

ASYLUM PROCEDURES

REPORT ON POLICIES AND PRACTICES
IN IGC PARTICIPATING STATES
2009



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intergovernmental consultations
on migration, asylum and refugees



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Asylum Procedures

REPORT ON POLICIES AND PRACTICES IN IGC PARTICIPATING STATES

May 2009

The IGC is an informal, non-decision making forum for inter-governmental information exchange and policy debate on issues of relevance to the management of international migratory flows. The IGC brings together 17 Participating States, the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM) and the European Commission. The IGC is supported by a small Secretariat located in Geneva, Switzerland.

The Participating States are Australia, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Netherlands, New Zealand, Norway, Spain, Sweden, Switzerland, United Kingdom and United States of America.

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PREFACE



The 2009 Asylum Procedures report was produced by the IGC Secretariat as a follow-up to similar books (so-called “Blue Books”) published in 1995 and 1997. The aim of this publication is to gather in a single document standardised country reports that provide comprehensive and comparative descriptions of refugee status determination procedures in the 17 Participating States.

The information contained in the 2009 report was compiled by the IGC Secretariat on the basis of substantial contributions from Participating States. Information on the role of the UNHCR in States’ asylum procedures was gathered with the assistance of the Refugee Agency’s Bureau for Europe and several of its country and regional offices.

All statistical data contained in this report was obtained directly from Participating States as part of the regular IGC data collection process. Unless otherwise indicated, statistical information reflects first and repeat applications and is presented up to 31 December 2008. Information on asylum law, procedures and policies is current up to April 2009.

This report would not have been possible without the considerable input of asylum policy-makers and practitioners in Participating States, the advice of Mike Bisi (former deputy coordinator of IGC), and the support of the entire staff of the IGC Secretariat.

The 2009 Asylum Procedures report was edited by Geraldine Wong.

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GLOSSARY¹

Adversarial: Involving opposing parties, contested; as distinguished from an *ex parte* hearing or proceeding, in which the party seeking relief has given legal notice to the other party, and afforded the latter an opportunity to contest it.²

Adjudication: The act of making a formal decision or judgment on a matter.

Asylee: An asylum-seeker who has been granted protection under the Immigration and Nationality Act in the United States.

Asylum: The grant, by a State, of protection on its territory to persons from another State who are fleeing persecution or serious danger. Asylum encompasses a variety of elements, including *non-refoulement*, permission to remain on the territory of the asylum country, and humane standards of treatment.

Asylum-seeker (also refugee claimant or applicant): 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. Not every asylum-seeker will ultimately be recognised as a refugee, but every refugee is initially an asylum-seeker.

Carrier sanctions: Sanctions, usually in the form of fines, imposed on carriers (owners of the conveyance) who bring into the territory of a State persons who lack valid entry documents.

Cessation clauses: Legal provisions that set out the conditions in which refugee status comes to an end because it is no longer needed or justified. Cessation clauses are found in Article 1C of the 1951 Convention relating to the Status of Refugees.

Complementary protection: Formal permission given by a country under its national law or practice, to reside in the country, extended to persons who are in need of international protection even though they do not qualify for refugee status under the 1951 Convention relating to the Status of Refugees. See *Subsidiary protection*.

Convention refugee: A person recognised as a refugee by States under the criteria set out in Article 1A of the 1951 Convention relating to the Status of Refugees, and entitled to the enjoyment of a variety of rights under that Convention. See *Refugee*.

Country of first asylum: The first country in which an asylum-seeker has been granted an effective hearing of his or her application for asylum.

Country of origin information (COI): Information on conditions in countries of origin, gathered specifically for use in procedures that assess claims of persons for refugee status or other forms of international protection. COI usually helps to answer questions regarding the political, social, cultural, economic and human rights situation as well as the humanitarian situation in countries of origin.³

¹ Based on *International Migration Law: Glossary on Migration*, International Organization for Migration (IOM) (2004) and *Master Glossary of Terms*, United Nations High Commissioner for Refugees (UNHCR) (June 2006), unless otherwise indicated.

² *Black's Law Dictionary with Pronunciations*, fifth edition, 1979.

³ Austrian Red Cross/ ACCORD, *Researching Country of Origin Information: A Training Manual, Part 1*, 2004 (updated April 2006), available online at: <http://www.coi-training.net/content/doc/en-COI%20Manual%20Part%201%20plus%20Annex%2020060426.pdf>.

De novo: Beginning anew. An appellate court may undertake a review *de novo*.

De jure: Existing by right or as a matter of law; descriptive of a condition in which there has been total compliance with all the requirements of the law.⁴

Dependant: A person who relies on another for support. In the migration context, a spouse and minor children are generally considered “dependants,” even if the spouse is not financially dependent.

Detention: Restriction on freedom of movement, usually through confinement, of a person by government authorities.

Diplomatic asylum: Refers broadly to asylum granted by a State outside its territory, particularly at its diplomatic missions.⁵

Exclusion clause: Legal provisions that deny the benefits of international protection to persons who would otherwise satisfy the criteria for refugee status. In the 1951 Convention relating to the Status of Refugees, the exclusion clauses are found in Articles 1D, 1E and 1F.

Expulsion: An act by an authority of the State with the intention and with the effect of securing the removal of a person or persons (usually non-nationals or stateless persons) against their will from the territory of that State. See *Removal*.

Ex officio: Refers to powers that, while not expressly conferred upon an official, are necessarily implied in the office.

Family reunification: Process whereby family members separated through forced or voluntary migration regroup in a country other than the one of their origin.

Freedom of movement: A human right laid down in Article 13 (1) of the Universal Declaration of Human Rights, which includes *inter alia* the element of “... freedom of movement and residence within the borders of each State.”

Group-based protection: Approaches whereby the protection and assistance needs of refugees are addressed without previously determining their status on an individual basis.

Inclusion clause: Clause in the 1951 Convention relating to the Status of Refugees (Article 1A (2)) that defines the criteria that a person must satisfy in order to be recognised as a refugee.

Inquisitorial: Involving an inquiry or inquest, or the investigation of certain facts and the active involvement of the decision-maker or adjudicator in the proceedings.⁶

Integration: Generally, the process by which migrants become accepted into society, both as individuals and groups. Integration implies consideration of the rights and obligations of migrants and host societies, of access to different kinds of services and the labour market, and of identification and respect for a core set of values that bind migrants and host communities in a common purpose.

Interception: Any measure applied by a State outside its national territory to prevent, interrupt, or stop the movement of persons without required documentation from crossing borders by land, air or sea, and making their way to the country of prospective destination.

International protection: Legal protection, on the basis of international law, aimed at protecting the fundamental rights of a specific category of persons outside their countries of origin, who lack the protection of their own countries.

Judicial Review: A court’s review of a lower court’s or an administrative body’s factual or legal findings.

Mandate refugee: A person who meets the criteria of the UNHCR Statute and qualifies for the protection of the UNHCR, regardless of whether or not he or she is in a country that is a party to the 1951 Convention relating to

⁴ *Black’s Law Dictionary with Pronunciations*, fifth edition, 1979.

⁵ UNESCO, *People on the Move: Handbook of Selected Terms and Concepts*, July 2008.

⁶ *Black’s Law Dictionary with Pronunciations*, fifth edition, 1979.

the Status of Refugees or the 1967 Protocol relating to the Status of Refugees, and whether or not he or she has been recognised by the host country as a refugee under either of these instruments.

Non-refoulement: A core principle laid down in the 1951 Convention relating to the Status of Refugees according to which “no contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, and nationality, membership of a particular social group or political opinion” (Article 33(1) of the 1951 Convention). The principle of *non-refoulement* is a part of customary international law and is therefore binding on all States, whether or not they are parties to the 1951 Convention.

Permanent residence: The right, granted by the authorities of a host country to a non-national, to live and work in the territory on a permanent (unlimited or indefinite) basis.

Prima facie refugee: A person recognised as a refugee, by a State or UNHCR, on the basis of objective criteria related to the circumstances in the country of origin, which justify a presumption that the person meets the criteria of the applicable refugee definition.

Protection visa (PV): Permit granted in Australia to asylum-seekers who have been recognised as Convention refugees.

Readmission agreement: Agreement that addresses procedures, on a reciprocal basis, for one State to return non-nationals in an irregular situation to their home State or a State through which they have transited.

Reception centre: A location with facilities for receiving, processing and attending to the immediate needs of refugees or asylum-seekers as they arrive in a country of asylum.

Refugee: A person who meets the eligibility criteria under the applicable refugee definition, as provided for in Article 1A (2) of the 1951 Convention relating to the Status of Refugees. See also *Convention refugee*.

Regularisation: Any process or programme by which the authorities of a country allow non-nationals in an irregular or undocumented situation to stay lawfully in the country.

Removal: The act of a State in the exercise of its sovereignty in removing a non-national from its territory to his or her country of origin or a third country after refusal of admission or termination of permission to remain. See also *Expulsion*.

Resettlement: The transfer of refugees from the country in which they have sought refuge to another State that has agreed to admit them. The refugees (often referred to as resettled or quota or mandate refugees) will usually be granted asylum or some other form of long-term rights.

Return: The act of a person returning to his or her country or place of origin or habitual residence. See *Voluntary return*.

Revocation: Rescinding, withdrawing or cancelling of permission or status granted.

Safe country of origin: The country of a person’s nationality or habitual residence where effective protection can be sought and secured. A safe country of origin does not generally produce refugees.

Safe third country: A country in which an asylum-seeker could have had access to an effective asylum regime, and in which he or she has been physically present prior to arriving in the country in which he or she is applying for asylum.

Stateless person: A person who is not considered a national by any State under the operation of its law (Article 1 of the 1954 UN Convention Relating to the Status of Stateless Persons).

Subsidiary protection: A form of complementary protection granted by EU member states when “serious harm” is established in accordance with Article 15 of Council Directive 2004/83/EC. See *Complementary protection*.

Suspensive effect: The right to remain in a country pending the outcome of a legal proceeding.

Temporary protection: Generally speaking, an arrangement developed by States to offer protection of a temporary nature to persons arriving from situations of conflict or generalised violence, often without prior individual status determination, or individually to persons who cannot return because of a generalised risk to the population in the country of origin.

Territorial asylum: Usually, asylum granted within the territorial limits of the State offering asylum.⁷

Unaccompanied minor: A person below the legal age of majority who is not accompanied by a parent, guardian, or other adult who by law or custom is responsible for the minor.

Unauthorised entry: Act of crossing the borders of a State without complying with the necessary requirements for legal entry of that State.

Visa: An endorsement by a consular officer in a passport or a certificate of identity that indicates that the officer, at the time of issuance, believes the holder to fall within a category of non-nationals who can be admitted under the State's laws.

Voluntary return: The assisted or independent return to the country of origin based on the person's free and informed decision. See *Return*.

⁷ UNESCO & The Hague Process, *People on the Move: Handbook of Selected Terms and Concepts*, July 2008.



INTRODUCTION

INTRODUCTION¹



When the IGC first began collecting information on asylum procedures in the mid-1980's, the approaches of Participating States were defined chiefly by their differences. Over the next several years, the overall asylum caseload grew rapidly, prompting greater efforts at exchanging good practices in such fora as the IGC. By 1997, when the IGC last published a report on asylum procedures, it had become possible to identify common approaches and *de facto* harmonisation of policies.

In the 1990's, measures such as accelerated procedures were being introduced, asylum institutions obtained a boost in human resources and efforts were being made to streamline the application process within a centralised system. Meanwhile, Member States of the European Union (EU) were drafting the Treaty of Amsterdam providing for the establishment of a common asylum system.

In the last decade, the number of asylum-seekers arriving in IGC States² has fluctuated well below the annual intake prevalent in the 1990's. Through these peaks and troughs, asylum procedures have continued to evolve on the basis of remarkably similar approaches. This commonality of approach is particularly evident in the prevalence of the single procedure and other efforts to simplify asylum determination.

This introduction seeks to highlight, among various trends evident in the 2009 Asylum Procedures report, the emergence of the single procedure and a few other key developments in IGC States in the period since the last Blue Book was published. As the individual country reports show, these developments are in part a reflection of legal requirements in the EU, but they also point to a common interest among IGC States to strengthen the integrity and efficiency of asylum procedures, regardless of the size of their caseload.

The Single Procedure

A key achievement for IGC States within the last decade has been the introduction of a single procedure that allows an asylum-seeker to make one application to obtain either Convention refugee status or a complementary form of protection.

In 1997, within their asylum procedure, about half of the current IGC States allowed for the possibility of examining grounds for Convention refugee status as well as other grounds to remain. However, approaches to a "single procedure" were hardly uniform. Procedures included an examination of grounds for persecution under the 1951 Convention and any combination of protection- and non-protection-related considerations, such as humanitarian grounds related to the asylum-seeker's personal circumstances (for example, health considerations and family ties) or protection from torture or threats caused by armed conflict or environmental disasters. A positive decision led to one of many possible status or permits, such as humanitarian status and temporary protection.³

Over the past decade, a single procedure that allows decision-makers first to consider whether asylum applicants meet criteria for Convention refugee status and, failing that, whether they meet criteria for obtaining a complementary

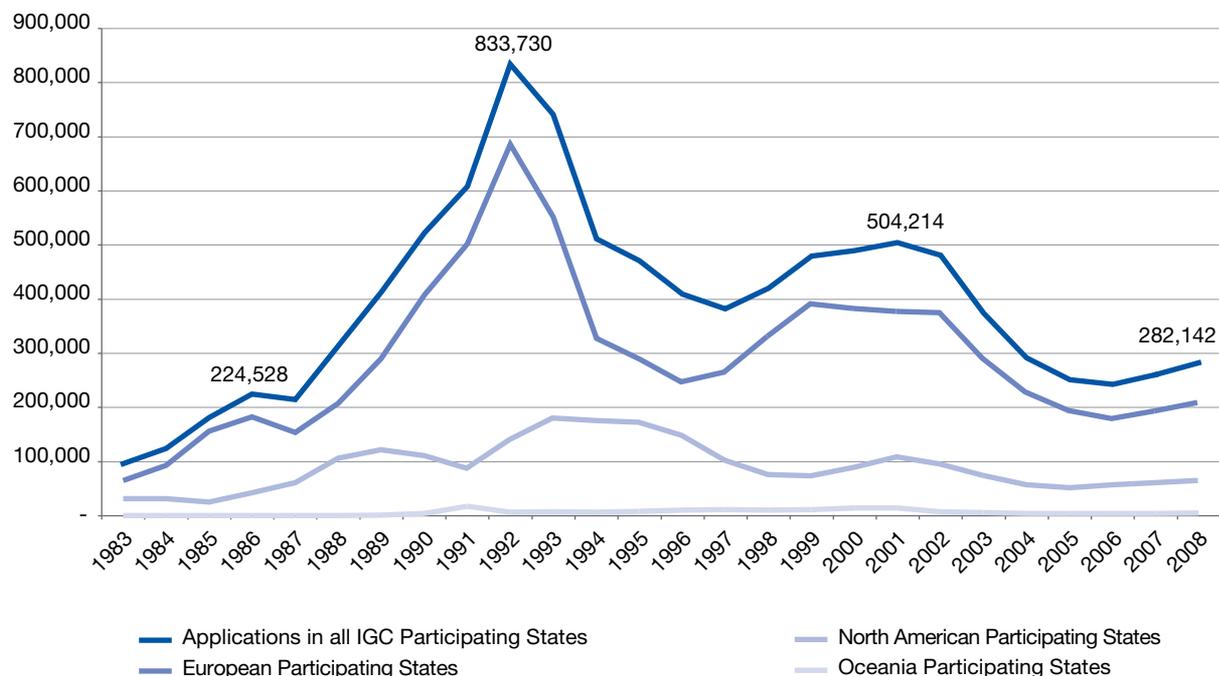
¹ This introduction benefited from the advice of Ms. Annette Zepp Glinoga at the Federal Ministry of Interior in Germany.

² The 1997 report covered procedures and data trends in all current Participating States, except Greece, Ireland and New Zealand (which subsequently joined the IGC), as well as Austria and Italy which, at the time, were participating in the IGC. See Report on Asylum Procedures: Overview of Policies and Practices in IGC Participating States, IGC, September 1997.

³ For example, in 1997, the various status that could be granted by the Danish Immigration Service included Convention refugee status, *de facto* status, asylum based on the applicant's strong ties to Denmark, humanitarian status, exceptional leave to remain and temporary protection.

Figure 1:

Evolution of Asylum Applications in IGC Participating States*, 1983-2008



form of protection, has emerged as the preferred approach for a majority of IGC States.⁴ In parallel, a consensus has grown regarding what constitutes complementary (or subsidiary) protection: that is, protection from violations of human rights under international law, including risk of torture or degrading treatment or punishment.⁵

The concept of complementary protection is today an integral element of asylum determination rather than a discretionary or ad hoc type of decision-making. Granting complementary protection, for the majority of IGC States, is a consideration that is separate from other grounds to remain that are more compassionate or administrative in nature, for example, family ties, health issues or administrative difficulties related to return to the country of origin. Today, while criteria for complementary protection are examined within the asylum procedure, in the majority of IGC States, permission to remain on non-protection-related grounds is granted outside the asylum procedure, usually by a different authority.⁶ Thus, the current approach to the single procedure is characterised by a clearer distinction than might have been the case in 1997 between granting status on protection-related grounds and granting permits on other, non-protection-related grounds.

The prevalence of the single procedure itself is evidence of two important trends of the last decade. In the European Union (EU), having a single procedure is one of the stated objectives of the Common European Asylum System (CEAS).⁷ The legal requirement that Member States fulfill their commitments to implement common minimum standards on asylum, including Council Directive 2004/83/EC, was an important factor in the emergence of the single procedure in some of the European States.

4 As indicated in its country report, Australia currently provides protection under the Convention against Torture (CAT) through ministerial intervention powers but the government is exploring the possibility of providing this type of complementary protection within a single asylum procedure. In Ireland, new legislation will be coming into force in the coming years to introduce a single procedure offering Convention status and complementary protection, while in New Zealand, a new Immigration Bill currently before Parliament foresees the granting of complementary protection under a single procedure. The U.S. fulfills its obligations under the CAT both within the asylum procedure (under the defensive procedure) and outside the asylum procedure. See the country reports for further information.

5 The legal basis for granting complementary protection encompasses Article 3 of the CAT and Article 7 of the International Covenant on Civil and Political Rights (ICCPR). In Europe, States also consider Article 3 of the European Convention on Human Rights (ECHR), while those EU Member States that have implemented the legislative instruments of the Common European Asylum System have regard for provisions contained in Council Directive 2004/83/EC, including protection from harm associated with armed conflict or generalised violence.

6 This does not preclude States from considering their *non-refoulement* obligations outside the asylum procedure. In most cases, States will take account of any risks of harm associated with returning a person, prior to implementing removal. For States that have integrated consideration of both protection- and non-protection-related grounds into a single procedure, see for example Finland.

7 See a list of the overarching objectives of the CEAS in "Policy Plan on Asylum: An Integrated Approach to Protection across the EU." Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions. Commission of the European Communities, 17 June 2008. COM (2008) 360.

Having the single procedure also falls in line with one of the primary interests of IGC States: to make asylum procedures more fair and efficient. For instance, the Canadian Immigration and Refugee Protection Act, which came into force in 2002 and introduced a single procedure for granting international protection, clearly states the objective of establishing “fair and efficient procedures that will maintain the integrity of the Canadian refugee protection system.”⁸

In many cases, the introduction of a single procedure was accompanied or preceded by reforms aimed at simplifying the entire process and reducing the amount of time an asylum-seeker must spend awaiting a decision. In Denmark, for example, asylum-seekers are no longer required to undergo interviews first by the Police and then by the Immigration Service. In Belgium, the admissibility and eligibility stages of the procedure, which involved two separate authorities, were eliminated with the introduction of a single procedure before the Commissioner General for Refugees and Stateless Persons (CGRS).

In effect, the intended consequence of having a single procedure is to be able to present an asylum-seeker with a clear resolution of his or her claim within a reasonable time frame. By centralising the sequential steps of the status determination process within a single authority and by making protection-related grounds the only criterion in status determination, States help to make the decision-making process more efficient and strengthen their ability to meet their protection obligations.

Achieving Efficiency, Safeguarding Integrity

With reforms such as the introduction of a single procedure, IGC States have attempted to not only address concerns regarding efficiency but also pursue their interest in safeguarding the integrity of procedures.

Beginning in 1997, the overall asylum caseload began to grow, compared with the relatively low numbers of new applications made in previous years. Faced with new pressures, States took measures to address concerns at various stages of the asylum procedure. One such concern was ensuring that persons with a genuine need for protection were able to access the procedure and be granted protection as quickly as possible. Persons who clearly did not present a need for protection were subject to accelerated procedures aimed at identifying and removing from consideration claims that were unfounded.

Concepts of safe countries of origin and safe third countries have now become the norm rather than the exception in refugee status determination. Efforts are also made to identify early in the procedure persons who might pose risks to national security and to exclude persons with serious criminal histories from consideration for the granting of asylum.

Conversely, claims made by vulnerable groups, such as unaccompanied minors, and by persons who demonstrate a clear need for protection are given priority.⁹

Over time, IGC States have focused their attention on improving the ability of asylum authorities to make quality decisions that contribute to the integrity of the overall system. Since 1997, many have invested in the creation of dedicated and professional teams of researchers and analysts to gather country of origin information (COI).¹⁰ Support tools such as training programmes for decision-makers, language analysis and age determination tests for minors are but some of the additional administrative measures taken to improve efficiency and integrity.

Technology has also played an important supporting role in assuring the integrity of the asylum determination procedure. All IGC States fingerprint asylum-seekers, although this is done within certain age limits and other exceptions prescribed by law.¹¹ Fingerprinting, like maintaining databases of applications, allows authorities to keep records of persons who have made a claim for asylum and, among other things, to identify repeat applicants and persons with criminal records. Some tools, however, have proven to be less useful in asylum determination:

⁸ Immigration and Refugee Protection Act, Bill C-11, 28 June 2002. See the full text of the legislation at: <http://laws.justice.gc.ca/en/l-2.5/>.

⁹ Increasingly, IGC States provide training to decision-makers on issues specific to unaccompanied minor asylum-seekers, including child-sensitive interview techniques, and will appoint a legal guardian to guide the child through the asylum procedure.

¹⁰ Readers will find in several country reports a summary of the key changes that COI offices in IGC States have undergone since 1997. Among the common developments has been the increased use of advanced information technology to gather and deliver country information more efficiently and an ongoing focus on ensuring the quality of COI being provided to decision-makers.

¹¹ In a few cases, such as in Australia, fingerprinting of asylum-seekers is undertaken on a discretionary basis.

forensic testing of documents, for example, is undertaken less frequently in States where the majority of asylum-seekers claim to carry no identity documents at all.

As was articulated in the 1997 Report on Asylum Procedures, the ability to effectively return persons who do not have a need for protection or other grounds for remaining is an important element of a credible asylum system. In the last decade, States have increased their efforts to implement returns of rejected asylum-seekers. Measures such as assistance with return and reintegration as well as readmission agreements have been designed to facilitate return fairly and efficiently.

Yet, as far-reaching as these individual efforts at achieving greater efficiency and integrity have been, there has also been greater reliance on practical cooperation and partnership among States. The U.S.-Canada Safe Third Country Agreement, which came into force in late 2004, works on the basic principle that the country in which the asylum-seeker first arrived takes responsibility for examining the claim, with certain exceptions. In Europe, both Switzerland and Norway now take part in the Dublin II Regulation, which assists States parties (generally speaking, Member States of the EU) to determine which among them is responsible for examining an asylum claim.

Practical cooperation has also extended to bilateral arrangements to facilitate information sharing on individual asylum cases. The Canada-U.S. Statement of Mutual Understanding on Information Sharing (SMU), for example, allows the two countries to exchange information regarding asylum-seekers on a systematic or case-by-case basis. Other arrangements, such as the multilateral Hunter Valley Declaration,¹² aim as well to achieve systematic exchange of biometric data on asylum-seekers. The overarching goal of such arrangements is to contribute to the integrity of asylum programmes.

The Common European Asylum System

In Europe, the time that has elapsed since the last report on asylum procedures was published has been devoted to laying down minimum standards for a common asylum system. The implementation of legislative instruments has been a key, ongoing exercise for IGC States in the EU¹³ and, as noted above, that exercise has had an important bearing on reforms introduced in the last several years.

The 2009 Asylum Procedures report does not set out to cover the entirety of *de jure* harmonisation in the EU in the area of asylum. However, the country reports do provide an indication of both the challenges and opportunities presented to States by the requirements of the Tampere and Hague Programmes. Given the broad scope of existing procedures and the legislative framework governing asylum, being able to apply common minimum standards has necessitated a re-thinking of existing norms and procedures. In Ireland, for example, significant legislative reforms that would see the introduction of a single procedure and an overhaul of the appeal procedure are pending. In Finland, transposition into national law of the Qualification Directive has prompted the introduction of a third type of complementary protection (humanitarian protection) in order to maintain the availability of a high level of protection.

Work towards achieving a common European asylum system has also provided States with greater opportunities to cooperate with one another. The creation of common guidelines on country of origin information (COI) and the establishment of the European Asylum Curriculum are but two examples of recent cooperative efforts. Practical cooperation, like the single procedure, is an overarching objective of the CEAS. Thus, in early 2009, the Commission issued a proposal for a regulation establishing an asylum support office to facilitate practical cooperation and provide technical assistance in the development of fair asylum policies.¹⁴

To move the CEAS closer to reality, the European Commission has also proposed a series of amendments to existing legislative instruments.¹⁵ In tabling these proposals, the Commission articulated its aim to create a “human and fair procedure[,] ... higher standards of protection, a more equal level playing field and higher efficiency for the system.”¹⁶

12 The Hunter Valley Declaration was signed in April 2007 by the U.S., Canada, Australia and the United Kingdom.

13 Denmark has an opt-out clause for participation in EU policies in the area of Justice and Home Affairs and is therefore not legally bound by EU asylum instruments. Denmark has opted in to the Dublin and Eurodac systems.

14 “Setting up of European Asylum Support Office Proposed by the Commission,” Press release (IP/09/275), 18 February 2009.
<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/275>.

15 Proposals were tabled in December 2008 to make amendments to the Reception Conditions Directive, the Dublin II Regulation and the Eurodac Regulation.

16 Statement by Jacques Barrot in “Putting the asylum seekers at the heart of a human and fair procedure: the EU Commission proposes to modify the Common European Asylum System.” Press release (IP/08/1875), 3 December 2008.
<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1875&format=HTML&aged=0&lang>.

Conclusion

The 2009 Asylum Procedures report reveals a long list of developments that have taken place over the last decade. This introduction has singled out only a few of them to show that, since 1997, one of the chief goals of IGC States has been and continues to be the improvement of their capacity to efficiently handle asylum applications while maintaining their commitment to international protection. The introduction of new laws and administrative mechanisms points to an ongoing preoccupation with striking the right balance between safeguarding the integrity of the asylum procedure and making the procedure fair, transparent and efficient.

In trying to reach this goal, States have looked back at past reforms, but they have also attempted to learn from one another. The regional context of asylum has become more important. In the European Union, the harmonisation of asylum policy has involved both Member States and their neighbours in an ongoing dialogue on creating better synergies across borders. In North America, the United States and Canada have implemented the Safe Third Country Agreement and engaged in more systematic exchanges of information.

Cooperation, regardless of geography, has opened up possibilities in areas as diverse as combatting fraud, sharing responsibility for examining asylum claims and exchanging credible country of origin information. While undoubtedly, *de jure* harmonisation of policies and practices in the EU will continue apace, that IGC States share common interests in achieving greater efficiency, fairness and integrity and are investing in collaborative efforts toward these goals can only ensure progress in *de facto* harmonisation of asylum procedures.

COUNTRY REPORTS



Australia



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1 Background: Major Asylum Trends and Developments

Asylum Applications

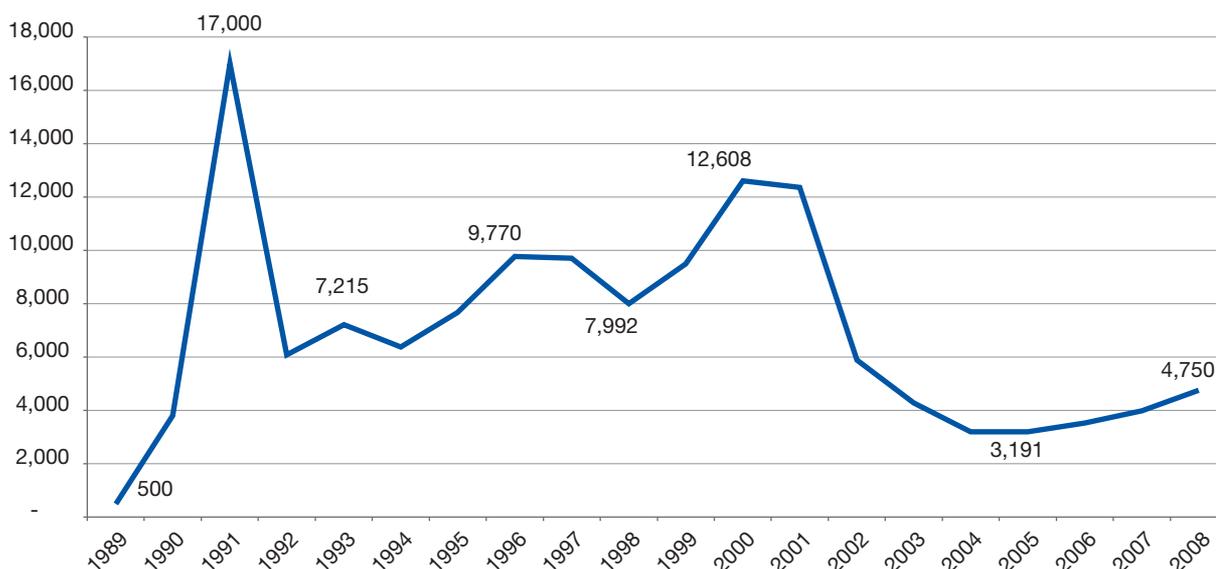
Australia has long afforded protection under its international obligations to those in need. However, reported data has been available only since the early 1990's. Asylum application numbers peaked at 17,000 in 1991 and again in 2000 and 2001, with more than 12,000 each year. Australia currently receives around 4,000 asylum applications per year.

Key Developments

In the 1980's, the Determination of Refugee Status Committee (DORS) had responsibility for examining claims at the first instance and reviewing negative decisions. The DORS Committee consisted of government representatives from the Departments of Immigration, Local Government and Ethnic Affairs (DILGEA), Foreign Affairs, the Prime Minister and Cabinet and the Attorney General. A representative of the United Nations High Commissioner for Refugees (UNHCR) also attended meetings in an advisory capacity. Where there were clear grounds for humanitarian stay, but where

Figure 1:

Evolution of Asylum Applications in Australia, 1989-2008



Top Nationalities

In the early 1990's, the majority of asylum-seekers arrived from China and Indonesia. By 2000 and 2001, the top countries of origin were Iraq and Afghanistan. In recent years, the top countries of origin have been China, Sri Lanka, Iraq, Pakistan and Iran.

Figure 2:

Top Five Countries of Origin in 2008

1	China	1,223
2	Sri Lanka	417
3	India	371
4	Indonesia	237
5	Malaysia	231

refugee status was not recommended, the Minister for Immigration, Local government and Ethnic Affairs, could approve temporary entry on humanitarian grounds.

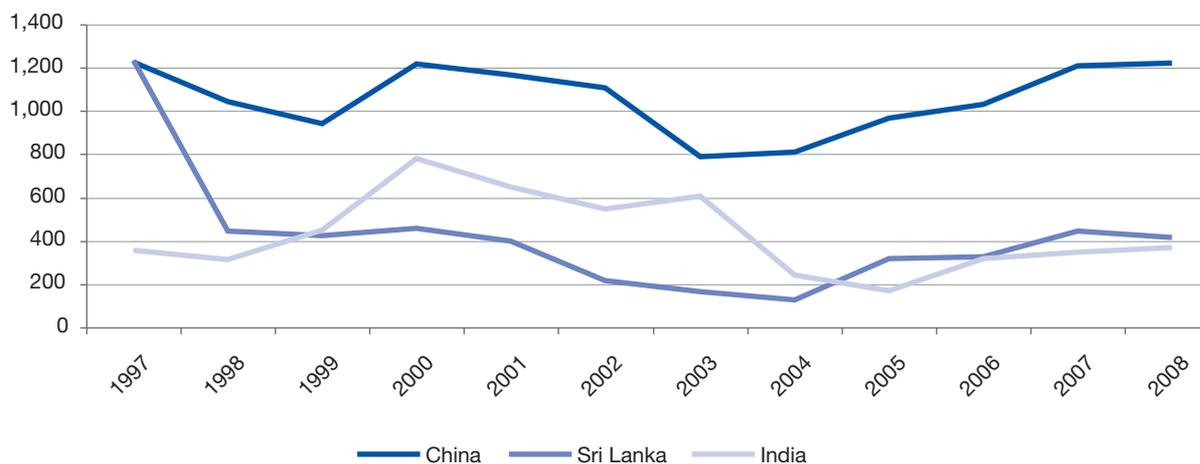
In 1990, a two-stage refugee determination process was introduced as follows:

- There was a primary stage where determinations were made by a DILGEA officer, and
- There was a review stage where unsuccessful applicants could seek review of their decision by the Refugee Status Review Committee (RSRC).

For the first time, a non-government representative was involved in the decision-making process – a nominee of the Refugee Council of Australia was represented on the RSRC – in addition to government members from DILGEA, Department of Foreign Affairs and Trade, and the Attorney-General. Successful onshore refugee applicants were granted a four-year Temporary Entry Permit rather than permanent residence.

Figure 3:

Evolution of Applications from the Top Three Countries of Origin for 2008



In 1993, the Refugee Review Tribunal (RRT) replaced the RSRC. In contrast to the RSRC, the RRT has a statutory basis, makes binding decisions and is independent.

A year later, as part of major reforms to the Migration Act 1958 and visa arrangements, a new permanent Protection Visa (PV) was introduced which incorporated refugee status determination as part of the visa eligibility criteria.

In 1999, a three-year Temporary PV (TPV) was introduced for unauthorised arrivals and asylum-seekers who had spent seven days in a third country where they could have sought or obtained protection, with the aim of discouraging human smuggling activities resulting in unauthorised boat arrivals and discouraging refugees from leaving their country of first asylum. Other PV applicants remained eligible for a permanent PV.

In September 2001, legislation was passed excising certain territories from the Australian migration zone to prevent unlawful non-citizens who have first entered Australia at an excised offshore place from accessing visa applications and review processes in Australia and enable such persons to be taken to a declared country (for example Nauru) for refugee processing (this was commonly called the “Pacific Solution”). Further territories were excised in 2005.¹

Also in 2001, there was the codification of key elements of the refugee definition such as persecution, particular social group, non-political crime and particularly serious crime.

¹ In 2001, the following places were excised: the Ashmore and Cartier Islands, Christmas Island, Cocos (Keeling) Islands and Australian offshore resource and sea installations. From 22 July 2005, further territories were excised which included: all islands that form part of Queensland and are north of latitude 21° south, all islands that form part of the Northern Territory and are north of latitude 16° south, all islands that form part of Western Australia and are north of latitude 23° south, and the Coral Sea Islands Territory.

From 12 December 2005, there has been a legislative requirement for DIAC and the RRT to process PV applications within a 90-day time frame.

Since the change in government on 24 November 2007, asylum policies have been reformed to ensure that refugees are provided with a fair, humane and certain outcome. The most significant reforms (which are detailed below) relate to the dismantling of the Pacific Solution and the abolition of the TPV regime, with all persons owed refugee protection now accessing a permanent visa.

2 National Legal Framework

2.1 Legal Basis for Granting Protection

Australia provides protection to persons who meet the United Nations definition of a refugee, as defined in the 1951 Convention and 1967 Protocol relating to the Status of Refugees through the PV process. The PV process is governed by the Migration Act 1958 and the Migration Regulations 1994.

Australia currently meets its international obligations under other international human rights instruments (such as the Convention against Torture, International Covenant on Civil and Political Rights, Convention on the Rights of the Child) through Ministerial intervention powers to grant visas when doing so is considered to be in the public interest.

2.2 Recent/Pending Reforms

Unauthorised Boat Arrivals

In February 2008, all remaining asylum-seekers who were being processed on Nauru under the Pacific Solution were granted Humanitarian visas and were settled in Australia. Unauthorised boat arrivals will no longer be taken to Nauru for processing but will have their protection claims processed on Christmas Island, which is part of Australian territory.

On 29 July 2008, the government announced that a framework of excision of offshore islands and non-statutory processing of persons who arrive at an excised offshore place will remain. The refugee processing arrangements were substantially improved, however, and now include provision of publicly funded independent advice and assistance, independent merits review of unfavourable refugee status assessments, robust procedural guidance for asylum decision-makers at the first instance and external scrutiny of the process by the Commonwealth Ombudsman.

Abolition of Temporary Protection Visas (TPVs)

On 9 August 2008, TPVs were abolished. All PV applicants are now entitled to receive a Permanent PV if they are found to be in need of protection, regardless of the nature of their entry into Australia.

Temporary Humanitarian visas (THVs) granted to persons outside Australia under the Secondary Movement Relocation (subclass 451) and Secondary Movement Offshore Entry (subclass 447) have also been abolished.

Current and former TPV and THV holders still in Australia on 9 August 2008 now have access to a permanent visa, Resolution of Status (subclass 851) visa, and are entitled to the same benefits as holders of Permanent PVs. Only health, character and security requirements² need to be met, and no reassessment of protection claims is required.

Asylum-seekers have also benefited from the Australian government's changes to detention policy, which ensure that detention occurs only as a matter of last resort and for the shortest practicable time.³

² Under Australian law, all foreign nationals entering Australia must meet a health requirement, and authorities are guided by the Public Interest Criteria (PIC) in determining which procedures may be used to assess persons against this health requirement. Usually, applicants will undergo a chest x-ray and medical examination. Character checks ensure that PV applicants are not a threat to national interest. For example, checks are done to determine whether the person has previously been convicted of a criminal offence.

³ These changes are described below under the section Freedom of Movement and Detention.

Future Changes

In 2009, the Australian government will introduce complementary protection arrangements that will allow Australia to meet its *non-refoulement* obligations under international treaties such as the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), through the PV process, rather than through Ministerial Intervention.

The Australian government will also introduce more flexible work rights arrangements for asylum-seekers.

3 Institutional Framework

3.1 Principal Institutions

The Department of Immigration and Citizenship (DIAC) administers Australia's Humanitarian Program, which is made up of an offshore resettlement component and an onshore protection component. DIAC receives PV applications, and DIAC officers, acting as delegates of the Minister for Immigration and Citizenship, decide if the PV applicant engages Australia's protection obligations under the 1951 Convention.

The Refugee Review Tribunal (RRT) reviews DIAC decisions that refuse to grant a PV or cancel a PV.

The Administrative Appeal Tribunal (AAT) reviews DIAC decisions that refuse to grant a PV, or cancel a PV, relying on Articles 1F, 32 or 33(2) of the 1951 Convention. The AAT also reviews DIAC decisions that refuse to grant, or cancel a visa on character grounds under section 501 of the Migration Act 1958.⁴

The Federal Magistrates Court or the Federal Court hears applications for judicial review of an RRT decision if there has been an error of law. Applicants may also pursue judicial review to the High Court, either having exhausted Federal Court avenues, or direct to the High Court's original jurisdiction.

3.2 Cooperation between Government Authorities

There is no structural cooperation between DIAC and the RRT, AAT or the courts, as these bodies work independently when reviewing DIAC PV decisions. Regular meetings are held between the RRT executive and DIAC to discuss and resolve issues of concern and to settle general PV policy and procedure.

⁴ See the annexe for the text of section 501 of the Migration Act.

The following government agencies are also involved in the PV procedure:

- The character test includes Australian Federal Police penal checks in relation to criminal conduct within Australia (and sometimes overseas if the applicant has resided in a country, other than the country of feared persecution, for 12 months or more)
- Australian Security Intelligence Organisation (ASIO) conducts security checks to ascertain whether an applicant is a direct or indirect risk to national security for the purposes of the first exception to Article 33(2) of the 1951 Convention
- The Minister of the Department of Foreign Affairs and Trade determines whether an applicant may be directly or indirectly associated with the proliferation of weapons of mass destruction.

Confidentiality and privacy principles are adhered to when information is exchanged between DIAC and other principal institutions or government agencies.

4 Pre-entry Measures

Australia has a universal visa system that requires all non-citizens to obtain a visa before entering Australia. When entering Australia, under the Migration Act 1958, citizens and non-citizens are required to identify themselves to an immigration inspector or some other person authorised by the Department at a port of entry and to provide certain information in order to enter Australia. This process is designed to regulate the entry of people to Australia and to ensure that those who enter have the authority to do so, that they are who they claim to be, and that they provide other information if required.

Under this process, the clearance authority examines a person's authority to enter Australia and checks that the person is an Australian citizen, a visa holder or a person eligible for a visa in immigration. The person's travel document is also checked.

4.1 Visa Requirements

Australia has a non-discriminatory immigration programme and a universal visa system requiring all non-citizens to obtain a visa before entering Australia. DIAC is the competent authority for issuing visas.

4.2 Carrier Sanctions

The Migration Act 1958 allows for fines of up to AUD \$10,000 for the master, owner, agent, charter and operator or agent of a vessel that carries any person

who does not hold a visa to Australia. As a matter of policy, DIAC may issue Infringement Notices for up to AUD \$5,000 for the same offence, where organised malpractice is not an issue.

4.3 Interception

In addition to its universal visa requirement, Australia has a number of programmes in place to intercept the entry of persons who pose security, criminal or health risks.

Overseas Compliance Officers

Overseas Compliance Officers (OSCOs) are specialists whose job is to identify and respond to immigration malpractice. They work closely with visa officers to detect and combat fraud in visa caseloads. There are currently 33 OSCOs at 23 posts, in 19 countries.

Immigration Alert Checking

The Movement Alert List (MAL) is DIAC's principal electronic alert system which consists of a Person Alert List (PAL) and a Document Alert List (DAL).

The purpose of MAL is to alert DIAC's decision-makers to information the Department holds about an individual during the processing of visa and citizenship applications, passenger processing at overseas check-in points (such as at airports) and immigration clearance at the Australian border.

As at the end of October 2008, there were approximately 650,000 names listed on the PAL. Persons may be listed on MAL when they have serious criminal records, where their presence in Australia may constitute a risk to the Australian community, and if they are subject to exclusion periods prescribed by migration legislation. This exclusion can occur for a number of reasons, including health concerns, debts owed to the Commonwealth or other adverse immigration records.

About 1.96 million documents of concern (i.e. lost, stolen or fraudulently altered passports) are also recorded on the DAL.

Details identifying persons of concern are recorded on MAL as a result of the department's liaison with law enforcement agencies and departmental offices in Australia and overseas.

If there is a MAL true match a decision on entry is taken by DIAC in consultation with any other relevant agency.

Advance Passenger Processing (APP)

Under the Advance Passenger Processing or "APP" system, all airlines and cruise ships must provide DIAC

with information on all passengers and crew, including transit passengers, travelling to or via Australia. This information is collected at check-in through the APP system and is transmitted to Australia for use by border agencies prior to the arrival of the vessel. The data transmitted to Australia is cross-checked against Australia's immigration databases.

APP checking occurred in about 99.8 per cent of all passenger and crew air arrivals during 2007-2008.

Airline Liaison Officers

Airline Liaison Officers (ALOs) play a key role in protecting Australia's borders by preventing and deterring irregular movement of persons in the region. ALOs conduct document screening of many Australia-bound passengers at key international gateways. They also provide advice to airlines and host governments on passenger documentation issues, and by their visible presence, deter the activities of those involved in people smuggling. ALOs assist airline check-in staff with training and advice about Australia's entry requirements.

There are currently (as at October 2008) 18 ALOs at 11 overseas locations, although this number remains flexible to enable response to changing situations. In 2007-2008, Australian ALOs interdicted 143 irregularly documented Australia-bound travellers.

Immigration Inspectors at Australia's Border

Under the Migration Act 1958, citizens and non-citizens are required to identify themselves to a clearance authority and provide certain information to enter Australia. This process is designed to regulate the entry of persons to Australia and to ensure that those who enter have the authority to do so, that they are who they claim to be and that they provide other information if required.

5 Asylum Procedures

5.1 Application Possibilities and Requirements, Procedures and Legal Remedies

A PV application may be made at the port of entry and within Australia at offices of DIAC.

PV applications for those who claim to be members of the same family unit may be made in combination. Only spouses and dependants who are in Australia are eligible for a combined application. This reduces the number of individual PV application forms that need to be submitted (and the PV application charge payable)

by a family unit. Family unit members can make claims of their own and may lodge separate PV applications if they so wish.

Access to Information on PV Procedures

Some information on the PV procedure is available in English on the DIAC website at www.immi.gov.au.

Staff at DIAC offices can also provide additional information on the PV procedure.

5.1.1. Outside the Country

Applications at Diplomatic Missions

It is not possible to make an asylum application at an Australian diplomatic mission except for those within the Refugee category of the offshore Humanitarian Program, as described below.

Resettlement/Quota Refugees

Average Yearly Quota

In 2008-2009, the Australian government has increased the Humanitarian Program to 13,500 places comprising the following:

- 6,500 places for the Refugee category (a one-time increase of 500 places from previous years)
- 7,000 places for the Special Humanitarian Program and onshore protection needs.

The increase of 500 places under the Refugee category is intended for Iraqis and is in recognition of the critical resettlement needs of this caseload.

Selection of Refugees

The regional composition of the offshore programme will be evenly distributed in 2008-2009. Africa, the Middle East and Asia will remain as priority regions, and each region will be allocated a 33 per cent intake, with the remaining one per cent allocated for contingencies.

Some caseloads expected to be resettled under the offshore resettlement programme in 2008-2009 include the following: Sudanese, Congolese, Burundians, Eritreans, Liberians, Iraqis, Afghans, Burmese and Bhutanese.

Criteria for Resettlement

The Refugee category provides resettlement in Australia to persons who are subject to persecution in their home country and are currently outside their home country. The majority of applicants who are considered under

this category are identified and referred by the UNHCR for resettlement. The Refugee category includes the Women-at-Risk programme. Each year, 10.5 per cent of the Refugee category allocation is set aside for the Women-at-Risk programme. Australia has consistently exceeded this allocation for the past few years.

The Special Humanitarian Program provides resettlement for persons who are subject to substantial discrimination amounting to human rights violations in their home country and are living outside their home country. The name of an Australian citizen or permanent resident or community organisation in Australia who is willing to support the application (a “proposer”) must be included in the application.

In addition, all applicants are required to meet health and character criteria to be eligible for the granting of a visa.

Procedures

Applications for a visa under the Refugee category may be made at an Australian diplomatic mission.

Refugee and Humanitarian visa applications that are accompanied by a proposal form for the Special Humanitarian Program category may be made at the DIAC office in Sydney or Melbourne.⁵

Following an assessment of claims, the application is either refused for not meeting the criteria or forwarded to the relevant overseas post for further consideration, interview and decision.

There is no possibility to appeal against decisions to refuse offshore applications for resettlement. Refused applicants may, however, reapply at any time.

5.1.2. At Ports of Entry

If a person, regardless of his or her immigration status, states at a port of entry (a seaport or airport) that he or she has a fear of return to the country of citizenship or usual residence, a full entry interview of the person is conducted by an immigration inspector or some other officer authorised by DIAC to ascertain the reasons for the person’s arrival in Australia, including the nature of any claims the person may make. It is not an assessment of the merits of the claim for protection.

After the full entry interview has been conducted, details of the case are faxed to an assessing officer,

namely a senior DIAC officer representing the Refugee, Humanitarian and International Division.

Based on the information given by the person, the assessing officer will decide whether the person at face value may engage Australia’s protection obligations. This is a low threshold test. If the assessing officer considers that the person may, at face value, engage Australia’s protection obligations, the person will be provided with a publicly funded migration agent (immigration consultant) to assist with the preparation and making of a PV application. Arrangements will then be made for the person to be transferred to the nearest immigration detention facility. The PV application is processed in the normal PV procedure, as described below. Priority is given to finalising detention cases.

If the person does not provide information or make claims that the assessing officer considers at face value may engage Australia’s protection obligations, arrangements may be made for the person to be removed. A person, however, can apply for a PV at any time after the entry interview while he or she remains in immigration detention in Australia, if new information or claims are made, or if the person requests a PV application form.

5.1.3. Inside the Territory

Persons who have entered Australia and are living either in the community or are in immigration detention centres, may apply for protection by completing and submitting the approved application form for a PV.

Application and Admissibility

Asylum-seekers may make a PV application with DIAC, either in person or via the postal service. PV applications are processed in DIAC regional offices in Sydney or Melbourne by trained PV decision-makers.

For a PV application to be valid, a PV applicant must be physically present in Australia and meet the following requirements:

- Complete and sign form 866, answering all questions
- Provide all personal details, including a current residential address
- Attach all relevant documents (e.g., certified copies of birth certificates)
- Provide reasons if all relevant documents are not attached
- Attach and sign any extra pages referred to in the application

⁵ Applications for persons from Africa are made at the Sydney office, while applications at the Melbourne office apply to countries in the Middle East and parts of South West Asia (Afghanistan, Bahrain, Iran, Iraq, Jordan, Kuwait, Lebanon, Oman, Pakistan, Qatar, Saudi Arabia, Syria, Turkey, United Arab Emirates and Yemen).

- List the documents that are attached to the application and/or that will be provided separately
- Include claims for protection
- Include the details and signatures of the witness and interpreter (if applicable)
- Attach a recent passport-sized photograph
- Enclose an application fee of AUD\$30 for community applicants only (no charge for PV applicants in detention)
- Sign an Australian Values Statement (if over 18 years of age).

Applicants who are living in the community and whose PV applications are found to be valid may be eligible for a Bridging visa (BV) which allows them to remain lawfully in Australia for the duration of the asylum procedure. The BV is issued with certain conditions and is valid until the primary PV application is finally determined.⁶ A further BV may be granted if a person pursues judicial review or seeks ministerial intervention after a final determination on his or her primary PV application. This is done on a case-by-case basis.

Inadmissibility and Appeal

A PV application will be invalid if form 866 is incomplete and omits material information or information allowing a decision-maker to consider the substantive issues raised by the PV application (e.g., the applicant's reasons for claiming protection).

However, if the PV applicant later provides the necessary information, the invalid PV application will become a valid PV application.

A PV application will also be invalid if a cheque is dishonoured for the application fee, or if a person who has been refused a PV makes a further (repeat) PV application (unless the Minister intervenes to allow a further application to be made, as described below).

A PV application is also invalid if a person is affected by any of these provisions:⁷

- Section 91E of the Migration Act 1958 provides that a person covered by the 1989

Comprehensive Plan of Action approved by the International Conference on Indo-Chinese Refugees or who has a prescribed connection with a declared safe third country cannot in certain circumstances make a valid PV application. The Minister can lift this bar under section 91F

- Section 91K of the Migration Act 1958 provides that a PV application by a Temporary Safe Haven visa holder will not be a valid application unless the bar has been considered and resolved by reference to exercise of the Minister's public interest power under section 91L
- A PV application made by a person who is a national of two or more countries (dual national), or where the person has a right to re-enter and reside in a country, in respect of which there is a ministerial declaration in force and in which the person has at some stage resided for a period of at least seven days, will not be a valid application unless the effect of the application bar in sections 91N and 91P(1) of the Migration Act 1958 has been considered and resolved by reference to exercise of the Minister's power under section 91Q(1).

A decision that a PV application is invalid is not eligible for appeal before the RRT, but may be subject to judicial review before the Courts. The applicant may commence proceedings in the Court within 28 days of the actual notification of the decision.

Accelerated Procedures

Australia does not have an accelerated procedure in place. However, as a matter of policy, certain categories of applications are given a higher priority. The order of priority is as follows:

- Detention cases
- Sensitivity and priority of cases involving unaccompanied minors in the community should be considered in each individual case and priority given accordingly
- Torture/trauma cases
- PV applicants in receipt of Asylum-Seeker Assistance (ASA)
- Special needs applicants, such as persons with physical or psychological disabilities, or those who are in serious ill health
- Further PV applications made following a decision by the Minister to lift the section 48A bar to make a further PV application
- All new initial PV applications.

⁶ The specific class of BV that a PV applicant will be eligible for depends on their immigration status at the time they apply for a PV. Applicants who hold proper authorisation for stay in Australia when they lodge their PV application will be granted a BV which allows them to remain lawfully in the community until the PV application is finally determined or whilst they seek judicial review. They are generally eligible for work rights and Medicare if they have spent fewer than 45 days in Australia in the 12 months prior to making their PV application. In many cases, persons without proper stay authorisation, including PV applicants, may also be eligible for a BV. DIAC is currently reviewing its BV policy, and the Australian government is considering changes to access to work rights and Medicare.

⁷ These sections of the Act may be found in the annexe to the chapter.

Depending on local arrangements, other priorities may be instituted. For example, in the interests of efficient case management, cases with similar claims from a particular country can be concurrently allocated and then considered by a decision-maker, although each case must still be considered on its individual merits.

Normal Procedure for Protection Visas

After a PV application is determined to be valid, a PV decision-maker from DIAC assesses the PV applicant's claims against the definition of a refugee set out in the 1951 Convention, Australia's domestic laws, and all information available on the conditions in the asylum-seeker's country of origin. All PV applications are assessed on an individual basis. All primary PV decisions by DIAC must be made within three months of application.

Other Requirements

Where a PV applicant is found to be a person to whom Australia has protection obligations, the PV applicant must satisfy the following criteria before a PV is granted:

- Undergo a health assessment (chest x-ray, HIV test and medical examination)
- Be of good character
- Not be a security risk to Australia
- Be physically present in Australia at the time of the decision.

Interview

An interview is not mandatory but the applicant may be invited to an interview if further information is required. DIAC has significantly increased the rate of interviews for initial PV applicants.

DIAC uses sensitive questioning techniques for children and victims of torture/trauma during the interview process.

Review/Appeal of Protection Visa Decisions

Appeal

If DIAC refuses a protection claim, the PV applicant may appeal the decision at an independent tribunal – the RRT or the AAT depending on the basis for the initial refusal.

The applicant has 28 days from the date of notification of the decision to refuse a PV (seven working days for an applicant in immigration detention) to lodge an application with the RRT or AAT.

The RRT undertakes a fresh merits review of DIAC decisions to refuse or cancel a PV. A decision on the

review by the RRT must occur within three months of application. If the RRT is unable to make a decision favourable to the applicant on the written evidence available, it must give the applicant the opportunity for a personal hearing. A fee of AUD \$1,400 becomes payable if the RRT affirms the original refusal decision.

The AAT reviews DIAC decisions that refuse to grant a PV, or cancel a PV, relying on Articles 1F, 32 or 33(2) of the 1951 Convention. The AAT also reviews DIAC decisions that refuse to grant or cancel a visa on character grounds under section 501 of the Migration Act 1958.

Judicial Review

An asylum-seeker may apply for judicial review of an RRT decision in the Federal Magistrates Court or the Federal Court if there has been an error of law, including consideration of whether the correct procedures were followed in the decision-making process, whether the person was given a fair hearing, whether the decision-maker correctly interpreted and applied the relevant law (including the provisions of the 1951 Convention), and whether the decision-maker was unbiased. Applicants may also pursue judicial review to the High Court, either having exhausted Federal Court avenues, or direct to the High Court's original jurisdiction.

If a failed PV applicant is subject to removal and has a pending appeal or request for ministerial intervention, then that person will not be removed from Australia until a final determination is made either by the court, tribunal or the Minister.

Freedom of Movement during the Procedure

There are no restrictions placed on the freedom of movement of PV applicants who enter Australia lawfully and maintain their lawful status. If a person is complying with immigration processes and is not a risk to the community, then detention cannot be justified. However, undocumented arrivals and persons who have been denied entry will be detained for the management of health, identity, and security risks to the community.

Detention

Under the government's reforms, persons are detained only if the need is established.⁸

Three groups are subject to mandatory detention:

- All unauthorised arrivals, for management of health, identity and security risks to the community

⁸ Information on Australia's seven key immigration detention values can be found in the annex.

- Unlawful non-citizens who present unacceptable risks to the community
- Unlawful non-citizens who have repeatedly refused to comply with their visa conditions.

In all cases, DIAC must justify a decision to detain and not presume detention.

All efforts are being made to consider unlawful non-citizens who are currently unable to be removed for the grant of an appropriate visa. If visa grant is not appropriate, alternative detention measures will be considered, in line with the principle stated above that detention in Immigration Detention Centres (IDCs) is to be a measure of last resort.

Flexible immigration detention options include immigration residential housing (IRH), immigration transit accommodation (ITA), alternative places of detention and community detention (residence determination).

While these options remain “immigration detention” in a legislative sense and still require a level of security and restriction of liberty, these alternatives are less intrusive than other detention options. As such, DIAC considers use of these facilities always preferable to accommodation in IDCs where an evaluation of a person’s needs and the risk he or she poses to the community deems it appropriate.

All families with children who enter into immigration detention are referred to the Minister for Immigration and Citizenship for possible consideration for Community Detention arrangements as soon as practicable, once health, security and identity requirements are satisfied.

DIAC currently contracts out the provision of immigration detention services and the provision of health care. The guidelines for the provision of immigration detention services and the standard of care provided by the detention services providers have been developed after extensive consultation with the sector and are consistent with Australia’s international human rights obligations and the Australian government’s Key Immigration Detention Values.

Detention services and their delivery are subject to an external scrutiny and accountability framework that includes the Parliament and a number of statutory authorities such as the Commonwealth Ombudsman, the Privacy Commissioner and the Australian Human Rights Commission. This framework is in place to ensure that persons in immigration detention are treated humanely, fairly, and with dignity.

Detention that is indefinite or otherwise arbitrary is not acceptable, and the length and conditions of immigration detention, including the appropriateness of

both the accommodation and the services provided, are subject to regular review. A senior DIAC officer reviews the situation of each person in immigration detention every three months to confirm that the further detention of the individual is justified. The Commonwealth Ombudsman also undertakes a review of those persons who have been in immigration detention for six months, in addition to the existing review at two years, to strengthen the existing oversight and management of those in immigration detention.

For those in immigration detention, the Australian government facilitates access to legal advice and representation. Upon arrival at an immigration detention centre, persons are informed, as part of the induction process, of their right to receive visits from their legal representatives, to contact legal assistance by phone and to receive and send material to legal representatives via fax or post.

If persons in immigration detention are assessed as prima facie engaging Australia’s protection obligations, they are additionally provided with access to the Immigration Advice and Application Assistance Scheme (IAAAS) at no cost to them. This includes the assistance of a professional interpreter and translation services at all points, if required. The service includes assistance with the preparation, making and presentation of applications for visas through the primary decision and merits review stages.

Recent Reforms to Detention Policies Affecting Families

As signatory to the Convention on the Rights of the Child, Australia takes its obligations very seriously. In June 2005, Australia reformed the management of immigration detention to enable families with children to live in the community under alternative detention arrangements while their visa status was resolved. In 2008, Australia took these reforms further by introducing a range of reforms to Australia’s immigration detention system, including the introduction of seven key immigration detention values. In accordance with these values, children and, where possible, their families, are not to be detained in an immigration detention centre under any circumstances.

Reporting

During the PV procedure, PV applicants must report such things as change of address to DIAC. Even though there are mandatory requirements in the Migration Act to inform DIAC of any change of address, non-compliance with this requirement by a PV applicant is dealt with on a case-by-case basis. If a person fails to notify DIAC of address changes, he or she may not receive important information in relation to the PV application. For example, the PV applicant may fail to request a review of the PV decision to the RRT or make an appeal for judicial review within the time frame stipulated in the Migration Act.



Repeat/Subsequent Applications

Section 48A of the Migration Act 1958⁹ provides that a PV applicant, whose application for a PV has been refused, whether or not the application has been finally determined, may not make another PV application.

However, under section 48B of the Migration Act 1958, the Minister for Immigration and Citizenship has a non-delegable, non-compellable power to lift the restriction on further applications, and allow a person to make a fresh PV application, if the Minister is satisfied that it is in the public interest to do so.

There is no limit on the number of times that a person barred under section 48A of the Migration Act 1958 can request that the Minister lift the bar to allow a fresh PV application.

Requirements and Procedure for a Repeat Application

When a request is made to the Minister for Immigration and Citizenship to allow a fresh PV application, DIAC officers examine the case against the ministerial Guidelines.

DIAC can initiate a referral to the Minister without a request being made where new information arises that would bring a particular case within the Minister's Guidelines.

A case is referred to the Minister in the form of a submission summarising the particulars of the case and the individual's immigration history when new information in support of the applicant's claims for protection becomes available, or if there has been a change of circumstances in the applicant's country of nationality, or habitual residence, and the information appears to be credible, is 1951 Convention-related and enhances the applicant's chances of making a successful claim. The information raised must also meet one of the following requirements:

- It was not known to the applicant during the consideration of the previous application
- It was not known to the applicant but is now known to DIAC and is relevant to the claims
- It was available to the applicant, but for plausible and compelling reasons, was not provided earlier.

Where the Minister for Immigration and Citizenship decides to lift the section 48A bar, a fresh PV application may be made.

The fresh PV application is considered by a DIAC PV decision-maker in accordance with standard PV application procedures, guidelines and legislation.

⁹ See the text of section 49 of the Act in the annexe to the chapter.

Review/Appeal

While the decision on whether or not a repeat application is allowed may not be reviewed, an applicant does have access to merits review if the fresh PV application is refused by DIAC.

5.2 Safe Country Concepts

5.2.1. Safe Country of Origin

Australia does not apply the "safe country of origin" concept within its asylum system.

Asylum Claims Made by a Citizen of an EU Member State

A claim for asylum by an EU member state citizen is considered individually based on the merits of the claim, having regard to Australia's obligations under the 1951 Convention and the domestic legislative framework.

5.2.2. First Country of Asylum

PV applicants who are found to be owed protection obligations are granted Permanent PVs regardless of their mode of arrival in Australia or whether they have passed through a country where they may have claimed asylum en route to Australia.

5.2.3. Safe Third Country

As part of the PV assessment process, decision-makers examine whether effective protection in a safe third country is available to PV applicants. Decision-makers have regard to section 36 (3)–(7) of the Act which requires them to consider whether the applicant has taken all possible steps to exercise legally enforceable rights to enter and reside, whether temporarily or permanently, in a safe third country.¹⁰

If the applicant has not exercised that right, he or she is not considered to be a person to whom Australia has protection obligations and the application must be refused on the basis of section 36 (3) of the Act.¹¹

When undertaking an assessment of whether an applicant will have effective protection in a safe third country, decision-makers refer to the facts and circumstances of each application. Decision-makers will consider information provided by the applicant, including visa and passport evidence, as well as take into account comprehensive up-to-date country information. If a decision has been made to return a person to a safe third country, the applicant may have

¹⁰ See also the section above on Admissibility.

¹¹ See the chapter annexe for an extract of section 36(3) of the Act.

that decision reviewed in light of any new information or a change in circumstance.

Other “safe third country” provisions are found in Subdivisions AI and AK of the Migration Act 1958. These provisions prevent certain non-citizens from making a valid PV application, including those covered by a Comprehensive Plan of Action (Indo-Chinese Refugees), those who are a national of two or more countries and those who have resided in a specified country for a continuous period of at least seven days. The bar on making a valid application may be lifted if the Minister for Immigration and Citizenship thinks that it is in the public interest to do so.

There is a Safe Third Country Agreement between Australia and China in which China agreed to accept the return of Vietnamese refugees from Australia who had already been resettled in China, and continue to afford them protection.

In practice, these provisions have not been used in recent years.

5.3 Special Procedures

5.3.1. Unaccompanied Minors

Guardianship

As a signatory to the Convention on the Rights of the Child, the Australian government takes its obligations towards unaccompanied minors very seriously. Unaccompanied minors (UAMs) are covered by the Immigration (Guardianship of Children) Act 1946 (IGOC Act). The Act ensures that unaccompanied minors who arrive in Australian territory seeking to stay have a legal guardian. Unaccompanied minors who fall under the IGOC Act are wards of the Minister for Immigration and Citizenship and the Minister becomes their legal guardian. The Minister delegates the function as a guardian of wards to officers of the department and to officers in relevant child welfare authorities in each State and Territory. Guardianship continues until the ward turns 18 years of age, leaves Australia permanently or becomes an Australian citizen.

Protection Visa Process

Unaccompanied minors may apply for protection after arriving in Australia. If a UAM is found to be owed protection obligations by Australia and he or she meets other visa requirements, he or she is granted a permanent PV.

Specific procedural safeguards embedded in the PV process for examining the claims of UAMs include the following:

- Decision-makers’ questions during the interview are tailored to the child’s age, stage of language development, background and level of maturity
- Child-friendly interview procedures are used to allow a child to discuss freely the elements and details of his or her claim
- UAMs are provided with interpreters to ensure clear communication between the child and the decision-maker
- Country of origin information includes a range of information regarding the situation of children in countries of interest
- Applications from UAMs are given processing priority.

Benefits

UAMs are provided with migration advice and application assistance by a registered migration agent under the Immigration Advice and Application Assistance Scheme (IAAAS).

UAMs qualify without delay for income support and assistance, including medical treatment if required, under the Asylum Seeker Assistance Scheme (ASA).

5.3.2. Stateless Persons

Australia does not have a specific legal framework or procedures for determining statelessness. As is the case for any other asylum-seeker, stateless persons may apply for a PV. The decision-maker will assess each case on its merits.

The Ministerial intervention powers under the Act provide the Minister the capacity to be flexible when looking at cases that are unique and exceptional. These types of cases may include claims by stateless persons whose claims for asylum have been rejected. The Minister looks at each claim on a case-by-case basis taking into account the individual circumstances and may grant a visa if doing so is in the public interest.

5.3.3. Processing of Offshore-Entry Persons

New processes have been put in place for those who arrive in an excised offshore place and claim protection. Asylum-seekers will receive publicly-funded advice and assistance and access to an independent review of negative decisions. In addition, their cases are subject to external scrutiny by the Immigration Ombudsman. These measures will build on strengthened procedural guidance for departmental decision-makers.

Box 1: Australian Case Law on Determination Criteria

Interpretation of Article 1A of the 1951 Convention

On 1 October 2001, legislation was passed to clarify elements of the 1951 Convention as it applies to PV applications which included the meaning of “persecution”, “membership of a particular social group”, “non-political crime” and “particularly serious crime”. These legislative changes addressed the issue that the interpretation of the term “refugee” by various Australian courts and tribunals had expanded, whilst still ensuring that Australia provides appropriate protection to refugees consistent with the 1951 Convention.

Domestic Violence

In *MIMA v Khawar* [2002] HCA 14, the High Court held that domestic violence against women (who can be identified as a “particular social group”) may fall under the 1951 Convention if the State condones or tolerates it. In this case, it was determined that there was a social group in Pakistan comprising, at its narrowest, “married women living in a household which did not include a male blood relation to whom the woman might look for protection against violence by members of the household.”

Effective Protection

In *NAGV v MIMIA* [2005] HCA 6, the High Court overturned the common law “effective protection” doctrine, as developed by the Full Court of the Federal Court in *Thiyagarajah v MIMIA* [1997] 80 FCR 543, when assessing third country protection. The effect of the decision in *NAGV* is that decision-makers can no longer rely on a determination of whether “the applicant can, as a matter of practical reality and fact, gain access to another country of protection” in order to conclude that Australia does not owe protection obligations to an applicant. As a result, a protection visa can no longer be refused on the basis that an applicant has common-law-effective protection. Decision-makers now need to consider each aspect of third country protection in relation to each protection visa application. If effective protection is established, then that will be a sufficient basis on which to refuse the application.

Credibility

In *Bakhtyar v MIMA* [2001] FCA 947, the Federal Court held that decision-makers must make allowance for the different cultural settings of applicants and “avoid applying assumptions about human behaviour which are contingent upon or informed by local culture.”

Additional case law relevant to determination practices in Australia can be found in the annexe.

6 Decision-Making and Status

6.1 Inclusion Criteria

6.1.1. Convention Refugee

The decision-maker will assess the merits of a protection claim against the criteria for the grant of a PV as set out in the Migration Act. A PV is granted to persons in Australia who are owed protection obligations under the 1951 Convention.

6.1.2. Complementary Forms of Protection

Australia does not have a formal system of complementary protection. Currently, Australia discharges its wider international treaty obligations through the personal intervention powers of the Minister for Immigration and Citizenship. For more information, see Status and Permits Granted outside the Asylum Procedure below.

The Australian government is considering the possibility of introducing complementary protection, including criteria for assessing Australia’s *non-refoulement* obligations, into the Protection visa framework. This would allow for complementary protection claims to be considered through a transparent, accountable and objective process, with the ability to seek merits review by an independent tribunal, and appeal to the courts on points of law.

6.2 The Decision

Applications for PVs are assessed by decision-makers who are experienced and trained in law, policy and procedures concerning the 1951 Convention. Decision-makers are required under the Migration Act to notify the applicant of the decision to grant or refuse a visa in writing as prescribed by the legislation. In the case of a decision to refuse a visa, the applicant is provided with written reasons and the criteria he or she failed to satisfy as well as the reason a particular criterion was not satisfied. The applicant is also informed of his or her review rights and where to apply for review. A notification letter is given by hand to applicants or sent by registered post to their authorised recipient.

6.3 Types of Decisions, Status and Benefits Granted

If a person is found to meet the requirements for Australia's protection obligations, he or she will be granted a Permanent PV.

Benefits

Recognised refugees and PV holders are entitled to the following benefits:

- Permanent residence
- Right to family reunification¹²
- Right to education
- Right to work and immediate access to social welfare benefits on the same basis as Australian citizens
- Permission to travel and enter Australia
- Travel documents
- Eligibility to apply for Australian citizenship after holding the permanent residence visa for a specified period.

Box 2: Residence Requirement for Citizenship

Persons who became permanent residents on or after 1 July 2007 may apply for citizenship if they have been lawfully resident in Australia for four years immediately before applying including 12 months as a permanent resident.

Persons who became permanent residents before 1 July 2007 and apply for citizenship before 30 June 2010 must have been physically present in Australia as a permanent resident for a total of two years in the five years before applying for citizenship, including one year in the two years before applying.

6.4 Exclusion

Australia considers Article 1F of the 1951 Convention and any security-risk cases, when assessing a claim for protection. All claims for protection are screened for exclusion.

If the PV applicant excluded has been assessed to be a threat to the Australian community and the national interest, he or she may be detained in accordance with the detention

provisions in the Migration Act. A person who is excluded may have his or her case reviewed by the Administrative Review Tribunal (AAT), and subsequently by the court.

6.5 Cessation

Persons found to be owed protection are granted a permanent visa.

Cessation consideration will generally only arise if visa cancellation or criminal deportation processes have been instigated. This process is instituted by the Department. Cases that invoke Article 1C of the 1951 Convention are assessed on a case-by-case basis.

A person whose status is subject to a cessation decision may have the decision to refuse a PV application or cancel a PV reviewed by the Refugee Review Tribunal (RRT), if he or she is in Australia, and subsequently, to have the RRT's decision reviewed by the court.

6.6 Revocation

Australia does not have a specific provision to revoke a PV. Australia may cancel a PV only in unique and exceptional cases where there are national interests or security concerns that may justify cancellation of a PV. However, the cancellation powers in the Act are used rarely. A decision to cancel a visa may be subject to review by the court.

Section 82 of the Migration Act requires that a decision-maker must undertake a detailed assessment of international obligations arising under treaties to which Australia is a party prior to cancelling or refusing to grant a visa.

6.7 Support and Tools for Decision-Makers

Decision-makers in Australia use the following tools:

- Legislation (the Migration Act 1958 and the Migration Regulations 1994)
- Australian case law
- Protection Visa Procedures Manual (PVPM), which provides guidance on the policy and practice and sets out migration law provisions relevant to the determination of PV applications, including key articles of the 1951 Convention
- Refugee Law Guidelines, which are prepared by in-house lawyers to provide legal guidance on assessment of protection obligations under the 1951 Convention
- UNHCR Handbook on Procedures and Criteria for Determining Refugee Status and UNHCR

¹² Immediate family members eligible for reunification must be presented within five years of the granting of the PV and may include a spouse, a dependent child under 18 years of age, and a parent of the PV holder.

Box 3: Australian Case Law: Cessation Clauses

In the case of *MIMIA v QAAH of 2004* [2006] HCA 52, the majority of the High Court held that a Protection visa applicant must have a current well-founded fear of persecution under Article 1A(2), regardless of whether the applicant had previously been recognised as a refugee in Australia by the grant of a Temporary Protection visa, and regardless of whether the 1951 Convention had ceased to apply to the applicant under Article 1C(5). The majority did not accept that Article 1C(5) imposed a different test to that imposed by Article 1A(2) and did not accept that Article 1C(5) placed any onus or burden on Australia to establish that there had been substantial, durable and permanent changes in the applicant's country of origin. In effect, the High Court accepted the former Minister's submission that Article 1C(5) was a mirror image of Article 1A(2).

The Court also pointed out that the language of Article 1C(5) made it clear that the status of a person permitted to reside in an asylum country could change. The phrases "He can no longer" and "the circumstances...have ceased to exist" indicate that the circumstances in question are not merely a matter of history, but may change just as circumstances in his or her country of origin may change. Article 1C(5), therefore, applies automatically and is not dependent for its application upon a request for a particular kind of visa, though in practice such a request will ordinarily lead to the visa consideration of whether or not a person is entitled to continuing protection.

guidelines on policies and procedures in dealing with unaccompanied children seeking asylum

- DIAC Guidelines on gender issues, outlining how to deal with clients in a sensitive manner giving regard to their personal circumstances
- DIAC Onshore Protection Interim Advice documents.

6.7.1. Country of Origin Information

The Country Research Section (CRS) at DIAC is responsible for providing country of origin information (COI) to primary decision-makers, and to pre-removal international obligations assessment decision-makers. All COI is made available and accessible to departmental officers via an electronic database, CISNET.

CRS prepares research papers on the general human rights situations in high priority countries or on complex issues of interest to decision-makers. CRS is also responsible for administering Effective Protection checks with third countries, which includes nationality/identity checks, re-entry/residency checks, and UNHCR checks.

7 Efficiency and Integrity Measures

7.1 Technological Tools

7.1.1. Fingerprinting

Two provisions in the Migration Act 1958 (sections 46 and 40) allow for the acquisition of fingerprints from non-citizens who apply for a visa, including a PV. The powers are discretionary and the purpose for acquiring

fingerprints must be in accordance with section 5A (3) of the Act. Fingerprints may only be collected by way of an identification test conducted by an officer who has been authorised by the Minister for Immigration to do so. Fingerprints cannot be acquired from children under the age of 15 years or from persons who are incapable of understanding the general nature, effect and purposes of a requirement to provide them. Fingerprints can also be acquired from PV applicants by informed consent.

Whether acquired by way of a formal legislative requirement or by informed consent, the applicant must be advised, in a language that they are reasonably likely to understand, why and how the fingerprints will be collected, to whom they may be disclosed, as well as their rights under the Privacy Act 1988 and the Freedom of Information Act 1982. While these provisions exist, fingerprint data is currently not collected on a routine basis from all PV applicants.

7.1.2. DNA Tests

DNA testing may be used as a last resort strategy when claims are doubtful or if credible documentation cannot be provided to substantiate claimed familial relationships. DNA testing is not mandatory and an applicant is under no obligation to agree to a test when the latter is suggested.

If the PV applicant decides to undertake DNA testing, DIAC provides information on how to arrange a test that will meet the Department's requirements. Any test obtained outside the departmental requirements may not be accepted.

7.1.3. Forensic Testing of Documents

The Document Examination Team located within the Department has the capacity to provide forensic

Box 4: **COI Research at the Refugee Review Tribunal**

On 17 February 2009, it was announced that the Refugee Review Tribunal (RRT) will publish its country of origin research to provide greater transparency in its decision-making.

More than 450 research documents from the major countries of reference for RRT reviews will initially be published, including country of origin information from China, India, Malaysia, Bangladesh, Indonesia, Lebanon, Sri Lanka, South Korea, Pakistan and Vietnam.

The research published includes general background information, commissioned research and opinions from academics and experts as well as responses researched in answer to specific questions posed by RRT members in relation to particular reviews. These responses are carefully edited to protect the identity and privacy of individual visa applicants and to maintain the integrity of the review process.

document examination services to decision-makers. This service is provided upon request and on a case-by-case basis.

7.1.4. Database of Asylum Applications/Applicants

The Integrated Client Service Environment (ICSE) is a departmental system that records the making and consideration of all visa applications. It is a central repository of client information that the decision-maker uses to record all the events that relate to a client in relation to his or her PV application. This tool captures the entire PV process from the receipt of application to the finalisation of the protection claim.

7.1.5. Other Tools

In addition to the Movement Alert List (MAL) and Airline Liaison Officers (ALOs), described above, the following tools are at the disposal of decision-makers:

- The Security Referral Service (SRS), which allows for information for PIC 4002¹³ referrals to be captured in a structured electronic format and sent to the Australian Security Intelligence Organisation (ASIO) for assessment
- The Identity Services Repository (ISR), a tool that captures client identity information that will assist decision-makers in assessing and recording the identity of clients at first contact and throughout further contact with the department.

7.2 Length of Procedures

All primary PV decisions by the Department are required to be made within the statutory time frame of 90 days from the Department's receipt of the completed application. Cases for which these time frames are not met are subject to periodic reports to Parliament.

7.3 Pending Cases

As at 3 April 2009, there were 1,257 initial PV applications on hand at the primary stage. The decision-makers have 90 days to make a decision.

Australia is not considered to have a significant backlog/legacy caseload. About eight per cent of the pending initial caseload continues to be processed in under 90 days, the statutory timeframe to process PV applications.

7.4 Information Sharing

Australia has entered into bilateral agreements with Four-Country Conference (4CC) countries (United Kingdom, United States and Canada) to share fingerprint samples of absconders, current and rejected asylum-seekers and visa applicants. DIAC also shares information with Australian Federal Police and Department of Foreign Affairs in cases involving fraudulent documents.

¹³ PIC 4002 refers to the Public Interest Criterion that outlines the interpretation of, and procedures for, assessing visa applicants against security requirements.

Box 5: Cooperation with UNHCR and Non-Governmental Organisations (NGOs)

UNHCR

The UNHCR Regional Office in Canberra has no direct role in the determination of refugee status in Australia but holds a general monitoring function. In accordance with its supervisory role, the UNHCR engages with the government of Australia on an at least bimonthly basis to discuss issues related to legislation, policy and practices that may arise in the asylum system. The UNHCR's supervisory role with respect to individual protection claims brought to its attention, its official positions, country of origin information, and best practices are generally well received by government authorities.

NGOs

The Australian government consults the Refugee Council of Australia (RCOA) and other NGOs that provide assistance on key issues that have an impact on asylum-seekers. The Minister holds his own consultation with NGOs as and when required, while the Department consults with NGOs for their input in major policy changes. The NGOs do not have access to departmental information provided by asylum-seekers.

8 Assistance and Reception Benefits for Asylum-Seekers

8.1 Procedural Support and Safeguards

8.1.1. Legal Assistance

All PV applicants are free to make their own private arrangements and engage a lawyer or other agent at their own expense or to seek legal aid.

Legal representatives or other agents may be present during an interview, but they may not initiate any active involvement in the interview. However, at the end of the interview PV applicants may consult privately with their representative or agent.

Migration Agents

PV applicants are encouraged to use registered migration agents to assist them during the PV procedure. The Office of Migration Agents Registration Authority (MARA) or a DIAC office can make a list of registered migrant agents available to them.

8.1.2. Interpreters

DIAC encourages the use of accredited interpreters from the Department's Translating and Interpreting Services during the PV interview process and bears the cost.

8.1.3. UNHCR

PV applicants may approach the UNHCR directly with a request for assistance, and in such instances DIAC will provide the UNHCR with access to information on the individual asylum-seekers. The UNHCR plays a supervisory role in the case of individual protection claims brought to its attention to ensure consistency with the 1951 Convention.

In addition, the Public Information unit of the UNHCR raises awareness about UNHCR's work and refugee issues amongst parliamentarians, schools, the media and the general public.

8.1.4. NGOs

NGOs in Australia provide support and assistance to asylum-seekers and refugees. NGO support includes the following:

- Assist refugees in countries of first asylum when they repatriate to their homeland
- Provide settlement support to refugees
- Advocate on behalf of a particular refugee community
- Provide community education on refugees
- Seek funding for specific projects to enhance capacity to serve the refugee community
- Provide legal advice and assistance to refugees
- Provide information on advocacy for refugees and humanitarian entrants in Australia
- Provide support services for refugees, asylum-seekers and other vulnerable persons in immigration detention
- Provide tracing and restoration of family links
- Provide emergency support where the need arises.

8.2 Reception Benefits

8.2.1. Accommodation

Australia does not have reception centres to accommodate asylum-seekers. Financial assistance provided under the Asylum-Seeker Assistance Scheme (ASA) may cover the cost of accommodation.

Box 6: Immigration Advice and Application Assistance Scheme (IAAAS)

The IAAAS is government-funded and provides migration advice and application assistance free of charge to all PV applicants in detention and to the most vulnerable PV applicants in the community. There are 23 IAAAS providers around Australia who are Registered Migration Agents or officers with legal aid commissions. The IAAAS providers do not provide legal advice as such and do not work under the free general legal aid scheme funded by the government.

PV applicants do not need to accept an offer to use IAAAS services, but if they seek immigration assistance from someone who is not an IAAAS provider, they need to fund the assistance themselves. Eligibility for IAAAS-funded assistance ceases when the PV has been granted or refused following appeal. IAAAS is not available to failed asylum-seekers requesting Ministerial intervention or applying for judicial review.

The various types of accommodation provided to asylum-seekers under the detention arrangements are currently under review.

8.2.2. Social Assistance

The Australian government established the Asylum Seeker Assistance Scheme to provide financial assistance to eligible PV applicants during the period in which their applications for protection are processed. The ASA scheme is managed by the Department and is administered through contractual arrangements by the Australian Red Cross Society. Applications and enquiries relating to the ASA scheme are lodged with the Australian Red Cross Society.

Financial assistance provided under the ASA scheme is 89 per cent of the Special Benefit paid by CentreLink and is paid every two weeks. The maximum financial assistance paid to the PV applicants depends on the family composition. The financial assistance provided under the ASA Scheme is to cover food, accommodation and basic health care. To be eligible for ASA, asylum-seekers must fulfill the following requirements:

- They must have lodged a valid PV application for more than six months (primary processing time) but ASA may be granted earlier where exemption criteria are met
- They must be in financial hardship
- They must hold a Bridging visa or other visa
- They must not be eligible for either Commonwealth or overseas income support
- They must not be the spouse, de facto or sponsored fiancé(e) of a permanent resident.

Asylum-seekers can be exempted from the above eligibility criteria if they fall under one of the following categories:

- Unaccompanied minors, elderly persons or families with children under 18 years of age

- Persons unable to work as a result of a disability, illness or the effects of torture and/or trauma.

8.2.3. Health Care

No person in Australia is refused emergency medical treatment on the basis of his or her immigration status. Health services are provided to PV applicants by qualified health professionals. To be eligible for Medicare (the Australian government's health insurance scheme), PV applicants must meet the following criteria:

- They must have an unfinalised application for a permanent visa
- They must hold a valid Bridging visa with work rights.

Some asylum-seekers without work rights may qualify for Medicare if they are the spouse, child or parent of an Australian citizen or permanent resident. ASA recipients who do not have access to Medicare may receive assistance with their health care costs and they can also be referred to counselling services.

State governments in Australia have issued advice to hospitals in their states not to seek payment for medical services from asylum-seekers. Asylum-seekers are provided full medical care which includes pathology, diagnostic, pharmaceutical and other services.

8.2.4. Education

Children between the ages of six and 15 years are eligible for primary and secondary school education. Those who are living in community residence within the detention facilities are provided with tailored education programs to meet their developmental needs while those living in the community have access to the public education system.

8.2.5. Access to Labour Market

PV applicants who are granted a Bridging visa with work rights are able to access the labour market while

their applications for protection are being considered. A Bridging visa may have work rights attached to it depending on the individual's circumstances.

8.2.6. Family Reunification

Family reunion is available only to PV holders.

8.2.7. Access to Benefits by Rejected Asylum-Seekers

ASA payments cease upon grant of PV or 28 days after notification that PV applications have been refused by the Department, but some rejected asylum-seekers who seek appeal at the RRT may be eligible for ASA if they meet the exemption criteria. ASA payments cease when the RRT makes a decision on the application.

Rejected PV applicants who reside lawfully in the community, whose cases are finalised and who do not depart from Australia within 28 days of their asylum application being finalised, may continue to have access to the following benefits: emergency health care, primary and secondary education for children.

9 Status and Permits Granted outside the Asylum Procedure

9.1 Humanitarian Grounds

The Minister for Immigration and Citizenship has non-compellable power to substitute a more favourable decision than that of the RRT or the AAT in relation to character issues, if the Minister considers that it is in the public interest to do so. These public interest powers allow visas to be granted on broader humanitarian grounds where the criteria for the grant of the visa applied for has otherwise not been met, and to give effect to Australia's international obligations under other human rights treaties.

The Minister's intervention powers are intended for unique and exceptional cases where the Minister considers it is in the public interest for that person to remain in Australia.

The following factors may be relevant, individually or cumulatively, in assessing whether a case involves unique or exceptional circumstances that would result in referral to the Minister for consideration to intervene to grant a visa:

- Particular circumstances or personal characteristics of a visa applicant that provide a sound basis for believing that there is a significant threat to the person's personal security, human rights or human dignity on return to his or her country

- Circumstances in which the application of relevant legislation leads to unfair or unreasonable results in a particular case
- Strong compassionate circumstances such that a failure to recognise them would result in irreparable harm and continuing hardship to an Australian citizen or an Australian family unit (in which one member of the family is an Australian citizen or permanent resident)
- Circumstances where exceptional economic, scientific, cultural or other benefit to Australia would result from the visa applicant being permitted to remain in Australia
- The length of time the person has been present in Australia (including time spent in detention) and his or her level of integration into the Australian community
- Compassionate circumstances regarding the age, health and/or psychological state of the person.

9.2 Withholding of Removal/Risk Assessment

In relation to involuntary removals, Australia has an administrative pre-removal clearance process undertaken by the Department to assess potential risks that may lead to the violation of a person's human rights or contravene Australia's *non refoulement* obligations under conventions such as ICCPR and CAT if they are removed from Australia. The risk factors are as follows:

- The person has previously applied for or held a PV and does not want to be removed from Australia because he or she fears persecution or a violation of human rights (including the right to life or right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment). This risk factor considers those cases where a person is a failed PV applicant or has had his or her PV cancelled and believes he or she is still owed protection
- The person has acquired a criminal history in Australia which he or she believes will place him or her at risk of a violation of their rights to life or right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment. This risk factor considers those circumstances where the person may be removed to a country which allows for death penalty to be imposed, is known to use torture or cruel, inhuman or degrading treatment or punishment and supports double jeopardy (i.e., country may not recognise the person's past convictions served in Australia)

- The person will face outstanding criminal charges in the country of return and it is a country that allows for the death penalty to be imposed or is known to use torture or cruel, inhuman or degrading treatment or punishment
- The proposed country of return has taken an adverse interest in the person. This factor may arise if the Department has received a persistent or unusual or adverse level of interest from a Consulate/Embassy/High Commission when arranging a person's removal
- Cases involving a child – this risk factor may arise in those cases where the person removed is the parent of either an Australian-born child or a child born overseas. This may also apply to those cases in which the Department is considering removing a child (either by themselves or accompanied by an adult). (Such an assessment may include the “best interests of the child” principle to determine an outcome)
- The UNHCR, the United Nations Human Rights Council (UNHRC) or the United Nations Committee Against Torture (UNCAT) have shown interest in the case. This risk factor may be applicable if the person being considered for removal has lodged a complaint with the relevant UN body regarding removal
- The person is being considered for removal to a country where the UNHCR has issued a Return Advisory
- Other circumstances in a case in which protection or humanitarian issues have arisen. This risk factor is available for those cases in which a removal officer may be uncertain as to whether a human rights issue exists or has been explored in determining whether the person can be removed from Australia.

Once a pre-removal clearance is given it remains valid for a period of six months from the date of the clearance unless there is a change in the person's circumstances or a change in country information. An example of a change in circumstance would be if a person has made a complaint to a United Nations (UN) body such as the UNHRC or UNCAT.

9.3 Obstacles to Return

Bridging Visas and Removal Pending Bridging Visa (RPBV)

Asylum-seekers who are unable to be returned or removed and persons who cannot be returned following a pre-removal assessment may be granted a temporary Bridging visa or Removal Pending Bridging visa (RPBV) to enable them to be released from immigration detention

and remain lawfully in Australia while arrangements for their removal are made. All applicants for the Bridging visa or persons being considered for the grant of a RPBV must meet the relevant character and security requirements before it can be granted.

There is no formal application form for the RPBV. The visa process may be started by the Minister issuing an invitation or indicating that he or she is inclined to exercise his or her power under section 195A of the Migration Act. The eligibility criteria as set out in the Migration Regulations for RPBV are as follows:

- The person is in immigration detention
- The Minister is satisfied that the person's removal from Australia is not reasonably practicable at that time, for reasons other than the person being party to proceedings in a court or review tribunal related to an issue in connection with visas
- The Minister is satisfied that the person will do everything possible to facilitate removal from Australia
- Any visa applications made by the person, other than a repeat PV application, must have been finally determined.

RPBV holders have access to a range of social support benefits:

- Work rights
- Access to certain social security benefits such as Special Benefit and Rent Assistance
- Access to Medicare benefits
- Access to early Health Assessment and Intervention services
- Eligible for Torture and Trauma counselling
- Public education for school-age minors; access to English as a Second Language service for school-aged children.

The RPBV comes into effect when granted by the Minister and allows the holder to remain in Australia, but not to leave and/or re-enter Australia, and ceases when the visa holder leaves Australia. The RPBV is non-renewable and is valid for 18 months. However, this visa can be ceased earlier if one of the following conditions is met:

- The Minister is satisfied that removal is now reasonably practicable
- The holder breaches a visa condition.

9.4 Group-Based Protection

Australia does not have procedures in place for granting group-based protection under the current PV framework. Historically, Australia has granted temporary haven for certain prescribed groups. The current Australian migration framework allows the government to develop regulations tailored to the particular circumstances of new groups, if the need arises.

Safe Haven

The Subclass 449 Humanitarian Stay (Temporary) visa provides temporary safe haven in Australia for people who have been displaced by upheaval in their country and for whom the Australian government considers the most appropriate assistance to be temporary safe haven. It was used to assist displaced Kosovars in 1999 and also East Timorese in particularly vulnerable situations. The visa provides temporary stay on the understanding that holders return to their home country when the Australian government considers it safe to do so.

Application for this visa is by acceptance of an offer made by a departmental officer who is authorised for this purpose. Such an offer can only be made to a person or caseload specified by the Immigration Minister. The visa is granted by a delegated departmental officer. This visa is administered separately from the PV and is not counted as part of the Humanitarian Program. Past and present holders of Subclass 449 visas may not apply for any other visa, including a PV, unless the minister allows it.

9.5 Regularisation of Status over Time

Australia does not have procedures in place to regularise the status of a person over time. Under the current migration framework, a non-citizen must have a visa to enter and remain lawfully in Australia. If a person is found to be unlawfully in Australia he or she may be removed.

9.6 Regularisation of Status of Stateless Persons

Australia does not have specific procedures for regularising the status of stateless persons. Currently stateless persons are dealt with in an ad hoc manner if they fall outside the 1951 Convention. The Minister has a non-delegable and non-compellable power to grant a visa if the person claiming statelessness has a unique and exceptional circumstance that warrants the Minister to use his or her intervention power on humanitarian grounds to allow the person some form of continued stay in Australia.

10 Return

The Migration Act provides the legislative basis for the removal of unlawful non-citizens, including failed asylum-seekers, from Australia in particular circumstances (section 198 of the Act).

10.1 Pre-departure Considerations

The pre-removal clearance is an assessment that checks whether or not the involuntary removal of certain clients will engage Australia's international treaty obligations. This clearance is in addition to any assessment made in connection with a previous PV application or Ministerial Intervention request and is designed to identify any changes in the person's circumstances or their country of return which could entail their removal breaching Australia's *non-refoulement* obligations under international treaties or conventions.

10.2 Procedure

Removals are forcibly implemented on occasion where there is a need to comply with, and enforce, Australian law with regard to the removal of uncooperative non-citizens who have no lawful reason to remain in Australia.

PV applicants whose refusal decision is affirmed by the RRT who have no other legal reason to stay in Australia have 28 days to depart the country. If they stay beyond this 28-day period, the Department may enforce the removal. There is no removal order – a removal happens as a consequence of law.

The Department also provides assistance to eligible persons through a Voluntary Assisted Return programme on a case-by-case basis.

10.3 Freedom of Movement/ Detention

There are no restrictions on the freedom of movement of PV applicants who entered Australia lawfully and maintain their lawful status. However, with undocumented arrivals or where entry has been denied and they have requested protection, they will be detained to conduct health, character and security checks. If these persons pose no risk to the national interest or the Australian community, they will be allowed to live in the community while their applications for refugee status are being considered.

10.4 Readmission Agreements

Australia has a few readmission agreements in place, but they are confidential.

11 Integration

Persons who are granted a refugee visa under the offshore Humanitarian Program have access to a range of integration programmes.

PV holders are eligible for the services provided by the Integrated Humanitarian Settlement Strategy (IHSS). IHSS, which is delivered by DIAC, provides initial, intensive settlement support. IHSS services are generally provided for approximately six months, but may be extended in particular cases. Services provided under the IHSS are as follows:

- Case coordination, information and referrals, which include a case coordination plan based on an initial needs assessment
- On Arrival Reception and Assistance, which includes meeting eligible entrants on arrival and providing them with initial orientation
- Accommodation Services, which helps entrants find appropriate and affordable accommodation
- Short-term Torture and Trauma Counselling services, which provides an assessment of needs, a case plan, referral for torture and trauma counselling.

In addition to the IHSS services, resettled refugees have access to the Australian Cultural Orientation (AUSCO) Program, which is delivered offshore to refugee and humanitarian entrants over five years of age and aims to enhance their settlement prospects. AUSCO courses are designed to prepare entrants for travel to Australia, create realistic expectations about their life in Australia and provide a practical introduction to Australian life, laws, culture and values. Free English language tuition is also provided through the Adult Migrant English Program (AMEP) for eligible adult migrants and humanitarian entrants who do not have functional English.

12 Annexe

12.1 Selections from the Migration Act 1958¹⁴

Section 36- Protection visas

- (1) There is a class of visas to be known as protection visas.

(...)
- (2) A criterion for a protection visa is that the applicant for the visa is:
 - (a) a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol; or
 - (b) a non-citizen in Australia who is the spouse or a dependant of a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa.

Protection obligations

- (3) Australia is taken not to have protection obligations to a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, if the non-citizen has a well-founded fear of being persecuted in a country for reasons of race, religion, nationality, membership of a particular social group or political opinion, subsection (3) does not apply in relation to that country.
- (5) Also, if the non-citizen has a well-founded fear that:
 - (a) a country will return the non-citizen to another country; and
 - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion;

subsection (3) does not apply in relation to the first-mentioned country.

Section 48A- Non-citizen refused a protection visa may not make further application for protection visa

- (1) Subject to section 48B, a non-citizen who, while in the migration zone, has made:
 - (a) an application for a protection visa, where the grant of the visa has been refused (whether or not the application has been finally determined); or
 - (b) applications for protection visas, where the grants of the visas have been refused (whether or not the applications have been finally determined);

may not make a further application for a protection visa while in the migration zone.

¹⁴ Migration Act 1958 (as amended up to Act No. 159 of 2008) - Act No. 62 of 1958 as amended. 8 October 1958, available online on UNHCR Refworld at: <http://www.unhcr.org/refworld/docid/49896a7d2.html> (Volume 1) and <http://www.unhcr.org/refworld/docid/49896b012.html> (Volume 2) [accessed 19 February 2009].

Section 48B- Minister may determine that section 48A does not apply to non-citizen

(1) If the Minister thinks that it is in the public interest to do so, the Minister may, by written notice given to a particular non-citizen, determine that section 48A does not apply to prevent an application for a protection visa made by the non-citizen in the period starting when the notice is given and ending at the end of the seventh working day after the day on which the notice is given.

(2) The power under subsection (1) may only be exercised by the Minister personally.

(3) If the Minister makes a determination under subsection (1), he or she is to cause to be laid before each House of the Parliament a statement that:

(a) sets out the determination; and

(b) sets out the reasons for the determination, referring in particular to the Minister's reasons for thinking that his or her actions are in the public interest.

(4) A statement under subsection (3) is not to include:

(a) the name of the non-citizen; or

(b) any information that may identify the non-citizen; or

(c) if the Minister thinks that it would not be in the public interest to publish the name of another person connected in any way with the matter concerned--the name of that other person or any information that may identify that other person.

(5) A statement under subsection (3) is to be laid before each House of the Parliament within 15 sitting days of that House after:

(a) if the determination is made between 1 January and 30 June (inclusive) in a year--1 July in that year; or

(b) if the determination is made between 1 July and 31 December (inclusive) in a year--1 January in the following year.

(6) The Minister does not have a duty to consider whether to exercise the power under subsection (1) in respect of any non-citizen, whether he or she is requested to do so by the non-citizen or by any other person, or in any other circumstances.

Section 91A- Reason for Subdivision (Safe third countries)

This Subdivision is enacted because the Parliament considers that certain non-citizens who are covered by the CPA,¹⁵ or in relation to whom there is a safe third country, should not be allowed to apply for a protection visa or, in some cases, any other visa. Any such non-citizen who is an unlawful non-citizen will be subject to removal under Division 8.

Section 91E- Non-citizens to which this Subdivision applies unable to make valid applications for certain visas

Despite any other provision of this Act, if this Subdivision applies to a non-citizen at a particular time and, at that time, the non-citizen applies, or purports to apply, for a protection visa then, subject to section 91F:

(a) if the non-citizen has not been immigration cleared at that time--neither that application nor any other application made by the non-citizen for a visa is a valid application; or

(b) if the non-citizen has been immigration cleared at that time--neither that application nor any other application made by the non-citizen for a protection visa is a valid application.

¹⁵ Comprehensive Plan of Action approved by the International Conference on Indo-Chinese Refugees, held at Geneva, Switzerland, from 13 to 14 June 1989.

Section 91F- Minister may determine that section 91E does not apply to non-citizen

(1) If the Minister thinks that it is in the public interest to do so, the Minister may, by written notice given to a particular non-citizen, determine:

(a) that section 91E does not apply to an application for a visa made by the non-citizen in the period starting when the notice is given and ending at the end of the seventh working day after the day that the notice is given; or

(b) that section 91G does not apply to an application for a visa made by the non-citizen during the transitional period referred to in that section.

(2) The power under subsection (1) may only be exercised by the Minister personally.

(...)

Section 91K- Non-citizens to whom this Subdivision applies are unable to make valid applications for certain visas (Temporary safe haven visas)

Despite any other provision of this Act but subject to section 91L, if this Subdivision applies to a non-citizen at a particular time and, at that time, the non-citizen applies, or purports to apply, for a visa (other than a temporary safe haven visa), then that application is not a valid application.

Section 91L- Minister may determine that section 91K does not apply to a non-citizen

(1) If the Minister thinks that it is in the public interest to do so, the Minister may, by written notice given to a particular non-citizen, determine that section 91K does not apply to an application for a visa made by the non-citizen in the period starting when the notice is given and ending at the end of the seventh working day after the day that the notice is given.

(...)

Section 91N- Non-citizens to whom this Subdivision applies (access to protection from third countries)

(1) This Subdivision applies to a non-citizen at a particular time if, at that time, the non-citizen is a national of 2 or more countries.

(...)

91P- Non-citizens to whom this Subdivision applies are unable to make valid applications for certain visas

(1) Despite any other provision of this Act but subject to section 91Q, if:

(a) this Subdivision applies to a non-citizen at a particular time; and

(b) at that time, the non-citizen applies, or purports to apply, for a visa; and

(c) the non-citizen is in the migration zone and has not been immigration cleared at that time; neither that application, nor any other application the non-citizen makes for a visa while he or she remains in the migration zone, is a valid application.

(...)

91Q- Minister may determine that section 91P does not apply to a non-citizen

(1) If the Minister thinks that it is in the public interest to do so, the Minister may, by written notice given to a particular non-citizen, determine that section 91P does not apply to an application for a

visa made by the non-citizen in the period starting when the notice is given and ending at the end of the seventh working day after the day that the notice is given.

(...)

Section 311- Migration Agents Registration Authority not bound by legal forms etc.

The Migration Agents Registration Authority, in considering a registration application or a possible disciplinary action under section 303:

- (a) is not bound by technicalities, legal forms or rules of evidence; and
- (b) must act according to substantial justice and the merits of the case.

Section 351- Minister may substitute more favourable decision

(1) If the Minister thinks that it is in the public interest to do so, the Minister may substitute for a decision of the Tribunal under section 349 another decision, being a decision that is more favourable to the applicant, whether or not the Tribunal had the power to make that other decision.

Section 501- Refusal or cancellation of visa on character grounds

(6) For the purposes of this section, a person does not pass the *character test* if:

- (a) the person has a substantial criminal record (as defined by subsection (7)); or
- (b) the person has or has had an association with someone else, or with a group or organisation, whom the Minister reasonably suspects has been or is involved in criminal conduct; or
- (c) having regard to either or both of the following:
 - (i) the person's past and present criminal conduct;
 - (ii) the person's past and present general conduct;
 the person is not of good character; or
- (d) in the event the person were allowed to enter or to remain in Australia, there is a significant risk that the person would:
 - (i) engage in criminal conduct in Australia; or
 - (ii) harass, molest, intimidate or stalk another person in Australia; or
 - (iii) vilify a segment of the Australian community; or
 - (iv) incite discord in the Australian community or in a segment of that community; or
 - (v) represent a danger to the Australian community or to a segment of that community, whether by way of being liable to become involved in activities that are disruptive to, or in violence threatening harm to, that community or segment, or in any other way.

Otherwise, the person passes the *character test*.

Section 502 - Minister may decide in the national interest that certain persons are to be excluded persons

(1) If:

- (a) the Minister, acting personally, intends to make a decision:
 - (...)(iii) to refuse to grant a protection visa, or to cancel a protection visa, relying on one or more of the following Articles of the Refugees Convention, namely, Article 1F, 32 or 33(2); in relation to a person; and
- (b) the Minister decides that, because of the seriousness of the circumstances giving rise to the making of that decision, it is in the national interest that the person be declared to be an excluded

person; the Minister may, as part of the decision, include a certificate declaring the person to be an excluded person (...).

Section 503- Exclusion of certain persons from Australia

(1) A person in relation to whom a decision has been made:

(...)

(c) to refuse to grant a protection visa, or to cancel a protection visa, relying on one or more of the following Articles of the Refugees Convention, namely, Article 1F, 32 or 33(2);

(...) is not entitled to enter Australia or to be in Australia at any time during the period determined under the regulations.

(2) The period referred to in subsection (1) commences, in the case of a person who has been deported or removed from Australia, when the person is so deported or removed.

12.2 Selections from the Immigration Guardianship of Children Act 1946¹⁶

Section 6- Guardianship of non-citizen children

The Minister shall be the guardian of the person, and of the estate in Australia, of every non-citizen child who arrives in Australia after the commencement of this Act to the exclusion of the father and mother and every other guardian of the child, and shall have, as guardian, the same rights, powers, duties, obligations and liabilities as a natural guardian of the child would have, until the child reaches the age of 18 years or leaves Australia permanently, or until the provisions of this Act cease to apply to and in relation to the child, whichever first happens.

Section 4AAA- Non-citizen child

(1) Subject to subsections (2) and (3), a person (the child) is a non-citizen child if the child:

(a) has not turned 18; and

(b) enters Australia as a non-citizen; and

(c) intends, or is intended, to become a permanent resident of Australia.

(2) Subsection (1) does not apply if the child enters Australia in the charge of, or for the purposes of living in Australia under the care of:

(a) a parent of the child; or

(b) a relative of the child who has turned 21; or

(c) an intending adoptive parent of the child.

(3) Subsection (1) does not apply if:

(a) the child enters Australia in the charge of, or for the purposes of living in Australia under the care of, a person who is not less than 21 years of age (the adult); and

(b) a prescribed adoption class visa is in force in relation to the child when the child enters Australia; and

(c) the adult intends to reside with the child in a declared State or Territory.

¹⁶ Immigration (Guardianship of Children) Act 1946 (as amended up to Act No. 144 of 2008). Act No. 45 of 1946 as amended 15 August 1946, available online on UNHCR Refworld at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=49817ec42&skip=0&query=Immigration%20guardianship%20of%20children%20act> [accessed 9 March 2009].

(4) A person is a non-citizen child if:

(a) the person has not turned 18; and

(b) a direction under section 4AA is in force in relation to the person.

12.3 Additional Case Law on Determination Practices

Internal Relocation Principle

In SZATV v Minister for Immigration and Citizenship [2007] HCA 40 and *SZFDV v Minister for Immigration and Citizenship [2007] HCA 41*, the High Court considered whether inconsistency exists between the application of the internal relocation principle and the principle established in *S395/2002 v MIMA [2003] HCA 71* (a requirement that a person modify his or her behaviour to avoid persecution may itself amount to persecution). The High Court upheld the internal relocation principle as currently applied, but held that whether it is reasonable or practicable to relocate to another part of the country depends upon the particular circumstances of the applicant and the impact upon that person of relocation. Decision-makers must ensure that in finding that an applicant is able to relocate, they are not expecting the applicant to censure that aspect of themselves or their behaviour that may have led to them having a well-founded fear of persecution in another part of the country.

Well-Founded Fear

In WAKZ v MIMA [2005] FCA 1065, the Federal Court found that subjective fear of harm based on psychological frailty cannot amount to a well-founded fear of persecution if it is not based on an objectively well-founded fear of apprehended objectively persecutory behaviour.

Particular Social Group

In Applicant S v MIMA [2004] HCA 25, the High Court formulated a test for determining whether a group falls within the definition of a “particular social group” in Article 1A(2) of the Refugees Convention. Decision-makers should apply this test: (1) the group must be identifiable by a characteristic or attribute common to all members of the group; (2) the characteristic or attribute common to all members of the group cannot be the shared fear of persecution; and (3) the possession of that characteristic or attribute must distinguish the group from society at large.

The High Court also rejected the proposition, which had been accepted in the Federal Court for some years, that the particular social group must be recognised or perceived within the society in question. Rather, the issue is whether the particular social group is distinguished from the rest of society in question. As well, the High Court outlined how social and legal factors could indicate the existence of a particular social group (“[if] the community’s ruling authority were to legislate in such a way that resulted in discrimination against left-handed men, over time the discriminatory treatment of this group might be absorbed into the social consciousness of the community. In these circumstances, it might be correct to conclude that the combination of legal and social factors (or norms) prevalent in the community indicate that left-handed men form a particular social group distinguishable from the rest of the community”).

Cessation Clauses

In MIMA v WABQ [2002] FCA 329, the Federal Court largely disagreed with the interpretation of Article 1D in prior Australian case law, and set a precedent on how the clause is interpreted and applied in Australia. The Court held that “persons...who are at present...receiving” refers to a group of persons, namely Palestinian refugees, who were receiving protection (United Nations Conciliation Commission on Palestine, UNCCP) or assistance (United Nations Relief and Works Agency for Palestine, UNRWA) at the time the Convention was signed or ratified (28 July 1951). The Court also held that “ipso facto” does not mean that Palestinian refugees are automatically entitled to the benefits of the Refugees Convention if UNRWA ceases to provide assistance and UNCCP ceases to provide protection. “Ipso facto” means, that if assistance or protection ceases, Palestinian refugees may be assessed as to whether they are refugees within the meaning of Article 1A(2) of the Refugees Convention.

12.4 Immigration Detention Values

Immigration detention in Australia is required by the Migration Act 1958 (the Act). It is administrative in nature and is not used for punitive or correctional purposes. The Government's position is reflected in the seven key immigration detention values that underpin immigration detention. These are:

1. Mandatory detention is an essential component of strong border control.
2. To support the integrity of Australia's immigration programme, three groups will be subject to mandatory detention:
 - a. all unauthorised arrivals, for management of health, identity and security risks to the community;
 - b. unlawful non-citizens who present unacceptable risks to the community; and
 - c. unlawful non-citizens who have repeatedly refused to comply with their visa conditions;
3. Children, including juvenile foreign fishers and, where possible, their families, will not be detained in an immigration detention centre (IDC);
4. Detention that is indefinite or otherwise arbitrary is not acceptable and the length and conditions of detention, including the appropriateness of both the accommodation and the services provided, would be subject to regular review;
5. Detention in IDC is only to be used as a last resort and for the shortest practicable time;
6. Persons in detention will be treated fairly and reasonably within the law; and
7. Conditions of detention will ensure the inherent dignity of the human person.

12.5 Additional Statistical Information

Figure 4:

Evolution of Top Five Countries of Origin for Australia in 1997, 2002 and 2008

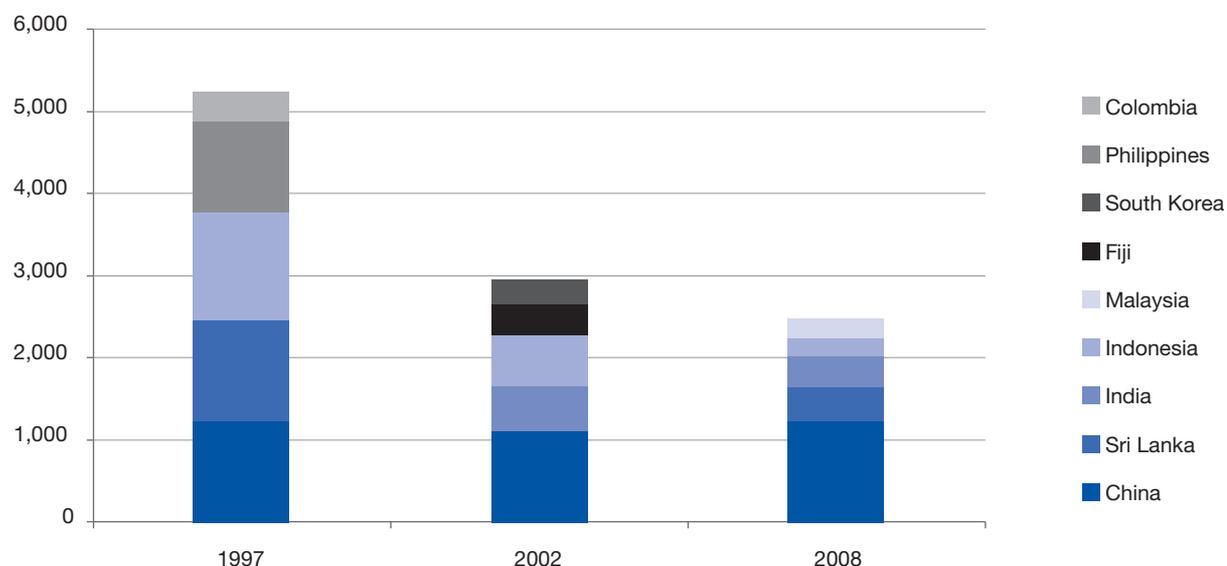


Figure 5:

Decisions Made at the First Instance, 1992-2008

Year	Convention Status		Other Authorisations to Remain		Rejections		Other Decisions*		Total Decisions
	Count	% of total	Count	% of total	Count	% of total	Count	% of total	
1992	257	5%	0	0%	4,709	88%	363	7%	5,329
1993	425	5%	0	0%	7,737	82%	1,257	13%	9,419
1994	846	11%	0	0%	5,754	76%	1,012	13%	7,612
1995	674	6%	0	0%	6,055	50%	5,288	44%	12,017
1996	1,195	12%	0	0%	6,573	64%	2,492	24%	10,260
1997	1,320	9%	0	0%	12,475	85%	856	6%	14,651
1998	836	7%	0	0%	10,453	90%	335	3%	11,624
1999	1,209	15%	0	0%	6,613	82%	200	2%	8,022
2000	4,050	31%	0	0%	8,358	65%	457	4%	12,865
2001	3,364	29%	0	0%	7,698	67%	452	4%	11,514
2002	1,234	13%	0	0%	7,761	83%	363	4%	9,358
2003	240	5%	0	0%	5,034	95%	0	0%	5,274
2004	354	11%	0	0%	2,721	86%	87	3%	3,162
2005	572	17%	0	0%	2,786	82%	62	2%	3,410
2006	697	20%	0	0%	2,626	77%	84	2%	3,407
2007	1,216	33%	0	0%	2,448	66%	58	2%	3,722
2008	1,397	32%	0	0%	2,867	66%	69	2%	4,333

*Other decisions may include withdrawn claims, abandoned claims or claims otherwise resolved.

Belgium



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1 Background: Major Asylum Trends and Developments

Asylum Applications

In the early 1980's, Belgium was receiving fewer than 5,000 applications per year. The numbers started to increase in the mid 1980's, however, reaching a peak of 26,000 in 1993 and another peak of 42,000 in 2000. Annual applications have decreased considerably since the second peak, and in 2008, Belgium received 12,000 applications.

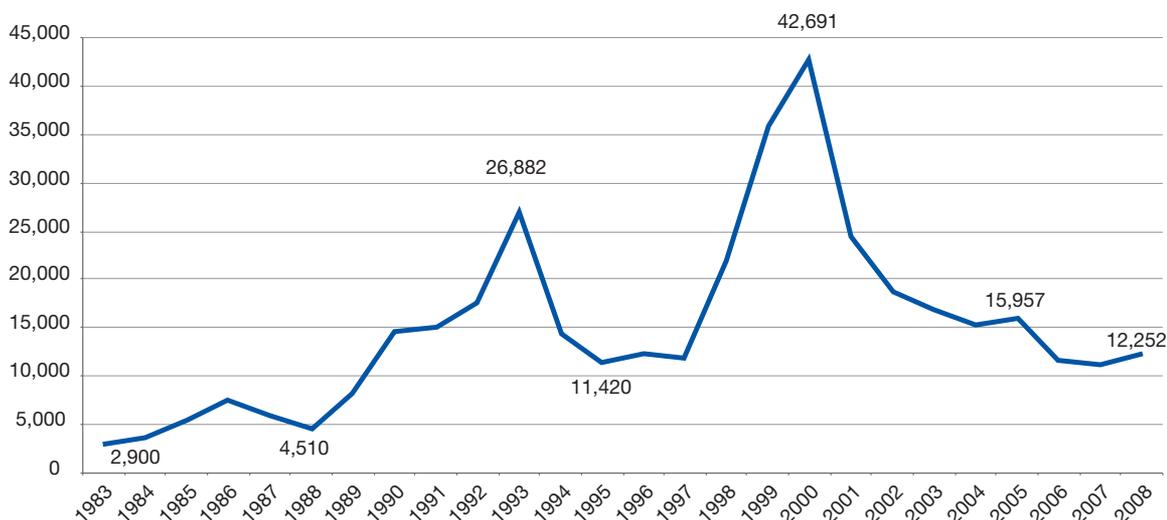
Top Nationalities

In the 1990's, most asylum-seekers came from Zaire (now the Democratic Republic of Congo), Romania, India and the former Yugoslavia. Since 2000, most claimants have come from Russia, the former Yugoslavia, Iraq and Iran.

- **Admissibility:** The Immigration Department (ID), which received asylum applications, was responsible for a first decision in the admissibility phase. If the application was found to be admissible, the file was transferred to the Office of the Commissioner General for Refugees and Stateless Persons (CGRS) for an in-depth investigation (eligibility phase). If the application was found to be inadmissible, an urgent appeal could be lodged with the CGRS. If the CGRS overturned the decision of the ID and decided the application was admissible, the file went through to the eligibility phase (still at the CGRS). If the CGRS confirmed the initial inadmissibility decision of the ID, there remained a possibility to lodge a non-suspensive appeal with the Council of State.
- **Eligibility:** In this phase, a positive decision of the CGRS would lead to the recognition of refugee status. A decision to refuse could be appealed before the Permanent Refugee Appeals Commission (administrative court). A positive decision by the Appeals Commission resulted in

Figure 1:

Evolution of Asylum Applications* in Belgium, 1983-2008



* Applications made by accompanied minors under age 14 are not included

Important Reforms

Major reforms over the period since the early 1980's have included an increase in staff working on asylum, the withdrawal of work rights from asylum-seekers, and the provision of benefits in kind rather than in cash at reception centres.

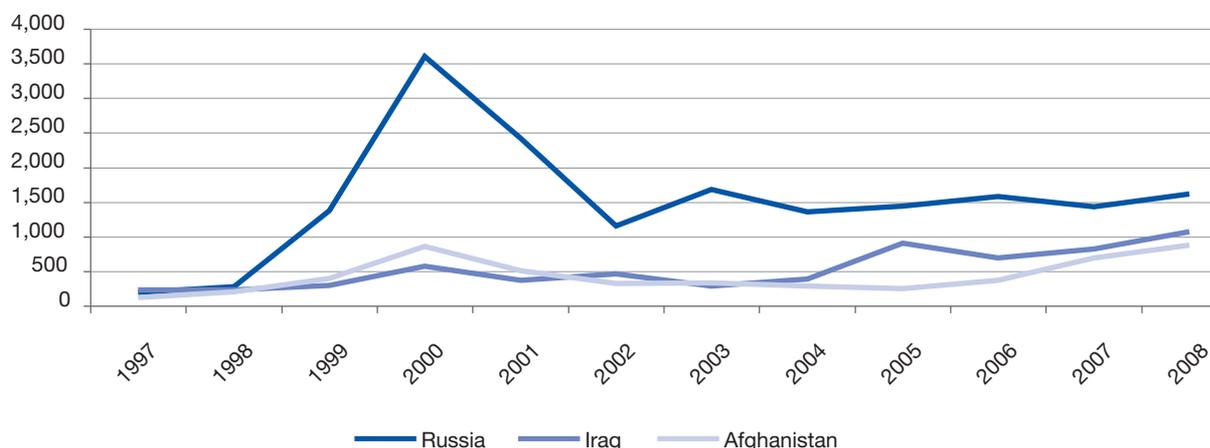
Until 1 June 2007, the asylum procedure was characterised by a two-phase system, as follows:

the granting of refugee status. Asylum-seekers could appeal a negative decision of the Appeals Commission before the Council of State. This final appeal did not have suspensive effect.

As outlined below, significant reforms to asylum procedures were introduced in 2006, leading to the elimination of the two-phase procedure, and putting in its place a single procedure for obtaining either Convention refugee status or subsidiary protection.

Figure 2:

Evolution of Applications* from Top Three Countries of Origin for 2008



* Applications made by accompanied minors under age 14 are not included

Figure 3:

Top Five Countries of Origin in 2008*

1	Russia	1,620
2	Iraq	1,070
3	Afghanistan	879
4	Guinea (Conakry)	661
5	Iran	614

* Applications made by accompanied minors under age 14 are not included

2 National Legal Framework

2.1 Legal Basis for Granting Protection

Refugee status is granted on the basis of the 1951 Convention Relating to the Status of Refugees (1951 Convention). The asylum procedure and the competencies of asylum institutions are governed by the Aliens Act of 15 December 1980 (Law regarding the entry, residence, settlement and removal of aliens).¹ The Aliens Act includes provisions for subsidiary protection (i.e., complementary protection), residence permits granted for medical or health reasons, and humanitarian status.

While the European Union (EU) asylum acquis has been largely transposed into the Aliens Act, there remains the

transposition of certain provisions of Council Directive 2005/85/EC.²

2.2 Recent Reforms

Asylum Procedures

Significant legislative reforms were adopted in 2006 that resulted in the introduction of subsidiary protection and a new single asylum procedure. The Aliens Act defines subsidiary protection and sets out conditions for obtaining this complementary form of protection.

The new single procedure came into effect on 1 June 2007, replacing the former two-phase (admissibility and eligibility) procedure. The single procedure considers grounds for both Convention refugee status and subsidiary protection in the examination of asylum claims.

In addition, the legislative reforms resulted in the following institutional changes:

- The Office of the Commissioner General for Refugees and Stateless Persons (CGRS) became the central body responsible for the adjudication of asylum claims
- The Aliens Litigation Council replaced the former Permanent Refugee Appeals Commission as the body responsible for hearing appeals of decisions taken by the CGRS

¹ The Aliens Act is currently available in French and Dutch at the following links on the website of the CGRS: <http://www.cgvs.be>.

² Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (Asylum Procedures Directive).

- The Council of State became a court of cassation where appeals of decisions taken by the Aliens Litigation Council can be heard.

Reception

A new Reception of Asylum-Seekers and Certain Other Categories of Aliens Act (Reception Act) came into force on 7 May 2007. The Act entitles asylum-seekers to material support for the duration of the asylum procedure and to accommodation. The new law also stipulates that asylum-seekers must be informed of their rights and obligations.

3 Institutional Framework

3.1 Principal Institutions

The institutions involved in the asylum procedure are as follows:

- The Immigration Department, Ministry of Interior, receives asylum claims inside the territory and is responsible for enforcing returns
- The CGRS is the independent federal administrative body with the competence to grant or refuse claims for refugee status or subsidiary protection
- The Aliens Litigation Council hears appeals of decisions taken by the Immigration Department or the CGRS
- The Council of State hears appeals by cassation of decisions of the Aliens Litigation Council.

Fedasil, the Federal Agency for the Reception of Asylum-Seekers, is responsible for the reception of asylum-seekers.

3.2 Cooperation between Government Authorities

The CGRS and the Immigration Department work closely together on an organisational level. Since the Department has certain competencies within the asylum procedure (including the Dublin procedure and determining the admissibility of subsequent applications), the two organisations also cooperate on a practical level. However, when it comes to decision-making, no consultation takes place in order to uphold the independence of the CGRS. Both the CGRS and the Immigration Department are financed by the Ministry of the Interior.

The Aliens Litigation Council (ALC) works independently. There is no structural cooperation with the other asylum agencies, due to the independent position of the ALC as an appeal court.

CGRS has no structural cooperation with police or the justice department. When ad hoc cooperation and information-sharing do take place between these agencies, the basic principles of confidentiality and privacy are guaranteed.

4 Pre-entry Measures

To enter Belgium, foreign nationals must have a valid travel document, such as a passport, and in certain cases, a visa issued by Belgium or one of the other States parties to the Schengen Agreement.

4.1 Visa Requirements

The Immigration Department of the Ministry of Interior is the competent authority for issuing visas to nationals from a majority of countries that fall outside the Schengen area. One may appeal a decision not to issue a visa before the Aliens Litigation Council.

4.2 Carrier Sanctions

Carrier sanctions are applicable to airplanes and ships. According to the Aliens Act, administrative fines may be imposed on private or public carriers if it is found that they have transported passengers who are not in possession of valid travel documents. The administrative fine amounts to 3,750€ per passenger.

4.3 Interception

Memoranda of Understanding (MOUs) have been concluded between the government and carriers in an effort to collaborate on the prevention of illegal migration. According to the MOUs, carriers that cooperate with government authorities in combating illegal migration may be subject to reduced carrier sanctions if and when they should become applicable.

To be eligible for signing an MOU, carriers must meet the following requirements:

- They must participate in activities against illegal migration (for example, training airline check-in staff on detecting fraudulent documents)
- They must pay all administrative fines that may have been imposed under the Aliens Act
- They must cooperate on the return of inadmissible foreign nationals.

Belgium does not carry out pre-departure clearance in countries of origin or transit.

5 Asylum Procedures

5.1 Application Possibilities and Requirements, Procedures and Legal Remedies

Foreign nationals seeking asylum may apply for it at airports and seaports. Applications inside the territory must be made at the Immigration Department within eight (8) days of arrival in Belgium. Applications may also be introduced in detention centres, prisons and closed centres.

Children of asylum-seekers may have their asylum claims included with those of their parents. Persons over the age of 18 must file their own asylum claims.

Access to Information

Information leaflets on the asylum and reception procedures exist in a number of different languages. The leaflets may be obtained at the reception centres, at offices of government agencies involved in the asylum procedure, and through non-governmental organisations (NGOs). An electronic version of the leaflet is available on the CGRS website.

There are also information leaflets geared specifically to women asylum-seekers and leaflets explaining the asylum procedure for claims that are introduced in a closed centre, at a border post or in prison. Staff at closed centres and open reception centres are available to provide asylum-seekers with additional information on procedures.

5.1.1. Outside the Country

Applications at Diplomatic Missions

Belgium does not have a legal procedure in place for persons to make an asylum claim at diplomatic missions.

Resettlement/Quota Refugees

Belgium does not currently have an annual quota for resettlement. In the past, Belgium has engaged in ad hoc resettlement of refugees upon the request of the United Nations High Commissioner for Refugees (UNHCR) and with the approval of the federal cabinet. Applications for resettlement were processed individually. In 1996, for example, a group of refugees were resettled from Zepa and Srebrenica.

In response to the general request of the European Union Justice and Home Affairs (JHA) Council of 27 November 2008 to intensify measures to resettle Iraqi

refugees in EU Member States, the Belgian Council of Ministers decided on 13 February 2009 to undertake a pilot project for the resettlement of 50 refugees originating from Iraq.

5.1.2. At Ports of Entry

A person who has been refused entry to the Schengen territory at a border post will be notified of a decision to return. Such a decision may be based on the use of false documents or on not having satisfied entry conditions. According to the Aliens Act, this person may be sent back to the place of departure.

Asylum applications may be made with the border police, and if this is the case, return will be suspended, and the application will be examined without triggering a right to enter Belgian territory. Usually, the asylum-seeker will be taken to a closed centre for the duration of the procedure (up to a maximum of two months).

A first interview with an officer of the Immigration Department takes place in order to obtain all the necessary information for determining which EU Member State is responsible for the asylum application. If Belgium is responsible for examining the claim, a caseworker and an interpreter of the CGRS will visit the closed centre to interview the asylum-seeker. The asylum-seeker has the right to free legal representation. The procedure in the closed centre is similar to the normal procedure described below, although determinations are made within a shorter timeframe at the closed centre.

If the application is allowed, the asylum-seeker is given permission to enter the country and is instructed to pursue the asylum application at the Immigration Department in Brussels.

5.1.3. Inside the Territory

Responsibility for Processing the Claim

The Dublin System

Application and Procedure

The Immigration Department determines whether Belgium is responsible for processing an asylum claim under Council Regulation (EC) No 343/2003.³ If it determines that Belgium is not responsible for processing the claim, the Department issues a refusal along with an order for the person to leave the country.

³ Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (Dublin II Regulation).

A *laissez-passer* is provided so the person can travel to the country responsible for processing his or her claim.

Freedom of Movement/Detention

Persons whose claims are considered to be Dublin cases may be detained for a maximum period of one month while the Immigration Department determines which country is responsible for the claim. In particularly complex cases, detention may be extended for an additional month. Persons may be detained for one of the following reasons:

- They are holders of an expired residence permit or an expired visa for another Dublin country
- They do not have the necessary travel documents and have resided in another Dublin country
- They do not have the necessary travel documents, and a fingerprint check shows that they have stayed in another Dublin country.

Persons may also be detained for a maximum period of one month after a decision has been made to return the person to the country responsible for the asylum application. Detention is applied to ensure removal from Belgium.

Conduct of Transfers

Transfers are carried out either voluntarily or involuntarily. Persons who are in detention may be escorted to the border (or airport), while others may travel voluntarily to the country responsible for their claim, either at their own expense or with transportation expenses provided by the Immigration Department.

Suspension of Dublin Transfers

Dublin II Regulation transfers may be suspended by order of the Aliens Litigation Council. Under a special procedure (the so-called “urgent necessity”), the counsel for the asylum-seeker may request a suspension of transfer when removal is imminent and would cause a serious disadvantage if carried out. The counsel must also show to the Council that an appeal for annulling the Dublin decision would in all likelihood result in a positive decision for the asylum-seeker. The Council may grant a suspension of transfer if the asylum-seeker can prove that, upon transfer to a Dublin country, he or she would be subject to *refoulement*.

Transfers may also be suspended if the person is unable to travel, for instance, for medical reasons.

Review/Appeal

Persons may appeal the Department’s decision to transfer them under the Dublin II Regulation before the Aliens Litigation Council within 30 days of the decision.

Application and Admissibility

Application

When filing an asylum application with the Immigration Department, asylum-seekers are required to do the following:

- Complete a form indicating the reasons for their claim
- Provide relevant information such as identity documents and date of arrival
- Have their photographs and fingerprints taken
- Undergo a chest x-ray to detect tuberculosis
- Appear at an interview with immigration officials, usually on the same day the asylum claim is filed, and with the assistance of an interpreter, if requested.

Admissibility

If the Immigration Department finds that, under the Dublin II Regulation, Belgium is responsible for processing an asylum claim, the asylum-seeker’s complete file is forwarded to the CGRS.

Inadmissibility and Appeal

According to Article 52 of the Aliens Act, an asylum claim may be deemed inadmissible on a number of substantive or technical grounds. Examples of substantive grounds include a fraudulent application or a manifestly unfounded claim. Technical grounds include failure to make an asylum application within eight days of arrival in Belgium, and the voluntary withdrawal of an asylum application.

The possibility for declaring an asylum application inadmissible, however, is optional: the Commissioner General is under no obligation to declare an application inadmissible under the terms of Article 52, even where all the conditions for making such a decision are fulfilled. Article 52 was applied during the admissibility phase under the previous, two-phase asylum procedure but is rarely used today.

Asylum applications may also be deemed inadmissible if the asylum-seeker had previously made an identical application.⁴

⁴ See the section on Repeat Applications below.

Applications made by citizens of an EU Member State or a candidate state may be deemed inadmissible as described below under Safe Country Concepts.

Determinations on inadmissibility are prioritised and must be made within two months of the application. In certain cases – such as asylum applications made by persons who are in detention – the law provides for a 15-day time limit for decisions on inadmissibility. Appeals against admissibility decisions can be made before the Aliens Litigation Council within 15 days. Such appeals have suspensive effect.

An appeal in cassation against the decisions of the Aliens Litigation Council can be made with the Council of State within 30 days of the notification of the decision. Such an appeal does not have suspensive effect.

Freedom of Movement

Asylum-seekers may be detained in a closed centre at the border while awaiting a decision by the Immigration Department if they do not have the necessary documents to enter the territory. In cases where the protection of public order or national security is concerned, the detention may be extended but cannot exceed a total of eight months. Detained persons may file an appeal against the decision with the Council Chamber of Correctional Court in the area, and reintroduce the appeal each month of his or her detention.

Accelerated Procedures

An accelerated procedure may apply in cases of subsequent applications. The Immigration Department first examines whether the application contains new elements. If this is the case and the file has been forwarded to the CGRS, a decision may be taken, within the normal procedure, within two or three months.

There are also provisions in place to apply an accelerated procedure in cases where the asylum-seeker is being held in a closed centre, is subject to a security measure or is detained in a penitentiary. The Commissioner General must give priority to the examination of these types of cases. Appeals made before the Aliens Litigation Council against decisions taken by the CGRS through an accelerated procedure are also given priority by the Council.

An accelerated procedure may also apply to citizens of EU Member States or candidate states who are making a claim for asylum. However, if the asylum claim of an EU citizen is not deemed inadmissible (that is, is taken into consideration) the claim will proceed to the normal procedure rather than to an accelerated procedure.⁵

⁵ See the Section on Safe Country Concepts for more information.

Normal Procedure

Application Requirements

Under the normal procedure, asylum-seekers are required to do the following:

- Submit all their identity documents and any other documentation that may be relevant to their claim
- Appear at an interview, which provides them with an opportunity to explain the particulars of their claim.

Interviews/Examination of Case

Interviews are conducted by a caseworker of the CGRS from one of the five geographical desks (Africa, The Balkans, Eastern Europe, Middle East/Asia, and Democratic Republic of Congo). The caseworker drafts an interview report, with the content treated as confidential. The caseworker then examines the individual asylum story against the objective situation in the country of origin and submits to a supervisor a proposal for a decision on the case. Under the single asylum procedure, the CGRS first examines claims within the framework of the 1951 Convention and then considers grounds for subsidiary protection.

Review/Appeal of Asylum Decisions

Appealing CGRS Decisions

The Aliens Litigation Council has full competence to confirm, annul or change a decision taken by the CGRS. Appeals, which have suspensive effect, must be made within 15 days of a CGRS decision. The asylum-seeker is eligible to obtain free legal assistance for his or her appeal.

Citizens of a member state or candidate member state of the EU whose claims have been rejected by the CGRS may only make an appeal for annulment before the Aliens Litigation Council within 30 days of a decision. In such cases, only the legality of the decision made by the CGRS may be examined and the appeal has no suspensive effect.

The procedure before the Aliens Litigation Council is a paper process. In limited cases, the appellant and his or her legal representatives may make an oral intervention during the hearing.

Both parties – that is, the asylum-seeker and his or her representatives and the CGRS – are present at the hearing. Hearings at the Aliens Litigation Council are open to the public, but a private hearing is possible if requested.

Box 1: Asylum Case Law: Suspensive Appeals

The decree of 5 February 2002 of the European Court of Human Rights in the case of *Conka v. Belgium* states that it is a violation of Article 13 of the European Convention on Human Rights (ECHR) to remove a rejected asylum-seeker without first hearing the result of an urgent request for suspension of removal before the Council of State. The Court further ruled that the suspensive character of an appeal must be guaranteed and that this appeal cannot be merely administrative.

The European Court had previously ruled that an urgent request for suspension of removal does not constitute an "effective appeal" in accordance with Article 13 of the ECHR, since such an appeal does not offer sufficient guarantees against erroneous and irreversible decisions.

As a result of the Conka decree, the Aliens Act was modified. Article 39/70 of the Act stipulates that, with regard to appeals against the decisions of the CGRS, removal from Belgium cannot be forcibly executed in the period following a decision on an asylum claim when an appeal may be lodged with the Aliens Litigation Council and while the appeal is being heard.

If the Aliens Litigation Council decides to annul a decision of the CGRS for reasons of substantial irregularities that cannot be repaired by the Council or because there are essential elements lacking that prevent the Council from reaching a decision without additional research, the case is returned to the CGRS for a new decision. The Aliens Litigation Council does not dispose of a power of investigation of its own. The judgment of the Aliens Litigation Council is based solely on the elements submitted by the appellant and the defendant for the purposes of the appeal.

The Minister for Immigration and Asylum Policy may appeal a CGRS decision to grant Convention refugee status or subsidiary protection within 15 days of the decision. This appeal is made before the Aliens Litigation Council.

Appealing Decisions of the Aliens Litigation Council

Decisions of the Aliens Litigation Council may be appealed only by cassation before the Council of State. All appeals before the Council of State have no suspensive effect and must be filed within 30 days of the decision of the Aliens Litigation Council. All cassation appeals undergo an admissibility procedure. Cases are inadmissible if they are found to be without cause, to be manifestly inadmissible or to be beyond the competence or jurisdiction of the Council of State.

If the Council of State annuls the decision being appealed, the case is returned to the Aliens Litigation Council for a new hearing, and the Aliens Litigation Council must observe the judgment that has been rendered.

Freedom of Movement during the Asylum Procedure

Detention

In certain cases specified by the Aliens Act, the Immigration Department may decide to hold an asylum-seeker in a closed centre during the determination procedure at the CGRS or pending return following a negative decision on the asylum claim. Decisions to detain may be appealed before the Council Chamber of the Correctional Court. Appellants have the right to free legal assistance during their appeal.

Examples of cases that may lead to detention include situations in which the person:

- Had been served a removal order by Ministerial or Royal Edict in the last 10 years
- Resided in another country or several other countries for three months or longer after leaving the country of origin, and left the last country of residence without fear of persecution as described in the 1951 Convention, and without a real risk of serious harm
- Introduced an asylum application more than eight working days after entering Belgium, without providing a valid reason for the delay
- Refused to disclose identity or nationality or provided false information or documents in this regard
- Made an asylum application for the sole reason of delaying removal from Belgium.

Reporting

Asylum-seekers do not have an obligation to report their whereabouts (such as changes of address) to the authorities during the asylum procedure.

Repeat/Subsequent Applications

Requirements and Procedure

In the case of a second or subsequent application for asylum, the Immigration Department determines whether new information has been provided to indicate a well-founded fear of persecution or a real risk of serious harm. If there is new information, the Immigration Department will forward the claim to the CGRS for examination. The procedure before the CGRS is similar to the normal procedure, although the procedure may be accelerated such that a decision may be taken within two or three months.

The Aliens Act stipulates that new elements or information being presented “have to relate to facts or situations that have occurred after the last phase in which the alien had been able to provide them.” The interpretation of what constitutes new elements is broad, and may include changing conditions in the country of origin or new documentary evidence.

Detention

The Aliens Act provides for the possibility of detaining asylum-seekers who have submitted a subsequent claim, if the Immigration Department finds that the sole objective of the application is “to delay or thwart the execution of a previous or upcoming decision leading to removal.”

Appeal

If the Immigration Department issues a decision of non-admissibility, the asylum-seeker has the right to appeal within 30 days before the Aliens Litigation Council. This appeal does not have suspensive effect and is usually accelerated.

5.2 Safe Country Concepts

5.2.1. Safe Country of Origin

Belgium does not apply a safe country of origin policy.

Asylum Claims Filed by a Citizen of an EU Member State

Declaration No. 56 relating to the Spanish Protocol, which is contained in the annex to the Treaty of

Amsterdam,⁶ states that, “Belgium declares that, in accordance with its obligations under the 1951 Geneva Convention and the 1967 New York Protocol, it shall ... carry out an individual examination of any asylum request made by a national of another Member State.”

If a citizen of a member state or a candidate country of the EU makes an asylum claim, the CGRS has five days to decide whether to proceed with an examination of the claim, after determining whether there is a well-founded fear of persecution or a serious risk of harm being invoked in the claim.

While the EU national is not entitled to a full jurisdictional appeal, he or she may appeal for the annulment of a decision by the CGRS not to examine his or her claim, within 30 days of that decision, before the Aliens Litigation Council. While this appeal has no suspensive effect, it is possible for the asylum-seeker to make a request for a suspension of removal together with his or her appeal.

5.2.2. First Country of Asylum

Article 52 of the Aliens Act stipulates that if an asylum-seeker, having left his or her country of origin, has spent three months or more in another country or several countries, and has then left without any fear as described in Article 1A(2) of the 1951 Convention, or any serious reasons for assuming a real risk of serious harm, the Commissioner General may decide not to grant refugee status or subsidiary protection.

As noted above, Article 52 is no longer in use. If a person who has been granted international protection in another state enters the asylum procedure in Belgium, his or her fear of persecution or serious harm will be examined vis-à-vis the country in which he or she obtained this protection and to which he or she can return. If the claim is found to be groundless, the person will be returned to the country that had granted asylum.

5.2.3. Safe Third Country

Belgium does not have any safe third country policies in place.

⁶ Protocol on Asylum for Nationals of Member States of the European Union (Page 103 of the Treaty of Amsterdam), annexed to the Treaty of Amsterdam, which was signed on 2 October 1997 and came into force on 1 May 1999. See the annexe to the Report for the text of the Protocol.

Box 2: Asylum Case Law: Unaccompanied Minors

On 12 October 2006, the European Court of Human Rights ruled in the case of *Tabitha v. Belgium* that by holding a minor in a closed centre for a period of two months, Belgium had violated Articles 3, 5 and 8 of the ECHR. According to the Court, Belgium had not made sufficient adjustments to the needs of the child inside the centre or provided her with adequate support. In addition, the Court found that Belgium had not taken necessary steps to reunite the child with her mother.

Beginning in 2002, Belgium adopted a series of legal measures to ensure proper care and support for unaccompanied minors seeking asylum. The most significant changes were as follows:

- The Guardianship Law, introduced in 2002, stipulates that all unaccompanied minors must be provided with a guardian. A guardianship office was created in 2004 at the Federal Government Agency of Justice (FGA Justice). The guardian, in cooperation with the Immigration Department, is responsible for seeking a permanent solution for the minor on the basis of his or her best interests.
- The 2007 Reception of Asylum Seekers and Certain Other Categories of Aliens Act ("Reception Act" of 12 January 2007) stipulates that unaccompanied minors who arrive at the border will no longer be taken to a closed centre.

There is now a possibility for an unaccompanied minor to be accompanied by a trusted representative when being returned to the country of origin.

5.3 Special Procedures

5.3.1. Unaccompanied Minors

Competent Authority

Each geographical team of the CGRS has caseworkers and supervisors competent in assessing the claims of unaccompanied minors. Special training on interviewing techniques as well as on the reception of unaccompanied minors and the risks of trafficking is provided to caseworkers. Belgium is also involved in a joint project with European partner countries to create a common training module for interviewers of unaccompanied minor asylum-seekers.

Guardianship

In 2004, a guardianship service was created for unaccompanied minors. The service appoints a guardian to the minor to act as his or her legal representative. Among other responsibilities, the guardian files the minor's asylum application and any subsequent appeals, and assists the minor at every stage of the procedure⁷.

Interview

During the interview, the minor is accompanied by his or her guardian and often by a lawyer. The caseworker makes efforts to put him or her at ease and to ensure that he or she understands the procedure. Questions

tend to be open-ended, and simple sentence structures are used. The interview is usually shorter than other interviews in the normal procedure, and it involves regular breaks. Generally, minors under the age of six are not interviewed unless doing so is considered necessary.

Information

In 2008, a special booklet was introduced to address the information needs of unaccompanied minor asylum-seekers. The booklet, in the form of a comic strip, is designed to help minors better understand the asylum procedure.

5.3.2. Temporary Protection

The Aliens Act integrates Council Directive 2001/55/EC⁸ with regard to minimum standards for granting temporary protection in case of a large influx of displaced persons. The law lays down, among other things, the conditions for persons who have been granted temporary protection to file an application for refugee status. The Act also stipulates that persons granted temporary protection obtain a one-year residence permit which is automatically renewable, first for a term of six months, then for a second term of one year.

⁷ Unaccompanied minor asylum-seekers from EU Member States do not benefit from the services of a guardian.

⁸ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (Temporary Protection Directive).

5.3.3. Stateless Persons

Stateless persons may apply for asylum at the Immigration Department, where their claims will be processed as normal. However, there are provisions in the law for the regularisation of status of stateless persons, as described below in the section Status and Permits Granted outside the Asylum Procedure.

6 Decision-Making and Status

6.1 Inclusion Criteria

When considering the merits of a claim, a CGRS caseworker must first consider whether the criteria for granting refugee status are met. If this is not the case, the caseworker must then consider whether the applicant meets the criteria for subsidiary protection.

6.1.1. Convention Refugee

Convention refugee status is granted to persons who have a well-founded fear of persecution in the meaning of the 1951 Convention and whose claim is found by the CGRS to be credible.

6.1.2. Subsidiary Protection

Subsidiary protection is provided to persons whose claims are credible and who do not meet the criteria for Convention refugee status but run a real risk of serious harm if returned to their country of origin.

6.2 The Decision

The CGRS caseworker submits a proposal for a decision on an asylum claim to his or her supervisor, who will then present it to the Commissioner General or one of two deputy commissioners for their signature. Decisions are made in writing and provided to the asylum-seeker (by registered mail or by messenger against receipt), the legal representative and the trusted representative. Negative decisions must be justified with motives provided for the refusal.

6.3 Types of Decisions, Status and Benefits Granted

The CGRS may take the following types of decisions:

- Granting of Convention refugee status
- Granting of subsidiary protection
- Refusal to grant Convention refugee status and refusal to grant subsidiary protection

- Refusal to consider an asylum claim made by a citizen of an EU member state or a candidate state
- The Commissioner General closes the asylum application if the asylum-seeker has voluntarily withdrawn his or her claim, has returned to the country of origin, has had his or her status regularised, has acquired Belgian nationality, or has died before the completion of the procedure.

The CGRS is also the competent authority for excluding persons from protection, for applying cessation clauses and for revoking Convention refugee status or subsidiary protection. These types of decisions are described below.

Benefits

Recognised refugees are entitled to the following benefits:

- Permanent residence
- The right to work and to obtain social security benefits equivalent to those available to Belgian citizens
- A travel document in the form of a “blue passport”
- Family reunification for spouses and minor children (in the case of unaccompanied minors recognised as refugees, the mother and father are eligible for family reunification)
- A proof of refugee status certificate issued by the CGRS
- The possibility of naturalisation, after two years of residence in Belgium.

Beneficiaries of subsidiary protection are entitled to the following:

- A residence permit valid for one year, which can be renewed yearly by the commune, upon instruction from the Immigration Department
- A permanent residence permit, after five years from the date of the asylum application
- The right to travel abroad; if the person does not have a passport, the FGA Foreign Affairs (FOD Buitenlandse Zaken) will issue an “aliens passport” when he or she becomes eligible for a permanent residence permit
- Other benefits, such as the right to work and to obtain social assistance, and the possibility for family reunification, identical to those available to recognised refugees.

6.4 Exclusion

6.4.1. Refugee Protection

The CGRS considers Article 1F of the 1951 Convention, as well as any security-risk cases, when examining a claim for asylum. All claims before the CGRS are screened for exclusion. A special unit is in charge of interviewing and examining the cases of persons likely to be excluded.

An asylum-seeker who has been excluded may lodge an appeal within 15 days of notification of the CGRS decision. The Aliens Litigation Council has full legal power in such appeals, meaning that it can confirm, change or annul the decision of the CGRS. This appeal has suspensive effect.

Excluded persons are not entitled to a status but may be protected from *refoulement*. According to its international obligations, as set out in the European Convention on Human Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Belgium does not forcibly return excluded persons. Over time, excluded persons may become eligible for a residence permit, for instance through family reunification or on the basis of Article 9.3 of the Aliens Act.

The detention of persons deemed to be security risks is possible on the basis of an evaluation of the risk posed by the person. According to the Aliens Act, the length of detention may not exceed eight months.

6.4.2. Subsidiary Protection

Persons may be excluded from subsidiary protection on the basis of criteria set out in the Aliens Act. These criteria are almost identical to those found in Article 1F of the 1951 Convention. The ground of “serious crime,” however, is further elaborated in the Aliens Act as a serious crime that has been committed in Belgium or abroad, either before or after the claim for asylum was made.

The asylum-seeker may lodge an appeal with full legal power with the Aliens Litigation Council within 15 days of notification of the CGRS decision. This appeal has suspensive effect.

The detention of persons deemed to be security risks is possible on the basis of an evaluation of the risk posed by the person, but may not exceed eight months.

6.5 Cessation

A Convention refugee may cease to benefit from this status if he or she meets one of the criteria set out in Article 1C of the 1951 Convention. The asylum-seeker may lodge an appeal with full legal power with the Aliens Litigation Council within 15 days of notification of the CGRS decision. This appeal has suspensive effect.

The Commissioner General has the competence to apply cessation clauses at his or her own initiative. The Immigration Department can provide the Commissioner General with information that may lead to cessation of status. In principle, cessation does not have an impact on the person’s right to remain in Belgium.

Subsidiary protection ceases to apply if the circumstances that led to the provision of subsidiary protection cease to exist or have evolved in such a way as to render protection unnecessary. To safeguard beneficiaries from a real risk of serious harm, the CGRS examines the changes in country conditions very closely before determining whether these changes are significant and lasting.

Similar to cessation of Convention refugee status, cessation of subsidiary protection status may be initiated by the Commissioner General. During the first five years of residence in the country (period of limited residence), the Minister for Migration or his or her representative (Immigration Department) may make a formal request to the Commissioner General to abrogate the status of subsidiary protection. In this case, the Commissioner General must write a motivated decision within 60 days. Cessation of subsidiary protection status during the period of limited residence (the first five years) may lead to an order to leave the country.

6.6 Revocation

According to the Aliens Act, the CGRS may withdraw Convention refugee status or subsidiary protection from its beneficiary for the following reasons:

- The person made false declarations, failed to disclose information or presented fraudulent documents that had, or could have had, a bearing on the outcome of the asylum claim
- The person’s behaviour would indicate that he or she no longer had a well-founded fear of persecution.

The Commissioner General can revoke status at his or her own initiative. The Minister of Migration or her representative (Immigration Department) may make a formal request to the Commissioner General to do the following:

Box 3: Creating Cedoca, One of Europe's Largest Country Information Offices

In 1997, country information was being gathered by the documentation unit of the CGRS, which consisted of 12 researchers and five other staff. At the time, only researchers had access to the Internet, a relatively new tool, and language analysis was in its infancy. Subsequently, asylum caseworkers at the CGRS obtained access to the World Wide Web.

In 1999, the CGRS documentation unit conducted an internal audit and introduced a COI user's survey in order to improve user satisfaction of COI services and the interaction between the research unit and caseworkers.

The following year, a decision was taken to bring together the COI competencies of the three existing documentation units (the CRGS, the Immigration Department and the Permanent Appeals Commission) into a single, specialised office. Thus, Cedoca came into being under the CGRS. At its inception, Cedoca had a total of 20 researchers and in 2000, it undertook its first fact-finding mission (to Turkey and Northern Iraq).

By 2001, Cedoca had grown in size to become one of the largest COI units in Europe, with a high degree of regional specialisation and expertise. Two years later, Cedoca participated in its first joint fact-finding mission with two European partner countries, marking the starting point for a sustained engagement in international cooperation on COI with colleagues in Europe and abroad.

Since then, Cedoca has conducted a number of fact-finding missions and continues to be active in international cooperation. It is responsible for making some 175,000 documents available on the Intranet, Glo.be, and for answering 4,000 research requests and producing 250 subject-related briefings on an annual basis.

In recent years, Cedoca has focused its efforts on achieving better knowledge management, on training its researchers and asylum caseworkers on advanced electronic research methods and on improving quality assurance of its COI products and services.

- Revoke refugee status or subsidiary protection status in the case of fraud. The Commissioner General must then write a motivated decision within 60 days. Revocation of status may lead to an order to leave the territory. Revocation on the basis of fraud is possible within the first 10 years of residence in the country
- Revoke subsidiary protection status from persons who should have been excluded. The law foresees that the decision of the Commissioner General should be accompanied by an opinion on whether return to the country of origin would be in conformity with Article 3 of the ECHR. Revocation on this basis is possible within the first five years of residence.

The person may lodge an appeal with full legal power with the Aliens Litigation Council.

6.7 Support and Tools for Decision-Makers

6.7.1. Country of Origin Information

Cedoca (Centre de documentation en matière d'asile), the documentation and research service of the CGRS, is made up of a 46-member team providing research and information support to caseworkers. Researchers are divided into geographical desks, in the same manner as the caseworkers, and are responsible for collecting

and analysing all information pertinent to the situation in countries of origin.

In addition to writing thematic reports and answering caseworkers' questions, the research team undertakes fact-finding missions and may also undertake research on individual asylum cases. Country of origin information can also be found in the Cedoca library and on Glo.be, the documentary intranet available to all caseworkers and supervisors.

6.7.2. Language Analysis

The Language Analysis Desk, located within Cedoca, may be requested to make recordings of asylum-seekers' speech. These are forwarded to language analysts in order to determine the region of origin of the applicant. The conclusions of the language analysts are considered as one of many elements that may factor into the final decision of the CGRS. Due to budgetary constraints, the use of language analysis has declined in recent years.

6.7.3. Psychological Support Unit

The main task of the psychological support unit is to provide advice to caseworkers on the mental and psychological capacities of asylum-seekers in cases where this may have an important bearing on the claim. These include situations in which asylum-seekers may

claim to be experiencing loss of memory, post-traumatic stress disorder or depression. The unit conducts a psychological evaluation of the asylum-seeker and provides a report to the caseworker.

Although the report reflects only on the psychological capacities of the asylum-seeker, it may play an important role in the decision-making process, particularly in cases in which the psychological capacity of the person may form the basis of contradictions that would otherwise undermine the credibility of the claim.

6.7.4. Gender Unit

The CGRS has a special gender unit made up of a coordinator and points of contact at each of the five geographical desks. The gender units respond to the needs of caseworkers for information, guidance and specialised training in assessing gender-based claims.

6.7.5. UNHCR Handbook

The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status does not hold any legally enforceable provisions for the CGRS and is used as a manual for the application of the 1951 Convention.

7 Efficiency and Integrity Measures

7.1 Technological Tools

7.1.1. Fingerprinting

All asylum-seekers are fingerprinted after making a claim for asylum at the Immigration Department. The fingerprints are stored (for an indefinite time) in the national PRINTRAC system. The data are sent to EURODAC in order to check previous applications or irregular entry in other EU Member States.

If the asylum-seeker is recognised as a refugee, the data remains in the system, but access to the information is blocked.

7.1.2. DNA Tests

The Immigration Department may request a DNA test in cases where family members, including children, who were not initially included in an asylum claim, are subsequently added to the claim. While DNA tests are used very rarely in the asylum procedure, they are considered very useful as the results are nearly 100 per cent accurate.

7.1.3. Forensic Testing of Documents

The Immigration Department and the CGRS may make a request to the police to verify identity documents when there are doubts about their authenticity. The documents are sent to the police department, which specialises in fraudulent documents. Forensic testing of documents is rarely undertaken in the asylum procedure, as the majority of asylum-seekers claim to not be in possession of identity documents.

7.1.4. Database of Asylum Applications/Applicants

All asylum applicants are registered in a “holding registry,” a subdivision of the national registry in which all inhabitants of Belgium are registered. The holding registry contains identity information, information on places of residence and information on each stage of the asylum procedure and the decisions taken. The Immigration Department is responsible for the first entry of an application into the registry and remains responsible for later changes relating to identity information. The local municipalities can introduce changes to the place of residence.

If a person is granted refugee status, the data in the holding registry are transferred to the aliens’ registry. In the case of a negative decision on a claim and the departure of the rejected asylum-seeker from Belgium, the person’s data are removed from the holding registry. Access to the holding registry is limited to a certain number of governmental institutions.

7.2 Length of Procedures

Asylum applications must be made within eight working days of the person’s arrival in Belgium or before a valid permit to remain in Belgium expires. However, no penalties are imposed on a person who does not meet these requirements and applications made after these deadlines will be processed.

7.3 Pending Cases

The significant backlog of cases at the CGRS, caused by the great influx of asylum application in the years 1999 and 2000 was to a large extent eliminated by 2007, mainly as a result of the declining number of new asylum applications and addition of staff and resources to deal with them. One method used to prevent the backlog from getting bigger was the so-called LIFO (Last In First Out) measure: new cases were prioritised, while old cases were put on hold. A large number of these old cases that had been pending for many years were the subject of regularisation.

Box 4: Cooperation with UNHCR, NGOs

The UNHCR Representative in Belgium has the competence to intervene (either at his or her own initiative or upon the request of Belgian authorities) in an advisory capacity at any stage of the asylum procedure. The Representative or Deputy Representative may, with the consent of the asylum-seeker, consult the asylum-seeker's file any time except when the case is before the Council of State. The UNHCR may, upon request, also be present at the asylum interview. If the CGRS decides not to take account of UNHCR interventions into consideration, the Commissioner General must disclose the reasons for this decision.

The Belgian Committee for Refugee Assistance (BCRA, BCHV) is an umbrella organisation of various associations that provide assistance to asylum-seekers and recognised refugees. As the operational partner of the UNHCR, the BCRA assists in selecting cases eligible for UNHCR support. On occasion, the BCRA intervenes in asylum applications, Dublin cases, and forced returns, among other matters. This intervention may be limited to written comments in favor of the asylum-seeker's case, but may also consist of the presence of the BCRA representative during an asylum interview.

If it decides to reject an application for asylum, the CGRS must show in its written decision that UNHCR or BCRA interventions – if provided – have been taken into consideration.

At the end of 2007, there were 4,966 pending cases, meaning that there was a limited backlog of around 1,500 cases, taking into account a normal-sized caseload of 3,500 cases. Since then the backlog has slightly increased again, with 5,248 cases pending at the end of 2008.

The Aliens Litigation Council has accumulated a backlog of 2,259 new cases since it was established in June 2007. It also inherited a backlog of 6,977 cases from the now defunct Permanent Appeals Commission for Refugees.

The Council of State, a cassation court, has a backlog of 14,755 cases, which is being eliminated at a rate of about 8,000 cases per year. Expectations are that this backlog will be eliminated by 2010-2011.

7.4 Information Sharing

The only information-sharing agreements to which Belgium is party are the Dublin Regulation and the agreements with Denmark, Norway, Iceland and Switzerland, which extend the application of the Dublin II Regulation to those States. Specific information on asylum-seekers can be released to other EU Member States, in accordance with Article 21 of the Dublin II Regulation. No information on an asylum-seeker can be released to a third country, unless the asylum-seeker consents to it.

7.5 Single Procedure

Since the introduction of subsidiary protection in October 2006, Belgium has put in place a single asylum procedure. In other words, asylum-seekers need make only one application for international protection in order to obtain either Convention refugee status or subsidiary protection. The CGRS first determines whether the applicant meets the criteria for refugee status, and if

this is not the case, it will determine whether grounds exist for granting subsidiary protection.

Before the introduction of subsidiary protection, no alternative form of protection besides the 1951 Convention existed in Belgium. By introducing subsidiary protection, the level of international protection has effectively risen in Belgium. Statistics show that the introduction of subsidiary protection did not have a negative influence on refugee status recognition rates.

8 Assistance and Reception Benefits for Asylum-Seekers

8.1 Procedural Support and Safeguards

8.1.1. Legal Assistance

At each stage of the asylum procedure following the admissibility phase before the Immigration Department, asylum-seekers are entitled to legal aid. Requests for such assistance can be made at a legal aid office.

Asylum-seekers appearing before the CGRS may have their legal representatives present during the interview. An asylum-seeker may also choose a person with whom he or she has a special bond of trust for assistance during the asylum procedure. This trusted representative is personally assigned by the asylum-seeker. Some categories of persons are excluded from being a trusted representative.

Neither the legal representative nor the trusted representative may make an intervention during the

interview. However, he or she may, at the end of the interview, explain the reasons for which the asylum-seeker might be entitled to refugee status or subsidiary protection.

8.1.2. Interpreters

Upon registration of the asylum application, the asylum-seeker is asked to choose the language he or she wishes to use throughout the asylum procedure. During interviews at all the different stages of the asylum procedure, an interpreter is available free of charge.

The CGRS uses independent and impartial interpreters for interpretation into Dutch, French or English during asylum interviews. Translators are also available to the CGRS for the translation of documents or declarations submitted by the asylum-seeker. The Interpreters' Service, a special unit within the CGRS, coordinates the work of interpreters and translators.

8.2 Reception Benefits

According to the new Reception Act, every asylum-seeker has the right to reception conditions that would allow him or her to lead a life of dignity. Asylum-seekers and their dependants are entitled to reception benefits for the duration of the procedure, including any appeal procedure.

The Reception Act also stipulates special reception arrangements for minors and for vulnerable persons. A complaint mechanism and possibilities for appeal with regard to reception benefits are available under the law. Violations of the right to reception benefits can be brought before the labour tribunal.

Persons who apply for asylum at the Immigration Department must register with the communal authorities where they are residing within eight days of submitting their application.

8.2.1. Accommodation

On the day that an asylum claim is filed with the Immigration Department, the dispatching service of the reception agency, Fedasil, will assign a reception centre to the asylum-seeker. The asylum-seeker is then provided with a brochure outlining his or her rights with regard to reception during the asylum procedure. The Woluwe-Saint-Pierre transit centre in Brussels can accommodate asylum-seekers for short stays while accommodation in a reception centre is being arranged. After four months in a reception centre, asylum-seekers may apply for a move to private accommodation.

Two specialised reception centres are geared specifically to unaccompanied minors.

Fedasil coordinates and oversees the different types of accommodation to ensure a common standard of living conditions. In addition to Fedasil, a number of other organisations are involved in managing the centres and private accommodation, among them the Red Cross Society, Initiatives locales d'accueil (ILA, Local Reception Initiatives), and NGO partners CIRE and Vluchtelingenwerk Vlaanderen.

8.2.2. Social Assistance

Upon arrival at a reception centre, each asylum-seeker is assigned a social worker who will assist him or her with the asylum procedure in such ways as by explaining the different parts of the procedure and helping with psychological and other support. Access to legal aid and to the services of an interpreter is also ensured.

8.2.3. Health Care

Medical services are available to asylum-seekers whether or not they are living in reception centres. The services are provided by a resident doctor or a consulting general practitioner. Recent legislation outlines the general framework for medical services guaranteeing human dignity.

8.2.4. Education

Schooling for minors between the ages of six and 18 years is mandatory. Special "transition" classes are organised for children of asylum-seekers. Kindergarten classes are offered to younger children.

Adults have the possibility of taking a range of classes organised at the reception centres: there are classes, for example, in language, information technology, cooking and sewing. Asylum-seekers may also take classes outside the reception centre. Similar education possibilities are offered to asylum-seekers residing in private accommodation.

Reception centres also organise activities such as sports and cultural outings.

8.2.5. Access to Labour Market

Asylum-seekers may engage in maintenance and cleaning work at the reception centres, for which they may receive a small remuneration.

Currently, asylum-seekers do not have access to the labour market. However, preparatory work on new legislation is under way to provide access to the labour market to asylum-seekers who have been awaiting a decision on their claim for more than six months.

8.2.6. Family Reunification

No possibilities for family reunification exist for asylum-seekers awaiting a final decision on their claim.

8.2.7. Access to Integration Programmes

Each reception centre has a budget to organise community activities, with the aim of integrating the centres into the local communities. Activities such as parties, sports and recreation take place inside or outside the centre, and bring together residents of the centre and members of the community. The reception centres also engage in outreach to the community, providing information on migration, asylum, and foreign cultures.

Asylum-seekers in Flanders and Brussels may take part in an integration programme designed for new immigrants (*inburgering*) four months into the asylum procedure.

8.2.8. Access to Benefits by Rejected Asylum-Seekers

The following rejected asylum-seekers have the right to an extension of their reception benefits after receiving a negative decision on their claim:

- Persons who have submitted an application for a residence permit on the grounds of a serious medical condition (under Article 9 of the Aliens Act)
- Persons who, for reasons beyond their control, cannot be returned to their country of origin or of habitual residence
- Persons whose parent or guardian has the right to material benefit
- Persons who have signed a voluntary return agreement and are awaiting departure from Belgium.

In some cases, minors with no legal status and their families may be eligible for reception benefits, irrespective of what point they are at in the asylum procedure.

9 Status and Permits Granted outside the Asylum Procedure

9.1 Humanitarian Grounds

Under the humanitarian clause, the CGRS may include in a negative decision a note to the Minister of Migration and Asylum Policy to consider any humanitarian

grounds put forth by the asylum-seeker. Situations that may warrant such a clause include the following:

- The person's medical condition and age
- Pregnancy or child delivery
- The presence of relatives who are residents of Belgium.

9.2 Withholding of Removal/Risk Assessment

Before a person is removed from Belgium, the Immigration Department will do a risk assessment to determine whether or not removal will violate the *non-refoulement* principle of the 1951 Convention, the provisions contained in Article 3 of the ECHR, or fundamental freedoms.

9.3 Obstacles to Return

If there are obstacles to return, the Immigration Department will make a case-by-case determination with regard to whether or not the person should be granted a residence permit. See section on "Exceptional Circumstances" below.

9.4 Regularisation of Status over Time

The Immigration Department may regularise the status of a rejected asylum-seeker on a case-by-case basis. See section on "Exceptional Circumstances" below.

9.5 Regularisation of Status of Stateless Persons

There is currently no regulation specifically governing the recognition of status of stateless persons (for example, a specific right for stateless persons to remain). Persons who claim to be stateless may turn to the regular civil courts at the first instance to acquire the status of stateless persons. However, the granting of such a status does not automatically lead to the right to remain in Belgium. In order to obtain a residence permit, stateless persons must make an application at the Immigration Department.

The Aliens Act also foresees an individual regularisation of foreign nationals who cannot return to their country of origin as a result of "exceptional circumstances," as described below.

9.6 Exceptional Circumstances

The Aliens Act sets out the procedure for granting a residence permit to persons who, due to exceptional circumstances, cannot return to their country of origin.

The procedure for granting residence permits on these grounds does not have suspensive effect for rejected asylum-seekers who do not have a right to stay in Belgium. The exceptional circumstances are examined on a case-by-case basis. Situations that may be considered to be “exceptional circumstances” include the following:

- Having a child who holds Belgian nationality
- Serious medical conditions and a lack of proper medical care in the country of origin.

10 Return

The Immigration Department is the competent authority for the formulation and implementation of return policies.

10.1 Pre-departure Considerations

When an asylum-seeker is given a removal order, he or she receives an information package outlining the possibilities of voluntary return in cooperation with the International Organization for Migration (IOM) and on seeking assistance with return from a number of NGOs.

10.2 Procedure

Voluntary Return

Following the receipt of a return decision, a rejected asylum-seeker has five days to leave Belgium voluntarily. Fedasil coordinates an assisted voluntary return scheme made up of two programmes:

- A basic voluntary return programme (REAB) run by the IOM, whereby persons wishing to return to their country of origin have their transportation costs (e.g., an airline ticket) covered by the government and receive a reintegration grant of 250€ each.
- A reintegration programme run by IOM, the NGO Caritas and the refugee councils Vluchtelingenwerk Vlaanderen and Coordination et initiatives pour et avec les réfugiés et étrangers (CIRE), which offers in-kind assistance to returnees in their country of origin valued at 700€ per person (or a maximum of 1,750€ per family). Vulnerable persons are entitled to an additional 700€ in assistance.

Enforced Return

Belgium also has the possibility of enforcing returns and of detaining rejected asylum-seekers pending return.

10.3 Freedom of Movement/ Detention

Pending return, rejected asylum-seekers may be detained for a period of two months. Detention may be extended for an additional two months under the following circumstances:

- If the necessary measures to remove the person have been taken within seven working days of the start of detention
- If these measures continue and return remains a possibility within a reasonable period of time.

Following the additional two-month detention period, the Minister is the only authority who may decide to extend the period of detention. Following five months of detention, the person must be released.

If the person refuses to be removed from the territory, a new two-month period of detention begins.

10.4 Readmission Agreements

The Ministry of Interior and the Ministry of Foreign Affairs are the competent authorities for negotiating and implementing readmission agreements.

11 Integration

The Federal Government Declaration of July 2003 sets out the main objective of integration policies, that is, to create a multicultural and tolerant society. The principal competencies for integration policies rest with the communes.

In Flanders and Brussels, all adult recognised refugees and beneficiaries of subsidiary protection are entitled to a standard integration programme. The training component of the programme incorporates Dutch language classes and social and professional orientation. Persons who participate in the training component receive a certificate of integration, which entitles them to take part in additional integration activities, such as vocational training, and to enroll in higher education institutions.

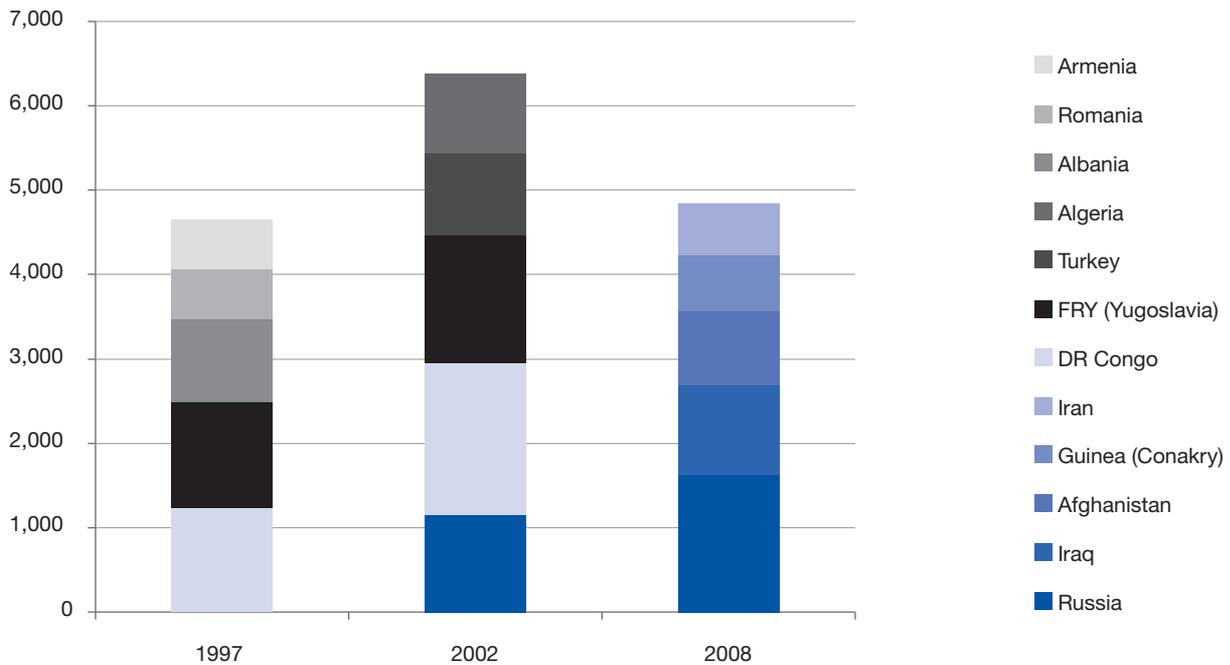
In Wallonia, there are no standard integration programmes available but there are seven regional integration centres which, in cooperation with local organisations, provide services such as job orientation to refugees.

12 Annexe

12.1 Additional Statistical Information

Figure 4:

Asylum Applications* from Top Five Countries of Origin for Belgium in 1997, 2002 and 2008



* Applications made by accompanied minors under age 14 are not included

Figure 5:

Decisions Made at the First Instance, 2000-2008

Year*	Geneva Convention Status		Complementary Protection and Other Authorisations to Remain**		Rejections***		Other Decisions****		Total Decisions°
	Count	% of total	Count	% of total	Count	% of total	Count	% of total	
2000	1,198	6%	0	0%	15,486	83%	2,073	11%	18,757
2001	897	4%	0	0%	22,095	89%	1,848	7%	24,840
2002	1,166	5%	0	0%	22,491	90%	1,468	6%	25,125
2003	1,201	6%	0	0%	18,533	89%	976	5%	20,710
2004	2,275	14%	0	0%	13,037	79%	1,175	7%	16,487
2005	3,059	15%	0	0%	13,732	68%	3,301	16%	20,092
2006	1,917	14%	8	0%	10,430	77%	1,248	9%	13,603
2007	1,839	18%	279	3%	7,851	76%	304	3%	10,273
2008	2,143	24%	394	4%	6,172	69%	231	3%	8,940

* Data for 2006, 2007 and 2008 are based on CGRS annual reports

° Final asylum decisions: decisions to further investigate (admissibility phase, urgent appeal) are not included; decisions to terminate the procedure are included ("Other Decisions")

** Decisions of the CGRS to grant subsidiary protection

*** Rejection decisions taken by the CGRS include:

- Until 1 June 2007: confirmation of refusal of entry/stay (admissibility phase, urgent appeal against ID decision)
 untimely appeal (admissibility, deadline for urgent appeal not met)
 technical refusal (admissibility and eligibility phase, no response to convocation/request for information)
 refusal to grant refugee status (eligibility phase)
 exclusion from refugee status

- Since 1 June 2007: refusal to grant refugee status and subsidiary protection status (eligibility phase)
 refusal to take the application into consideration (EU citizens)
 technical refusal (no response to convocation/request for information)
 exclusion from refugee status/subsidiary protection
 Revocation decisions have not been included in this table.

**** Discontinuation of procedure: withdrawal of the application (e.g., in case the applicant wishes to return voluntarily), "application without subject" (before a final asylum decision has been taken, the applicant has received another status/regularisation, has become a Belgian citizen or has died).

Canada



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1 Background: Major Asylum Trends and Developments

Asylum Applications

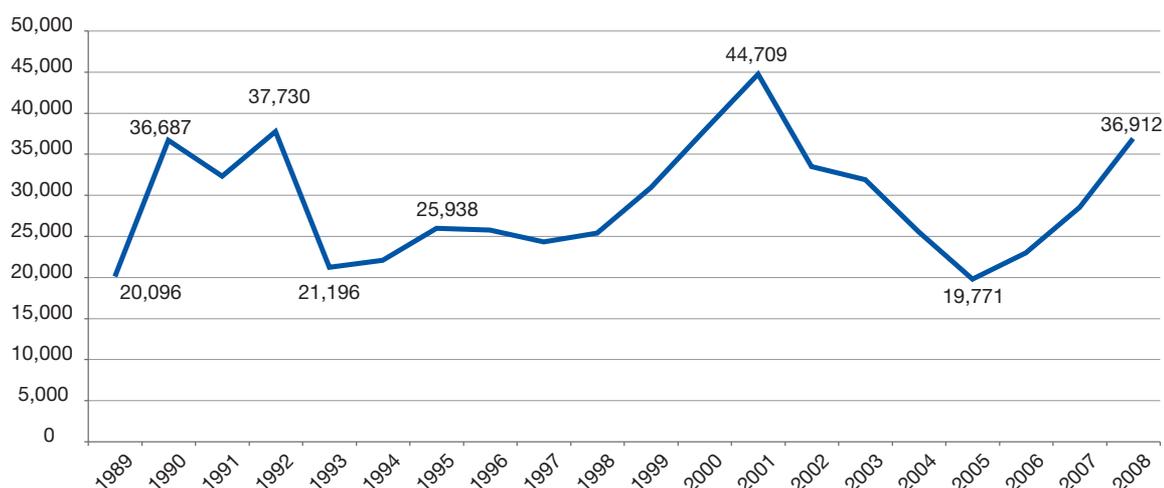
In the early 1980's, Canada received between 5,000 and 8,000 asylum applications per year. Numbers increased to 35,000 in 1985 and peaked in 1988 with 45,000, but then dropped to 20,000 in 1989. Between 1990 and 2000, the number fluctuated between 37,000 and 21,000. Applications peaked again in 2001, with some 44,000, then decreased until 2005 to some 20,000, but rose to more than 28,000 in 2007 and almost 37,000 in 2008.

in part, due to a Supreme Court of Canada decision¹ in 1985, which declared the lack of an oral hearing in the refugee status determination process to be in contravention of Canada's Charter of Rights and Freedoms.

The Immigration and Refugee Board (IRB) was created, and an entirely new refugee status determination system began work in January 1989. The IRB, a quasi-judicial, independent and non-adversarial tribunal, was given the responsibility for adjudicating refugee claims. This task was delegated to the Convention Refugee Determination Division (CRDD) at the IRB. The new system also added to the process the requirement for an oral hearing for refugee claimants. The system

Figure 1:

Evolution of Asylum Applications in Canada, 1989-2008



Top Nationalities

In the early 1990's, Sri Lanka, Somalia and Iran were top source countries of asylum claimants. In the late 1990's and until 2001, top source countries included Sri Lanka, China, Pakistan and Hungary. From 2001 to 2007, Pakistan, Colombia and Mexico were the leading countries of origin, although numbers of claimants from Pakistan have decreased significantly in recent years. The top five countries for refugee claimants for 2007 were Mexico, Haiti, Colombia, U.S. (mainly U.S. born children of third nationality claimants), and China. Currently, the number of claims by Mexican citizens represents approximately 25% of total claims made in Canada.

Important Reforms

In the late 1980's, the Canadian refugee status determination system became a quasi-judicial process and remains so today. This change was undertaken,

was modified by legislation passed in 1992 and 1995, and further modified by the Immigration and Refugee Protection Act (IRPA) in 2002.

With the proclamation of IRPA in June 2002, the Refugee Protection Division (RPD) replaced the CRDD. The IRB remains an independent and impartial decision-maker with respect to refugee protection claims in Canada. The new law enshrined critical elements of the Convention relating to the Status of Refugees (1951) and its Protocol Relating to the Status of Refugees (1967). This legislative framework, which remains in effect today, also reflects Canada's obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

¹ *Singh v. Minister of Employment and Immigration* [1985] 1 S.C.R. 177. This case is further described in the Case Law text box below.

IRPA introduced a number of other significant changes to Canada's system of refugee status determination, as follows:

- The expansion of the grounds under which a claimant could be granted Canada's protection, to include consideration of the CAT and Articles 6 and 7 of the International Covenant on Civil and Political Rights (ICCPR). The combination of the Convention refugee definition and these additional grounds for protection has been referred to as the "consolidated grounds"
- Under the former Act, refugee hearings were conducted by a two-member panel. Under IRPA, this was changed to a single member
- IRPA introduced a pre-removal risk assessment (PRRA) that permits refused asylum-seekers and other inadmissible individuals to apply for protection before being removed from Canada on the grounds that there is new evidence or evidence that it was not possible or reasonable to provide at the original hearing
- IRPA also modified the provisions governing detention by requiring more frequent detention reviews. Previous legislation required that a review of the grounds for detention be held every seven days. IRPA modified these provisions to require an initial detention review by the IRB within 48 hours or without delay after 48 hours, at least once during the seven days following, and at least once every 30 days thereafter. IRPA also extended the authority to detain foreign nationals who are already inside Canada if they failed to establish their identity, may pose a danger to the public or are a flight risk.

IRPA provides a legislative refugee protection framework. Along with this, the Canadian Charter of Rights and Freedoms is an important overarching element in Canadian refugee protection. The Supreme Court of Canada ruled in 1985 that the Charter applies to refugee claimants as well as to Canadian nationals, and since that time there have been a number of important Court decisions affecting both the substance and procedures of law relating to refugee protection.²

In November 2001, the Canadian federal government made a commitment that all persons claiming refugee protection would be required to undergo front-end security screening to ensure that individuals who could pose a risk to Canada would not be granted protection and could not use the refugee status determination process to gain admittance into Canada.

Finally, in December 2002, Canada and the United States signed the Safe Third Country Agreement (STCA), which came into force on 29 December 2004.

Recent Developments

In April 2008, Citizenship and Immigration Canada (CIC) published amendments to the Protected Persons Manual (PP1) to include age- and gender-sensitive guidelines, which outline the procedures to be followed by officers who conduct eligibility interviews with minors and vulnerable persons. Their purpose is "to support priority processing for refugee protection claims made by vulnerable persons and to ensure special accommodation during the front-end examination process." They include provisions for officers to consider the particular vulnerability and needs of these persons, and they provide direction on how to identify unaccompanied or separated children and victims of gender-based violence.³

Bill C-3, An Act to Amend the Immigration and Refugee Protection Act (Security Certificates) received Royal Assent on February 14, 2008. This legislation, introduced as the result of a decision by the Supreme Court of Canada (SCC), changed the provisions governing *ex parte* in camera proceedings that use secret evidence, by introducing an independent agent to represent the interests of the individual subject to security certificates, during proceedings in which secret information is used. This legislation, prompted by a decision of the SCC, makes the security certificate provisions of IRPA more fully compliant with the Canadian Charter of Rights and Freedoms and strikes a balance between the right of the individual to know the Government's case against him and the continued maintenance of national security and the safety of Canadians.

The SCC in its ruling found that detention under security certificates does not violate the Charter provision against cruel and unusual punishment, as IRPA allows for a "robust and meaningful" review of the grounds for detention. Nonetheless, the amendments introduced by Bill C-3 also modified and extended the detention review process. Previous legislation had provided that permanent residents held under a security certificate had to be provided a detention review after 48 hours. Bill C-3 extended to all foreign nationals the right to have a detention review at the IRB within 48 hours and at least once every six months thereafter. Prior to this change, review of the detention of a foreign national held under a security certificate was not required until after the certificate had been reviewed by a Federal Court judge and found reasonable.

² Some of these decisions are examined in the Case Law text boxes throughout this chapter.

³ See the section below on unaccompanied minors for more information on the new guidelines.

Figure 2:

Evolution of Applications from Top Three Countries of Origin for 2008

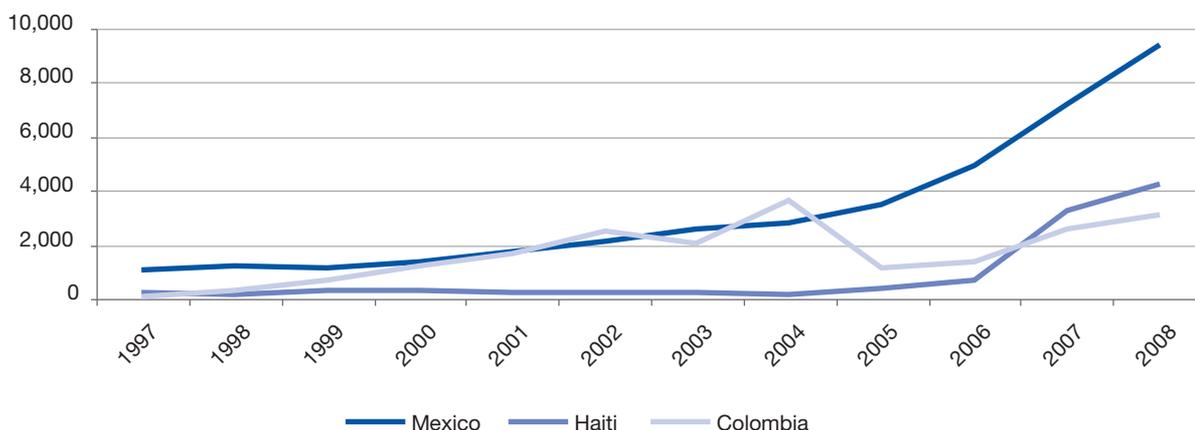


Figure 3:

Top Five Countries of Origin in 2008

1	Mexico	9,422
2	Haiti	4,247
3	Colombia	3,070
4	USA	2,308
5	China	1,470

Under IRPA, persons may obtain permanent residence on the basis of a positive pre-removal risk assessment (PRRA). Those who would be at risk if returned to their country of origin are granted protected person status and may apply for permanent residence. A Temporary Resident Permit (TRP) may also be issued under the provisions of the Protected Temporary Resident Class designation to individuals who were determined to be refugees outside of Canada and who are in urgent need of protection. These individuals may apply for permanent residence from within Canada. Finally, outside of the asylum process, IRPA also provides for the granting of permanent residence on humanitarian and compassionate grounds. Such applications may include risk as a ground of consideration.

2 National Legal Framework

2.1 Legal Basis for Granting Protection

Refugee Protection

The 2002 Immigration and Refugee Protection Act (IRPA) is the primary legal document concerning immigration to Canada and the granting of refugee protection. The 1951 Convention relating to the Status of Refugees, including the definition of a Convention refugee, has been incorporated into IRPA.

Complementary Protection

Under IRPA, the definition of torture as found in the Convention against Torture (CAT) has been incorporated into national law. Persons identified as facing a danger of torture, a risk to life or a risk of cruel or unusual treatment or punishment are recognised as “persons in need of protection.” Such persons can apply for permanent residence within 180 days of the decision and are granted the same rights and status as those found to be Convention refugees.

Box 1: Canadian Case Law: Obligations under the Convention Against Torture

Suresh v. Canada (Minister of Citizenship and Immigration), [2002] 1 SCC: This case clarified Canada’s obligation under the CAT. The Supreme Court of Canada affirmed that Canada can remove those who pose a risk to Canadian society, even refugees, following an administrative process that balances the seriousness of their conduct against the risk faced upon return. The substantive limit the Court placed upon government is that removal leading to torture would generally be a breach of fundamental justice.

2.2 Recent Reforms

The Safe Third Country Agreement, implemented on 29 December 2004, initially reduced the number of claims made at the land border between Canada and the United States (U.S.).

3 Institutional Framework

3.1 Principal Institutions

The Minister for Citizenship and Immigration Canada (CIC) has overall responsibility for refugee policy and programs, including those related to asylum. CIC also makes specific determinations on which foreign nationals may be referred to the Immigration and Refugee Board to apply for refugee protection. Those granted refugee protection may apply to CIC for permanent residence. CIC also makes decisions on pre-removal risk assessments (PRRA), which may result in the granting of protected person status. Finally, CIC decides on claims for refugee protection made outside of Canada, such as for resettlement purposes.

The Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB), an independent, quasi-judicial, non-adversarial tribunal, is responsible for processing inland claims for refugee protection.

The Canada Border Services Agency (CBSA) refers refugee claims made at the border to the IRB. In addition, CBSA is responsible for security screening of refugee claimants, detention of foreign nationals in accordance with provisions in IRPA, and the removal of persons who are inadmissible to Canada.

For institutions' handling of judicial review of refugee claims, please see the section entitled "Review/Appeal of IRB Decisions" below.

3.2 Cooperation between Government Authorities

All three institutions involved in the area of asylum work both individually and in concert with each other. In addition to referring asylum claims to the IRB for adjudication, CIC formulates refugee policy and grants permanent residence to recognised refugees and other protected persons. CIC is also the competent authority for making pre-removal risk assessments (PRRA). While the IRB reports to Parliament through the CIC Minister, it retains its independence with respect to the consideration of specific cases. The CBSA is responsible for the return of failed asylum-seekers and works together with CIC to enforce immigration legislation.

4 Pre-entry Measures

To enter Canada, foreign nationals must be in possession of a valid travel document and a valid visa, if required, and must not otherwise be inadmissible to Canada.

4.1 Visa Requirements

All foreign nationals must apply for a visa before travelling to Canada, unless exempted from that requirement under Canada's Immigration and Refugee Protection Regulations. Exemptions from the visa requirement are based on a traveller's nationality, travel document, a combination of travel document and nationality, and/or purpose of entry to Canada. The competent authority for Canadian visa policy and issuance is CIC.

4.2 Carrier Sanctions

Any carrier transporting people into Canada is obligated under the law to ensure that it does not transport anyone lacking the prescribed documents for legal entrance into the country. If a carrier contravenes this law, inadvertently or otherwise, it is obligated to make arrangements and cover all costs to effect the removal of the person(s) back to the point of embarkation. If a carrier fails to comply with its obligations, it may face fines, seizure of assets, or criminal charges, as warranted.

4.3 Interception

Canadian law prescribes that any carrier seeking to transport people into Canada comply with the Advance Passenger Information (API)/Passenger Name Record (PNR) regime. This information is used to pre-screen a carrier's manifest for any individuals inadmissible either because they fail to comply with Canada's immigration regulations or because they pose a security threat.

4.4 Migration Integrity Officers

Canada has expanded its overseas presence of CBSA personnel through the deployment of Migration Integrity Officers who assist carriers and host government officials in maintaining rigorous screening systems to ensure that carriers comply with Canadian law.

5 Asylum Procedures

5.1 Application Possibilities and Requirements, Procedures and Legal Remedies

Claims for asylum may be made at any port of entry (at a border crossing, an airport or a seaport), or inland at a CIC office. In addition, CIC has an administrative process to select refugees overseas for resettlement.

5.1.1. Outside the Country

Resettlement/Quota Refugees

CIC is responsible for managing Canada's resettlement program. Both Convention refugees and persons in refugee-like situations, including members of the Humanitarian-Protected Persons Abroad Classes (HPC), are eligible for resettlement. Each year, a target is allocated for resettlement through the government-assisted programme. In addition, a private sponsorship program enables organisations and private individuals to participate in refugee identification and settlement.

Three streams are used for resettling refugees, as follows:

- Convention Refugees Abroad Class – the United Nations High Commissioner for Refugees (UNHCR), other referral organisations and private sponsorship groups identify Convention refugees outside their country of origin to be resettled in Canada
- Country of Asylum Class – persons outside their country of origin who are not Convention refugees but who are affected by conflict or are victims of serious human rights violations are usually identified for resettlement by private sponsorship groups
- Source Country Class – this is a special class for persons living in certain countries of origin who are in refugee-like situations as a result of civil war or armed conflict or because their fundamental human rights are not respected. Applications are made at diplomatic missions.

In each of these streams, processing is completed at Canadian diplomatic missions. A visa officer decides whether the person identified meets eligibility and admissibility requirements for resettlement. Although decisions may be reviewed by the Federal Court of Canada, there is no appeal process on resettlement referral decisions.

The target for government-assisted resettled refugees in 2009 is between 7,300 and 7,500, while it is between 3,300 and 4,500 for privately sponsored refugees.

5.1.2. At Ports of Entry

At a port of entry (airport, seaport or land border post), a CBSA officer first examines the validity of the foreign national's travel documents, and examines whether his or her circumstances have changed since a visa or permit was first issued. The officer also determines whether the person poses a security or health risk or has committed a serious crime or human rights violation. If the person wishes to make a claim for asylum, an immigration officer will interview the claimant to

determine whether the claim is eligible to be referred to the IRB.⁴

Undocumented asylum-seekers may make claims using the same procedure, without being differentiated from other asylum-seekers, but may be detained for reasons of identity.

Inadmissible Persons

Any person deemed inadmissible may be detained for up to 48 hours on the authority of a CBSA officer if the officer is not satisfied of the person's identity, or if there are reasonable grounds to believe the inadmissible person is a danger to the public or unlikely to appear for an immigration process. Within the first 48 hours, the CBSA has authority to review the initial decision to detain and may release the person or impose conditions.

Any detention deemed necessary to continue beyond 48 hours will be reviewed within this timeframe by the Immigration Division of the IRB. If it is justifiable to do so, the Immigration Division may extend the detention for seven days, and subsequently up to terms of 30 days upon review if necessary. If the detention is deemed unwarranted, the person will be released and the IRB may impose any conditions it considers necessary.

5.1.3. Inside the Territory

Any person in Canada may make an asylum claim inland at any point, provided it is done prior to the issuance of a removal order. However, even once a removal order is issued, the person may request a PRRA prior to removal.

Responsibility for Processing the Claim

The Safe Third Country Agreement (STCA)

The Safe Third Country Agreement (STCA) between Canada and the U.S. was signed on 5 December 2002 and came into force on 29 December 2004. The Agreement establishes rules for the sharing of responsibility by the two countries for hearing refugee claims made by persons at ports of entry along the Canada-U.S. land border. The STCA also outlines procedures for processing refugee claims made by individuals who, during removal, are in transit by air through Canada or the U.S.

The general principle of the STCA requires that the country in which the refugee claimant arrived first take responsibility for adjudicating a refugee claim if the claimant does not qualify for an exception under the Agreement.

⁴ For terms of ineligibility and the procedure for forwarding the claim to the IRB, please see the section entitled "Application and Eligibility" below.

The STCA is based on the fact that both Canada and the U.S. maintain refugee protection programmes that meet international standards and that both have mature legal systems that offer procedural safeguards. The STCA acknowledges the international legal obligations of both governments under the principle of *non-refoulement* outlined in the 1951 Convention and the 1967 Protocol, as well as the 1984 Convention against Torture.⁵

Application and Procedure

The STCA applies to asylum-seekers entering Canada from the U.S. at land-border crossings or airports, if the person has been refused asylum in the U.S. and is in transit through Canada after being removed from the U.S.

There are four categories of exceptions to the application of the STCA, as follows:

- Family member exceptions – persons may be exempted if they have a family member⁶ who is a Canadian citizen, a permanent resident, a protected person, a holder of a valid work permit, a holder of a study permit, a recipient of a stay of removal on humanitarian and compassionate grounds, or an asylum-seeker who is appearing before the IRB
- Unaccompanied minors (UAMs) exception – UAMs who are single and have no family member or legal guardian residing in the U.S. or Canada may be eligible to apply for asylum
- Document holder exceptions – persons may apply for asylum if they hold a valid Canadian (non-transit) visa, a work permit, a study permit, or a travel document (for permanent residents) issued by Canada, or if they are not required to have a temporary resident visa to enter Canada but require a U.S.-issued visa to enter the U.S.
- Public interest exceptions – persons may be exempted if they have committed a crime that could subject them to the death penalty in the U.S. or a third country or if they are nationals of countries benefiting from a temporary suspension of removal.

⁵ The designation of the U.S. as a “safe third country” was challenged in the Federal Court of Canada by three non-governmental organisations (NGOs) and an anonymous asylum-seeker in the U.S. While the Federal Court ruled that the designation was invalid, the Federal Court of Appeal overturned that ruling, finding that the designation of the U.S. as a safe third country was not outside the authority of the Government and that the STCA between Canada and the U.S. was not illegal. On 5 February 2009 the Supreme Court of Canada declined to grant leave to the NGO and individual challengers to hear an appeal of the Federal Court of Appeal decision.

⁶ The STCA defines a family member as a spouse or common-law partner, legal guardian, parent, sibling, grandparent, uncle/aunt, or nephew/niece.

The STCA does not apply to U.S. citizens or habitual residents of the U.S. who are stateless.

If the immigration officer examining the asylum claim at the Canada–U.S. land border port of entry determines that the person does not fit any of the above-mentioned exceptions, the person is returned to the U.S. forthwith.

Freedom of Movement/Detention

The grounds and procedures for detention of individuals deemed inadmissible under the STCA are the same as they are for other inadmissible claimants. However, detention is usually not required since under the agreement those deemed inadmissible do not have recourse to a PRRA and are generally returned to the U.S. the same day.

Conduct of Transfers

Transfers of inadmissible cases back to the U.S. involve coordination on both sides of the border. The sending party informs the receiving party that an individual is en route, and they are provided with an official explanation of the claim and why it was denied prior to the release of the person. Escorts are usually not required, and individuals return to the U.S. via their own means. UNHCR monitors the agreement and has access to various points of entry for first-hand monitoring.

Suspension of STCA Transfers

There is no specific mechanism that allows for the suspension of transfer of persons deemed inadmissible under the STCA, unless they are reclassified under one of the allowed exceptions outlined above. In a more general sense, either party can suspend the agreement as a whole for a three-month period.

Review/Appeal

As outlined above, those not falling into the exception categories have no recourse to appeal inadmissibility determinations under the STCA.

Application and Eligibility

When a person makes an asylum claim at a port of entry or a local CIC office, he or she is interviewed by an immigration officer. During the interview, the asylum-seeker may be assisted by an interpreter. The asylum-seeker is also asked to complete a questionnaire and to have his or her photograph taken. Persons 14 years of age or older are fingerprinted.

If the immigration officer decides that the claim is eligible, the claim is forwarded to the IRB for determination. If the immigration officer does not make an eligibility

determination within three working days, the claim is deemed eligible and automatically sent to the IRB.

The asylum-seeker is given a Personal Information Form (PIF), which must be completed and returned to the IRB within 28 days. The asylum-seeker must then complete a medical examination. The asylum-seeker is also given a removal order, which is conditional on the result of his or her asylum claim at the IRB. In other words, should the asylum-seeker's refugee claim be refused, the removal order becomes enforceable. If the IRB does not receive the PIF in the time indicated, the claim may be declared abandoned.

A person's claim may be found ineligible if he or she:

- Has already been granted asylum in Canada or in another country to which he or she can be returned
- Has previously been refused asylum in Canada or withdrew or abandoned his or her previous claim
- Came to Canada from, or through, a designated safe third country where a claim for asylum could have been made, or
- Is a security risk, has violated international human rights, has been convicted of a serious crime or has been involved in organised crime.

Asylum-seekers may choose to seek a Federal Court judicial review of determinations of eligibility as well as other decisions.

Asylum-Seeker Rights and Obligations

Refugee claimants receive a document of terms and conditions, which outlines their obligations during the refugee status determination process. Failing to abide by these obligations may result in the issuance of a warrant.

Box 2:

Canadian Case Law: Giving the Right to an Oral Hearing

Singh v. Minister of Employment and Immigration [1985] 1 S.C.R. 177: This Supreme Court ruling held that refugee status determinations made on the basis of a transcript of an interview were inconsistent with the requirements of fundamental justice. As a result, Canadian legislation was revised so that asylum-seekers were afforded an opportunity to make their case at an oral hearing. This resulted in the creation of the Immigration and Refugee Board in 1989.

Accelerated Procedures

The IRB has a Fast-Track Policy comprising two instruments:

- The fast-track expedited process is used to identify and handle claims that can be determined without a hearing at a faster rate than more complex cases. The asylum-seeker is interviewed by a tribunal officer, who makes a recommendation to either accept the claim or to proceed with a hearing. If the recommendation is to accept the claim, the claim is forwarded to a decision-maker. The decision-maker can either grant status or proceed with a full hearing under the normal procedure. Claims that are not recommended for acceptance without a hearing proceed directly to the normal determination procedure, that is, to a full hearing
- The fast-track hearings process is used to identify and handle simple claims that require a hearing and that can be heard at a faster rate than can complex claims. A simple claim is defined as a claim in which one or two issues, apart from the asylum-seeker's credibility, appear to be determinative of the claim. Hearings are usually concluded within two hours.

Certain countries of origin and claim types are designated for processing under this policy, although any claim can be streamed into the two processes where the RPD and counsel consider this to be suitable. Under the fast-track policy, an interview is generally scheduled within eight weeks of referral or receipt of the Personal Information Form (PIF), and a decision is taken within seven days of the interview. The procedure is non-adversarial.

Unaccompanied minor asylum-seekers, persons requiring a designated representative by reason of a mental disability, and cases remitted to the IRB for a new hearing by the Federal Court after judicial review are excluded from the fast-track policy.

Normal Procedure

When the IRB receives an asylum-seeker's PIF, it reviews the claim to determine the best way to proceed. The claim can be put through the fast-track expedited process, the fast-track hearings process (see above) or the full-hearing process. Asylum-seekers are required to provide the IRB with identity and travel documents, including passport, birth certificate, any education certificates, police or medical reports, membership cards for political or other groups, and any documentary evidence on conditions in their country of origin.

Full hearings follow the tribunal process and are non-adversarial. The asylum-seeker has the right to be assisted by a legal representative or counsel.⁷ Hearings are held in private. The Minister's representative (a CBSA officer) may participate in the hearing to intervene on behalf of CIC. The CBSA reviews claims on the Minister's behalf and determines if an intervention is warranted before the RPD decision is made. Dependants who are included in their parents' or guardians' asylum claim must appear at the hearing, although they are required to be present only at the start of the hearing to establish identity.

Cases are heard by Members, independent decision-makers who assess each claim individually on its merits. Members may be assisted by a tribunal officer during the hearing.

If the asylum-seeker fails to appear at his or her scheduled hearing, the claim may be considered to be abandoned.

Review/Appeal of IRB Decisions

Asylum-seekers and the Minister of CIC may apply to the Federal Court for a judicial review of an IRB decision. This application must be filed within 15 days of the IRB decision. First, the asylum-seeker or the Minister's representative must obtain the Court's permission, or leave, for a judicial review. The role of the Federal Court is to ensure that the IRB has made a decision lawfully. If the Court concludes that an error of law, of fact, or of mixed law and fact was made, the judicial review is allowed, and the claim is returned to the IRB for a new hearing. New evidence may be presented at the hearing. A request for judicial review has the effect of suspending the person's removal from Canada.

There are possibilities for further appeal before the Federal Court of Appeal and the Supreme Court of Canada, again on the condition that the court in question grant leave.

Failed asylum-seekers who have a removal order in effect may apply to CIC for a pre-removal risk assessment (PRRA) or may apply to remain in Canada as a permanent resident on humanitarian and compassionate (H&C) grounds. Although a pending application for H&C consideration, contrary to a PRRA application, does not put into effect a stay of removal, most applications for H&C consideration are examined prior to the applicant's removal.⁸

⁷ A representative can be a lawyer, an immigration consultant, a trusted advisor or a family member.

⁸ The PRRA and consideration of humanitarian and compassionate grounds for a stay of removal are described later in the chapter, under the section Status and Permits Granted outside the Asylum Procedure.

Freedom of Movement during the Asylum Procedure

Detention

Procedure

The CBSA has the legislative authority to arrest and detain foreign nationals, including asylum-seekers believed to be inadmissible to Canada. For all detentions, an officer must have reasonable grounds to believe the person is inadmissible to Canada and is a danger to the public or is unlikely to appear for an immigration proceeding. A person may also be detained if an officer is not satisfied of the identity of the person in the course of any procedure under IRPA.

The CBSA has jurisdiction over the detention for the first 48 hours after an arrest. If a CBSA officer does not release the person during this time, then the case is referred to the Immigration Division of the IRB. Once the case is before the IRB, the IRB Member reviews the reasons for detention according to the following schedule: within 48 hours of the arrest or without delay afterwards; once in the following seven days; and once every thirty days for as long as a person remains detained. The IRB has the authority to order continued detention or to release the person with or without conditions.

Detention Facilities

The CBSA operates four immigration holding centres (IHCs) located in Toronto, Ontario; Vancouver, British Columbia; Laval, Quebec; and Kingston, Ontario. The first three are for low-risk detainees while Kingston IHC is solely for individuals subject to security certificates. The CBSA relies on provincial facilities to detain high-risk detainees (such as criminals or persons suffering serious medical or psychological problems) and low-risk detainees in areas not served by a CBSA immigration holding centre. A person detained in a provincial facility for immigration reasons is bound by the rules of the provincial correctional institution.

Safeguards

While there is no limit imposed on the length of detention, detention is used only as a last resort. Alternatives to detention, such as release on conditions or financial guarantees, are always considered before detaining someone.

Where safety or security is not an issue, the detention of minors is avoided, regardless of whether a child is unaccompanied or accompanied by a parent or legal guardian. Alternatives to detention are considered. For unaccompanied minor asylum-seekers, the preferred option is to release with conditions to the care of

child welfare agencies, if those organisations are able to provide an adequate guarantee that the child will report to the immigration authorities as requested. The average length of detention of minors has declined by 40% due in part to increased use of such alternative arrangements. The responsibility for child protection rests with the provincial youth protection agencies.

Where safety or security is not an issue, detention is avoided or considered a last resort for elderly persons, pregnant women, persons who are ill, persons who are handicapped, and persons with behavioural or mental health problems. For persons falling under these categories, Canada will always consider alternatives to detention.

Persons detained under IRPA have a right to apply for leave to the Federal Court of Canada for judicial review of the decision to detain.

Reporting

Asylum-seekers are required to report changes of address within 48 hours. RPD Rule 4(3) states that changes to contact information must be reported to the Division and the Minister “without delay” and to the IRB no later than 10 days after the date they receive the PIF. Any subsequent changes of address must be reported within 48 hours.

Should asylum-seekers not report address changes, they may not receive notice to appear for their hearing at the IRB, which may result in non-attendance and abandonment of their claim.

Repeat/Subsequent Applications

An asylum-seeker in Canada may make only one claim for asylum. Thus, a re-application for asylum is ineligible for referral to the IRB if an asylum claim by the person had previously been rejected by the IRB, had been deemed ineligible for referral to the IRB, or had been withdrawn or abandoned.

However, IRPA allows rejected asylum-seekers awaiting removal to apply for a PRRA. For most applicants, a positive determination results in the granting of protected person status.

5.2 Safe Country Concepts

5.2.1. Safe Country of Origin

Asylum Claims Filed by a Citizen of a European Union Member State

Canada does not currently have a safe country of origin policy. All cases before the RPD, regardless of

the country of alleged persecution, are decided in the same manner. IRB decision-makers must consider the totality of the evidence before them as well as the overall credibility of an asylum-seeker when making a final decision on a claim. This applies to all cases before the RPD, regardless of the alleged country of persecution.

5.2.2. First Country of Asylum

There is no legal requirement for an asylum-seeker to have applied for asylum in the first or earlier country of asylum. However, failure to do so may have a negative impact on the assessment of the person’s subjective fear or credibility.

5.2.3. Safe Third Country

According to IRPA, a country can be designated a safe third country after consideration of the following criteria:

- Whether the country is party to the 1951 Convention and the CAT
- The policies and practices of the country with respect to the 1951 Convention and the CAT
- The human rights record of that country
- Whether the country is party to an agreement with Canada on sharing responsibility for asylum claims.

To date, the United States is the only country that has been designated a safe third country by Canada.⁹

5.3 Special Procedures

5.3.1. Unaccompanied Minor Asylum-Seekers

Eligibility Stage

As may adults, children may make a refugee claim in Canada. Claims for refugee protection may be made inland or at a Canadian port of entry. CBSA and CIC officers assess admissibility and determine whether a claim is eligible to be referred to the Refugee Protection Division (RPD) of the IRB.

Measures are in place to ensure that the best interests of children are taken into consideration throughout the refugee claims process. For example, on 4 April 2008, amendments to the Protected Persons Manual (PP1) that include age- and gender-sensitive guidelines were published. These outline the procedures to be followed by officers who conduct eligibility interviews with minors and vulnerable persons. The guidelines include instructions for officers to consider the particular vulnerability and

⁹ See the Safe Third Country Agreement section above for further detail.

needs of children, and provide direction on how to identify unaccompanied or separated children and children at risk.

The guidelines instruct officers that if a child is unaccompanied or separated, or if, during the interview, it becomes apparent that he or she is otherwise at risk, the child is to be referred to the appropriate provincial or territorial child protection agency. Jurisdictional responsibility for child welfare protection matters rests with the provinces and territories, and local child protection agencies determine the level of care and treatment that children who come within their jurisdiction require. This jurisdictional responsibility includes the appointment of a guardian when that is deemed appropriate.

At the IRB

IRPA provides for the designation of a representative for minor children (persons under the age of 18) in all proceedings before the IRB. In the case of an unaccompanied minor asylum-seeker (UAM), the IRB normally appoints employees of social service or other non-governmental support agencies as designated representatives. If none is available, a lawyer who is not acting as the child's counsel may be chosen for the role.

The role of the designated representative is to act in the best interests of the child in all proceedings before the IRB. The role of the designated representative includes retaining and instructing counsel, making decisions about the case or helping the child to understand and make decisions about the proceedings, obtaining and providing evidence, and being a witness at the hearing if necessary.

A pre-hearing conference is held with the designated representative in order to discuss how best to elicit the child's testimony. Age, mental development and capacity are considered in this process. The UAM may be called upon at the hearing to provide evidence about his or her claim and, as does an adult claimant, an unaccompanied minor asylum-seeker has a right to be heard in relation to his or her claim. Procedural accommodation may be provided to ensure the UAM feels more comfortable.

Best Interests of the Child

When determining the procedure to be followed while considering the claim of a UAM, the best interests of the child are given primary consideration. This principle is articulated in the IRB Chairperson's Guideline on Child Refugee Claimants: Procedural and Evidentiary Issues¹⁰ and in the Protected Persons Manual.

¹⁰ The guidelines can be found on the IRB website: http://www.irb-cisr.gc.ca/en/references/policy/guidelines/child_e.htm.

5.3.2. Stateless Persons

Although Canada has not ratified the 1954 Convention relating to the Status of Stateless Persons, it is a signatory to the 1961 Convention on the Reduction of Statelessness. All asylum-seekers, regardless of whether they are stateless, have the same rights, and their cases will be treated individually on their merits.

6 Decision-Making and Status

The IRB considers both Convention refugee and other claims for protection under the "consolidated grounds" at the time of determination.

6.1 Inclusion Criteria

The RPD grants Convention refugee status to persons who have a well-founded fear of persecution in the meaning of Article 1A (2) of the 1951 Convention.

6.1.1. Convention Refugee

The RPD grants Convention refugee status to persons who have a well-founded fear of persecution in the meaning of Article 1A (2) of the 1951 Convention.

Box 3: Canadian Case Law: Defining the Grounds for Protection

Canada (Attorney General) v. Ward, [1993] 2 S.C.R. 689: This decision clarified the meaning of "State protection", as well as the meaning of "political opinion" as grounds for persecution. The Court also provided a more comprehensive definition of "particular social group".

6.1.2. Persons in Need of Protection

IRPA allows for complementary protection if an individual has substantial grounds to believe that he or she would be at risk of torture or that his or her life or well-being would be at risk if he or she was returned to the country of origin. Section 97 of IRPA affords such protection to persons who on substantial grounds would, if returned, incur the following risks:

- A danger of torture
- A risk to their life
- A risk of cruel and unusual treatment or punishment.

Such persons are referred to as “persons in need of protection.”

6.2 The Decision

Under IRPA, members of the RPD assess whether asylum-seekers are Convention refugees or persons in need of protection. Decisions are made based on the evidence provided and the law, following a full hearing, a fast-track hearing or the fast-track expedited process. Decisions and the reasons for the decisions, whether positive or negative, can be given orally at the end of the hearing or sent in writing by mail. Written reasons must be provided in the case of negative decisions and in certain other circumstances, such as when the asylum-seeker or the Minister’s counsel requests written reasons. If the decision is given orally, a transcript is provided.

6.3 Types of Decisions, Status and Benefits Granted

The RPD of the IRB can either grant protection to Convention refugees or persons in need of protection or reject claims for protection.

If a negative decision on a claim for asylum is issued, the removal order becomes effective and the asylum-seeker must leave Canada within 30 days.

“Protected Person” Status and Benefits

Convention refugees and persons in need of protection both obtain the status of “protected persons.” Thus, both groups are protected against *refoulement* and are entitled to the same set of benefits. Protected persons have the right to apply to CIC for permanent residence within 180 days of the decision and then for citizenship after three years of residence in Canada.

As permanent residents, protected persons have access to the following benefits:

- Most of the social benefits that Canadian citizens receive, including health care coverage
- The right to live, work and study anywhere in Canada
- Protection under Canadian law and the Canadian Charter of Rights and Freedoms.

Protected persons may include in their application for permanent residence family members who are located in Canada or overseas. If, for any reason, a family member is inadmissible to Canada, the protected person and any admissible family members will not be affected. They will be granted permanent residence, provided they meet all other statutory requirements.

6.4 Exclusion

The RPD of the IRB applies Article 1F and 1E of the 1951 Convention in the examination of protection claims. If the RPD believes, before or during a hearing, that there is a possibility that sections of the exclusion clauses apply to the claim, the Division must notify the Minister in writing and provide any relevant information. The Minister has the right to intervene in such cases, and may do so either by attending the hearing or by so indicating in writing.

Once a claim has been forwarded to the RPD proceeding, and before a decision has been taken, the CBSA reviews the claimant’s PIF and the supporting evidence that was provided to the RPD. If a rigorous examination of the claim reveals reasonable grounds for opposing a refugee protection claim, the CBSA may object to the claim on behalf of the Public Safety Minister or the CIC Minister. Ministerial interventions in the refugee status determination process aim to ensure that individuals who are major criminals or who may compromise national security do not enjoy the benefit of Canada’s protection. They also aim to protect the integrity of the refugee status determination system.

Persons excluded from refugee status (and thus deemed inadmissible¹¹) under the IRPA guidelines outlined above have recourse through the PRRA process, provided they file their request within 15 days of the issuance of the inadmissible ruling.

In the event that the individual’s circumstances fail to meet the threshold for either a positive PRRA ruling (which may grant the right to apply for permanent residence) or a stay of the removal order, there is still recourse to staying the removal under the principle of *non-refoulement*.

The Supreme Court of Canada has ruled in *Suresh*¹² that “the Minister’s discretion to deport under s. 53 is confined to persons who pose a threat to the security of Canada and have been engaged in violence or activities directed at violence. Expression taking the form of violence or terror, or directed towards violence or terror, is unlikely to find shelter under the Charter. Provided that the Minister exercises her discretion in accordance with the Act, the guarantees of free expression and free association are not violated.” In other words, Canada can remove those who pose a risk to Canadian society,

¹¹ A person who is excluded from refugee protection is also inadmissible to Canada and his or her claim will not be referred to the IRB. However, refugee claims of other inadmissible persons may be referred to the IRB based on the type of inadmissibility. In other words, an excluded person is also inadmissible to Canada but an inadmissible person is not necessarily excluded from refugee protection.

¹² *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002. See the text box above on Case Law for a summary of the court’s ruling.

even refugees, following an administrative process that balances the seriousness of their conduct against the risk faced upon return.

The substantive limit the Court placed upon government is that removal to torture would generally be a breach of fundamental justice. However, Canada has never invoked this exception to remove anyone when a Canadian tribunal has found a substantial risk of torture.

Persons excluded from protected person status under the IRPA guidelines outlined above have recourse to appeal through the PRRA process, provided they file their request within 15 days of the issuance of the inadmissibility ruling.

6.5 Cessation

There are two ways in which the cessation clauses of the 1951 Convention are considered by the RPD of the IRB:

- The RPD may decide, on the day of the hearing (when, under Canadian law, the well-founded fear of persecution is assessed), to hear about changes in circumstances
- The Minister may make an application to vacate refugee protection or an application to cease refugee protection, after the person has been granted refugee status.

These clauses may be applied directly. The Minister may make an application to cease refugee protection, after the person has been granted refugee status. Such applications are made relatively infrequently.

In assessing the objective basis of any claim for refugee protection, the RPD will always consider the impact of any changes in circumstances. If it concludes that as a result of a change in circumstances, a person who previously would have been found to be a refugee or a person otherwise in need of protection no longer meets the definition, the RPD will also consider whether there is evidence of compelling reasons sufficient to accept the claim despite the change in circumstances.

The cessation clauses are used only in exceptional cases. Persons who have been the subject of a cessation of their refugee status may ask the Federal Court for leave for judicial review of the IRB's decision.

6.6 Revocation

IRPA also has provisions that allow for the revocation of refugee status. An application to vacate refugee protection may be brought by the Minister if the decision was obtained as a result of directly or indirectly misrepresenting or withholding material facts relating

to a relevant matter. However, the RPD may reject the application if it is satisfied that other evidence considered at the time of the first determination would have justified conferring refugee protection.

If the Minister's application is allowed, the previous grant of refugee protection is nullified and the claim is deemed rejected. A person whose status is vacated may seek leave at the Federal Court for judicial review of the RPD's decision.

6.7 Support and Tools for Decision-Makers

6.7.1. Country of Origin Information

The IRB Research Directorate gathers current, public and reliable information on countries of origin for the purposes of refugee status determination. The research team produces responses to information request (RIRs) made by RPD decision-makers. Published RIRs can be viewed on the IRB's internal and external websites and at IRB Regional Documentation Centres. The Research Directorate has created and published National Documentation Packages (NDPs) containing information on each country of origin in the IRB caseload to provide decision-makers, claimants and counsel across the country with a comprehensive overview of country conditions. The Research Directorate also gathers claimant-specific information for RPD decision-makers.

6.7.2. Language Analysis

The IRB is currently conducting a Language Analysis Pilot Project (LAP) in order to determine refugee claimants' country of origin based on a language analysis. The Pilot focuses on 60 claims from three countries where there are identified difficulties in obtaining reliable identity documents, and there are significant populations of the target languages spoken by people in neighbouring countries. The final report is expected in the summer of 2009.

6.7.3. Chairperson's Guidelines

Guidelines are developed to address specific issues that may arise in the adjudication or management of asylum claims and to act as a source of guidance for decision-makers. For example, guidelines have been issued on unaccompanied minor asylum-seekers and on women asylum-seekers. The use of Chairperson's Guidelines is not mandatory, but decision-makers must provide a reasoned justification for not applying them.

Box 4: Recent Developments in the Research Directorate's COI Unit

The IRB adopted the Policy for Producing Country of Origin National Documentation Packages (NDPs) in 2003. Since then, the number of NDPs published in electronic and paper formats has grown to more than 180, and the production and maintenance of the NDPs has become a primary focus of the COI unit. NDPs include responses to information requests (RIRs) and other Research Directorate products, as well as selected documents published by third parties. The RIRs prepared for inclusion in an NDP tend to be longer and broader in scope than traditional RIRs because they contain COI relevant to a range of cases from a given country.

In 2003, the COI unit began publishing most responses to information requests in Canada's two official languages, French and English. Both versions are available on the IRB website.

To ensure effective workload management and improve knowledge and staff retention, two Senior Research Officer positions were created in 2006. The Senior Research Officers lead geographically specialised teams of researchers. Each team is collectively responsible for performing research on countries in their region and maintaining the associated NDPs.

6.7.4. Jurisprudential Guidelines

These guidelines articulate policy on the application of the law in cases that share essential similarities. Jurisprudential guidelines must be applied by decision-makers. Those who fail to apply them must provide a reasoned decision for not doing so in a particular case.

6.7.5. Policies

Policies are formal statements that explain the purpose and the mechanics of operational initiatives at the IRB. For instance, a policy sets out specific responsibilities for action by decision-makers and personnel supporting the adjudicative process. Policies are flexible instruments, and the degree to which they are mandatory varies with their content. They often contain elements that are mandatory, but may also provide general guidance or define areas in which the exercise of discretion is required.

6.7.6. Chairperson's Instructions

Instructions provide formal direction that obliges specific IRB personnel to take or to avoid specific actions. In contrast to policies, instructions are limited to a specific and narrow practice area and may also include organisational concerns (e.g. relations between decision-makers and Refugee Protection Officers) that define roles and responsibilities consistent with the principle of adjudicative independence and impartiality.

6.7.7. Persuasive Decisions

Persuasive decisions are identified by the RPD as being of persuasive value in developing the jurisprudence of the Division. Decision-makers are encouraged, but not obliged, to apply them in the spirit of collegiality. Persuasive decisions enable the RPD to move toward

a consistent application of questions of law and to promote efficiency in the reasons-writing process.

7 Efficiency and Integrity Measures

7.1 Technological Tools

7.1.1. Fingerprinting

All asylum-seekers 14 years of age or older are fingerprinted at the time of application.

7.1.2. DNA Tests

DNA testing is not an element of Canada's asylum procedures. Successful claimants (protected persons) may apply for permanent residence. They may include in their application family members, including dependent children. Alternatively, the protected person may sponsor family members later, as may any other permanent resident of Canada. If the applicant or sponsor is unable to establish the relationship with a child, and the immigration officer would otherwise refuse the application with respect to the child, the applicants may be offered DNA testing, at their own expense, as a means of preventing refusal of the family member's application for a visa.

7.1.3. Forensic Testing of Documents

Forensic testing may be done at the option of the RPD decision-maker. From time to time, the IRB requests that CIC or the Royal Canadian Mounted Police (RCMP) conduct forensic testing of documents, usually passports. However, for practical considerations, decision-makers are encouraged to reserve such testing for evidence that is crucial to determining the case.

7.1.4. Database of Asylum Applications/Applicants

CIC maintains a database of all clients, including refugee claimants. In the case of refugee claimants, all who are 14 years of age or older are fingerprinted; this practice, in use since 1993, enables authorities to identify repeat claimants, and those who have been convicted of criminal offences in Canada. These fingerprint records are retained until, in the case of a successful claimant, a person acquires Canadian citizenship.

7.1.5. Video Conferencing of Asylum Hearings

As the IRB must deal with cases in a timely manner, at the Division's discretion, a hearing may be conducted by video conference with the asylum-seeker. Generally, this workload management occurs as a file transfer between two regions. In 2004, the IRB issued the Policy on the Transfer of Files for Hearings by Video Conference. The policy outlines the circumstances under which a file can be administratively transferred.

7.2 Length of Procedures

There is no time limit placed on making refugee claims. However, once a claim is made, claimants have 28 days to complete their PIF. There are no legislatively mandated timeframes for the determination of a claim at the Board. Shifting global migration and refugee movements, among other factors, influence the number and type of cases the IRB receives. In addition, shortfalls in the decision-maker complement have resulted in a growing inventory of asylum cases.

There are time guidelines for processing of asylum claims under the Fast-Track Policy. See the section on Accelerated Procedures above for more information.

7.3 Pending Cases

As at 31 December 2008, there were 54,296 pending asylum cases before the IRB. There are a number of different initiatives currently being used to reduce the number of pending cases, including the following measures:

- Use of the streamlining process, which consists of properly streaming a case in order to allocate the appropriate level of resources to each case, improve consistency in decision-making, and provide for greater scheduling efficiency. A prompt review of all claims is undertaken to ensure that claims are sent quickly to the most appropriate stream

- Intensive decision-maker recruitment and selection efforts
- Implementation of adjudicative support, including early resolution of cases and case readiness procedures
- Continued implementation of comprehensive cross-divisional training programmes for decision-makers and tribunal officers
- Development and implementation of adjudicative strategies in all three divisions to promote quality decision-making and improve consistency in approaches to common issues, such as requests for postponements and adjournments.

7.4 Information Sharing

Canada exchanges information on asylum-seekers with other refugee-receiving countries, on a bilateral basis, in accordance with legal and privacy considerations of both states. The Canada-U.S. Statement of Mutual Understanding on Information Sharing (SMU) allows for the sharing of information on a case-by-case basis. The Asylum Annex to the SMU allows for the systematic or case-by-case sharing of information on asylum-seekers who attempt to access the asylum system in Canada or the U.S.

Until the Asylum Annex is fully and systematically implemented, requests for information are done on a case-by-case basis. Requests from the U.S. are made directly to CIC or CBSA, which request information on individual asylum-seekers from the IRB.

In April 2007, Canada, the U.S., the U.K. and Australia signed the Hunter Valley Declaration. Under this agreement, CIC and CBSA agreed to work towards the systematic exchange of biometric data with the three cited countries. Canada, the U.S., the U.K., Australia and New Zealand are engaged in discussions on multilateral data sharing on asylum, visa and other programmes, with the goal of improving programme integrity outcomes.

7.5 Single Procedure

Prior to the coming into force of IRPA, refugee status was determined solely on the grounds outlined in the 1951 Convention. Since the coming into force of IRPA in June 2002, protection is allowed on the grounds of the 1951 Convention (s.96 of IRPA) and the Convention against Torture (s.97 of IRPA). Asylum-seekers need make only one application for protection in order to obtain Convention protection or be determined to be a person in need of protection. The combination of Convention refugee and additional grounds for protection has been referred to as the "consolidated grounds." Both sets of protection afford the same benefits to those determined to be in need of protection.

Box 5: Cooperation with UNHCR

In accordance with IRPA, representatives of the UNHCR monitor the process relating to refugee protection in Canada, and observe RPD hearings without limitation, consistent with the UNHCR's duty and right to observe and monitor the refugee status determination process. Also as part of its supervisory responsibility, the UNHCR consults with CIC on legislative and procedural developments, comments on policy and practice, and makes *demarches* with the government, when necessary and appropriate.

When Canada and the U.S. signed the Safe Third Country Agreement (STCA), the UNHCR was invited to monitor implementation of the Agreement. The UNHCR accepted this invitation, submitting a written report on the first year's implementation to both Canada and the U.S., and subsequently undertaking regular visits to assess access to territory and procedures. The UNHCR's operations in relation to the STCA involve close cooperation with CBSA officials who provide unhindered access to ports of entry and asylum-seekers.

The UNHCR conducts regular monitoring of detention facilities where persons of concern, including asylum-seekers, are detained.

8 Assistance and Reception Benefits for Asylum-Seekers

8.1 Procedural Support and Safeguards

8.1.1. Legal Assistance

Asylum-seekers appearing before the IRB can represent themselves at a hearing or have the assistance of counsel throughout the process. Also, persons such as family members, friends or volunteers who receive no remuneration for doing so may act as counsel to the asylum-seeker. However, a counsel who charges a fee must be a lawyer or a licensed immigration consultant with membership in good standing in the Canadian Society of Immigration Consultants (CSIC).

Asylum-seekers may contact the legal aid office in the province where their claim is being heard for assistance during the procedure at the IRB and further on at the appeal stage. There are also local community groups that offer counsel and other support services.

8.1.2. Interpreters

Asylum-seekers can indicate on their PIF whether they require an interpreter for their hearing. Interpreters are provided at the expense of the IRB.

8.1.3. NGOs

NGOs do not have a formal role in the asylum process. They may, however, provide information and orientation to individual asylum-seekers, on a voluntary basis or according to the level of funding from non-federal sources.

8.2 Reception Benefits

Persons determined to be eligible to make an asylum claim are issued a Refugee Protection Claimant Document, which identifies them as persons in the asylum procedure. Refugee claimants are asked to provide this document in order to be entitled to apply for a variety of services such as the services detailed in the sections below.

8.2.1. Accommodation

Accommodation for asylum-seekers is a provincial responsibility and therefore programmes may vary depending on the province in which the claim is made. There is no federal programme in place to provide accommodation to asylum-seekers in Canada.

While accommodation under provincial programmes is not free of charge, the rental cost is heavily subsidised. As well, asylum-seekers may apply for social assistance, which could indirectly subsidise housing costs, as well as cover other living costs.

8.2.2. Social Assistance

Provincial and municipal governments provide social assistance to asylum-seekers to cover basic necessities. Social assistance rates vary from province to province.

8.2.3. Health Care

Asylum-seekers whose claims are being heard at the IRB, who are unable to pay for essential and emergency health care and who are not covered by a public or private health insurance plan may apply to CIC for interim federal health (IFH) care coverage. IFH covers emergency health care services.

8.2.4. Education

School-aged children are eligible to attend school. Once they have been determined eligible to make a refugee claim, and while awaiting the determination of their claims, asylum-seekers may also benefit from provincially funded language training programmes.

8.2.5. Access to Labour Market

Asylum-seekers may apply for authorisation to work. Usually only persons who cannot live without public assistance are eligible for employment authorisation. Work permits are granted for a period of 24 months to asylum-seekers whose identity has been established and who have passed the medical exam.

8.2.6. Family Reunification

There is no availability of family reunification for asylum-seekers. However, persons who have been determined to be Convention refugees or protected persons may apply for permanent residence. They may also include family members who are located in Canada or overseas in their application for permanent residence.

8.2.7. Access to Benefits by Rejected Asylum-Seekers

Pending removal, rejected asylum-seekers may continue to have access to social assistance provided by provincial governments until the date of departure from Canada. Those with a work permit may also continue to work. In addition, they remain eligible for interim federal health care coverage, while school-aged children are eligible to receive education. Those who are subject to a temporary stay of removal (TSR) are also eligible for the above-named benefits.

9 Status and Permits Granted outside the Asylum Procedure

9.1 Humanitarian and Compassionate Grounds

According to section 25 of IRPA, the Minister and his delegates have the authority to grant exemptions from requirements of the Immigration and Refugee Protection Act or grant permanent resident status to foreign nationals who are otherwise inadmissible, where doing so is justified on humanitarian and compassionate (H&C) grounds.

Any foreign national, including a rejected asylum-seeker, who is inadmissible or does not meet the requirements

of the Act may apply for H&C consideration. IRPA requires that all H&C requests made from within Canada be considered. H&C is granted on a discretionary basis, taking into consideration any relevant factors, such as the individual's establishment in Canada, general family ties to Canada, the best interests of any children involved, risk upon return, the hardship of having to apply for permanent residence from abroad, as well as any other issues raised by the applicant. An application for permanent residence on H&C grounds does not put into effect a stay of removal; however, most applications for H&C consideration are examined prior to the applicant's removal.

A negative H&C decision cannot be appealed; however, applicants may ask the Federal Court to review the decision.

9.2 Pre-Removal Risk Assessment (PRRA)

Anyone who has been given notice that his or her removal order is being enforced, including failed asylum-seekers, may ask for a pre-removal risk assessment (PRRA) by CIC. This paper-based assessment is done on the basis of the 1951 Convention and on the basis of danger of torture or risk to life or of cruel and unusual treatment or punishment. An application for PRRA suspends the person's removal.

When an application is made, a PRRA officer reviews the documents provided by the applicant and any new evidence that was not presented at the asylum hearing. Only in some cases are applicants asked to appear at an interview with the PRRA officer, generally for reasons of credibility.

Persons who are not eligible for pre-removal risk assessment include:

- Persons who are not eligible for a hearing at the IRB for reasons of having left a safe third country
- A repeat asylum-seeker who is being removed from Canada less than six months after he or she previously left the country
- A person who has been granted Convention refugee status by a country to which he or she can return.

When a claim for PRRA is accepted, the successful applicant may receive the status of "protected person" and apply for permanent residence. If the claim is rejected, the removal order again comes into effect. Rejected applicants may apply to the Federal Court for a review of the decision.

In the event that the individual's circumstances fail to meet the threshold either for a positive PRRA ruling or for a stay of the removal order, there is still recourse in IRPA to staying the removal under the principle of *non-refoulement*.

The Supreme Court of Canada has ruled that under exceptional circumstances the possibility exists whereby an individual, if proven to pose an immediate security threat to Canada, could be expelled even where a substantial risk of torture exists. However, Canada has never invoked this exception to remove anyone where a Canadian tribunal has found a substantial risk of torture.

9.3 Obstacles to Return

A removal order may be suspended if non-protection-related circumstances in a particular case warrant such a halt. Such a suspension may be ordered by the Immigration Appeal Division of the IRB, any other competent court, or the Minister, in light of civil unrest, natural disaster or other such generalised threats in the country of origin.

9.4 Temporary Protection

While Canada does not have a temporary protection regime in place, the IRPA Regulations provide the Minister of Public Safety with discretion to "impose a stay on removal orders with respect to a country or a place if the circumstances in that country or place pose a generalised risk to the entire civilian population." This stay of removal is subject to exceptions for serious criminals and security risk cases.

When a suspension of removal order is issued, affected individuals are entitled to hold a work or student permit; however, these documents do not confer any status. The majority of individuals under a temporary suspension of removal in Canada are or have been refugee claimants.

Individuals under a temporary suspension of removal may apply for reconsideration, based on humanitarian and compassionate grounds, to remain in Canada permanently.

9.5 Regularisation of Status over Time

A removal may be suspended if a decision is made to lay aside the inadmissibility ruling and grant individual permanent residence status based on either a PRRA ruling or an application for admission on H&C grounds. However, there is no programme in Canada currently that results in automatic regularisation over time.

9.6 Regularisation of Status of Stateless Persons

Stateless persons whose application for refugee protection has been rejected have access to consideration, under Humanitarian and Compassionate grounds (H&C), and to a pre-removal risk assessment (PRRA), as do other unsuccessful claimants. All foreign nationals, regardless of whether they are stateless, may also be eligible for a Temporary Resident Permit (TRP), which may eventually lead to permanent residence. See below for more information on the TRP.

A stateless person on whom a removal order is in effect may, under IRPA, be removed by the CBSA to the country from which he or she came; the country in which he or she last permanently resided; or the country in which he or she was born. Provided that sufficient travel documents are procured to facilitate removal, the conditions for suspending a removal order would be the same if the person were a citizen.

In the event that sufficient travel documents cannot be procured, the removal is de facto suspended until either such a time as they can be provided or as the individual's status is regularised in Canada.

9.7 Temporary Resident Permits (TRP)

Under section 24(1) of IRPA, a CIC or CBSA officer may issue a temporary resident permit (TRP) to an inadmissible foreign national if the officer is of the opinion that it is justified in the circumstances and if there is little or no risk to Canadian society. A TRP, however, can be cancelled at any time and does not stay a removal order.

A TRP may also be issued under the Protected Temporary Resident Class to individuals who have been determined to be refugees outside Canada and who are in urgent need of protection.

10 Return

Persons on whom a removal order is in effect are required to leave the country within 30 days of its issuance. The Canada Border Services Agency (CBSA) has responsibility for the implementation of the removal order.

10.1 Pre-departure Considerations

When an individual has exhausted the appeals process, he or she is informed of the decision to effect the removal order. Measures may be taken at this time to ensure that the individual complies with the order.

Where required, appropriate travel documents and visa(s) are obtained to facilitate the return journey.

Where required, escorts are provided and officials in any country through which the individual may be transiting are informed accordingly.

Suitable arrangements, including the provision of qualified escorts, are made in the case of minors or medical cases.

10.2 Procedure

Canada does not have an assisted voluntary return programme for persons returning to their country of origin.

10.3 Freedom of Movement/ Detention

The degree of freedom of movement that an individual has during the return process varies from case to case. An individual assessed as voluntarily complying with the removal order, who does not pose either a flight or a safety risk is not subject to significant movement restrictions or provided with escorts. However, where there are concerns regarding compliance, measures, including detention and the provision of escorts to the final destination, may be taken to ensure that the individual is returned.

10.4 Readmission Agreements

As outlined above, Canada has a readmission agreement with the U.S. as relates to third country nationals.

11 Integration

Some provinces have assumed responsibility for the design, administration and delivery of settlement (or integration) programmes and services that have federal funding. In the remainder of the provinces, settlement programmes and services are administered by CIC and delivered through a network of CIC offices, community organisations, educational institutions and the private sector. CIC remains committed to providing comparable and accountable settlement services across Canada.

CIC funds Service Providing Organisations (SPOs) to deliver integration or settlement programmes.

The same integration services are largely available to protected persons and resettled refugees, although resettled refugees have access to the Resettlement Assistance Programme tailored specifically to their needs.

12 Annexe

12.1 Selections from the Immigration and Refugee Protection Act 2002¹³

PART 1

IMMIGRATION TO CANADA

DIVISION 3

ENTERING AND REMAINING IN CANADA

25. (1) The Minister shall, upon request of a foreign national who is inadmissible or who does not meet the requirements of this Act, and may, on the Minister's own initiative, examine the circumstances concerning the foreign national and may grant the foreign national permanent resident status or an exemption from any applicable criteria or obligation of this Act if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to them, taking into account the best interests of a child directly affected, or by public policy considerations.

(...)

PART 2

REFUGEE PROTECTION

DIVISION 1

SECTION 1 REFUGEE PROTECTION, CONVENTION REFUGEES AND PERSONS IN NEED OF PROTECTION

95. (1) Refugee protection is conferred on a person when

(a) the person has been determined to be a Convention refugee or a person in similar circumstances under a visa application and becomes a permanent resident under the visa or a temporary resident under a temporary resident permit for protection reasons;

(b) the Board determines the person to be a Convention refugee or a person in need of protection; or

(c) except in the case of a person described in subsection 112(3), the Minister allows an application for protection.

(2) A protected person is a person on whom refugee protection is conferred under subsection (1), and whose claim or application has not subsequently been deemed to be rejected under subsection 108(3), 109(3) or 114(4).

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

¹³ Immigration and Refugee Protection Act, Bill C-11, 28 June 2002, available online on UNHCR Refworld at: <http://www.unhcr.org/refworld/docid/3d3ff708a.html> [accessed 27 February 2009].

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

98. A person referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection.

Cessation of Refugee Protection

108. (1) A claim for refugee protection shall be rejected, and a person is not a Convention refugee or a person in need of protection, in any of the following circumstances:

(a) the person has voluntarily reavailed themselves of the protection of their country of nationality;

(b) the person has voluntarily reacquired their nationality;

(c) the person has acquired a new nationality and enjoys the protection of the country of that new nationality;

(d) the person has voluntarily become re-established in the country that the person left or remained outside of and in respect of which the person claimed refugee protection in Canada; or

(e) the reasons for which the person sought refugee protection have ceased to exist.

(2) On application by the Minister, the Refugee Protection Division may determine that refugee protection referred to in subsection 95(1) has ceased for any of the reasons described in subsection (1).

Principle of Non-refoulement

115. (1) A protected person or a person who is recognized as a Convention refugee by another country to which the person may be returned shall not be removed from Canada to a country where they would be at risk of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion or at risk of torture or cruel and unusual treatment or punishment.

(2) Subsection (1) does not apply in the case of a person

(a) who is inadmissible on grounds of serious criminality and who constitutes, in the opinion of the Minister, a danger to the public in Canada; or

(b) who is inadmissible on grounds of security, violating human or international rights or organized criminality if, in the opinion of the Minister, the person should not be allowed to remain in Canada on the basis of the nature and severity of acts committed or of danger to the security of Canada.

(3) A person, after a determination under paragraph 101(1)(e) that the person's claim is ineligible, is to be sent to the country from which the person came to Canada, but may be sent to another country if that country is designated under subsection 102(1) or if the country from which the person came to Canada has rejected their claim for refugee protection.

DIVISION 3 SECTION 3 PRE-REMOVAL RISK ASSESSMENT

Protection

112. (1) A person in Canada, other than a person referred to in subsection 115(1), may, in accordance with the regulations, apply to the Minister for protection if they are subject to a removal order that is in force or are named in a certificate described in subsection 77(1).

(2) Despite subsection (1), a person may not apply for protection if

- (a) they are the subject of an authority to proceed issued under section 15 of the Extradition Act;
- (b) they have made a claim to refugee protection that has been determined under paragraph 101(1)(e) to be ineligible;
- (c) in the case of a person who has not left Canada since the application for protection was rejected, the prescribed period has not expired; or
- (d) in the case of a person who has left Canada since the removal order came into force, less than six months have passed since they left Canada after their claim to refugee protection was determined to be ineligible, abandoned, withdrawn or rejected, or their application for protection was rejected.

(...)

113. Consideration of an application for protection shall be as follows:

- (a) an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection;
- (b) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required;
- (c) in the case of an applicant not described in subsection 112(3), consideration shall be on the basis of sections 96 to 98; (d) in the case of an applicant described in subsection 112(3), consideration shall be on the basis of the factors set out in section 97 and
- (i) in the case of an applicant for protection who is inadmissible on grounds of serious criminality, whether they are a danger to the public in Canada, or
- (ii) in the case of any other applicant, whether the application should be refused because of the nature and severity of acts committed by the applicant or because of the danger that the applicant constitutes to the security of Canada.

114. (1) A decision to allow the application for protection has

- (a) in the case of an applicant not described in subsection 112(3), the effect of conferring refugee protection; and
- (b) in the case of an applicant described in subsection 112(3), the effect of staying the removal order with respect to a country or place in respect of which the applicant was determined to be in need of protection.

(...)

12.2 Additional Statistical Information

Figure 4:

Asylum Applications from Top Five Countries of Origin for Canada in 1997, 2002 and 2008

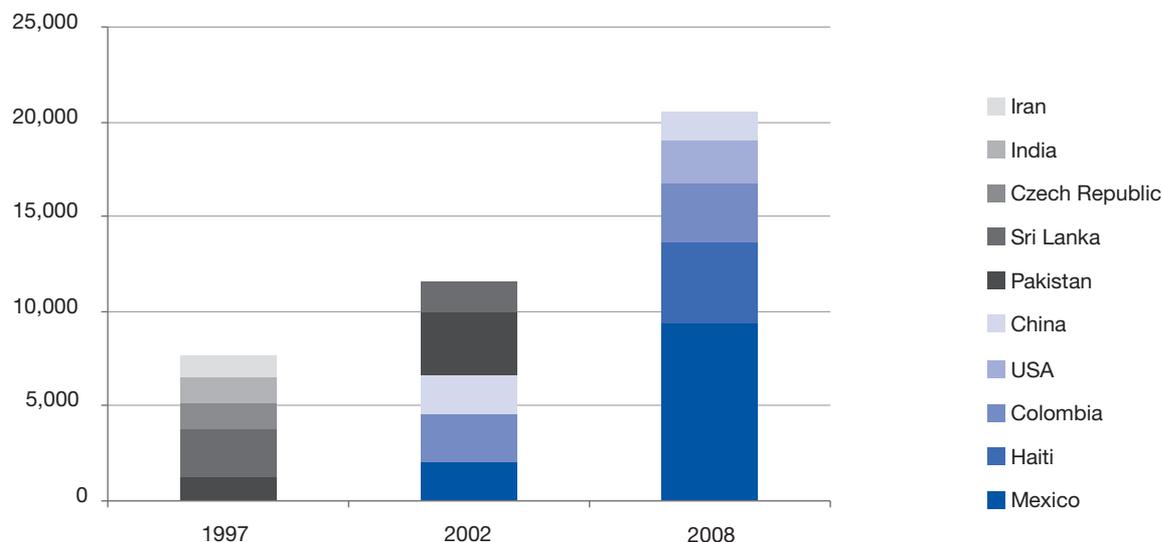


Figure 5:

Decisions Made at the First Instance, 1992-2008

Year	Convention Status*		Other Authorisations to Remain		Rejections		Other Decisions**		Total Decisions
	Count	% of total	Count	% of total	Count	% of total	Count	% of total	
1992	17,605	60%	0	0%	9,915	34%	1,863	6%	29,383
1993	14,230	46%	0	0%	11,728	38%	4,936	16%	30,894
1994	15,286	60%	0	0%	6,538	26%	3,718	15%	25,542
1995	9,685	56%	0	0%	4,101	24%	3,369	20%	17,155
1996	9,625	44%	0	0%	7,074	32%	5,293	24%	21,992
1997	10,002	40%	0	0%	8,995	36%	5,713	23%	24,710
1998	12,930	44%	0	0%	10,254	35%	6,210	21%	29,394
1999	12,978	46%	0	0%	9,393	34%	5,608	20%	27,979
2000	13,999	48%	0	0%	10,205	35%	4,712	16%	28,916
2001	13,383	47%	0	0%	9,580	34%	5,473	19%	28,436
2002	15,459	46%	0	0%	11,509	34%	6,436	19%	33,404
2003	17,630	42%	0	0%	17,943	42%	6,826	16%	42,399
2004	15,948	40%	0	0%	19,056	47%	5,255	13%	40,259
2005	12,090	44%	0	0%	11,822	43%	3,328	12%	27,240
2006	9,296	47%	0	0%	8,132	41%	2,473	12%	19,901
2007	5,935	43%	0	0%	5,429	39%	2,486	18%	13,850
2008	7,575	42%	0	0%	6,797	38%	3,747	21%	18,119

*Starting in 2002, data reflect decisions to grant Convention refugee status and decisions to grant complementary protection, both of which lead to a single status ("protected person").

**Other decisions may include withdrawn claims, abandoned claims or claims otherwise resolved.

Denmark



- 101 - BACKGROUND: MAJOR ASYLUM TRENDS AND DEVELOPMENTS
- 103 - NATIONAL LEGAL FRAMEWORK
- 103 - INSTITUTIONAL FRAMEWORK
- 103 - PRE-ENTRY MEASURES
- 104 - ASYLUM PROCEDURES
- 108 - DECISION-MAKING AND STATUS
- 111 - EFFICIENCY AND INTEGRITY MEASURES
- 112 - ASSISTANCE AND RECEPTION BENEFITS FOR ASYLUM-SEEKERS
- 114 - STATUS AND PERMITS GRANTED OUTSIDE THE ASYLUM PROCEDURE
- 115 - RETURN
- 116 - INTEGRATION
- 117 - ANNEXE

1 Background: Major Asylum Trends and Developments

Asylum Applications

In the early 1980's, Denmark was receiving fewer than one thousand asylum claims per year. In 1984, however, there was a significant increase, when over 4,000 claims were received. The number of annual claims fluctuated between 4,000 and 9,000 between 1985 and 1991. Numbers peaked in 1992 and 1993 at some 14,000 annual claims, then decreased significantly to between 5,000 and 6,000 between 1994 and 1998, and peaked again in 1999 and 2001 with more than 12,000 claims. Since 2002, numbers have decreased significantly and in 2008, some 2,000 claims were received.

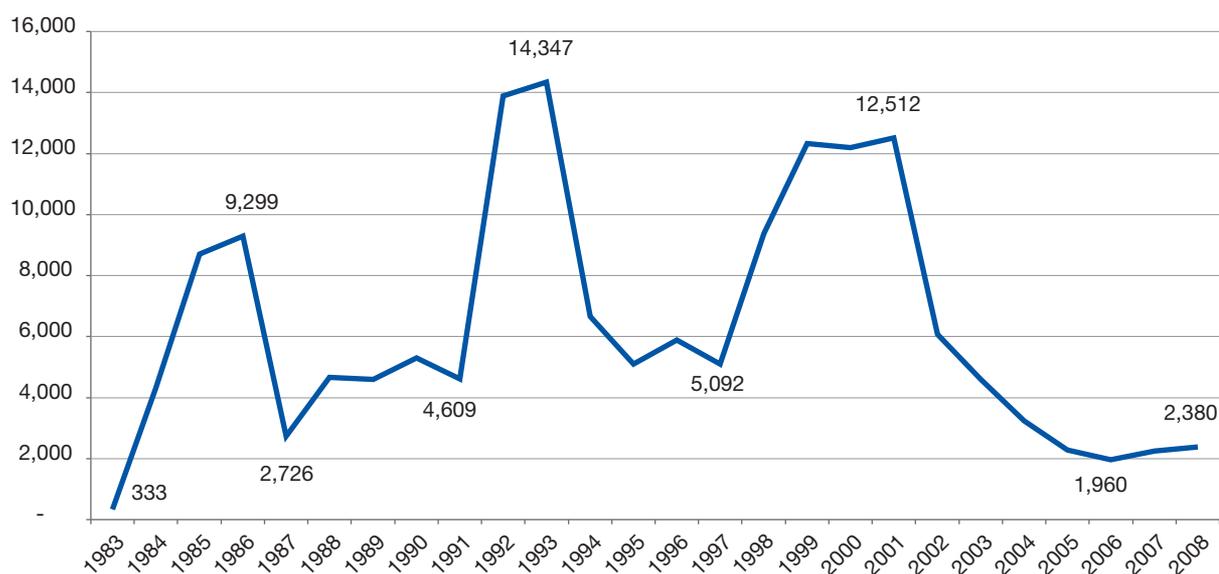
rested on the fundamental consideration that the policy for foreign nationals must honour Denmark's treaty obligations.

Act No. 365 of 6 June 2002 (Bill No. L 152 of 28 February 2002) includes amendments to the Aliens Act and the Marriage Act that were introduced in accordance with the Government's new policy for foreign nationals.

Under the Act, the "de facto refugee" concept was abolished. Residence permits may now be issued only to asylum-seekers who are eligible for protection according to criteria set out in international legal instruments, such as the 1951 Convention relating to the Status of Refugees (1951 Convention), the United Nations (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and the European Convention on Human Rights (ECHR).

Figure 1:

Evolution of Asylum Applications* in Denmark, 1983-2008



* Prior to 1998, data was gathered based on the number of persons whose applications were under active consideration. From 1998, data includes all asylum applications made in Denmark.

Top Nationalities

From 1992 to 2001, the majority of asylum-seekers arriving in Denmark hailed from Somalia, Iraq, the former Yugoslavia, and Afghanistan. Stateless Palestinians also arrived in large numbers. Since then, the top countries of origin have not changed significantly, with increasing numbers of claims received from Russia and Iran and fewer claims from Somalia.

The Act also abolished the possibility to apply for asylum in Denmark from a Danish diplomatic mission abroad.

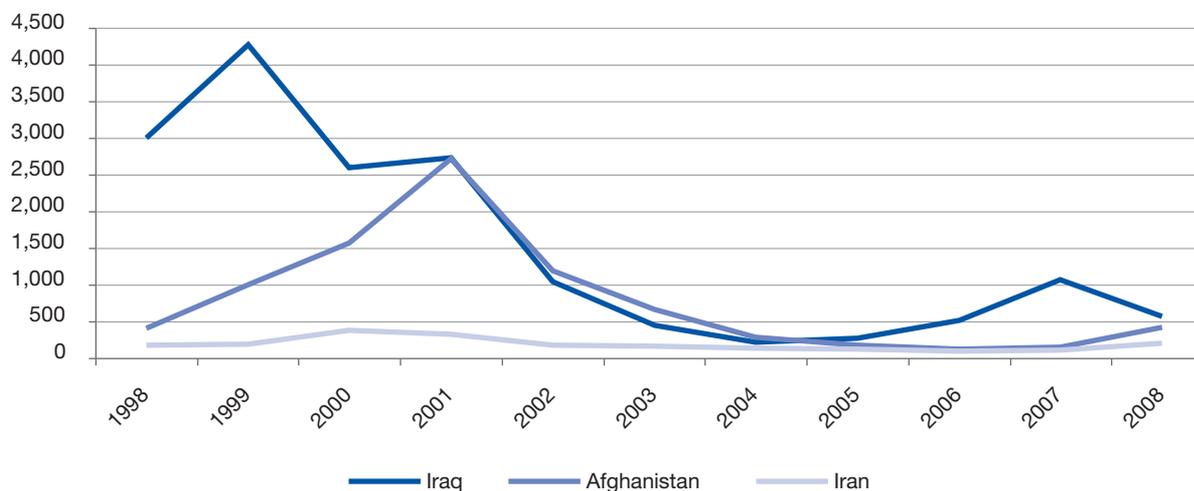
Important Reforms

On 17 January 2002, the Government presented its new "Policy for Foreign Nationals" which, among other things,

Act No. 60 of 29 January 2003 (Bill No. L 23 of 2 October 2002 regarding the processing of claims made by unaccompanied minors) includes an amendment that puts into law the standard administrative practice of granting residence permits to unaccompanied minor asylum-seekers (UAMs). The amendment also provides that all unaccompanied minors seeking asylum will be appointed a personal representative to safeguard their interests during the procedure as well as an attorney, if the case is being dealt with under the manifestly unfounded procedure. According to the amendment,

Figure 2:

Evolution of Applications from Top Three Countries of Origin for 2008



the Immigration Service must initiate a search for the parents of unaccompanied minors seeking asylum.

Act No. 292 of 30 April 2003 (Bill No. L 157 of 29 January 2003 regarding a reform of the activation and tuition efforts concerning adult asylum-seekers etc. and the system of periodic cash payments to asylum-seekers etc.) includes amendments that state that asylum-seekers must carry out certain tasks at the accommodation centre and take part in relevant activities in order to maintain and strengthen the asylum-seekers' abilities. Furthermore, the amendment introduced various levels of periodic support payments to asylum-seekers depending on which stage of the asylum process the applicant is at, the applicant's family relations, and the applicant's fulfilling of his or her obligations at the accommodation centre.

Act No. 403 of 1 June 2005 (Bill No. L 79 B of 23 February 2005) changes the criteria for the selection of refugees for resettlement (quota refugees), including both refugees under the 1951 Convention and other persons in need of protection. During the selection process, greater emphasis is now placed on the potential of the refugee to integrate into Danish society. Act No. 403 includes a requirement to provide additional information on settling in Denmark and a pre-departure integration course for resettled refugees.

More recently, reforms made to the reception of asylum-seekers have been aimed at preparing rejected asylum-seekers to return to, and reintegrate in, their countries of origin. These changes were a consequence of the evolution of the asylum situation in Denmark, namely the decline in the number of applications received and in the recognition rate.

Figure 3:

Top Five Countries of Origin in 2008

1	Iraq	563
2	Afghanistan	418
3	Iran	196
4	Russia	183
5	Syria	105

Regions of Origin Initiative

In 2003, the Regions of Origin Initiative was introduced as part of Denmark's international development assistance policy.

The overall objective of this initiative is to help secure access to protection and durable solutions for refugees and internally displaced persons (IDPs) as close to their country of origin as possible. Enhanced protection in the regions of origin is believed to improve conditions for refugees and IDPs, and thereby also diminish the need for secondary movements.

The Regions of Origin Initiative was developed during the same period that the United Nations High Commissioner for Refugees (UNHCR) elaborated its "Framework for Durable Solutions." Thus, the initiative incorporates key elements of the UNHCR approach. In addition, it draws on aspects of cooperation within the European Union (EU).

The Regions of Origin Initiative is managed and implemented by the Ministry of Foreign Affairs and includes cooperation with the Ministry of Refugees, Immigration and Integration Affairs on aspects of the programme pertaining to Danish refugee and asylum policies.

At the moment, the Regions of Origin Initiative supports activities in nine countries: Kenya, Tanzania, Uganda, and Zambia – which are all priority programme countries for Danish bilateral assistance – as well as in Afghanistan, Burundi, Iraq, Somalia and Sudan. Furthermore, a number of regional programmes are being implemented in partnership with the European Commission and other EU Member States.

It is expected that by 2012, more than DKK two billion (270€ million) will have been committed to the Regions of Origin Initiative.

2 National Legal Framework

2.1 Legal Basis for Granting Protection

The asylum procedure and the competencies of asylum institutions are governed by the Aliens Act (Consolidation Act No. 808 of 8 July 2008). The 1951 Convention has been transposed into Danish law by reference. Relevant provisions of the European Convention on Human Rights (ECHR) have also been transposed into the Aliens Act by reference (Act on the European Convention on Human Rights).

In accordance with the Protocol on the position of Denmark, annexed to the Treaty of the European Union and the Treaty establishing the European Community, Denmark is not bound by the EU asylum acquis. However, Denmark has a parallel agreement enabling Denmark to take part in Council Regulation (EC) No 343/2003¹ and Council Regulation (EC) No 2725/2000.²

2.2 Pending Reforms

In 2009, an expert group appointed by the government will issue a report on asylum policy containing recommendations primarily in the area of reception of asylum-seekers. The group was created as part of the Danish government programme following its re-election in November 2007. The recommendations will be based, in part, on a study of selected countries' (Canada, Finland, Germany, the Netherlands, Norway, Sweden, and UK) asylum policies drawn up by the Ministry of Refugee, Immigration and Integration Affairs.

¹ Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (Dublin II Regulation).

² Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention (Eurodac Regulation).

3 Institutional Framework

3.1 Principal Institutions

The Ministry of Refugee, Immigration and Integration Affairs prepares and implements laws and administrative regulations in the area of asylum, immigration, and integration.

The Danish Immigration Service is a directorate under the Ministry of Refugee, Immigration and Integration Affairs. It processes applications for asylum at the first instance.

The Refugee Appeals Board is an independent body responsible for hearing appeals of Immigration Service decisions on asylum cases. It is the final avenue for appeal in asylum cases where the decision of the Immigration Service may be contested. Under the so-called manifestly unfounded procedure, the Danish Refugee Council (a non-governmental organisation (NGO)) cooperates with the Immigration Service in helping to determine that a case is indeed manifestly unfounded.

The National Commissioner for the Police is responsible for registering new applicants and establishing their identity and travel route. The National Commissioner of the Police moreover has the responsibility of returning rejected asylum-seekers.

The municipalities are responsible for ensuring the integration of refugees and other persons granted international protection in Denmark.

3.2 Cooperation between Government Authorities

4 Pre-entry Measures

To enter Denmark, a foreign national must have a valid travel document such as a passport and, if applicable, a visa issued by Denmark or one of the other Schengen States.

4.1 Visa Requirements

Denmark is a party to the Schengen Agreement and as such is bound by the common list of countries laying down the nationalities subject to visa requirements. Danish diplomatic and consular posts have the competence to issue "bona fide" visas in simple cases, while more complicated cases, including all cases that the diplomatic mission considers potential refusals, are sent to the Immigration Service for its decision. Negative decisions of the Immigration Service on a visa application may be appealed to the Ministry.

4.2 Carrier Sanctions

Carriers that bring to Denmark a foreign national who upon his or her entry or transit at a Danish airport is not in possession of the necessary travel documents and visa are liable to a fine; this provision does not apply to entry from a Schengen country.

4.3 Interception

In addition to carrier sanctions, Denmark has at various times posted immigration liaison officers abroad who have assisted the local authorities with, among other tasks, the authentication and control of travel documents for persons travelling to Denmark.

Moreover, the police can ask for identity and proof of legal residence of foreign nationals present in Denmark. This is sometimes done as part of coordinated interagency control activities carried out at business premises (such as restaurants).

5 Asylum Procedures

5.1 Application Possibilities and Requirements, Procedures and Legal Remedies

A foreign national may make a claim for asylum at one of the following locations:

- In person at a police station, including the police station located inside Copenhagen Airport
- In person at the Sandholm accommodation centre
- At the Sandholm Centre run by the Immigration Service, or the Police, by submitting a written application, either personally or with the assistance of an attorney
- At the municipality, in which case the National Commissioner for the Police will be contacted in order for the application to be channeled into the regular asylum procedure.

5.1.1. Outside the Country

Applications at Diplomatic Missions

Applications for asylum may not be made from outside of Denmark.

Resettlement/Quota Refugees

Denmark has in place an annual resettlement programme with a flexible quota of 1,500 places to be met over a three-year period.

Criteria for Resettlement

Persons being resettled must fulfill the same conditions asylum-seekers are obliged to meet in order to be granted a residence permit in Denmark. For resettlement purposes, a residence permit may be issued to a person who is outside of his or her country of origin and who meets the following criteria:

- The person falls within the provisions of the 1951 Convention
- The person risks being subjected to the death penalty or to torture or inhuman or degrading treatment or punishment if returned to his or her country of origin, or
- The person is in such a position that essential considerations of a humanitarian nature conclusively make it appropriate to grant the application.

Linguistic abilities, educational background, work experience, family situation, age and motivation are also taken into consideration when selecting refugees for resettlement. The Immigration Service has responsibility for making final decisions on selection.

Procedures

At the beginning of each year, the Minister for Refugee, Immigration and Integration Affairs, upon recommendations made by the Immigration Service, makes decisions on the overall allocation of approximately 500 quota places within the different categories (geographical, emergency and medical) and on the destinations of selection missions for that year.

Approximately 400 of the 500 persons are selected by the Immigration Service following interviews on resettlement missions among refugees identified by the UNHCR. The remaining 100 persons are identified among medical or urgent cases presented by the UNHCR, usually on a dossier basis.

Family members of refugees are not generally included in the resettlement quota but may instead apply for family reunification, once the refugee has been resettled in Denmark.

5.1.2. At Ports of Entry

There are no separate asylum procedures for persons applying for asylum at ports of entry or inside the territory. When a foreign national arrives in Denmark and applies for asylum, the National Police will interview the person and establish his or her travel route. An assessment will then take place to determine whether

Denmark is responsible for examining the claim under the Dublin II Regulation. Thereafter, the asylum-seeker is subject to the normal procedure.

5.1.3. Inside the Territory

Responsibility for Processing the Claim

The Dublin System

Application and Procedure

The National Police is responsible for determining the travel route of the asylum-seeker when an asylum claim is made. The Immigration Service will then make a determination regarding Denmark's responsibility for examining the claim under the Dublin II Regulation. If another State party to the Dublin II Regulation is responsible for handling the application, the Immigration Service will request that the country assume responsibility for processing the asylum-seeker's claim. If the state in question agrees to do so, the asylum-seeker is transferred to that country for processing.

The initial process of determining whether an application for asylum should be processed in Denmark or another EU country takes up to three months to complete, although it may in some cases take as long as six months.

Freedom of Movement/Detention

The freedom of movement of asylum-seekers is not restricted during the asylum procedure. However, asylum-seekers may be detained if detention is necessary to ensure the implementation of a transfer under the Dublin II Regulation. Detention is used only if measures such as the deposit of a passport or other travel document is deemed to be insufficient.

Conduct of Transfers

Transfers are carried out either voluntarily or with police escort.

Suspension of Dublin Transfers

The Immigration Service and the Ministry may make a decision to suspend transfers to another State party to the Dublin II Regulation. As at this writing, Denmark has decided to implement a temporary suspension on the transfer of unaccompanied minors to Greece.

Review/Appeal

A decision by the Immigration Service to transfer an asylum-seeker under the Dublin II Regulation may be appealed to the Ministry. The appeal does not have suspensive effect.

Application and Admissibility

Application

Asylum-seekers who gain entry into Denmark are interviewed and photographed and have their fingerprints taken by the police in order to determine their identity, nationality and travel route. The asylum-seeker will be asked by the Immigration Service to complete an application form stating the reasons for his or her asylum request. An interview with the Immigration Service is then scheduled.

Applications for asylum under the 1951 Convention are treated in the same way as applications for subsidiary protection (protected status) and examined using the same procedure.

Admissibility

If the Immigration Service decides, under the Dublin II Regulation, that an asylum application may be processed in Denmark, the Immigration Service will interview the applicant and proceed with making a determination on the claim.

In addition to applying the Dublin II Regulation, Denmark maintains a regularly updated list of safe third countries. Based on this list, the Immigration Service may decide not to examine an asylum claim if the asylum-seeker has travelled to Denmark directly from one of the countries on the list. In such cases, the asylum-seeker is required to return to the safe third country.³

Accelerated Procedure

In certain cases asylum applications may be processed according to an expedited version of the "manifestly unfounded procedure," which is described below. This procedure may be applied to cases in which the asylum-seeker is found to be from a country in which it is unlikely that he or she would risk persecution if returned.

Under the expedited manifestly unfounded procedure, the asylum-seeker will not be asked to fill out an application form; instead, he or she is quickly referred for an interview with the Immigration Service. The Danish Refugee Council, a non-governmental organisation (NGO) will then give a statement on the case, and the Immigration Service will aim to come to a decision within a few days. If the Danish Refugee Council agrees with the Immigration Service that the application is manifestly unfounded, the decision of the Immigration Service to reject the claim for asylum may not be appealed.

³ See the section below on Safe Country Concepts for more information on the application of this policy.

If the Refugee Council disagrees with the decision of the Immigration Service, the Immigration Service may maintain – as is most often the case – its rejection but will refer the case to the Refugee Appeals Board for a final ruling.

Normal Procedure

Under the normal procedure, the Immigration Service interviews the asylum-seeker with the assistance of an interpreter. Following the interview, the Immigration Service will make a decision on the claim, based on the asylum-seeker's statements and information on conditions in the country of origin.

Manifestly Unfounded Procedure

In a small number of cases, the Immigration Service may determine at the outset that an asylum claim is manifestly unfounded and that the asylum-seeker is therefore not eligible for asylum. According to Section 53 b (1) of the Aliens Act, the Immigration Service may determine that a claim is manifestly unfounded in one of the following cases:

- The identity claimed by the applicant is manifestly incorrect
- It is manifest that the circumstances invoked by the applicant cannot lead to the granting of a residence permit under section 7 of the Aliens Act⁴
- It is manifest that the circumstances invoked by the applicant cannot lead to the granting of a residence permit under section 7 according to the practice of the Refugee Appeals Board
- The circumstances invoked by the applicant are in manifest disagreement with general background information on the conditions in the applicant's country of origin or former country of residence
- The circumstances invoked by the applicant are in manifest disagreement with other specific information on the applicant's situation
- The circumstances invoked by the applicant must be deemed manifestly to lack credibility, including as a consequence of the applicant's changing, contradictory or improbable statements.

Such cases are sent to the Danish Refugee Council, which will provide a statement on the case following an interview with the applicant by the Refugee Council. If it agrees with the Immigration Service that the application is manifestly unfounded, the application will be rejected by the Immigration Service without a right of appeal. If the Refugee Council does not agree that the claim

is manifestly unfounded, the Immigration Service may maintain – as is most often the case – its rejection but will refer the case to the Refugee Appeals Board for a final ruling.

Cases that, in the opinion of the Refugee Council, are not manifestly unfounded, are examined using a written procedure by only the chairman of the Refugee Appeals Board or a deputy chairman, unless there is reason to believe that the Board will change the decision made by the Immigration Service. If there is a possibility that the Board will reverse the decision, the case is examined by a full three-member board with a personal appearance by the applicant.

The Immigration Service will reject an application only after a full first instance procedure has been completed, including a normal asylum interview.

Review/Appeal of Asylum Decisions

Manifestly unfounded cases aside, a negative decision on an asylum application at the first instance is automatically subject to appeal before the independent Refugee Appeals Board. The asylum-seeker will normally be required to participate in a hearing. An attorney will be appointed to represent the applicant's interests at the expense of the government. The decisions of the Refugee Appeals Board are final.

If the Refugee Appeals Board agrees with the decision of the Immigration Service, the asylum-seeker must leave Denmark immediately.

If the Refugee Appeals Board does not agree with the decision of the Immigration Service, the asylum-seeker is normally granted a residence permit either as a Convention refugee or as a person granted protected status (subsidiary protection).

Freedom of Movement during the Asylum Procedure

Detention

If imposing reporting obligations or other measures is not enough to ensure efficient examination of the asylum application or removal from Denmark, an asylum-seeker may be detained during the procedure if he or she, through his or her behaviour, essentially obstructs the procuring of information for the case by:

- Without reasonable cause, repeatedly failing to appear for interviews with the police or the Danish Immigration Service, to which he or she has been summoned

⁴ See the provisions contained in section 7 of the Aliens Act in the annexe to this chapter.

- Failing to disclose information on his or her identity, nationality or travel route
- Making obvious misrepresentations thereon or
- Otherwise not assisting with procuring information for the case.

The decision to detain an asylum-seeker is taken by the National Police whose decision must be approved by the Courts. The Courts may decide to uphold the detention for a maximum period of four weeks; however, at the end of the four-week period, the police may ask the courts to extend the detention for another four-week period. There is no statutory maximum period in this connection. The detention, including its duration, must be considered to be proportional to the reasons for detention in order to be upheld by the courts.

Reporting

Reporting obligations may be required of an asylum-seeker if this is deemed necessary for ensuring the presence of the asylum-seeker or his or her cooperation in the examination of the claim. Decisions on reporting obligations may be made by the Police in the following cases:

- The asylum-seeker is not cooperating on providing information for the examination of the claim
- Without reasonable cause, the asylum-seeker fails to appear for an interview with the Immigration Service or the Police to which the person in question has been summoned
- The person has exhibited violent or threatening behaviour towards staff or other residents of an accommodation centre where he or she is residing.

Repeat/Subsequent Applications

An asylum-seeker who has received a final negative decision on his or her claim is under the obligation to leave Denmark. Prior to departure, however, an asylum-seeker may make a request to have his or her claim reopened for consideration. A claim will be reopened if the applicant can show that reasons, such as developments in the country of origin or *sur place* considerations, exist to reopen the claim.

There is no limit to the number of times a rejected asylum-seeker can request a reopening of his or her claim.

A person who has previously received a final negative decision on an asylum claim in Denmark and has returned to his or her country of origin may, upon re-entry in Denmark, file a new application for asylum.

5.2 Safe Country Concepts

5.2.1. Safe Country of Origin

While Denmark does not have a safe country of origin policy, the Immigration Service, the National Police and the Danish Refugee Council together are responsible for drawing up a list of countries, based upon which the expedited version of the manifestly unfounded procedure, described above (see Accelerated Procedure), may be applied.

Asylum Claims Made by EU nationals

Asylum claims made by EU citizens are assessed on their individual merits. The cases are generally examined under the expedited version of the manifestly unfounded procedure.

5.2.2. First Country of Asylum

A residence permit on the basis of refugee status or protected status (subsidiary protection) can be refused if the applicant has already obtained protection in another country, or if the foreign national has close ties with another country where he or she is deemed to be able to obtain protection.

Such a decision may be taken by the Immigration Service as part of its normal examination of an application for asylum and may be appealed to the Refugee Appeals Board like other asylum decisions of the Immigration Service.

5.2.3. Safe Third Country

The Ministry, after a hearing with the Immigration Service and the National Police, regularly updates a list of safe third countries to which an asylum-seeker may be removed (without consideration of his or her application for asylum), if he or she has travelled to Denmark directly from one of these countries.

The decision to return an asylum-seeker to a safe third country is taken by the Immigration Service. In practice, it is often the Police that will present the decision to the asylum-seeker at the airport after having consulted the Immigration Service.

If the decision is immediately enforceable, the person may be detained at the airport pending the implementation of return to the safe third country. If, in an individual case, there are reasons to believe that removal to a third country is not safe, the Immigration Service will examine the application on its merits.

If deemed necessary and if other measures such as deposit of travel documents are deemed insufficient,

an asylum-seeker may be detained pending the implementation of return to the safe third country. A reporting requirement may also be imposed.

A decision by the Immigration Service to return an asylum-seeker to a safe third country may be appealed to the Ministry. The appeal does not have suspensive effect.

5.3 Special Procedures

5.3.1. Unaccompanied Minors

Procedures

Unaccompanied minors (UAMs) must meet the same conditions as other asylum-seekers in order to have their application processed. However, UAMs are considered a particularly vulnerable group. They will be put through the normal asylum procedure only if they are deemed mature enough to understand the procedure. UAMs over the age of 15 are generally considered to have the required level of maturity, but the decision on maturity is taken on a case-by-case basis.

Every UAM who makes an asylum claim is given a personal representative. The representative offers support during the procedure, for example, by being present at the interview. Interviews are conducted by specially trained staff. If a minor's case is processed according to the manifestly unfounded procedure, the Immigration Service appoints an attorney to represent the minor.

Age Assessment

If there is any doubt about the age of the minor, a voluntary medical examination may be carried out. This may consist of dental x-rays, x-rays of the left hand and a general medical examination. The information gathered by medical experts is sent to the Medico-Legal Council, which then provides a statement on the minor's age.

Decisions

If the Immigration Service assesses that a UAM does not have the required level of maturity to undergo the asylum procedure, he or she will be granted a residence permit without his or her application being processed.

If the asylum claim is refused, the minor may be granted a residence permit, if it is determined that the child would in fact be placed in an emergency situation if returned to the country of origin owing to the lack of an adequate support network in the form of family or public assistance.

If a UAM is granted asylum, he or she receives a residence permit valid initially for a period of seven

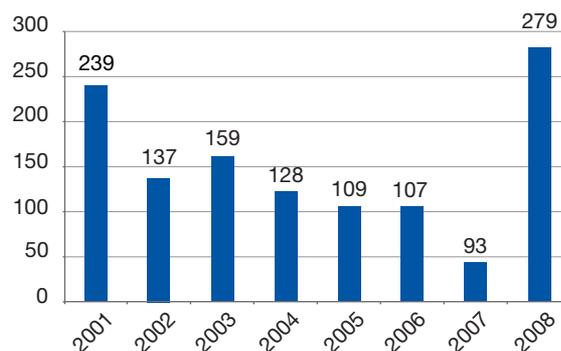
years. The permit is renewable. If a UAM is granted any other type of residence permit, the permit is initially valid for a period of two years and is renewable.

Appeal

If the appeal against the decision to not grant a residence permit under section 9 c (3) of the Aliens Act is submitted less than seven days after the Immigration Service's decision, the UAM may stay in Denmark during the appeal procedure. However, if the appeal is submitted after this time period has elapsed, it will be processed, but the date of removal will not be affected.

Figure 4:

Total Applications Made by Unaccompanied Minors, 2001-2008



5.3.2. Temporary Protection

Denmark does not have in place a regime for granting temporary protection.

5.3.3. Stateless Persons

The risk of persecution facing stateless asylum applicants is determined by assessing the risk of persecution in the applicant's country of former habitual residence. Stateless persons who are found not to be in need of protection may be returned to the country of former habitual residence.

6 Decision-Making and Status

6.1 Inclusion Criteria

6.1.1. Convention Refugee

In order to be granted asylum in Denmark, an applicant must qualify for refugee status under the 1951 Convention.

6.1.2. Protected Status

In conformity with its international obligations under ECHR and CAT, Denmark grants protected status to persons who are at risk of the following if returned to the country of origin:

- The death penalty
- Torture
- Inhuman or degrading treatment or punishment.

6.2 The Decision

Decisions taken at the first instance are reasoned and given in writing. The decisions are translated into the applicant's mother tongue whenever possible. In certain cases, including when a claim has been made by an unaccompanied minor or when the applicant is illiterate, the asylum-seeker is notified of the decision orally by the police.

6.3 Types of Decisions, Status and Benefits Granted

The Immigration Service may take one of the following decisions on an asylum claim:

- Grant Convention refugee status
- Grant protected status
- Refuse to grant Convention refugee status and/or refuse to grant other types of protection
- Refuse to consider asylum claims made by a person who can be refused entry and removed to a safe third country
- Refuse to consider an application made by a person who is to be transferred to another country responsible for examining his or her application pursuant to the Dublin II Regulation.

Negative decisions are accompanied by a decision on whether the applicant can – in line with Denmark's international obligations⁵ – be returned by force to his or her country of origin if he or she does not leave Denmark voluntarily.

Convention refugees and persons granted protected status obtain the same rights and benefits, including assistance pursuant to Danish social legislation, cash benefits, housing subsidies, education, family reunification, and the possibility to apply for a permanent residence permit. These benefits correspond to the benefits available to Danish citizens and permanent residents.

⁵ As per section 31 of the Aliens Act.

6.4 Exclusion

An asylum-seeker cannot be issued a residence permit as a refugee or as a person with protected status under any of the following circumstances:

- The person is deemed a danger to national security
- The person is deemed a serious threat to public order, safety or health
- The person is deemed to fall within Article 1F of the 1951 Convention.

A foreign national cannot, unless particular reasons make it appropriate, including regard for family unity, be issued a residence permit as a refugee or as a person with protection status as a rule, if:

- The person has been convicted abroad of an offence that could lead to expulsion (in accordance with the provisions on expulsion for crimes, etc.), if his or her case had been heard in Denmark
- There are serious reasons for assuming that the person has committed an offence abroad which could lead to expulsion (in accordance with the provisions on expulsion for crimes, etc.)
- Circumstances otherwise exist that could lead to expulsion (in accordance with Part IV of the Danish Aliens Act dealing with expulsion)
- The person is not a national of a Schengen country or a Member State of the European Union, and an alert has been entered in the Schengen Information System in respect of the person for the purpose of refusal of entry pursuant to the Schengen Agreement, or
- Because of a communicable disease or serious mental disorder the person must be deemed potentially to represent a threat or cause substantial inconvenience to those around him or her.

A person prohibited from entering Denmark in connection with expulsion cannot be issued a residence permit as a refugee or as a person with protection status unless particular reasons make it appropriate, including regard for family unity.

Decisions to exclude a person from refugee or protected status are taken by the Immigration Service and may be appealed to the Refugee Appeals Board. While the Immigration Service does not issue removal orders, the excluded person must leave Denmark, unless there are other grounds for allowing the person to remain in Denmark.

6.5 Cessation

A residence permit issued to a refugee or person with protected status lapses only when the person has settled in his or her country of origin or has, of his or her own free will, obtained protection in a third country.

A residence permit may no longer be valid if the person has resided outside of Denmark for six months, or for 12 months, if the person has lived for more than two years in Denmark.

A person whose residence permit would lapse for one of the reasons stated above may make an application to the Immigration Service to retain his or her residence permit. The Immigration Service may make a determination in favour of the person, depending on the individual circumstances.

Decisions regarding cessation are taken by the Immigration Service and may be appealed to the Refugee Appeals Board.

6.6 Revocation

The Immigration Service may revoke or refuse to extend a residence permit granted to a recognised refugee or person with protected status for one of the following reasons:

- The basis on which the permit was granted is no longer applicable. For example, there is no longer a risk of persecution in the applicant's country of origin
- Evidence of fraud committed at the time of application has since been uncovered (in other words, if the residence permit would not have been issued except for the fraudulent reasons, the permit may be revoked)
- The person is considered a threat to national security, public order, safety or health
- The person is a war criminal, or has committed a serious non-political crime outside Denmark
- The person has been convicted of a crime that would warrant removal if committed in Denmark.

When assessing whether a residence permit should be revoked, the Immigration Service must take the following factors into consideration:

- The person's ties to Danish society, including the duration of residence in Denmark
- The person's age, health, and other personal circumstances
- The person's connection to the country of origin.

A person whose residence permit is the subject of a decision to revoke may appeal the decision to the Refugee Appeals Board.

6.7 Support and Tools for Decision-Makers

A decision-maker at the Immigration Service is supported in his or her task by a number of tools, including the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, country of origin information (COI) services, the jurisprudence of the Refugee Appeals Board, reports on human rights produced jointly by the Refugee Appeals Board and the Immigration Service, and language analysis, age determination tests, and medical reports, where required. COI support services and language analysis tools are highlighted below.

6.7.1. Country of Origin Information

The Documentation and Project Division of the Danish Immigration Service is responsible for the collection of information on conditions in asylum-seekers' countries of origin or countries of habitual residence. The research team consists of country experts specialised in various geographical desks.

As part of its research methodology, the Documentation and Project Division undertakes several fact-finding missions every year. The purpose of undertaking fact-finding missions is to obtain valid, detailed and up-to-date information that is not available from existing written sources. Fact-finding missions are usually undertaken in cooperation with national partners such as the Danish Refugee Council or sister organisations in other countries.

Every effort is made to ensure that the information gathered on fact-finding missions is accurate, current and obtained from reliable and well-informed sources on the ground. Great care is taken to ensure that a varied range of sources is consulted in order to provide balanced country of origin information to decision-makers.

Reports drawn up on the basis of fact-finding missions are published on the joint website of the Danish Immigration Service and the Ministry (www.nyidanmark.dk). Most reports are available in English.

6.7.2. Language Analysis

Language analysis is a service provided by external consultants to decision-makers at the National Commissioner of the Police or at the Immigration Service who may decide that it is necessary to use language analysis in order to assist with the determination of an asylum-seeker's nationality or region of origin.

7 Efficiency and Integrity Measures

7.1 Technological Tools

7.1.1. Fingerprinting

Asylum-seekers who are above the age of 14 are always fingerprinted.

The fingerprints are stored in a special database under the responsibility of the National Police. The primary purpose of taking fingerprints is to enable the authorities to check whether an applicant has lodged a claim for asylum in another state bound by the Dublin II and Eurodac Regulations. In addition, fingerprints are used to establish the identity of asylum-seekers or, if necessary, are used in connection with applications for travel documents (such as to facilitate the return of an asylum-seeker who has received a final negative decision on his or her claim).

7.1.2. DNA Tests

DNA tests may be carried out at the request of decision-makers of the Immigration Service if such tests would assist in establishing the identity of an asylum-seeker or his or her family ties.

7.1.3. Forensic Testing of Documents

Documents may be sent to the Police for forensic testing if Immigration Service decision-makers believe doing so would assist in authenticating documents submitted by asylum-seekers in support of their claims.

7.1.4. Database of Asylum Applications/Applicants

The Danish immigration authorities have in place a database (“Udlændingeregisteret”) containing information on foreign nationals who either have a case or have had a case considered under the Aliens Act.

7.1.5. Visa Information System

The National Commissioner of Police has access to the visa case handling systems (visa cases are not stored in the above mentioned “Udlændingeregister”) and through those systems may be able to find out whether an applicant has lodged a visa application at a Danish diplomatic post beforehand. With the rollout of the Visa Information System (VIS), this control mechanism will become more valuable, as biometric data will be entered into the systems, and the police will be able to search for visa dossiers from all Schengen states through access to the C-VIS database.

7.2 Length of Procedures

There is no time limit imposed on persons to make an application for asylum after their arrival in Denmark. However, Danish authorities may reject a person at the border only within the first three months of his or her arrival.

The length of the asylum procedure is not regulated by law and often varies according to the number of applicants and other factors. As at this writing, the average length of the asylum procedure for all cases (normal and expedited procedure) is 136 days.

7.3 Pending Cases

The decline in the number of asylum applications made in Denmark in the last six years has reduced the backlog considerably. Furthermore, the Immigration Service since 2006 has put extra focus on efficiency in case processing, which on a general scale has improved efficiency to a large degree. However, recently the numbers of applicants and pending cases have increased. Efforts are being made at the Immigration Service and the Ministry to reduce the backlog.

Each year, the Immigration Service enters into an agreement with the Ministry of Refugee, Immigration and Integration Affairs in which certain goals and objectives are specified. The agreement includes specific goals in relation to the number of asylum cases to be processed and the quality standard to be achieved.

Box 1: Adopting “Lean” Production Principles

One measure that was taken by the Immigration Service to improve the efficiency of its asylum procedure was to adopt “lean production” principles. The lean production practice considers the expenditure of resources to achieve an objective other than the creation of value for the end customer to be wasteful, and thus a target for elimination.

In other words, lean production adheres to the notion of achieving “more value with less work”. Lean production is a generic process management philosophy derived mostly from the Toyota Production System (TPS), which came to prominence under the term “lean” in the 1990s. The adoption of this and other measures has assisted the Immigration Service to meet its goal of processing asylum claims more efficiently.

7.4 Information Sharing

The National Commissioner of the Police and the Immigration Service engage in practical cooperation and information sharing during the asylum procedure.

Cooperation with third countries such as EU Member States occurs primarily in the context of determining whether Denmark has responsibility for examining an asylum claim under the Dublin II Regulation. Moreover, specific information may be requested from other third States, including copies of the file of an asylum-seeker who has previously made an asylum application in a third country.

Such sharing of information with other organisations or authorities takes place within the rules on protection of personal data set out in the Danish Act on Personal Data and the Act on Administrative Affairs.

7.5 Single Procedure

Applications for asylum under the 1951 Convention are also treated as applications for subsidiary protection (protected status) and are examined in the same procedure.

8 Assistance and Reception Benefits for Asylum-Seekers

8.1 Procedural Support and Safeguards

8.1.1. Legal Assistance

An asylum-seeker may be represented by counsel at the first instance and has the right to legal counsel at the appeal stage.

While asylum-seekers are not entitled to legal aid at the first instance, legal aid is provided to those appearing before the Refugee Appeals Board. Legal aid is also offered to unaccompanied minor asylum-seekers as soon as the Immigration Service channels the application into the manifestly unfounded procedure.

8.1.2. Interpreters

Interpreters are available for those asylum-seekers who require interpretation services, both at the first instance interviews and during hearings before the Refugee Appeals Board.

8.1.3. UNHCR

The UNHCR Regional Office in Stockholm, Sweden, may respond to inquiries from asylum-seekers during the procedure and may be of assistance by providing information on the procedure, on legal counsel on and any relevant organisations that may be of further assistance.

Box 2: Cooperation with the UNHCR, NGOs

The UNHCR Regional office, which is located in Stockholm, Sweden, plays no formal role in refugee status determination in Denmark. However, upon the request of a party in the procedure, the UNHCR may provide updated country of origin information (COI), legal advice or the UNHCR's recommendations and guidelines. In exceptional precedent-setting cases, the UNHCR may submit *amicus curiae* to the last instance body. The UNHCR regional office in Stockholm may request access to a particular asylum application, usually for advocacy purposes.

The Danish Refugee Council (implementing partner of the UNHCR in Denmark) is a private, independent humanitarian organisation, to which decisions on applications considered to be "manifestly unfounded" are transmitted for review by the Immigration Service. If the Danish Refugee Council disagrees with the Immigration Service regarding whether a particular case should be treated as manifestly unfounded, the case will be handled through the normal asylum procedure, that is, with automatic appeal to the Refugee Appeals Board.

The Refugee Council may also take on an advocacy role on behalf of asylum-seekers. For instance, in 2007 the Refugee Council requested that the Refugee Board reopen a number of applications that had been subject to a final negative decision. Some cases were eventually re-opened.

Cooperation also takes place between the Immigration Service and the Danish Red Cross, which is responsible for running the majority of asylum reception centres on behalf of the government.

8.1.4. NGOs

Upon making an application for asylum, a person will be informed of his or her rights and obligations during the procedure, including the possibility to contact the implementing partner of the UNHCR in Denmark, namely the Danish Refugee Council. This information is provided in the context of an asylum-seeker “course”.

8.2 Reception Benefits

8.2.1. Accommodation

Asylum-seekers in Denmark typically reside at an accommodation centre while their claim is being processed.

It is the responsibility of the Immigration Service to provide accommodation. The day-to-day operation of these accommodation centres is carried out with several partners.

The Danish Red Cross operates and administers most accommodation centres in Denmark, while Thisted municipality and Jammerbugt municipality are responsible for one centre each.

Asylum-seekers reside first at Sandholm Centre outside of Copenhagen, and are then moved to another accommodation centre after the interview, where they reside until a decision has been taken. If the asylum-seeker has family residing legally in Denmark, he or she may be allowed to reside with his or her family. In such cases, asylum-seekers are not eligible for financial support from the State.

UAMs are placed in the Unaccompanied Minors Centre run by the Danish Red Cross.

8.2.2. Social Assistance

Asylum-seekers receive a cash allowance from the Immigration Service to cover their expenses. This does not apply, however, to applicants married to a Danish citizen or holders of a Danish residence permit or card. In the case of the former, the spouse is expected to support the applicant.

The basic allowance is DKK 45.92 per day per adult. If an applicant is living with his or her spouse, registered partner or cohabitating partner, both will receive DKK 36.36 per day per adult. The basic allowance is paid in advance every other Thursday.

While an application is in its initial phase - when it has yet to be determined whether the application will be processed in Denmark or elsewhere - the supplementary allowance is DKK 7.66 per day. If it

is decided that the application is to be processed in Denmark, the supplementary allowance is increased to DKK 26.79 per day. If the application is rejected and the applicant is ordered to leave Denmark, the supplementary allowance is decreased to DKK 7.66 per day. The supplementary allowance is paid every other Thursday, at the end of each fourteen-day period.

The caregiver allowance for the first child and second child, during the initial phase, is DKK 53.59 per child per day. If it is decided that the application is to be processed in Denmark, the supplementary allowance will be increased to DKK 72.72 per child per day. For asylum-seekers living at centres where free meals are served, the caregiver allowance is DKK 26.79 per child per day. The reduced caregiver allowance for the third child and fourth child is DKK 38.27 per child per day. For asylum-seekers living at centres where free meals are served, there is no caregiver supplement for the third or fourth child. Both types of caregiver allowance are paid in advance every other Thursday.

Asylum-seekers whose cases are processed according to the expedited version of the manifestly unfounded procedure do not receive cash allowances.

8.2.3. Health Care

The State covers basic and emergency health care services for asylum-seekers. With the exception of minors claiming asylum, asylum-seekers are not entitled to the same access to health care as are other persons residing in Denmark.

If an asylum-seeker has sufficient means of his or her own, the Immigration Service may decide that he or she is not in need of health care support.

8.2.4. Education

Newly arrived asylum-seekers at the reception centre take part in an introductory course on their rights and obligations as well as on the benefits to which they are entitled. When the initial case review is completed and it has been decided that the asylum-seeker’s application is to be processed in Denmark, the applicant may participate in English language courses, language courses in their mother tongue, and vocational courses designed to help him or her find future employment in the country of origin.

Asylum-seekers below the age of 18 have access to the same school system as nationals, until the ninth grade. They are offered special courses either at, or in affiliation with, the accommodation centre. Depending on their skills, they may be able to continue their primary education in regular Danish schools.

8.2.5. Access to Labour Market

Asylum-seekers do not have the right to work unless they have a residence and work permit.

Asylum-seekers may apply for a residence and work permit under the so-called Positive List, irrespective of whether they entered Denmark through legal channels. The Positive List is a list of professions and fields currently experiencing a shortage of qualified workers. Persons who have been offered a job in one of these professions or fields have particularly easy access to the labour market.

Activities inside Reception Centres

All asylum-seekers over the age of 18 are obliged to assist with daily tasks at their centre, such as cleaning their own rooms and common areas. They may also help personnel with routine office work and maintenance work inside the centre. Cash allowances may be reduced if tasks have not been performed.

Activities outside Reception Centres

Applicants may also participate in unpaid job training programmes at an organisation that is not affiliated with the accommodation centre. They may also participate in unpaid humanitarian work or any other form of volunteer work.

8.2.6. "Food Allowance" Programme for Asylum-Seekers

A food programme is available to asylum-seekers who have received a final negative decision on their claim but who do not cooperate on the implementation of their return to the country of origin. While all other allowances and benefits are discontinued, these asylum-seekers receive basic allowances for food.

A single adult without children on the food allowance programme, who lives in a regular accommodation centre with no free meals, receives DKK 642.88 every 14 days.

The Immigration Service may remove rejected asylum-seekers from the food allowance programme if they cooperate with police on return, if their return date is postponed, or if the claim is re-opened. In such cases, the asylum-seekers receive once again the benefits and allowances to which they were entitled during the procedure, until the date of departure or resolution of the re-opened claim.

9 Status and Permits Granted outside the Asylum Procedure

9.1 Humanitarian Grounds

Upon application to the Ministry of Refugee, Immigration and Integration Affairs, a residence permit may be issued to an asylum-seeker who has not been granted refugee status or protected status, but who presents significant humanitarian considerations that warrant a residence permit. Possible situations include the following:

- The asylum-seeker suffers from an illness of a serious nature and cannot receive the necessary treatment in his or her country of origin
- A family with children below the age of 18 faces the possibility of returning to a country in a state of war.

Decisions on applications for humanitarian status are final and cannot be appealed. Decisions are taken by the Ministry of Refugee, Immigration and Integration Affairs.

9.2 Obstacles to Return

In cases where a rejected asylum-seeker has not been returned to the country of origin, the National Police may forward the file to the Immigration Service for the possibility of issuing a temporary residence permit. For such a permit to be issued, the following three conditions must be met (Section 9 c (2) of the Aliens Act):

- The police have attempted without success to remove a rejected asylum-seeker for at least 18 months
- The asylum-seeker has been cooperative on the return arrangements
- Return remains improbable.

The residence permit is valid for an initial period of 12 months and can be renewed, provided that the removal remains improbable.

9.3 Consequence Status

Where persons are not eligible for refugee status or protected status (subsidiary protection), a residence permit may be granted if close family ties exist with a person who has been granted refugee status. The Immigration Service may decide to grant such persons "consequence status" and grant them the same type of residence permit as the family member with refugee

status. Spouses and minor children of a refugee are usually eligible for this type of status.

If the persons did not enter the country at the same time as the person who has obtained refugee status, the question of whether or not to grant a residence permit on the basis of “consequence status” is determined after an examination of the individual application.

In order for a person to be granted consequence status, the conditions in the country of origin that gave rise to the grounds for granting protection to the person whose family members are applying for consequence status must still prevail.

In addition, the length of time between the applicants’ claims and the reasons behind the persons in question not entering the country at the same time are also factors that are considered in connection with the examination of a case.

9.4 Stateless persons

While Denmark has ratified the 1961 UN Convention on the Reduction of Statelessness and the 1989 Convention on the Rights of the Child (which contains provisions regarding statelessness) there are no procedures outside the asylum procedure to regularise the status of stateless persons.

10 Return

10.1 Pre-departure Considerations

When an asylum-seeker receives a final negative decision on a claim, he or she must leave Denmark immediately. When the Immigration Service or the Refugee Appeals Board hands down a final negative decision, the Service or Board forwards all documents to the National Police, which then determines the practical arrangements for implementing return.

10.2 Procedure

The Danish Immigration Service has in place voluntary return assistance programmes for asylum-seekers who wish to leave Denmark either during the procedure or following a negative decision on their claim.

Assistance with Return: Pending Applications

A person whose asylum application is being considered in Denmark may, if he or she does not have sufficient means himself or herself, be granted assistance to travel to a third country where, after entry into Denmark and before expiry of a time-limit for departure, the

person has been issued an entry and residence permit, if the person has been refused a residence permit for Denmark or waives an application for such a permit.

This assistance covers the following costs:

- Transportation tickets
- Expenses necessary for transportation of personal belongings
- No more than DKK 5,000 (670€) per family for transportation of equipment needed for the trade of the person or family in the third country in question
- Other expenses incidental to the journey.

Assistance with Return after a Final Decision

An asylum-seeker who has received a negative decision on a claim from the Immigration Service or the Refugee Appeals Board may be granted assistance to return to his or her country of origin or former country of residence if the person assists in departure without undue delay.

The assistance amounts to DKK 3,000 (400€) per person over the age of 18 and DKK 1,500 (200€) per person under the age of 18.

Additional assisted voluntary return schemes have been set up on a temporary basis for certain groups of asylum-seekers, such as Iraqis and Afghans.

The current scheme for Iraqis who opt for voluntary return to Central or Southern Iraq involves economic support as well as reintegration assistance in Iraq. For adults the economic support is as follows:

- Cash grant upon arrival: DKK 30,000 (4,000€)
- Supplementary cash grant after six months of stay in Iraq: DKK 15,000 (2,000€).

Children receive a cash grant upon arrival of DKK 15,000 (2,000€) as well as a supplementary cash grant after six months’ stay in Iraq of DKK 7,500 (1,000€).

10.3 Freedom of Movement/ Detention

Asylum-seekers who have obtained a final negative decision on their claim and who are uncooperative on the implementation of their return are placed in one of two departure centres run by the Danish Red Cross and the Immigration Service.

A number of conditions apply at the departure centres:

- Residents on the food allowance programme are given money only to buy food
- There are extra guards and police to ensure order is maintained
- Adult residents do not have access to training courses or work activities⁶
- Residents may not relocate unless the Immigration Service permits them to do so.

10.4 Readmission Agreements

Denmark has entered into bilateral readmission agreements or arrangements with the following countries or autonomous regions: Albania, Afghanistan, Armenia, Bosnia and Herzegovina, Macedonia, (FYROM), Montenegro, Russia, Serbia, Somaliland, and Sri Lanka. A signed agreement with Ukraine awaits final Ukrainian approval. Several of these agreements are drafted on the basis of EU readmission agreements, as Denmark cannot legally take part in EU readmission agreements as a result of its opt-out of the Justice and Home Affairs acquis.

11 Integration

According to the Danish Integration Act, an introduction programme planned by the responsible local municipality and funded by the Danish government must be offered to all newly arrived immigrants, including refugees, persons granted protected status, persons arriving on family reunification grounds and resettled refugees. Persons eligible for this programme must be 18 years of age or older.

The introduction programme lasts up to three years. The programme aims at making the newcomers both active members of society and self-reliant as soon as possible upon arrival in Denmark. The programme includes a course that incorporates Danish language instruction and classes on Danish culture and society. The programme also includes employment support such as job counselling and training, individually tailored job-training schemes and employment with a wage supplement. The duration of a full programme is 37 hours per week, for up to three years, preparation time included. The newcomer must agree to an integration contract with the municipality and must also sign an integration declaration.

Participation in the programme is a condition for receiving the special monthly financial support for newcomers and is also included as a condition if the refugee or immigrant applies for a permanent residence permit.

⁶ See the section above on reception benefits for information on the food allowance programme and the general conditions in regular accommodation centres for asylum-seekers.

12 Annexe

12.1 Selections from the Danish Aliens (Consolidation) Act (2005)⁷

Part I- Aliens' entry into and stay in Denmark

7.

(1) Upon application, a residence permit will be issued to an alien if the alien falls within the provisions of the Convention relating to the Status of Refugees (28 July 1951).

(2) Upon application, a residence permit will be issued to an alien if the alien risks the death penalty or being subjected to torture or inhuman or degrading treatment or punishment in case of return to his country of origin. An application as referred to in the first sentence hereof is also considered an application for a residence permit under subsection (1).

(3) A residence permit under subsections (1) and (2) can be refused if the alien has already obtained protection in another country, or if the alien has close ties with another country where the alien must be deemed to be able to obtain protection.

8.

(1) Upon application, a residence permit will be issued to an alien who arrives in Denmark under an agreement made with the United Nations High Commissioner for Refugees or similar international agreement, and who falls within the provisions of the Convention relating to the Status of Refugees (28 July 1951), cf. Section 7(1).

(2) In addition to the cases mentioned in subsection (1), a residence permit will be issued, upon application, to an alien who arrives in Denmark under an agreement as mentioned in subsection (1), and who risks the death penalty or being subjected to torture or inhuman or degrading treatment or punishment in case of return to his country of origin, cf. section 7(2).

(3) In addition to the cases mentioned in subsections (1) and (2), a residence permit will be issued, upon application, to an alien who arrives in Denmark under an agreement as mentioned in subsection (1), and who would presumably have satisfied the fundamental conditions for obtaining a residence permit under one of the provisions of the Aliens Act if he had entered Denmark as an asylum-seeker.

9.

(...)

(3) A residence permit may be issued to: -

(i) an unaccompanied alien who has submitted an application for a residence permit pursuant to section 7 prior to his 18th birthday if, from information available on the alien's personal circumstances, there are particular reasons to assume that the alien should not undergo asylum proceedings;

(ii) an unaccompanied alien who has submitted an application for a residence permit pursuant to section 7 prior to his 18th birthday, if there is reason to assume that in cases other than those mentioned in section 7(1) and (2) the alien will in fact be placed in an emergency situation upon a return to his country of origin.

(...)

⁷ Consolidation Act No. 1044 of 6 August 2007, with the amendments following from Act No. 264 of 23 April 2008, Act No. 431 of 1 June 2008, Act No. 485 of 17 June 2008 and Act No. 486 of 17 June 2008, available online at http://www.nyidanmark.dk/NR/rdonlyres/C2A9678D-73B3-41B0-A076-67C6660E482B/0/alens_consolidation_act_english.pdf [accessed 27 February 2009].

Part VI- Rules on residence permit, expulsion and refusal of entry

31.

(1) An alien may not be returned to a country where he will be at risk of the death penalty or of being subjected to torture or inhuman or degrading treatment or punishment, or where the alien will not be protected against being sent on to such country.

(2) An alien falling within section 7(1) may not be returned to a country where he will risk persecution on the grounds set out in Article 1 A of the Convention relating to the Status of Refugees (28 July 1951), or where the alien will not be protected against being sent on to such country. This does not apply if the alien must reasonably be deemed a danger to national security or if, after final judgment in respect of a particularly dangerous crime, the alien must be deemed a danger to society, but cf. subsection (1).

Part VIII- Competence, appeals, etc

48e.

(1) When the Danish Immigration Service has decided that an alien who claims to fall within section 7 may stay in Denmark while his application for asylum is being examined, the Danish Immigration Service registers the person as an applicant for asylum.

(2) For the purpose of the decision to be made by the Danish Immigration Service under section 48a(1), the police carries out an investigation with a view to determining the alien's identity, nationality and travel route and procuring other necessary information.

(3) The Danish Immigration Service is otherwise in charge of bringing out all facts of the case. This includes the decision of the Danish Immigration Service concerning the filling-in of an application form and the interrogation of the alien.

53b.

(1) Upon submission to the Danish Refugee Council, the Danish Immigration Service may resolve that the decision in a case of a residence permit under section 7 cannot be appealed to the Refugee Appeals Board if the application must be considered manifestly unfounded, including if : -

(i) the identity claimed by the applicant is manifestly incorrect;

(ii) it is manifest that the circumstances invoked by the applicant cannot lead to the issue of a residence permit under section 7;

(iii) it is manifest that the circumstances invoked by the applicant cannot lead to the issue of a residence permit under section 7 according to the practice of the Refugee Appeals Board;

(iv) the circumstances invoked by the applicant are in manifest disagreement with general background information on the conditions in the applicant's country of origin or former country of residence;

(v) the circumstances invoked by the applicant are in manifest disagreement with other specific information on the applicant's situation;

or

(vi) the circumstances invoked by the applicant must be deemed manifestly to lack credibility, including as a consequence of the applicant's changing, contradictory or improbable statements.

(2) Unless essential considerations make it inappropriate, the Danish Immigration Service may resolve that the Danish Refugee Council must inform the Danish Immigration Service on the same day that the Danish Immigration Service submits a case to the Danish Refugee Council under subsection (1) whether the Danish Refugee Council agrees with the assessment by the Danish Immigration Service according to which the application must be considered manifestly unfounded. The

Danish Immigration Service may further resolve that the interrogation of the applicant by the Danish Immigration Service and the interview of the applicant by the Danish Refugee Council must take place on premises close to each other.

(3) The Danish Immigration Service informs the Refugee Appeals Board about the decisions which have not been appealed to the Board because the Danish Immigration Service has so resolved under subsection (1). The Refugee Appeals Board may resolve that it must be possible to appeal certain groups of cases to the Board.

12.2 Additional Statistical Information

Figure 5:

Asylum Applications from Top Five Countries of Origin for 2002 and 2008

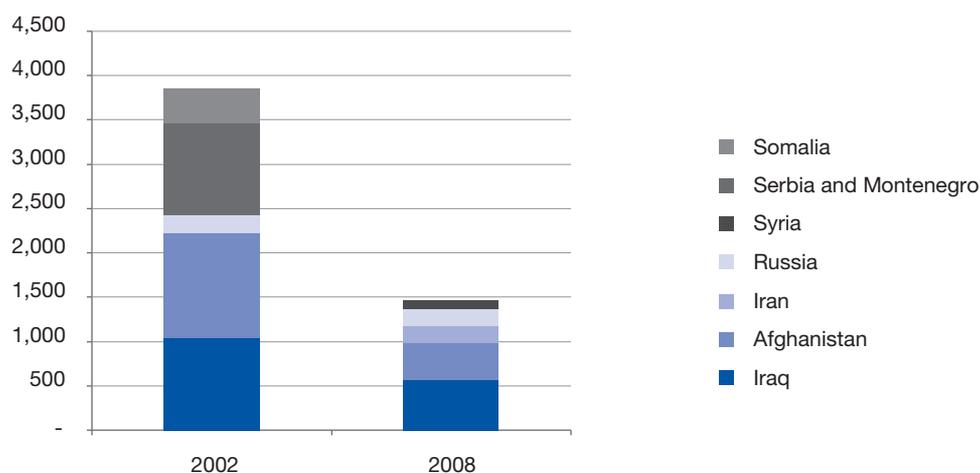


Figure 6:

Decisions Made at the First Instance, 1992-2008

Year	Geneva Convention Status		Complementary Protection and Other Authorisations to Remain		Rejections		Other Decisions		Total Decisions
	Count	% of total	Count	% of total	Count	% of total	Count	% of total	
1992	638	14%	1,696	37%	2,236	49%	0	0%	4,570
1993	681	14%	1,555	32%	2,650	54%	0	0%	4,886
1994	674	12%	1,166	21%	3,840	68%	0	0%	5,680
1995	4,810	22%	13,704	62%	3,496	16%	0	0%	22,010
1996	954	14%	3,777	54%	2,212	32%	0	0%	6,943
1997	883	12%	3,015	42%	3,210	45%	0	0%	7,108
1998	911	15%	2,638	43%	2,558	42%	0	0%	6,107
1999	932	17%	2,328	42%	2,254	41%	0	0%	5,514
2000	1,202	17%	2,265	32%	3,579	51%	0	0%	7,046
2001	1,857	21%	2,740	31%	4,142	47%	0	0%	8,739
2002	1,134	13%	1,389	16%	6,428	72%	0	0%	8,951
2003	500	14%	270	8%	2,683	78%	0	0%	3,453
2004	105	5%	105	5%	1,945	90%	0	0%	2,155
2005	93	7%	136	10%	1,098	83%	0	0%	1,327
2006	108	12%	62	7%	755	82%	0	0%	925
2007	70	8%	403	47%	376	44%	0	0%	849
2008	200	19%	315	30%	527	51%	0	0%	1,042

Finland



- 123 - BACKGROUND: MAJOR ASYLUM TRENDS AND DEVELOPMENTS
- 124 - NATIONAL LEGAL FRAMEWORK
- 125 - INSTITUTIONAL FRAMEWORK
- 125 - PRE-ENTRY MEASURES
- 125 - ASYLUM PROCEDURES
- 132 - DECISION-MAKING AND STATUS
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- 137 - ASSISTANCE AND RECEPTION BENEFITS FOR ASYLUM-SEEKERS
- 139 - STATUS AND PERMITS GRANTED OUTSIDE THE ASYLUM PROCEDURE
- 140 - RETURN
- 140 - INTEGRATION
- 141 - ANNEXE

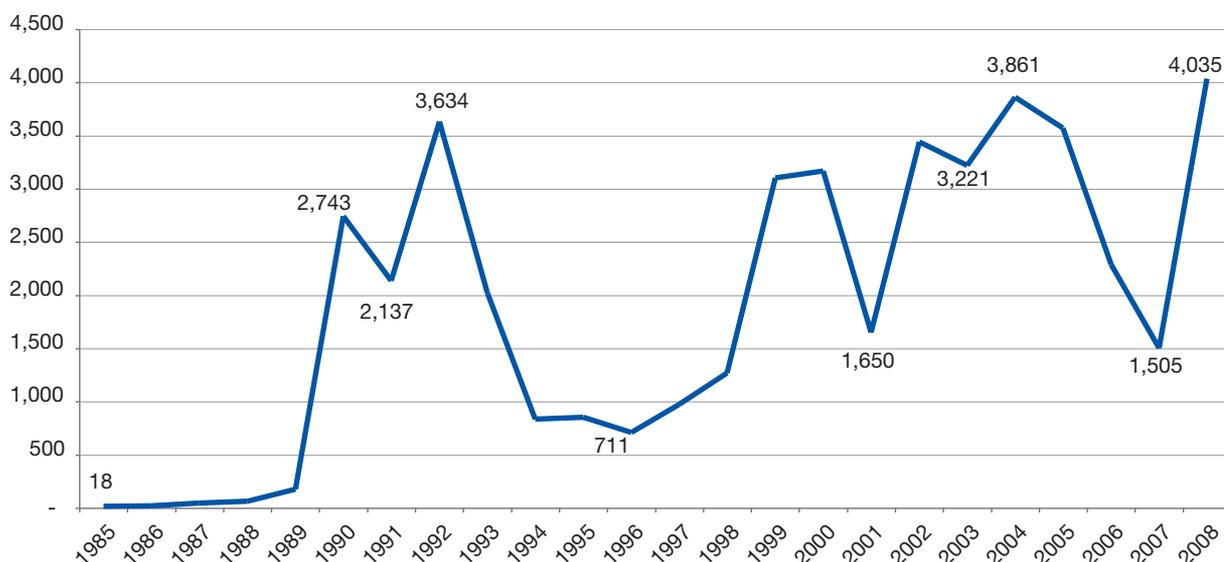
1 Background: Major Asylum Trends and Developments

Asylum Applications

Until the end of the 1980's, Finland received only a few asylum applications per year. However, the numbers started to increase significantly in 1990, when Finland received over 2,700 claims. In 1992 claims peaked at more than 3,600. In 1993 the claims decreased to around 2,000 and decreased even further between 1994 and 1997, when Finland received fewer than 1,000 claims per year. In 1998 the number of claims increased again to over 1,000 and in 1999 and 2000 to over 3,000. In 2001, the number of claims was around 1,500. Between 2002 and 2005, asylum applications numbered over 3,000. After that the annual inflow decreased to around 2,000 in 2006 and around 1,500 in 2007. The trend in 2008, however, was one of an upward climb, with the number of claims reaching over 4,000 by the end of that year.

Figure 1:

Evolution of Asylum Applications in Finland, 1985-2008



Top Nationalities

In the 1990's, the majority of asylum claims were made by nationals from Somalia, Russia and the former Yugoslavia. Towards the end of the 1990's, a large number of asylum-seekers came to Finland from such European Union (EU) candidate states as Poland, the Slovak Republic and the Czech Republic. Since 2000, the majority of asylum-seekers have originated from Russia, Iraq, Somalia, the former Yugoslavia and,

prior to their membership in the European Union, from Bulgaria, Romania and the Slovak Republic.

Important Reforms

A number of important legislative and institutional reforms were introduced after the 1980's:

- The creation of the Directorate of Immigration in 1995 as the competent authority for making decisions on asylum claims at the first instance
- The transfer of responsibility for the asylum appeal procedure from the Asylum Appeals Board to the Helsinki Administrative Court in 1998
- The introduction of accelerated procedures for certain types of claims in 2000
- The transfer of responsibility for asylum interviews from the Police to the Directorate of Immigration in 2003
- The introduction in 2007 of a legislative provision for tracing family members of unaccompanied minor asylum-seekers, to be undertaken in cooperation with the International Social Service.

While a new Aliens Act came into force in 2004, the asylum procedure remained largely unchanged.

More recently, the Directorate of Immigration was renamed the Finnish Immigration Service. An Advisory Board for the Finnish Immigration Service was established at the beginning of 2008. The Board consists of invited members and includes immigrants' representatives along with traditional interest groups.

Figure 2:

Evolution of Applications from Top Three Countries of Origin for 2008

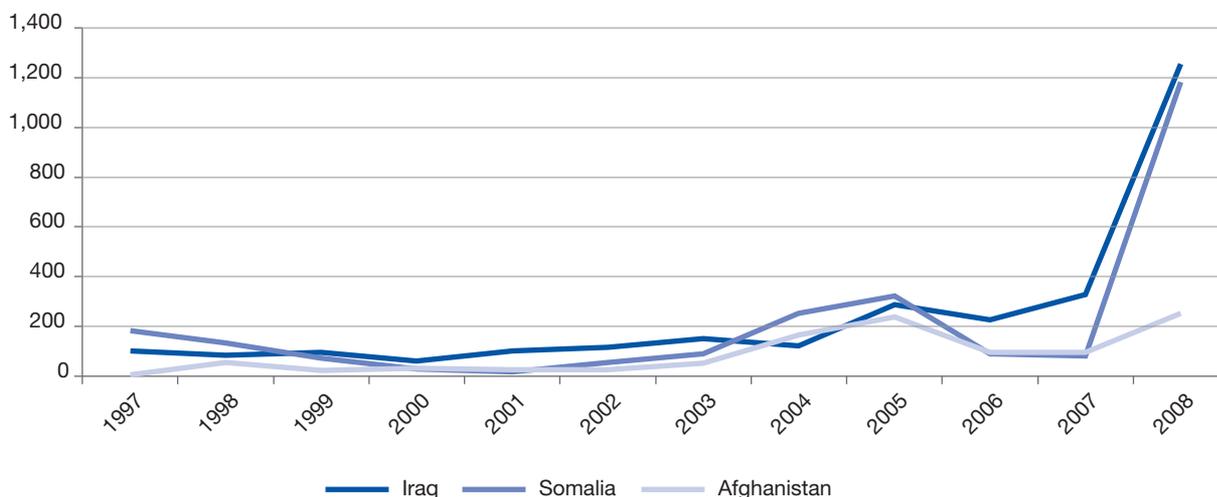


Figure 3:

Top Five Countries of Origin in 2008

1	Iraq	1,255
2	Somalia	1,181
3	Afghanistan	254
4	Russia	209
5	Iran	144

2 National Legal Framework

2.1 Legal Basis for Granting Protection

The asylum procedure and the competencies of asylum institutions are governed by the Aliens Act (2004). The Act provides grounds for granting international protection as well as other, non-protection-related grounds for a residence permit, which must be considered during a single asylum procedure.

The 1951 Convention relating to the Status of Refugees and the European Convention on Human Rights (ECHR) have been transposed into Finnish law. The government's asylum policy is committed to the full application of the 1951 Convention.

The requirements for granting asylum under the Aliens Act are virtually identical to those in the 1951 Convention.

Council Directive 2004/83/EC¹ will be transposed into this Act in the summer of 2009. In transposing the Directive, the scope of the current national legal provision for granting subsidiary protection will be narrowed to meet the definition of subsidiary protection contained in the Directive. However, in order to retain the level of protection granted in Finland, a new, third protection category ("humanitarian protection") is being introduced.

The reception of asylum-seekers is governed by the Act on the Integration of Immigrants and Reception of Asylum Seekers (1999). Council Directive 2003/9/EC² has been transposed into this Act. The Act entitles asylum-seekers to the safeguarding of basic needs such as accommodation, subsistence, social assistance, health care and other basic services. The Act also stipulates that asylum-seekers must be informed of their rights and obligations.

2.2 Pending Reforms

A government proposal aimed at transposing the Qualification Directive and Council Directive 2005/85/EC³ is currently before Parliament.

Legislative amendments and practical arrangements are also under way to hand over competence in and responsibility for the steering of reception centres to the Finnish Immigration Service.

¹ Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (Qualification Directive).

² Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (Reception Directive).

³ Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (Asylum Procedures Directive).

3 Institutional Framework

3.1 Principal Institutions

The Ministry of the Interior is responsible for Finland's migration policy, including issues of international protection, and the drafting of relevant legislation. The Ministry also oversees the integration of migrants in Finland.

The Finnish Immigration Service is the competent authority for examining and making a determination on asylum applications at the first instance. In the future, responsibility for steering of reception centres and other types of accommodation for asylum-seekers will be transferred to the Service.

The District Police receive applications for international protection in-country and establish the identity, travel route and means of entry into the country of an asylum-seeker. The Police also facilitate the transfer of asylum-seekers under Council Regulation (EC) No. 343/2003⁴ and implement the return of rejected asylum-seekers and persons denied entry into Finland.

The Finnish Border Guard receives asylum applications for international protection at points of entry and establishes the identity, travel route and means of entry into the country of asylum-seekers. The Border Guard is also competent for implementing the return of rejected asylum-seekers and decisions on refusal of entry.

The Helsinki Administrative Court hears appeals against all negative decisions made by the Finnish Immigration Service on asylum applications. The Court is also competent for hearing appeals against decisions concerning withdrawal and cancellation of refugee status and related refugee travel documents.

The Supreme Administrative Court, provided it give leave to appeal, hears appeals against decisions of the Helsinki Administrative Court.

The Ombudsman for Minorities may provide an opinion on an asylum case. The opinion of the Ombudsman is non-binding on the decision-making authorities. The Ombudsman must be notified when any decision is made on an asylum claim under the Finnish Aliens Act, when there is a refusal of entry into Finland, or when a removal order is issued. The Ombudsman must also be notified without delay of any decision to place a foreign national in detention. The Ombudsman must be notified, upon its request, of any other decision made under the Finnish Aliens Act.

⁴ Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (Dublin II Regulation).

4 Pre-entry Measures

4.1 Visa Requirements

Foreign nationals' entry into Finland is subject to the provisions of the Finnish Aliens Act and the Schengen Acquis. As a rule, foreign nationals who need an entry visa are requested to apply for one at the Finnish mission that represents Finland in their home country. In countries where Finland does not have a mission, another Schengen country can represent Finland in visa matters.

4.2 Carrier Sanctions

Obligations and financial penalties on carriers are laid down in Chapter 11 of the Aliens Act. Carriers violating the obligations (obligation to report and obligation to provide information) are subject to a fine. The financial penalty may be annulled if the foreign national is granted permission to remain in Finland on protection grounds.

4.3 Interception

Finland does not carry out pre-departure clearance in countries of origin or transit.

5 Asylum Procedures

5.1 Application Possibilities and Requirements, Procedures and Legal Remedies

All asylum-seekers have the right to enter the territory and to remain in Finland for the duration of the asylum procedure, and until an enforceable decision on refusal of entry is made in the matter. Asylum-seekers have the right to be heard during the procedure and to enjoy the basic legal guarantees such as interpretation and legal assistance.

Information on the procedures regarding international protection available to asylum-seekers (and the public at large) can be found on the website of the Finnish Immigration Service (www.migri.fi/refugees) in a number of different languages.

5.1.1. Outside the Country

Applications at Diplomatic Missions

It is not possible to make an asylum application at or through Finnish diplomatic missions abroad. Nor is it possible to make an asylum application from abroad in writing, by post or electronic mail.

Resettlement/Quota Refugees

Finland has in place an annual resettlement programme to admit persons recognised as refugees by the United Nations High Commissioner for Refugees (UNHCR) and other persons in need of international protection, in accordance with section 90 of the Aliens Act. The annual quota is confirmed each year in the State budget. Since 2001, the resettlement programme has operated with an annual quota of 750 refugees. The Ministry of the Interior, in cooperation with the Ministry of Foreign Affairs, prepares a proposal for the Government on the allocation of the refugee quota.

The grounds for issuing a residence permit under the Finnish refugee quota are as follows:

- The person is in need of international protection from his or her country of origin
- The person is in need of resettlement from the first country of asylum
- The requirements for admitting and integrating the person into Finland have been assessed
- There are no obstacles under section 36 of the Aliens Act to issuing a residence permit.

The selection of refugees for resettlement is usually based on interviews conducted in refugee camps, during which the grounds for granting a residence permit are examined. A representative of the Security Police participates in the interviews with the Finnish Immigration Service, which grants residence permits to refugees admitted to Finland under the refugee quota.

Of the refugee quota, 10 per cent is reserved annually for urgent cases and for people whom the UNHCR has assessed as being in urgent need of resettlement. These refugees are selected on a UNHCR dossier basis.

5.1.2. At Ports of Entry

An application for international protection may be made in person with the Police or with border control authorities (Finnish Border Guard) upon entry into the country or at police stations inside the territory immediately after entry.

After an asylum application has been made, the Police or Border Guard establishes the person's identity, travel route and means of entry into Finland. To achieve this, personal data on the applicant's family members and other relatives are collected. The asylum application is then examined by the Finnish Immigration Service.

5.1.3. Inside the Territory

An application may be filed later than upon arrival in Finland under the following circumstances:

- The circumstances in the foreign national's home country or country of permanent residence have changed during his or her stay in Finland
- The person was not able to present a statement in support of his or her application any earlier
- Other reasonable grounds for making an application at a later time are applicable as per section 95 of the Aliens Act.

Responsibility for Processing the Claim

The Dublin System

Application and Procedure

Under the Dublin system, an asylum application filed in Finland may be transferred to be processed in another State party to the Dublin II Regulation. Dublin cases may arise under the following circumstances:

- The asylum-seeker previously applied for asylum in another State party
- A member of the asylum-seeker's family has obtained refugee status in another State party
- The asylum-seeker holds a residence permit or visa from another State party
- The asylum-seeker has entered Finland illegally through another State party or without passing through a border check after travelling from another State party.

Where one of these criteria has been fulfilled, the Finnish Immigration Service will issue a decision to refuse the applicant's entry into Finland and to transfer him or her to another State party.

Freedom of Movement/Detention

The grounds for detention outlined in the Aliens Act are applicable to all foreign nationals in Finland, including those who may be subject to a transfer according to the Dublin II Regulation. These grounds include reasons to believe that the person may prevent the implementation of transfer or removal.⁵

If there are no grounds for detention, persons whose claims are processed under the Dublin system enjoy freedom of movement as do all other asylum-seekers.

Conduct of Transfers

The Police or the Border Guard is responsible for the enforcement of the decisions on refusal of entry or

⁵ Further information on grounds for detention can be found in the section "Freedom of Movement/Detention" below.

deportation, including the implementation of the decisions based on the application of the Dublin II Regulation.

Review/Appeal

Decisions on non-entry based on the Dublin II Regulation may be appealed before the Helsinki Administrative Court. A decision on refusal of entry may be implemented regardless of whether an appeal has been made, unless otherwise ordered by the administrative court. The administrative court can prevent the implementation of the decision or order that it be suspended.

Box 1: Finnish and European Case Law: Transferring Applicants under the Dublin II Regulation

In summer 2008, the European Court of Human Rights provided interim measures based on Article 39 of the Rules of the Court in eight cases in which the Finnish Immigration Service had decided to transfer an applicant to Greece under the Dublin II Regulation. Two of the interim measures were later lifted since these cases were pending, one in the Helsinki Administrative Court and the other in the Supreme Administrative Court. The latter made a decision on 26 February 2009 according to which "despite it having become evident there were serious deficiencies in Greece's asylum system, the Supreme Administrative Court considered, with reference in particular to the decision *K. R. S. v. the United Kingdom* made by the European Court of Human Rights on 2 December 2008 in a similar matter, that the return of an Iraqi asylum seeker to Greece did not constitute an infringement of the requirements contained in Article 3 of the Human Rights Act."

Application and Admissibility

According to section 103 of the Aliens Act, the Finnish Immigration Service may deem an asylum application to be inadmissible under one of the following circumstances:

- The applicant has arrived from a safe country of asylum where he or she enjoyed or could have enjoyed protection and where he or she may be returned⁶
- The applicant may be sent to another State which, under the Dublin II Regulation, is responsible for processing the asylum application.

⁶ The safe country of asylum principle is described below under the section entitled Safe Country Concepts.

In such instances, the Finnish Immigration Service issues a decision on refusal of entry. A decision made on the basis of the application of the Dublin II Regulation can be enforced as soon as the decision has been served on the applicant. A decision made on the basis of the application of the safe country of asylum concept can be enforced eight days after serving the decision on the applicant. In these cases, an appeal to the Helsinki Administrative Court will not suspend the enforcement, unless the Court decides otherwise.

Accelerated Procedures

Asylum applications may be processed under either the normal procedure or an accelerated procedure. The Finnish Immigration Service is competent for making a decision on which procedure is applied in each case. The Police or the Border Guard may inform the Immigration Service if they have identified reasons for handling the application urgently.

Applying an Accelerated Procedure

An asylum application may be examined under an accelerated procedure in one of the following instances:

- The applicant comes from a safe country of origin, as defined in section 100 of the Aliens Act, where he or she is not at risk of treatment referred to in section 87 or 88 and where he or she may be returned⁷
- The application is considered to be manifestly unfounded
- The applicant has filed a subsequent application that does not contain any new grounds for remaining in Finland that would influence the decision on the matter.

Where the safe country of origin or safe country of asylum principle is applicable, the Finnish Immigration Service must make a determination on the claim within seven days of the date when the minutes of the interview were completed and the information on their completion was entered in the Register of Aliens.

While asylum-seekers whose applications are being examined under an accelerated procedure have the same rights and obligations as do other asylum-seekers with regard to the procedure, in the case of subsequent applications, a decision may be issued without organising an asylum interview.⁸

⁷ The safe country of origin principle is described below in the section entitled Safe Country Concepts.

⁸ The procedure for examining subsequent applications is described below.

Manifestly Unfounded Applications

The Finnish Immigration Service may decide that an application is manifestly unfounded if the application does not raise grounds for protection related to serious human rights violations or the application has been made as an obvious misuse of the asylum application process.

While manifestly unfounded cases are subject to an accelerated procedure, there is no time limit for the authorities to make a decision. In the guidelines concerning asylum procedures, it is stated that, *inter alia*, applications considered manifestly unfounded must be processed urgently. Usually a decision to reject an application on the basis that it is manifestly unfounded is a decision of refusal of entry.

An application may be rejected as manifestly unfounded in one of the following instances:

- No grounds for protection or against *refoulement* have been presented
- The claims presented in the application are clearly implausible
- The applicant clearly intends to abuse the asylum procedure:
 - by deliberately giving false or misleading information on matters that are essential to the decision on the application
 - by presenting forged documents without an acceptable reason
 - by impeding the establishment of the grounds for his or her application in another fraudulent manner
 - by filing an application after a procedure for removing him or her from the country has begun, as a way of delaying the implementation of the procedure
- The applicant comes from a safe country of asylum or a safe country of origin where he or she may be returned, and the Finnish Immigration Service has not been able to issue a decision on the application within the time limit (of seven days) laid down in section 104 of the Aliens Act.

Normal Procedure

After the Police or Border Guard has established the identity, travel route and means of entry of the asylum-

seeker, the asylum application is examined by the Finnish Immigration Service.

The Immigration Service conducts an interview with the asylum-seeker⁹. The purpose of the interview is to determine whether there are protection-related or non-protection-related grounds for granting a residence permit. Thereafter, a written report of the interview is provided to the applicant.

The requirements for issuing a residence permit are assessed individually for each applicant by taking account of the applicant's statements on his or her circumstances and relevant country of origin information (COI).

Upon request, the Ombudsman for Minorities has the right to be heard in an individual matter concerning an asylum applicant. The Finnish Immigration Service may, on a case-by-case basis, set a reasonable deadline for the issuing of an opinion by the Ombudsman for Minorities.

Review/Appeal of Finnish Immigration Service Decisions

Helsinki Administrative Court

A decision of the Finnish Immigration Service to refuse to grant a residence permit may be appealed before the Helsinki Administrative Court if the decision falls under one of the following categories:

- Rejection of an application for protection¹⁰
- Rejection of an application for temporary protection
- Removal from the country, prohibition of entry or cancellation of a travel document issued in Finland (in a decision taken under the asylum procedure or the procedure concerning temporary protection)
- Withdrawal of refugee status and cancellation of a refugee travel document
- Cancellation of refugee status and cancellation of a refugee travel document.

The time limit for making an appeal is 30 days following the decision being served to the applicant.

⁹ At the request of the Finnish Immigration Service, the Police may conduct asylum interviews if the number of applications has increased dramatically or there are other compelling reasons for delegating this task to the Police. In addition to the Finnish Immigration Service, the Security Police may conduct a further asylum interview, if Finland's national security or international relations require it.

¹⁰ Asylum-seekers whose application for protection was rejected but who were granted a residence permit on other, non-protection-related grounds, may appeal that decision.

Supreme Administrative Court

The decision of the Administrative Court may be appealed to the Supreme Administrative Court if the latter gives leave to appeal. A leave to appeal may be given if it is important for the application of the Act to other similar cases, for the sake of consistency in legal practice or if there is some other compelling reason for granting leave.

Freedom of Movement during the Normal Procedure

According to section 7 of the Constitution of Finland and section 41 of the Aliens Act, foreign nationals residing legally in Finland have the right to move freely within the country and to choose their place of residence. According to section 40 of the Aliens Act, an asylum-seeker may reside legally in the country while his or her application is being processed and until there is a final decision on the claim or an enforceable decision on his or her removal from the country.

If an asylum-seeker leaves Finland during the asylum procedure and does not inform the authorities, the application may be regarded as implicitly withdrawn.

Detention

Grounds for Detention

Alternatives to detention must be considered before a decision is made on whether or not to detain an asylum-seeker. Measures such as reporting requirements, handing over travel documents to authorities and paying a financial guarantee¹¹ equivalent to the cost of accommodation or return may be considered valid alternatives.

The Police and Border Guard are competent for making a decision on placing a foreign national in detention. The official responsible for a decision to place a foreign national in detention or, exceptionally, in police detention facilities must, without delay and no later than the day after the person was placed in detention, notify the District Court of the municipality where the person is being detained. The District Court must hear a matter concerning the detention of a foreign national without delay and no later than four days following the date when the person was placed in detention. In the case of a person being placed in a police detention facility, the matter must be heard without delay and no later than 24 hours after the Court has received the notification of detention.

¹¹ The financial guarantee is returned to the person when it is no longer required to establish whether the person meets the requirements for entering the country or to prepare for or ensure the implementation of removal. In other cases, the financial guarantee may be used to cover the expenses related to accommodation or return.

According to section 121 of the Aliens Act, a foreign national may be detained under one of the following circumstances:

- Taking into account the person's personal and other circumstances, there are reasonable grounds to believe that the person will prevent or considerably hinder the implementation of a decision to remove him or her from Finland
- Holding a person in detention is necessary for establishing his or her identity¹²
- Taking into account the person's personal and other circumstances, there are reasonable grounds to believe that he or she will commit an offence in Finland.

Asylum-seekers may be detained in detention units or Police or Border Guard detention facilities, in accordance with the Aliens Act. Persons are detained in Police or Border Guard facilities¹³ only if detention units are at full capacity or there are practical impediments to holding the person in a detention unit. A minor may be placed in a Police or Border Guard detention facility only if his or her legal guardian or other adult member of the family is being held in the same detention facility.

The detained person or his or her legal representative must be informed of the grounds for detention. In the case of a minor under the age of 18, the representative of social welfare authorities may be heard before a decision on detention is made.

There is no maximum period of detention. Instead, the Aliens Act requires that the authorities handling the matter order the release of a detained asylum-seeker immediately after the requirements for detention cease to exist.

Judicial Review

Judicial review of a decision to detain an asylum-seeker is ensured in the Aliens Act. If the release of a person who has been held in detention has not been ordered, the District Court in the place of detention will, at its own initiative, always rehear the matter concerning the detention no later than two weeks after the decision of the District Court to prolong detention.

¹² Factors that may lead to detaining an asylum-seeker in order to establish his or her identity include the asylum-seeker having provided unreliable information or having refused to give the required information regarding identity, or the presence of other compelling reasons to believe the person's identity has not been firmly established.

¹³ Detention inside Police and Border Guard detention facilities is also governed by the Act on the Treatment of Persons in Police Detention (841/2006).

Reporting

General Reporting Requirements

The Aliens Act stipulates that a person whose case is being processed by the authorities must provide them with his or her contact information and any changes to such information.

An asylum-seeker living in private accommodation must inform the reception centre of his or her address and any changes to this address. If the reception centre does not know the correct address, payment of living allowances cannot be effected.

Specific Reporting Requirements

A foreign national may be required to report to Police or border check authorities at regular intervals in one of the following cases:

- Reporting is necessary in order to establish that he or she meets the requirements for entry into the country
- Reporting is necessary in order to prepare or ensure the enforcement of a decision on removing the person from the country, or for otherwise supervising the foreign national's departure from the country.

The reporting requirement is in force until it has been established that the person meets the requirements for entry, a decision on removal from the country has been enforced, or the processing of the matter has ended otherwise. However, the reporting requirement must come to an end when it is no longer necessary for ensuring the issue or enforcement of a decision.

Subsequent Applications

A subsequent application is an application for international protection made by a foreign national still residing in Finland, after his or her previous application was rejected by the Finnish Immigration Service or an administrative court. A subsequent application can also be filed by a foreign national who has left the country for a short time following a negative decision on his or her previous claim.

If a new application is filed while the matter is still being processed, the information given by the applicant is submitted to the authorities processing the matter and is to be considered as a new statement in the matter.

According to the Aliens Act, a decision on a subsequent application may be issued without an asylum interview. A decision on a subsequent application may be processed in an accelerated procedure. A decision on refusal of entry

may be enforced immediately after service on the applicant, unless otherwise ordered by an administrative court.

5.2 Safe Country Concepts

5.2.1. Safe Country of Origin

When making a decision on an asylum application, the Finnish Immigration Service may determine that the asylum-seeker's country of origin is a safe country of origin as he or she is not at risk of persecution or serious violations of human rights there.

When assessing whether a country may be considered a safe country of origin, one should take the following aspects into account:

- Whether the State has a stable and democratic political system
- Whether the State has an independent and impartial judicial system, and the administration of justice meets the requirements for a fair trial
- Whether the State has signed and adheres to the main international conventions on human rights, and no serious violations of human rights have taken place in the State.

No lists of safe countries of origin are used. The assessment is always made individually for each applicant. The grounds presented by the applicant and all specific factors implying that the country concerned might not be safe for the applicant are taken into consideration when deciding on the case.

When the decision on the application has been made on the basis of the notion of a safe country of origin, the decision on refusal of entry can be enforced eight days after serving the decision on the applicant. An appeal to the Administrative Court of Helsinki will not suspend the enforcement, unless it is otherwise ordered by the Court.

Procedure

If the applicant is considered to come from a safe country of origin, a decision on the application must be made within seven days of the date when the minutes of the interview were completed and the information on their completion was entered in the Register of Aliens.

Asylum Applications Made by Citizens of European Union Member States

Finland observes the Protocol on Asylum for Nationals of Member States of the European Union annexed to the Treaty of Amsterdam and therefore presumes that, as the Protocol states, EU Member States are considered to be safe countries of origin.

Nevertheless, according to Finnish law, all applications made by EU citizens are examined on their merits, under an accelerated procedure.

The Finnish Immigration Service must notify the Ministry of the Interior immediately of any application for asylum made by a citizen of the European Union, if it does not consider the State in question a safe country of origin for the applicant and if it does not apply sections 103(2)(1) and 104 of the Aliens Act to a decision on the application. The Ministry of the Interior then notifies the Council of the European Union of the matter.

5.2.2. Safe Country of Asylum

The notions of “first country of asylum” and “safe third country” are not found in the Aliens Act. However, the notion of “safe country of asylum” covers both situations since a reference is made in the definition to a country in which an asylum-seeker enjoyed or could have enjoyed protection and where he or she may be returned.

The criteria and procedure for the application of the notion of “safe country of asylum” are laid down in the Act. In recent years, no decisions on the basis of the application of the notion of a safe country of asylum have been made.

Procedure

An application for international protection may be dismissed if the applicant has arrived from a safe country of asylum. The Finnish Immigration Service has to take a decision on the application within seven days of the date when the minutes of the interview were completed and the information on their completion was entered in the Register of Aliens.

No lists of safe countries of asylum are used. The assessment is always made individually for each applicant. The grounds presented by the applicant and all specific factors implying that the country concerned might not be safe for the applicant are taken into consideration when deciding on the case.

When the decision on the application has been made on the basis of the notion of a safe country of asylum, the decision on refusal of entry can be enforced eight days after serving the decision on the applicant. An appeal to the Administrative Court of Helsinki will not suspend the enforcement, unless otherwise ordered by the Court.

5.3 Special Procedures

5.3.1. Unaccompanied Minors

All unaccompanied minor asylum-seekers have access to the asylum procedure.

In any decision issued under the Aliens Act that concerns a minor under 18, special attention must be paid to the best interest of the child and to circumstances related to the child’s development and health. Before a decision is made concerning a child who is at least 12 years old, the child may be heard unless such hearing is manifestly unnecessary. The child’s views may be taken into account in accordance with the child’s age and level of development. A younger child may also be heard if the child is sufficiently mature to have his or her view taken into account. Matters related to minors must be processed as a priority.

According to the Act on the Integration of Immigrants and Reception of Asylum Seekers, a representative must be assigned to an unaccompanied minor asylum-seeker. The reception centre at which the minor is registered applies for the appointment of a representative at the District Court.

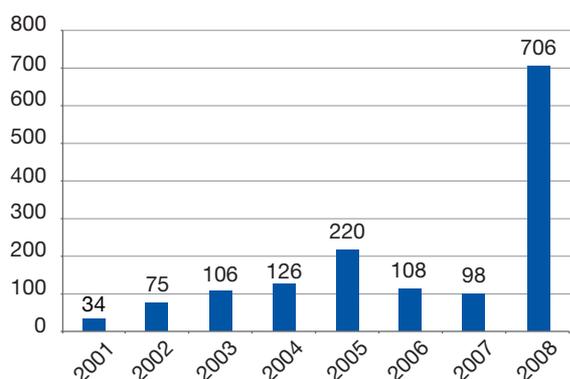
The representative’s task is to supervise the interests of the child during the asylum procedure. It is not the representative’s function to see to the daily or other care or upbringing of the child.

In the transposition of the EU Asylum Procedures Directive, a proposal has been made to add in the Aliens Act an obligation to give a representative a possibility to be present at the asylum interview of an unaccompanied minor. This is the practice already today since a representative is always present at the interview of an unaccompanied minor asylum-seeker.

The Finnish Immigration Service has produced interview guidelines for unaccompanied minor asylum-seekers. Unaccompanied minor asylum-seekers are interviewed and their applications are investigated by specially trained personnel of the Finnish Immigration Service. There is no requirement to undergo age assessment tests. However, some tests can and have been done but only with the approval of the applicant (and his or her representative).

Since the legislative amendment of the Aliens Act in 2007, the Finnish Immigration Service aims at tracing without delay an unaccompanied minor asylum-seeker’s parents or legal guardians.

Figure 4:

Total Applications Made by Unaccompanied Minors, 2001-2008**5.3.2. Temporary Group-Based Protection**

The Aliens Act was amended in 2002 in order to implement the essential provisions of Council Directive 2001/55/EC¹⁴. Temporary protection may be given to persons who need international protection and who cannot return safely to their home country or country of permanent residence because there has been a massive displacement of people in the country or its neighbouring areas as a result of an armed conflict, some other violent situation or an environmental disaster. Providing temporary protection requires that the need for protection be considered to be of short duration.

Temporary protection lasts for a maximum of three years in total. Foreign nationals in need of temporary protection are issued a residence permit for a maximum of one year at a time.

5.3.3. Stateless Persons

Stateless persons may make asylum applications in Finland according to the same procedures as other asylum-seekers.

Finland recently ratified the UN Convention on Reduction of Statelessness and the European Convention on Nationality. In the asylum procedure, statelessness is taken duly into account when assessing whether the applicant can receive protection in another country. If no such country exists for this particular applicant, he or she will be given the appropriate status in Finland. According to the Aliens Act, an Alien's passport may be issued to those who have no citizenship. Stateless

¹⁴ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (Temporary Protection Directive).

persons who are granted refugee status are issued a refugee travel document.

6 Decision-Making and Status**6.1 Inclusion Criteria****6.1.1. Convention Refugee**

Section 87 of the Aliens Act sets out the criteria for granting asylum in line with the criteria laid out in Article 1A (2) of the 1951 Convention.

Asylum is defined in section 3 of the Aliens Act to mean a residence permit issued to a refugee under the asylum procedure. A person acknowledged as a refugee is granted refugee status.

6.1.2. Complementary Forms of Protection

If an asylum-seeker does not meet the criteria for refugee status, he or she may be granted a complementary form of protection, that is, subsidiary protection or humanitarian protection.

Subsidiary protection may be granted where there are substantial grounds to believe that the person concerned, if returned, would face a real risk of suffering serious harm, and is unable or owing to such risk unwilling to avail himself or herself of the protection of the State. Serious harm consists of:

- The death penalty or execution
- Torture of inhuman or degrading treatment or punishment
- Serious and individual threat by reason of indiscriminate violence in situations of international or internal armed conflict.

An asylum-seeker may be granted humanitarian protection if he or she is unable to return to the country of origin because of an environmental disaster or a poor security situation resulting from an international or internal armed conflict or a serious human rights situation.

6.1.3. Non-Protection Related Status

As Finland applies a single procedure, all grounds – both protection and non-protection-related – are examined when determining whether an asylum-seeker may be granted a residence permit. The non-protection-related grounds that may form the basis for being granted a residence permit are as follows:

- Compassionate grounds. According to section 52 of the Aliens Act, foreign nationals residing in Finland may be issued a continuous residence permit if refusing a residence permit would be manifestly unreasonable in view of their health, their ties to Finland or on other compassionate grounds, particularly in consideration of their vulnerable position or the circumstances they would face in their home country
- Cases where foreign nationals cannot be removed from the country. Persons residing in Finland are issued with a temporary residence permit if they cannot be returned to their home country or country of permanent residence for temporary reasons of health or if they cannot actually be removed from the country (i.e. there are practical impediments for the removal)
- Family ties in Finland
- Ongoing studies undertaken in Finland
- Ongoing employment or self-employment in Finland.
- Grant Convention refugee status (Aliens Act, section 87)
- Issue a residence permit on the basis of subsidiary protection or humanitarian protection (Aliens Act, sections 88 and 88a)
- Grant a residence permit on other, non-protection-related grounds
- Reject the application with a refusal of entry.

The Immigration Service may reject an application for protection with a refusal of entry if the following is applicable:

- The application does not present merits for granting asylum or a complementary form of protection
- The situation in the asylum-seeker's country of origin or country of permanent residence does not warrant the need of international protection
- The applicant cannot be granted a residence permit on any non-protection-related ground.

6.2 The Decision

After considering the merits of the claim, the Finnish Immigration Service caseworker submits a proposal for a decision to his or her supervisor (the Head of Section), who will make the final decision. The decision is always made in writing. The reasons in fact and in law are stated in the decision, and information on how to challenge a negative decision is also given in writing. The decision is sent to the Police in the asylum-seeker's place of residence. The Police are responsible for serving the decision to the applicant.

The applicant is entitled to receive the decision concerning his or her application in his or her native language or in a language that the applicant can be presumed to understand. The notification of a decision will be made through interpretation or translation.

If the application is rejected, a decision on refusal of entry or deportation is issued at the same time, unless special reasons have arisen for not making a decision on removing the applicant from the country.

The Ombudsman for Minorities is notified of any decision under the Aliens Act on issuing a residence permit on the basis of international or temporary protection or on refusing an applicant entry or deporting the applicant.

6.3 Types of Decisions, Status and Benefits Granted

The Finnish Immigration Service may take one of the following decisions:

Benefits

Recognised refugees and beneficiaries of complementary protection are allowed to work and have access to social assistance, health care and accommodation. Their integration into Finnish society is supported by local authorities. They have also a right to family reunification for nuclear family members (spouse and unmarried children under 18 years of age).¹⁵

Recognised refugees and beneficiaries of subsidiary protection are first issued a fixed-term continuous residence permit (type A). The first fixed-term residence permit is issued for one year and a new fixed-term residence permit is issued if the requirements under which the person was issued his or her previous fixed-term residence permit are still valid. For the transposition into national law of the EU Qualification Directive, a proposal has been made to change the first fixed-term continuous residence permit for both refugees and beneficiaries of subsidiary protection to a four-year permit.

A refugee travel document is issued to a person who has been granted refugee status. A person who has been issued a residence permit on the basis of subsidiary protection is issued an Alien's passport.

¹⁵ A residence permit may be issued to other relatives of a refugee or a beneficiary of subsidiary or temporary protection if refusing the residence permit would be unreasonable because the persons concerned intend to resume their close family life in Finland or because the relative is fully dependent on the sponsor living in Finland.

Non-Protection-Related Grounds

The permit granted under section 52 of the Aliens Act is continuous, and the first permit is issued for one year. A new permit is issued for a maximum of four years. Persons who meet grounds for stay under section 51 (obstacles to return) are granted a temporary residence permit.¹⁶

Foreign nationals, including refugees and beneficiaries of other types of protection and non-protection-related permits, may become eligible for a permanent residence permit (type P) after having resided legally in Finland for a continuous period of four years and if the requirements for issuing a continuous residence permit remain valid and there are no obstacles to issuing a permanent residence permit under the Finnish Aliens Act.

6.4 Exclusion

The Finnish Immigration Service considers Article 1F of the 1951 Convention when examining a claim for both Convention refugee status and complementary forms of protection (Aliens Act, section 89). Exclusion clauses are included in section 87 (2) and Section 88 (2) of the Aliens Act.

Excluded persons are entitled to a temporary residence permit for a period of one year. The residence permit can be renewed and can become permanent. Excluded persons are protected from *refoulement*.

According to the Aliens Act, foreign nationals residing in Finland who are not granted asylum or a residence permit on the basis of subsidiary protection or humanitarian protection because they have committed, or there are reasonable grounds to suspect that they have committed, an act referred to in Article 1F of the 1951 Convention, are issued a temporary residence permit for a maximum of one year at a time if they cannot be removed from the country because they are under the threat of death penalty, torture, persecution or other treatment violating human dignity.

6.5 Cessation

Finland applies Article 1C of the 1951 Convention to both Convention refugee status and complementary protection. According to section 107 of the Aliens Act, a person's refugee status may be withdrawn if he or she meets one of the criteria set out in Article 1C. Subsidiary protection status may be withdrawn if circumstances which led to the granting of subsidiary protection have ceased or changed to such an extent that protection is no longer needed.

¹⁶ Residence permits issued in Finland are either fixed-term or permanent. Fixed-term permits are further broken down into two categories: temporary and continuous.

Every case is decided individually. Cessation occurs in cases of significant and durable changes in the country of origin, as well as changes in the particular circumstances on the basis of which the person was once granted refugee status.

When cessation of asylum is decided, the refugee or beneficiary of subsidiary protection may defend his or her case. The decision of the Finnish Immigration Service may be appealed to the Administrative Court of Helsinki and further to the Supreme Administrative Court, if leave is granted.

6.6 Revocation

According to the Aliens Act (section 108), refugee status and subsidiary protection status are cancelled if the applicant has, when applying for international protection, deliberately or knowingly given false information that has affected the outcome of the decision, or concealed a fact that would have affected the outcome of the decision.

A fixed-term or permanent residence permit may be cancelled if false information on the person's identity or other matters relevant to the decision was knowingly given when the permit was applied for, or if information that might have prevented the issue of the residence permit was concealed. A fixed-term residence permit may also be cancelled if the grounds on which the permit was issued no longer exist.

In addition, a fixed-term or permanent residence permit may be cancelled if the person has moved out of the country permanently or has continuously resided outside Finland for two years for permanent purposes.

There is no time limit for revocation to be applied.

6.7 Support and Tools for Decision-Makers

6.7.1. Country of Origin Information

The Country Information Service is a sub-unit of the Legal and Country Information Unit within the Finnish Immigration Service. The Country Information Service produces thematic reports and answers to individual country information requests, primarily for use by caseworkers but also by asylum policy-makers and appeal bodies. Caseworkers can access these reports and request responses directly on the country information electronic database, TELLUS.

The Country Information Service manages the up-to-date collection of the Migration Library, which is accessible to all Immigration Service staff. The Country Information Service is also involved in training decision-

Box 2: Developments in the Provision of COI in Finland

The Country of Origin Information (COI) unit has operated as a separate section of the Directorate of Immigration (and its successor, the Finnish Immigration Service) since 1998 and works independently of decision-making personnel. Since 1997, the number of staff working in the COI unit has doubled – the section now consists of 10 persons. This has allowed its researchers to develop a specialisation in specific countries of origin.

In addition to the growth of the COI unit in terms of staff, one of the other major developments in the provision of country information has been the creation of the electronic COI database known as TELLUS. TELLUS was introduced in 2001 and has since been upgraded regularly to conform to developments in information technology. The TELLUS database is available to all decision-makers at the Finnish Immigration Service as well as external agencies such as the appeal bodies and the Police.

While the responsibilities of the Country Information Service have changed little in the last decade, the methodology for gathering information has developed alongside the increasing use of electronic sources of information. The Country Information Service has also undertaken a small number of fact-finding missions in recent years and has experimented with other efficient types of information gathering, such as cooperation with the offices of the International Organization for Migration (IOM) in the field.

makers and new Finnish Immigration Service staff on the use of country of origin information (COI).

6.7.2. Other Support Tools

If there is a special need for a common policy on how to handle claims of certain refugee groups, the Legal Service within the Finnish Immigration Service can provide such guidance papers. These general recommendations (policy guidelines) are guidelines for decision-makers, but they need to be checked in every case to determine whether or not this general guidance is applicable in a particular case.

Training of decision-makers takes place on a variety of aspects of the work, including interview techniques, intercultural dialogue and legal training.

Decision-makers have access to an electronic database, Legis, where all key cases are stored. The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status is made available to every decision-maker while UNHCR's Refworld website of all asylum- and refugee-related documentation is also in general use.

Language analysis can be used if the local Police so decide.

7 Efficiency and Integrity Measures

7.1 Technological Tools

7.1.1. Fingerprinting

According to the Aliens Act, for the purposes of identification and registration, Police or border check authorities take fingerprints and a photograph and record other personal descriptions of a person who has applied for asylum.

7.1.2. DNA Tests

The Finnish Immigration Service may provide the person with an opportunity to undergo DNA analysis, if an asylum-seeker also applies for a residence permit on the basis of family ties and if no other adequate evidence of family ties is available. DNA testing is suggested only where there are no reliable documents to prove family ties. Usually, the applicant and the family member are first heard from either in writing or in person and orally. After the hearing, the Finnish Immigration Service decides whether or not DNA analysis is needed.

7.1.3. Forensic Testing of Documents

If a document is suspected to be false or forged, it can be sent to the Crime Laboratory of the National Bureau of Investigation (Police). The Police will undertake an analysis and provide a statement about the authenticity of the documents.

7.1.4. Database of Asylum Applications/Applicants

Personal distinguishing marks (such as fingerprints) taken by Police or border check authorities are registered in the Police identification register.

The Finnish Immigration Service maintains the Register of Aliens, which contains among other things data on persons who have applied for asylum. The Register of Aliens includes the following information:

- Identification data regarding the person
- Data regarding the application, declaration or inquiry
- Data collected while processing the application
- Decisions and grounds for the decisions
- Contact information for family members or sponsors.

The Register of Aliens contains six sub-registers, the main controllers of which are the Finnish Immigration Service and the Ministry for Foreign Affairs. The register is also maintained and used by the Police, the Frontier Guard, the Customs authority, the Employment and Economic Development Centres, the Employment Offices, the Prison Administration Authority and the Ombudsman for Minorities.

7.1.5. Others

Finland makes use of pre-entry technology such as systems to detect fraudulent documents and a fingerprint-check system, as well as registers to trace stolen documents.

The Finnish Border Guard and the Crime Laboratory of the National Bureau of Investigation (Police) have in place a large reference system on fraudulent documents.

7.2 Length of Procedures

There are no time limits for submitting an asylum application. In principle, an application must be made upon entry into the country or as soon after entry as possible. Section 95(2) of the Aliens Act lays down situations in which an application may be filed at a later date.

If the applicant is considered to come from a safe country of asylum or origin, a decision on the application must be made within seven days of the date when the minutes of the interview are completed and the information on their completion is entered in the Register of Aliens.

Otherwise, there are no time limits for processing asylum applications laid down in the Aliens Act¹⁷.

The average time for processing asylum claims in 2008 was 127 days (under the normal procedure, the average was 176 days while under the accelerated procedure, the average was 57 days).

As described above, the Finnish Immigration Service prioritises the examination of certain asylum applications (such as those from unaccompanied minors and other vulnerable persons) based on its internal instructions.

7.3 Pending Cases

As at 31 December 2008, there were 2,631 pending asylum cases at the Finnish Immigration Service.

7.4 Information Sharing

According to the Act on the Openness of Government Activities (621/1999), documents concerning a refugee or an asylum-seeker are treated as confidential unless it is obvious that access will not compromise the safety of the refugee, the applicant or a person closely involved with them. An authority may provide access to a secret official document if there is a specific provision on such access or on the right of such access, or if the person whose interests are protected by the secrecy provision consents to the access.

The Act on the Openness of Government Activities contains provisions on the right of access to official documents in the public domain, officials' duty of non-disclosure, document secrecy, and any other restrictions on access that are necessary for the protection of public or private interests, as well as on the duties of the authorities for the achievement of the objectives of this Act. The Act does not include provisions concerning information exchange on asylum-seekers. It sets the general framework for activities of the authorities.

Information can be shared in accordance with the Dublin Regulation.

UNHCR and legal counsellors are provided access to the file of an asylum-seeker provided that the applicant has given consent.

7.5 Single Procedure

Finland applies a single asylum procedure, which means that all grounds for a residence permit are examined at the same time. According to section 94 of the Finnish Aliens Act, granting the right of residence is also

¹⁷ For statistics on the length of procedures, please visit the website of the Finnish Immigration Service, www.migri.fi.

investigated and decided on other emerging grounds (complementary forms of protection or other residence permit) in conjunction with the asylum procedure.

Box 3:
Cooperation with UNHCR, NGOs

The UNHCR Regional Office for the Baltic-Nordic Region, located in Stockholm, Sweden, has no formal role in the asylum procedure. However, upon the request of a party in the procedure, UNHCR may provide updated country of origin information (COI), legal advice or UNHCR's recommendations and guidelines. In exceptional precedent-setting cases, the UNHCR may submit *amicus curiae* to the last instance body.

In line with Article 35 of the 1951 Convention, asylum-seekers have access to the UNHCR, which is entitled to request and obtain information on individual applications (based on the consent of the asylum-seeker) and to present its views on individual claims to the decision-making authorities.

having free legal aid. Asylum-seekers may also contact the Ombudsman for Minorities for advice on legal assistance.

An asylum-seeker's right to legal aid is laid down in the Legal Aid Act. Legal aid is provided by Legal Aid Offices as well as other law firms and attorneys that are listed with the reception centre as providers of legal aid services for asylum-seekers. A court may grant legal aid to asylum-seekers without requiring a statement on their financial situation. The legal aid is paid out of State funds.

Applicants can use the services of a legal counsel throughout the process, but there is no obligation, according to Finnish laws, to provide a legal counsel. According to the Legal Aid Act, applicants are eligible for free legal aid only at the appeal stage. According to the Act, legal aid may be given if the person has a matter to be heard by a Finnish court of law.

8.1.2. Interpreters

The Aliens Act stipulates that interpretation or translation may be provided if the foreign national does not understand the Finnish or Swedish language or if he or she, because of his or her disability or illness, cannot be understood. Interpretation is provided at all stages of the asylum procedure. The person concerned has the right to be notified of a decision concerning him or her in his or her mother tongue or in a language which, on reasonable grounds, he or she can be expected to understand. A decision is given through interpretation or translation.

8.1.3. UNHCR

The UNHCR Regional Office in Stockholm responds to inquiries from asylum-seekers and provides general information about the asylum procedure and the contact details of legal counselors and relevant national institutions.

8.1.4. NGOs

The main non-governmental organisation offering legal aid and advice to asylum-seekers in Finland is the Finnish Refugee Advice Centre. Lawyers of the Refugee Advice Centre are available to provide legal advice and assistance to asylum-seekers at different stages of the asylum procedure. They also offer information to asylum-seekers on the asylum procedure and the rights of asylum-seekers in Finland. They often assist the asylum-seekers at asylum interviews and represent the applicants at the appeal stage. Similar to the UNHCR, they are allowed to have access to asylum-seekers, to have information on the individual applications (based

7.6 Other measures

The Ministry of the Interior set up a review project for the period 1 November 2007 to 30 April 2008 to develop the operations of the Finnish Immigration Administration and the Finnish Immigration Service. The main focus of the review was developing the service, quality of operations and structure of the Finnish Immigration Service. Among the proposals of the report was giving the competence and responsibility for the practical steering of reception centres to the Finnish Immigration Service. A government proposal on the subject will be given to Parliament before the summer of 2009.

8 Assistance and Reception Benefits for Asylum-Seekers

8.1 Procedural Support and Safeguards

8.1.1. Legal Assistance

Asylum-seekers are allowed to use legal counsel at the asylum interview and in the appeal process. However, there is no obligation in the national legislation to provide legal counsel. In practice, authorities provide asylum-seekers with assistance in contacting a legal counsel. The reception centres inform asylum-seekers regarding the possibility of using legal counsel and

on the consent of the asylum-seeker) and to present their views on individual applications¹⁸.

8.2 Reception Benefits

The following benefits apply during the asylum application procedure, until the time of departure, as the case may be.

8.2.1. Accommodation

An asylum-seeker may reside either in a reception centre with basic facilities or in private accommodation. Private accommodation may be arranged by the asylum-seeker at his or her own cost. All reception centres are funded by the government. There are two reception centres that are run by the Finnish Red Cross. An additional 12 reception centres are run by the municipalities.

Some of the reception centres are transit centres, from which, following the asylum interview, the asylum-seeker is transferred to another reception centre where he or she resides until a final decision is made on the asylum application.

Unaccompanied minor asylum-seekers are always initially placed in group homes established in connection with the reception centres. The group homes are located throughout Finland, each accommodating between eight and 24 children. The group homes are responsible for the accommodation, daily care and upbringing of the children they house.

8.2.2. Social Assistance

According to section 19 of the Finnish Constitution, persons who cannot obtain the means necessary for a life of dignity have the right to receive financial assistance and care.

An asylum-seeker is entitled to income support, if he or she does not have any other income or financial means. For adults, the amount of income support is 10% less and for minors 15% less than the basic amount ordained in the Law on Income Support (1412/1997). The reason for the mentioned reductions is that adult asylum-seekers are regarded as receiving from the reception centre services worth approximately 10% and minors approximately 15% of the basic amount of the income support.

8.2.3. Health Care

According to the National Health Act (66/1972), an asylum-seeker is entitled to fundamental health care, that is, emergency health care. However, health care services offered to minors (who have arrived either with their families or unaccompanied) are broader than those offered to adults.

Upon arrival at the reception centre, all asylum-seekers may take voluntary medical tests (such as for tuberculosis, HIV, hepatitis and cardiopipin). If there are reasons to believe a person may carry tuberculosis, a medical test is mandatory.

The reception centres buy the fundamental health care services from the public or private health care sector. A great majority of the reception centres are staffed by a nurse who may refer asylum-seekers for medical care. Medicines ordered by a doctor are compensated for with the income support. Asylum-seekers with paid employment may be required to pay for health services.

8.2.4. Education

According to the Finnish Constitution (section 16), everyone has the right to basic education free of charge. However, municipalities are not responsible by law for providing education, although in practice, they do.

Children below the Age of 17

As do all children in Finland, minor asylum-seekers between seven and 17 years old receive basic compulsory education, which is given in primary schools.

Minor asylum-seekers attend special classes for immigrant children. There is a teaching period of 500 hours, during which children are taught mainly the Finnish language. At this stage, children can be integrated into classes of their own age in certain subjects such as music, drawing, sports, etc. Children can also be taught their native language for two hours per week if there are at least four pupils in the same group.

Also as is the case for all children in Finland, once a minor asylum-seeker has completed compulsory basic education, he or she may have access to secondary school.

Persons over the Age of 17

Asylum-seekers who are over 17 years old can study in special classes for adults, at secondary schools for adults, at evening classes, at folk high schools, or in classes organised by the reception centre. Study

¹⁸ The Finnish Immigration Service may hear the views of UNHCR and of legal counsel of the Finnish Refugee Advice Centre on individual asylum applications and may choose to take these views into consideration when examining the merits of the claim.

activities may include courses in Finnish or Swedish, familiarisation with Finnish society and customs, as well as basic computer skills. The studies of asylum-seekers may form part of an Activity Programme. By signing the Activity Programme, asylum-seekers commit themselves to their studies. However, there is no obligation for asylum-seekers over the age of 17 to study. Studies can be replaced by work activities assigned in the Activity Programme.

8.2.5. Access to Labour Market

An asylum-seeker may start work in Finland without a residence permit three months after submitting an asylum application. This right to work is granted to asylum-seekers by law and is not subject to a separate application. Asylum-seekers are entitled to work until a final decision on the application has been made.

8.2.6. Family Reunification

Family reunification is not possible during the asylum procedure. However, an applicant who is not in need of international protection can be granted a residence permit on the basis of his or her family ties to Finland. As explained above, these grounds are also investigated and decided in conjunction with the asylum procedure.

8.2.7. Access to Integration Programmes

Access to integration programmes is not possible during the asylum procedure. However, the asylum-seeker may study (as noted above) and/or may start working three months after submitting the asylum application. Instead of studies and/or work, the asylum-seeker may participate in, for example, cleaning, renovation, repair, or yard work at the reception centre and this work activity can be included in the Activity Programme.

It is mandatory for asylum-seekers to participate in some kind of activity if an asylum-seeker is not ill or if there is no other compelling reason not to participate. The income support can be temporarily lowered by 20% if the asylum-seeker refuses to participate without any acceptable reason.

8.2.8. Access to Benefits by Rejected Asylum-Seekers

Rejected asylum-seekers are provided with a daily allowance, accommodation and basic health care until their return or removal.

9 Status and Permits Granted outside the Asylum Procedure

Finland applies a single asylum procedure. This means that all grounds for granting the right of residence are investigated in conjunction with the asylum procedure.

Nevertheless, there are other types of status that may be granted outside the asylum procedure, such as temporary protection (Aliens Act, section 109) or other humanitarian immigration (Aliens Act, section 93).

9.1 Humanitarian Grounds

Outside the asylum procedure, there is a system for admitting foreign nationals into Finland on special humanitarian grounds or to fulfil international obligations. There is no application procedure. The decision-making process begins with the Ministry of the Interior and the Ministry for Foreign Affairs preparing a joint proposal for a government decision on whether to grant a permit on these grounds. The final decision is made by the government in plenary sessions, and the residence permit, if granted, is issued by the Finnish Immigration Service. Witnesses who have appeared at international criminal tribunals have been granted residence permits on special humanitarian grounds.

9.2 Temporary Protection

As noted above, providing temporary protection on the basis of the EU Temporary Protection Directive requires that the need for protection be considered to be of short duration. The Government decides in a plenary session on population groups that may be given temporary protection and on the period during which residence permits may be issued on the basis of temporary protection.

Persons found to be in need of temporary protection are issued a residence permit for a maximum of one year at a time.

9.3 Regularisation of Status of Stateless Persons

There are no special procedures in place to regularise the status of stateless persons in Finland.

10 Return

10.1 Pre-departure Considerations

An asylum-seeker who has received a negative decision on a claim before the Finnish Immigration Service has a right of appeal and may file a petition with the Helsinki Administrative Court for the suspension of the enforcement of a decision on refusal of entry. The principle of *non-refoulement* is always taken into account in the enforcement of decisions.

10.2 Procedure

The Police and the Border Guard are responsible for the enforcement of the decisions on refusal of entry or removal. The responsibility for coordination of the decisions on refusal of entry enforced by the Police has been given to the Immigration Police of Helsinki.

10.3 Freedom of Movement/ Detention

The same provisions regarding freedom of movement and detention apply to asylum-seekers and rejected asylum-seekers, as described in the section on Asylum Procedures above.

10.4 Readmission Agreements

Finland has not concluded readmission agreements for any specific groups of rejected asylum-seekers. Finland has bilateral readmission agreements with Estonia, Lithuania, Latvia, Bulgaria and Romania. Finland has negotiated an agreement with Switzerland. It will come into force in 2010.

11 Integration

Right to an Integration Plan

Immigrants residing in Finland are entitled to an integration plan in accordance with provisions in the Act on Social Assistance. The right to an integration plan applies to all immigrants who have a residence permit and who register as unemployed jobseekers or apply for social assistance. This applies to persons who have acquired status within the asylum procedure regardless of whether they have Convention refugee status or a form of complementary protection status or are resettled refugees.

An integration plan is drawn up in cooperation with the local authority and the employment and economic development centre. The duration and amendment of a

plan and extension of a suspended plan are subject to agreement among the local authority, the employment office and the immigrant.

Integration Plan

An integration plan sets out the specific activities that may be undertaken to support the immigrant and the immigrant's family in acquiring the essential knowledge and skills needed in society and working life.

The integration plan may be an agreement on providing support in a variety of areas, such as language classes (Finnish or Swedish), employment-related training, education, vocational counselling and rehabilitation, the integration of children and young people, and any other activity that is considered important for integration purposes.

Immigrants may also receive integration support intended to promote and improve their ability to find employment or further training and to improve their ability to function in Finnish society by securing their means of support while the integration plan is being implemented. Provisions for integration support are laid out in the Act on the Integration of Immigrants and Reception of Asylum-seekers.

12 Annexe

12.1 Processing Costs

The figures listed below are indicative of costs incurred by the state for the decision-making process of the Finnish Immigration Service and Police duties related to the asylum procedure. Several factors affect these costs, e.g. the number of asylum-seekers per year and the total duration of the asylum procedure, and it is difficult to anticipate and list these costs due to the nature of the asylum-seeking process.

The Finnish Immigration Service

According to the Finnish Immigration Service, the costs of decision-making on an asylum application during the period from January to August 2008 were the following:

Decision on an asylum application (the cost includes the working costs and a part of the general costs regarding an asylum investigation and the qualitative assessment on an asylum claim)	1,490 €
Decision on refusal of entry	1,516 €
Primary costs on an average per capita basis:	
Interpretation costs of an asylum interview	263 €
Translation of documents	42 €
Costs per asylum-seeker:	
Asylum-seeker, positive decision on an asylum application	1,795 €
Asylum-seeker, negative decision on an application for international protection and a residence permit based on other grounds	2,656 €
Asylum-seeker, negative decision and decision on refusal of entry	3,311 €
Readmission cases based on the Dublin II Regulation	328 €

The Police

The costs incurred by the Police during the different phases of the asylum procedure relate to the asylum investigation, the removal from the country, and the guarding and transporting of persons in detention. Besides working costs, the asylum procedure involves interpretation costs and costs related to concrete measures to remove a person from the country. The estimation of costs is based on the costs of the required person years of the Police in relation to the above-mentioned tasks.

A rough estimation of the costs incurred by the police for the tasks related to the asylum procedure is the following:

Working costs (in 2006 for 2,324 asylum-seekers) (costs include establishing the entry into the country, the travel route and the identity of the asylum-seeker, tasks related to the enforcement of removal from the country, and the guarding and transporting of persons in detention)	645 €/asylum-seeker
Interpretation costs on average (in 2007 for 1,505 asylum-seekers)	194 €/asylum-seeker
Costs of escort on average (in 2007 for 1,505 asylum-seekers) (costs include, <i>inter alia</i> , the flight ticket costs of the person to be removed from the country and his or her escorts)	1,143 €/asylum-seeker

The costs incurred by the Police have been divided by the total number of asylum-seekers. The cost per asylum-seeker depends, *inter alia*, on whether the decision is positive or negative. The costs do not include costs incurred during the decision-making process for residence permits.

12.2 Additional Statistical Information

Figure 5:

Asylum Applications from Top Five Countries of Origin for Finland in 1997, 2002 and 2008

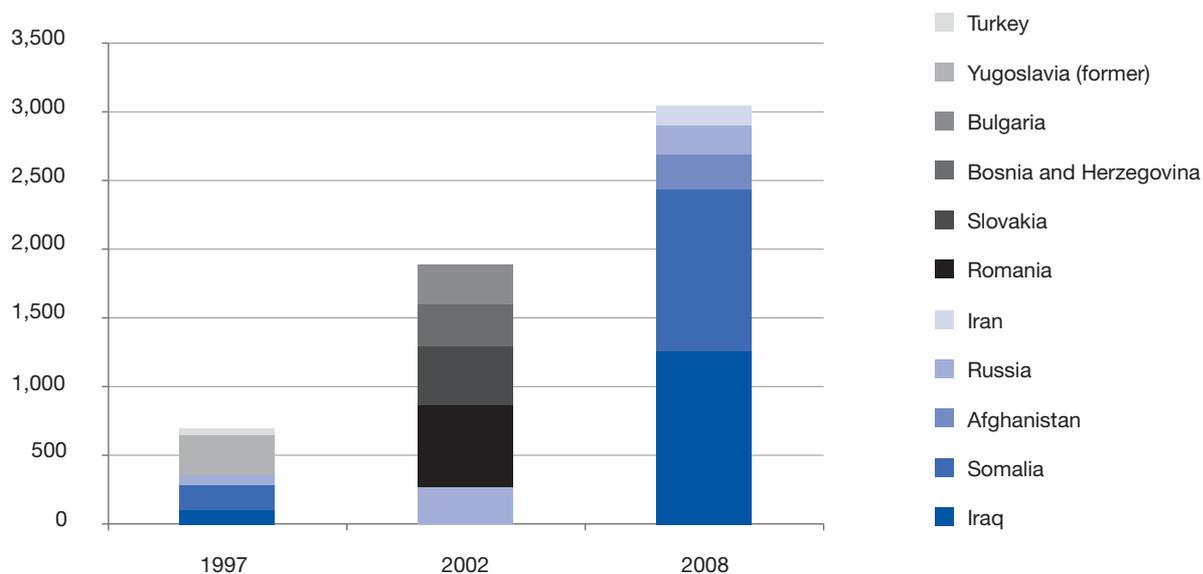


Figure 6:

Decisions Made at First and Second Instances, 1992-2008

Year	Geneva Convention Status		Complementary Protection and Other Authorisations to Remain		Rejections		Other Decisions*		Total Decisions
	Count	% of total	Count	% of total	Count	% of total	Count	% of total	
1992	12	1%	467	20%	1,344	57%	529	22%	2,352
1993	9	0%	2,043	46%	1,435	32%	991	22%	4,478
1994	15	1%	277	25%	491	45%	319	29%	1,102
1995	4	1%	199	30%	269	40%	202	30%	674
1996	11	1%	321	43%	248	33%	164	22%	744
1997	4	1%	247	33%	278	37%	213	29%	742
1998	7	1%	356	41%	240	28%	263	30%	866
1999	29	1%	467	17%	114	4%	2,115	78%	2,725
2000	9	0%	458	13%	2,121	58%	1,049	29%	3,637
2001	4	0%	809	37%	1,045	48%	307	14%	2,165
2002	14	0%	581	17%	2,315	69%	431	13%	3,341
2003	7	0%	487	15%	2,443	74%	383	12%	3,320
2004	29	1%	771	16%	3,418	72%	546	11%	4,764
2005	12	0%	585	17%	2,472	72%	370	11%	3,439
2006	28	1%	460	21%	1,434	66%	264	12%	2,186
2007	68	3%	792	40%	961	49%	135	7%	1,956
2008	89	4%	696	35%	1,011	51%	199	10%	1,995

*Other decisions may include withdrawn claims, abandoned claims or claims otherwise resolved.

France



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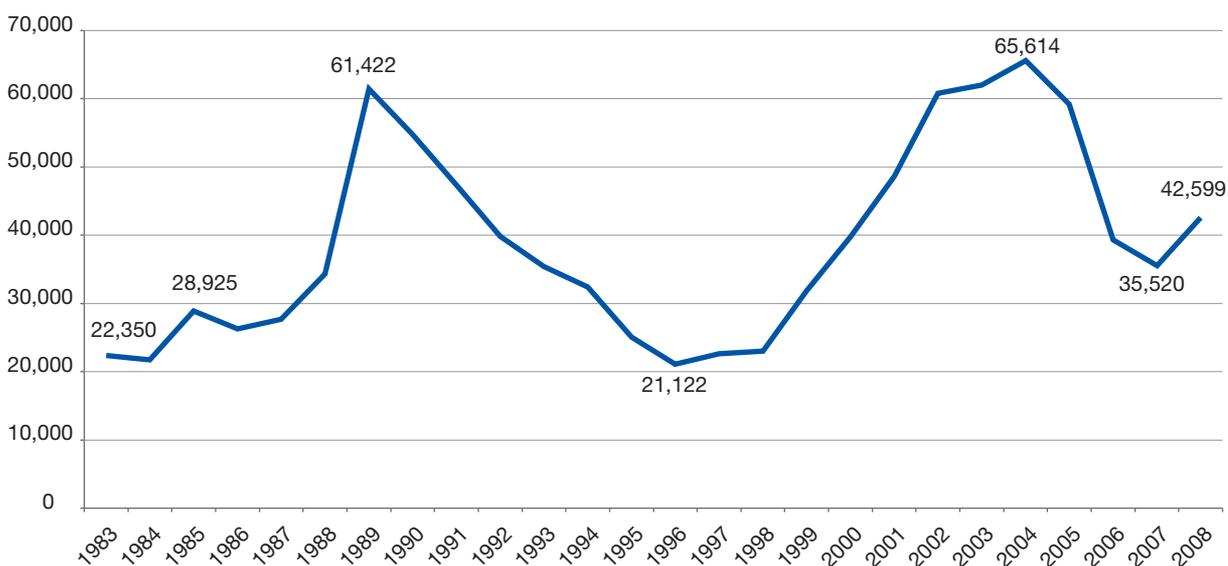
1 Background: Major Asylum Trends and Developments

Asylum Applications

In the early 1980's, France was receiving approximately 20,000 asylum applications per year (minors excluded). The numbers started to increase in the mid 1980's, however, reaching a peak of 61,000 in 1989. Annual applications decreased considerably from 1990 to 1996, when numbers reached a low of 21,122. In 1999 numbers began to increase again and peaked in 2003 and 2004 at over 60,000 annual applications. Applications are currently being made in slightly fewer numbers, with 42,500 applications received in 2008. This number, however, represents an increase from 2007.

Figure 1:

Evolution of Asylum Applications* in France, 1983-2008



* First applications only

Top Nationalities

In 2008, the top countries of origin of asylum-seekers were Russia, Mali and Sri Lanka. Significant numbers of applications are also received from the Democratic Republic of Congo and Turkey, which have been among the top ten countries of origin since the mid-1990's, as well as from Serbia.

Figure 2:

Top Five Countries of Origin in 2008*

1	Russia	3,818
2	Mali	3,354
3	Sri Lanka	3,308
4	Turkey	2,945
5	DR Congo	2,920

* First applications only

Important Reforms

Act 98-349 of 11 May 1998 concerning entry and residence as well as asylum in France created a form of alternative protection called territorial asylum (*asile territorial*) for those persons deemed to be not eligible for refugee status but who could not be removed to their country of origin due to a risk of treatment prohibited by Article 3 of the European Convention on Human Rights (ECHR). Territorial asylum claims were processed by the prefectures and decisions were made by the Ministry of Interior, after consultation with the Ministry of Foreign Affairs.

Under the Asylum Act 2003-1176 of 10 December 2003, territorial asylum was replaced by subsidiary protection

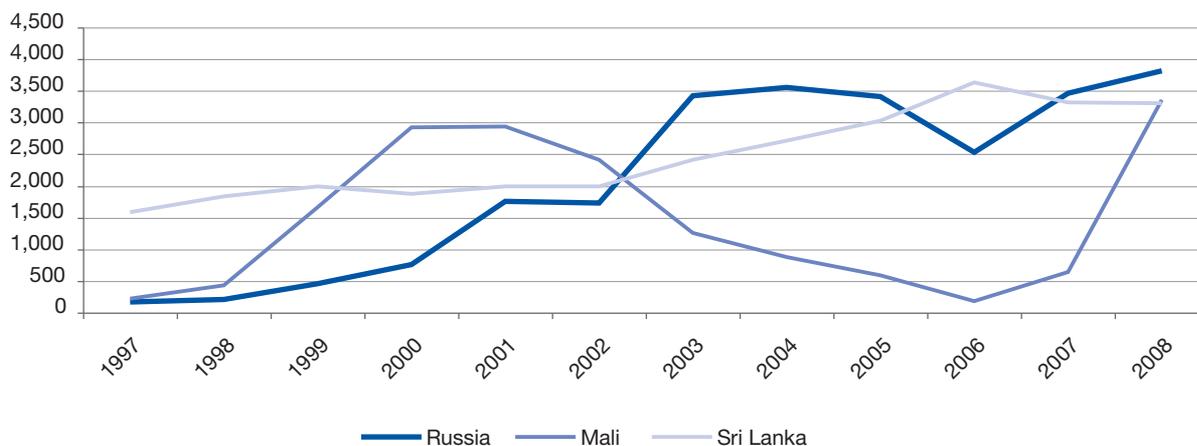
within the meaning of Council Directive 2004/83/EC of 29 April 2004¹, which was subsequently adopted. Subsidiary protection, implemented by the Office for the Protection of Refugees and Stateless Persons (Office français pour la protection des réfugiés et apatrides, OFPRA) in a single procedure, incorporated such new concepts included in the Qualification Directive as internal flight alternative and safe countries of origin as well as the concept of non-State agent persecution within the scope of asylum. The introduction of these new concepts reversed the well-established jurisprudence of the competent Courts (the Refugee Appeal Commission – Commission de recours des réfugiés - and Council of State - Conseil d'Etat) that had been in effect since 1952 (see below).

Since the French legal system is a monist³ one, international treaties and conventions such as the 1951 Convention relating to the Status of Refugees (1951 Convention) and its 1967 Protocol, as well as other relevant international instruments (e.g., the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and the International Covenant on Civil and Political Rights (ICCPR)) are directly applicable.

All Council Directives have been transposed into national legislation. The asylum-related directives were incorporated into national legislation mainly through the Asylum Act of 10 December 2003, the remaining provisions having been transposed under other pieces of legislation and by-laws.

Figure 3:

Evolution of Applications* from Top Three Countries of Origin for 2008



* First applications only

2 National Legal Framework

2.1 Legal Basis for Granting Protection

The procedure for examining asylum claims and the granting of asylum are laid down in the Code on Entry and Stay of Foreign Nationals and the Right to Asylum of 24 November 2004 (Code de l'entrée et du séjour des étrangers et du droit d'asile, CESEDA) modified by Law 2007-1631 of 20 November 2007.²

1 Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (Qualification Directive).

2 The text of the CESEDA (consolidated version dated 1 February 2009) is available in French on the government legislation website: <http://www.legifrance.gouv.fr/>.

2.2 Recent Reforms

The Law of 20 November 2007 (Loi Hortefeux) regulating immigration, residence and naturalisation introduced the following reforms to the asylum procedure:

- A new appeal procedure, with suspensive effect, for negative decisions on asylum claims made on entry at the border
- A transfer of institutional responsibility for the OFPRA, the agency in charge of examining asylum claims, from the Ministry of Foreign Affairs to the new Ministry of Immigration, Integration, National Identity and Development

3 In other words, by ratifying an international legal instrument, France immediately incorporates this document into national law. International law can thus be directly applied by the national courts and citizens may invoke international law just as they may invoke national law.

- At the appeal level, the Refugee Appeal Commission (Commission de Recours des Réfugiés) was renamed the National Court of Asylum Law (Cour Nationale du Droit d'Asile, CNDA). The time limit for asylum-seekers who have received a negative decision on their claim to make an appeal before the CNDA remained unchanged at one month.

Under the Asylum Act of 10 December 2003, persons claiming persecution or a serious threat from non-state agents could be granted refugee status or subsidiary protection (Article L.713-2 of CESEDA), while the concepts of internal flight alternative and safe countries of origin were introduced into French legislation.

3 Institutional Framework

3.1 Principal Institutions

The Ministry of Immigration, Integration, National Identity and Development (Ministère de l'immigration, de l'intégration, de l'identité nationale et du développement solidaire) has overall responsibility for immigration policy and the integration of migrants.

The French Office for the Protection of Refugees and Stateless Persons (Office Français de Protection des Réfugiés et Apatrides, OFPRA) is the competent authority for the examination of asylum claims and the granting of refugee status and subsidiary protection at the first instance.

The National Court of Asylum (Cour Nationale du Droit d'Asile, CNDA) hears appeals of decisions made by the OFPRA.

The National Agency for the Reception of Foreign Nationals and Migration (Agence Nationale de l'Accueil des Etrangers et des Migrations, ANAEM) has, among other tasks, the responsibility for coordinating the reception of asylum-seekers, implementing returns, and providing reintegration assistance to those returning voluntarily to their country of origin.

The *préfecture*⁴ is responsible, *inter alia*, for registering asylum applications and making a decision on whether an asylum-seeker may obtain a provisional stay authorisation, in order to pursue his or her claim before the OFPRA.

The Police and the Gendarmerie, both under the joint authority of the Ministries of Interior and of Immigration

are in charge of detention centres and of escorting detainees to their interview at the OFPRA.

3.2 Cooperation between Government Authorities

Given the above-mentioned distribution of tasks, the responsibility for dealing with an asylum-seeker moves back and forth between the prefecture and the OFPRA depending on the status of the procedure. The OFPRA informs the *préfecture* of any decision made. The OFPRA also informs the ANAEM of its decisions, for the purpose of managing reception, and informs the service in charge of paying unemployment and other social benefits (Association pour l'emploi dans l'industrie et le commerce, ASSEDIC) for the purpose of managing the payment of the Temporary Allowance (*allocation temporaire d'attente, ATA*) granted to asylum-seekers who have not yet obtained accommodation at a reception centre.

4 Pre-entry Measures

4.1 Visa Requirements

To enter France, foreign nationals must be in possession of the necessary travel and identity documents and visas, where applicable, as set out in international conventions and relevant regulations. Foreign nationals must also provide a proof of accommodation and proof of medical insurance for the duration of their stay.

4.2 Carrier Sanctions

Carriers are liable to a maximum fine of 5,000€ if they are found to have brought onto French territory an undocumented non-European Union (EU) national. This sanction is applicable in cases where France is the final destination as well as in instances of transit through the national territory.

Sanctions do not apply in the following cases:

- The foreign national has been admitted into the territory in order to make an asylum claim that is not deemed to be manifestly unfounded
- The carrier is able to establish that the required travel documents were presented at the time of embarkation and that these did not appear to be fraudulent.

4.3 Interception

The Border Police (Police aux Frontières, PAF) are responsible for undertaking checks on travellers at ports of entry.

⁴ Regions in metropolitan France are subdivided into 96 administrative departments (*départements*). The national government is represented at the local level by a prefect (*préfet*) and its administration (*préfecture*).

4.4 Immigration Liaison Officers

France has immigration liaison officers posted in a number of countries. These officers provide technical support to local border authorities, through such activities as document checks on passengers bound for France at an international airport abroad.

5 Asylum Procedures

5.1 Application Possibilities and Requirements, Procedures and Legal Remedies

Foreign nationals arriving in France at airports, seaports or international train terminals may indicate their wish to enter the country in order to apply for asylum at border control posts. Once a person has been allowed to enter the territory, an asylum application may be made at a local administrative office (*préfecture*).

5.1.1. Outside the Country

Applications at Diplomatic Missions

There is an informal possibility to make a claim for asylum at French diplomatic missions in countries of origin or third countries. As at this writing, no provision in French law governs this procedure, which means that asylum applications at diplomatic missions are dealt with on an exceptional basis.

When a claim is made, the applicant may be asked to provide further information, either by appearing for an interview with a French diplomatic official or by mailing the information to the mission. The diplomatic mission will then decide whether or not to allow the application to proceed or to refer it to the United Nations High Commissioner for Refugees (UNHCR) or the local authorities. If the application proceeds further, the diplomatic mission may forward the claim to the Ministry of Foreign Affairs in France. The mission may also decide to issue the applicant a visa so that the person is able to enter France and proceed with his or her asylum claim.

If the diplomatic mission decides to forward the claim to the Ministry of Foreign Affairs (MFA), the latter will do an initial assessment of the claim and ask for the opinion of the OFPRA in order to determine whether the claim meets general criteria for refugee status. If the assessment is positive, the diplomatic mission may be asked to issue the person an entry visa. The applicant may then make a formal application for asylum once in France and, from that point, enters the normal asylum procedure for in-country applications.

If the decision is negative, an appeal may be made with the Visa Appeal Commission. The appeal must be submitted within two months of notification of the negative decision. In addition to making an appeal with the Commission, the applicant may also approach the head of the diplomatic mission with a request for reconsidering the decision, or address the Minister of Foreign Affairs in writing with a request to change the decision.

Resettlement/Quota Refugees

France recently put in place a resettlement policy. It made a commitment to resettling vulnerable Iraqi refugees from countries of first asylum in the region of origin and signed on 4 February 2008 a framework agreement with the UNHCR whereby the UNHCR will submit to the government dossiers of refugees from all parts of the world.

5.1.2. At Ports of Entry

A foreign national arriving in France by air, sea or train may indicate to customs or police officials at border control his or her wish to enter the territory in order to apply for asylum. The officials will make a decision to either allow or deny entry. If entry is refused, the OFPRA officials will interview the foreign national and provide their opinion to the Ministry of Immigration. If permission to enter is granted by the Ministry, the person will be granted entry in order to make his or her asylum claim.

A negative decision on entry may be made only when the claim is regarded as “manifestly unfounded.”

An application is deemed to be manifestly unfounded when its motives fall outside the scope of asylum (e.g., issues of poverty, debts, etc.), when the story provided by the applicant is inconsistent or contradictory or cannot be reconciled with established facts, or when there are obvious elements of bad faith regarding identity, nationality or forged documents.

The foreign national may make a request before the administrative tribunal to annul a negative decision on entry within 48 hours of the decision. The tribunal is required to make its decision within 72 hours of the request. If the negative decision is annulled, the person is granted an entry pass valid for eight days, during which he or she may appear at a *préfecture* to make an application for asylum.

Freedom of Movement

If border officials do not make an immediate decision to allow entry, the foreign national may be placed in a “waiting area” (*zone d’attente*) according to a decision of the head of border control at the port of entry. The person remains in this waiting area until a decision is

made on entry. Waiting areas are distinct from detention zones and are located in the vicinity of disembarkation points at airports and border posts.

A person may remain in the waiting area for a maximum of four days under the administrative decision mentioned above. If the stay in the waiting area exceeds four days, the judge for liberties and detention must be informed of the matter in order to determine whether the stay should be prolonged for a maximum of eight days or stopped. After the eight-day period has ended, the stay may be extended only once more. Persons kept in the waiting area are free to depart at any time for any country outside of France to which they are admissible.

Box 1:
Asylum Case Law: Appeals at the Border

The European Court of Human Rights ruling in the case of *Gebremedhin* (26 April 2007), in relation to appeals at the border made by persons wishing to claim asylum, led to a new system of appeal being introduced under the Act of 20 November 2007, on Immigration Control, Integration and Asylum. Appeals of negative decisions on entry at the border now have suspensive effect. Asylum-seekers may appeal a negative decision before the administrative tribunal within 48 hours. The tribunal must then rule on the appeal within 72 hours.

5.1.3. Inside the Territory

Responsibility for Processing the Claim

The Dublin System

Application and Procedure

A stay authorisation may be denied if it is found that, under Council Regulation (EC) No 343/2003,⁵ another European Union Member State is responsible for examining the asylum claim. The *préfecture* is responsible for determining responsibility under the Regulation when registering the application and before issuing OFPRA's application form to the applicant.

The asylum-seeker may indicate if a member of his or her family is a refugee or has applied for asylum in one of the EU Member States. He or she may join his or her family member in that country under the conditions laid down in the Dublin II Regulation. The *préfecture*

will then approach the country to ask whether it will take responsibility for his or her case. The *préfecture* will issue the asylum-seeker a document valid for the duration of stay (*convocation*) while awaiting transfer.

Freedom of Movement/Detention

An asylum-seeker is not detained for the mere fact of being subject to a transfer to another State under the Dublin II Regulation.

Conduct of Transfers

Applicants may either travel voluntarily to the Member State responsible or be transferred under escort.

Suspension of Dublin Transfers

The prefect (*préfet*) may decide to suspend the transfer of an asylum-seeker to another State or to cancel the decision to transfer the person on medical or other humanitarian grounds.

Review/Appeal

A decision to make a transfer under the Dublin II Regulation may be appealed to the administrative tribunal. The appeal does not have suspensive effect.

Application and Admissibility

Provisional Stay Authorisation

Once entry onto the territory has been granted or if the foreigner entered without proper authorisation, the foreign national may apply for asylum at the *préfecture*. Upon registering the application, the *préfecture* must decide within 15 days whether or not a provisional stay authorisation (*autorisation provisoire de séjour*, APS) may be granted to the person. If the office grants provisional stay, the person is entitled to proceed to the OFPRA for the asylum procedure.

An APS, if granted, is valid for one month and entitles the person to pursue an asylum claim before the OFPRA. The *préfecture* will also provide the person with an asylum application form, which he or she must complete and submit to the OFPRA within 21 days.

The *préfecture* may decide to refuse to grant an APS in the following cases:

- The asylum claim is found to be the responsibility of another State under the Dublin system (see above)
- The person holds citizenship of a country with regard to which the OFPRA, in consultation with

⁵ Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (Dublin II Regulation).

UNHCR, has declared the applicability of Article 1C(5) of the 1951 Convention, following a lasting change in circumstances

- The person is from a safe country of origin as set out in the list of the Management Board of the OFPRA
- The person is considered to be a danger to the public or a threat to national security
- The claim is fraudulent or was made in order to delay or thwart measures to remove the person from France, or was made in an overseas territory while a claim is also pending in another EU Member State.

In each of these cases, except where the Dublin II Regulation is applicable, the asylum claim may be routed to the “priority procedure”, which is described below.

Accelerated Procedures: The Priority Procedure

An asylum claim may be routed to an accelerated procedure called the priority procedure if the *préfecture* refuses the application for a provisional stay authorisation and the claim is not subject to the Dublin procedure. A higher priority is given to processing applications from asylum-seekers detained in administrative holding centres. Unlike claims under the normal procedure, the *préfecture* is responsible for forwarding to the OFPRA the application forms for priority procedure claims and other documents that the applicants have deposited in a sealed envelope.

Under the priority procedure, the OFPRA is responsible for making a determination on the claim within 15 days. However, the OFPRA has 96 hours to make a decision on claims in which the asylum-seeker is being held in a closed centre (*centre de rétention*). The asylum-seeker cannot be removed from France until the OFPRA has made its decision. In the case of complex asylum claims, the OFPRA may exceed the timeframe stipulated under law in coming to a decision. Applicants under the priority procedure are interviewed, except under certain circumstances which are described below (see the section on Normal Procedure).

The conditions for making an appeal following a negative decision by the OFPRA under the priority procedure are the same as those for appeals of decisions made under the normal procedure, as described below. However, under the priority procedure, appeals to the CNDA have no suspensive effect.

Normal Procedure

If a foreign national is granted a provisional stay authorisation, he or she may obtain an asylum

application form from the *préfecture*. The application form must be completed and returned to the OFPRA within 21 days, along with all relevant identity and travel documents. The OFPRA will provide the asylum-seeker an official receipt (*lettre d’enregistrement*) as proof that an asylum application has been made. This receipt enables the holder to exchange his or her APS for a so-called receipt of an application for a residence permit (*récépissé de demande de carte de séjour*) valid for three months and renewable until a final decision on the claim has been made by the OFPRA or the CNDA.

The OFPRA will interview the asylum-seeker except under the following circumstances:

- The claim will result in the granting of status
- The asylum-seeker hails from a country to which Article 1C(5) of the 1951 Convention applies
- The medical or health condition of the asylum-seeker prevents the asylum-seeker from appearing at the interview
- The claim is manifestly unfounded.

The OFPRA will then examine the claim first in relation to the criteria for Convention refugee status and, if the criteria are not met, in relation to subsidiary protection.⁶

Review/Appeal of Asylum Decisions

Appeal

Appeals of negative decisions by the OFPRA may be made before the National Court of Asylum Law (CNDA) within 30 days of receipt of the decision. All appeals must be made in writing, in French, and sent by registered mail.

Upon receipt of the appeal, the CNDA informs the OFPRA, which has 15 days to send its own files on the claim to the CNDA. The asylum-seeker appears at a hearing to present his or her case orally. The CNDA will provide an interpreter if necessary, and the asylum-seeker may be assisted by a lawyer. Hearings are generally open to the public, unless the presiding judge decides otherwise.

Except for appeals of decisions made under the priority procedure, appeals before the CNDA have suspensive effect.

If the decision of the OFPRA is annulled, the CNDA may grant either refugee status or subsidiary protection to the asylum-seeker. The asylum-seeker is granted an official receipt for a request for a renewable residence permit initially valid for three months. The permit entitles

⁶ The decision-making process is described later in the chapter.

the person to the same benefits to which other refugees or beneficiaries of subsidiary protection are entitled.

If the CNDA rejects the appeal, a refusal of stay will generally be issued by the *préfecture*, along with a request to leave the country within one month of the decision.

Final Appeal

A rejected asylum-seeker may make a final appeal on points of law (*pourvoi en cassation*) before the Council of State within two months of the CNDA decision. The final appeal does not have suspensive effect, unless the *préfecture* decides otherwise.

Freedom of Movement during the Asylum Procedure

Detention

Asylum-seekers are not detained during the normal procedure. All detained asylum-seekers' applications are channelled into the priority procedure.

Reporting

Asylum-seekers have an obligation to apply within the same department (*département*) in which they reside. Any changes of address must be reported to the local administration.

Repeat/Subsequent Applications

Re-examination

Persons whose asylum claims have been rejected in a final decision may submit a request for a review by the OFPRA and eventually the CNDA. To be eligible for a re-examination, asylum-seekers must present new facts that have emerged since the final negative decision was given.

To begin a re-examination process, asylum-seekers must make a request to the *préfecture* for a provisional stay authorisation. Once this authorisation is obtained, they may then make their request for a re-examination at OFPRA within eight days.

A negative decision on the re-examination request may be appealed before the CNDA within 30 days of the decision.

Box 2:

Asylum Case Law: Re-examinations

In a decision dated 28 April 2000 (CE, 192701, *M.T.*¹), the Council of State ruled that when a repeat application contains admissible and relevant new elements, the application, including previously examined events and allegations, must be re-examined.

¹ All decisions made by the CNDA and the Council of State mentioned in this chapter are available on the CNDA website, <http://www.commission-refugies.fr>.

5.2 Safe Country Concepts

The concepts of first country of asylum and safe third country are not applicable in the French system, as they are not compatible with paragraph 4 of the Preamble to the 1946 French Constitution. The preamble states that, "any man persecuted because of his action in favour of liberty has the right to enjoy asylum on the territories of the Republic."

The only exceptions to this rule are the Dublin II Regulation and Dublin-like agreements as provided for in Article 53(1) of the Constitution of the Fifth Republic (4 October 1958).

5.2.1. Safe Country of Origin

The Management Board of the OFPRA maintains a list of safe countries of origin. In principle, any member of the Board may take the initiative of adding or removing a country. In practice, the initiative has been taken by the MFA and/or the OFPRA. Both have jointly prepared country dossiers for consideration by members of the Board. The Board organises a vote following deliberation.

Currently, the countries included in the list are as follows: Benin, Bosnia-Herzegovina, Cape Verde, Croatia, Georgia, Ghana, India, Former Yugoslav Republic of Macedonia, Madagascar, Mali, Mauritius, Mongolia, Senegal, Tanzania and Ukraine.

Asylum Claims Made by a Citizen of an EU Member State

Since there is no admissibility procedure for asylum applications, all applications made by EU citizens are forwarded to the OFPRA by the *préfecture*, usually under the priority procedure. The OFPRA will consider the application as manifestly unfounded unless the applicant is able to refute that assumption.

5.3 Special Procedures

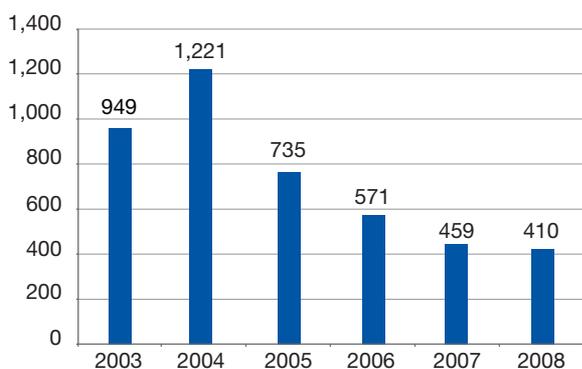
5.3.1. Unaccompanied Minors

Persons under the age of 18 may make an application for asylum at the *préfecture*. However, no stay authorisation is provided to them as they cannot be returned from French territory. The *préfecture* notifies the OFPRA and the state prosecutor of the asylum-seeker's claim, after which the state prosecutor will assign an ad hoc administrator to assist the person with his or her claim.

If a minor is granted refugee status or subsidiary protection, he or she will obtain a residence permit upon turning 18 (or 16, if the minor wishes to work). If the asylum claim is rejected, the minor will not be subject to removal before turning 18.

Figure 4:

Total Applications Made by Unaccompanied Minors*, 2003-2008



* First applications only

5.3.2. Stateless Persons

There are no special procedures in place for examining the asylum claims of stateless persons. All applications are treated in the same way. There is a separate procedure for the recognition of statelessness, which is described below.

6 Decision-Making and Status

In coming to a decision on an asylum claim, the OFPRA will first consider whether the criteria for Convention refugee status are met, and failing that, whether the criteria for subsidiary protection are met.

6.1 Inclusion Criteria

6.1.1. Convention Refugee

OFPRA may grant Convention refugee status on the basis of one of three sets of criteria:

- The applicant has been placed under the mandate of the UNHCR (in accordance with Articles 6 and 7 of the Statute of the Office of the UNHCR)⁷
- Criteria set out in Article 1A(2) of the 1951 Convention
- Criteria set out in paragraph 4 of the 1946 French Constitution, which states that “any man persecuted because of his actions for liberty has the right to enjoy asylum on the territories of the Republic.”

6.1.2. Subsidiary Protection

Subsidiary protection may be granted to any person who does not fulfil the conditions for refugee status and who has established that he or she would be exposed to the following serious threats in the country of origin:

- Death penalty
- Torture or inhuman or degrading treatment
- Under Article 2.11(2) of the modified asylum law of 25 July 1952, if someone is a civilian, “a serious, direct and individual threat against his or her life or person because of generalised violence resulting from an internal or international armed conflict.”

6.2 The Decision

All asylum-related decisions are made by the OFPRA and the CNDA. Asylum-seekers are notified of the decisions in writing by registered mail. Decisions contain reasoning in fact and law.

6.3 Types of Decisions, Status and Benefits Granted

Types of Decisions and Status

The OFPRA may make one of the following decisions on an asylum claim:

- Grant Convention refugee status or subsidiary protection
- Reject a claim for asylum.

⁷ See the text of the articles of the Statute in the annexe at the end of the report.

Box 3:**Asylum Case Law: Grounds for Granting Refugee Status****Defining a Particular Social Group**

In a number of rulings, the CNDA found that women refusing female genital mutilation (FGM) for themselves or parents refusing this practice for their female children may be regarded as a social group in a number of countries of origin, including Mali, Guinea (Conakry), Nigeria, Niger and Chad.

Women who refuse to enter into forced marriages may also be considered a social group in countries where their behaviour is perceived by society at large to be a punishable transgression and when no effective state protection is available (e.g., Pakistan and Turkey).

Mutatis mutandis, the CNDA also ruled that homosexuals may be considered members of a particular social group in various countries (e.g., Algeria, Bangladesh, Senegal, Nigeria, Cameroon and Russia).

Principles of Family Unity

The granting of refugee status on the principle of family unity was introduced as a general principle in refugee law by the Council of State (Council of State, Assembly, 2 December 1994, *Mrs A.*). The basis for the family unity rule is in the protection granted to the refugee under the 1951 Convention, which, to be full and complete, must encompass the protection of his or her family.

However, case law has limited the application of this rule to the refugee's immediate family, that is, to his or her spouse (Council of State, aforementioned *Mrs A.*) or his or her significant other (Refugee Appeals Board, Special Combined Hearing, 21 July 1995, *M.L.* upheld by the Council of State, 21 May 1997, *M.G.*) on the proviso that he or she has the same nationality as the refugee and that marriage or the beginning of cohabitation occurred prior to the date on which the asylum application was made. The refugee's children under the age of majority also benefit from the application of this family unity rule (Council of State, aforementioned *Agyepong*) on the proviso that they are under the age of majority at the date of the entry into France (Council of State, 21 May 1997, *M.S.*).

Case law has thus not accepted that the family unity rule requires that the same status be granted to all the persons who are or who were, in the country of origin, dependent upon the refugee (Council of State, aforementioned *M.S.*; Council of State, 7 October 1998, *Mrs K.*), with a reservation for the case in which there is an allegation of a special circumstance that could justify the application of this rule.

A claim for asylum may be rejected by the OFPRA, *inter alia*, if exclusion clauses apply and if it can be reasonably expected that the asylum-seeker could return to the country of origin and seek an internal flight alternative.

Benefits

Recognised refugees are entitled to the following benefits:

- A 10-year residence permit, renewable unless the refugee leaves France for more than three years or is found to have engaged in polygamy
- Right to work
- Travel documents valid for a period of two years, issued by the OFPRA
- Family reunification for spouses and children of refugees who meet criteria set out in the Law of 20 November 2007
- Temporary accommodation in a Temporary Accommodation Centre (*Centre provisoire*

d'hébergement, CPH) for a renewable period of six months.

Spouses of recognised refugees are entitled to the same residence permit if the marriage took place before refugee status was granted and they have lived together continuously. Dependants under the age of 18 may obtain the same residence permit upon turning 18 (or 16, if they wish to work).

Beneficiaries of subsidiary protection are entitled to the following benefits:

- A one-year residence permit (labelled "private life and family"), which may be renewed on a yearly basis, if the reasons that led to the granting of subsidiary protection remain
- Right to work
- Family reunification for spouses and children, within the same rules which apply to families of refugees (see above)

- Travel documents issued upon request to the *préfecture*, if it is not possible to request travel documents from the authorities of the country of origin.

6.4 Exclusion

Exclusion clauses apply to both Convention refugee status and subsidiary protection. The criteria used are those, respectively, of the 1951 Convention and the Qualification Directive. Exclusion is applied only in cases in which the applicant is found to have a well-founded fear as set out in the relevant legal texts. Where this is not the case, the claim is rejected on the basis of non-established facts.

Decisions to exclude a person from protection may be appealed in the same manner as are other negative asylum decisions.⁸ Exclusion does not automatically entail removal of the person from France.

6.5 Cessation

Refugee status may be terminated by the OFPRA if it appears that the refugee who has legally received refugee status no longer requires the protection of the Convention for one of the reasons provided for in Article 1C of the 1951 Convention.

Subsidiary protection may be terminated under the conditions provided in the Qualification Directive.

A decision to cease status may be appealed before the CNDA in the same manner as are other negative asylum decisions.⁹

Box 4: Asylum Case Law: Exclusion

Both in a 25 March 1998 Council of State ruling (170172. *M.M.*) and in a ruling of the Refugee Appeal Commission (SR, 9 January 2003, 362645, *M.A.*), it was found that the personal participation of an applicant in alleged crimes or acts, and not mere membership in a political or government organisation, was necessary to establish that the person has perpetrated crimes which would exclude him or her from refugee status.

6.6 Revocation

When the circumstances of the case reveal that the application on the basis of which the status was granted was fraudulent, the OFPRA may withdraw the status or request the CNDA to revise its ruling.

A decision to withdraw status may be appealed before the CNDA in the same manner as are other negative asylum decisions.¹⁰

Box 5: Asylum Case Law: Withdrawal of Status

In a ruling dated 21 May 1997 (CE, 148997, *M.P.*), the Council of State concluded that Article 33(2) of the 1951 Convention does not constitute a legal ground for withdrawing refugee status. As a result, France cannot apply the provisions found in Article 14(4) of the Qualification Directive, which states that persons for whom there are reasonable grounds to consider a danger to national security or persons who have committed a particularly serious crime, may have their status revoked or terminated.

In another decision later the same year (CE, section, 5 December 1997, 159707, *M.O.*), the Council of State ruled that the OFPRA may not withdraw refugee status on the basis of information it has obtained showing that that person was granted status as a result of fraud or untrue declarations, if the decision to grant status was made by the Appeals Board, which has force of *res judicata*. This ruling led to the creation of a new form of appeal before the CNDA, whereby the OFPRA may apply for a review of the Court's decision within two months of evidence of fraud coming to light (Act of 10 December 2003).

6.7 Support and Tools for Decision-Makers

6.7.1. Country of Origin Information

The Division of Information, Documentation and Research (Division de l'information, de la documentation et des recherches, DIDR) provides country of origin information (COI) services to decision-makers and the legal and international affairs section of the OFPRA. Slightly more than half of the requests for information made by decision-makers are in relation to African countries. In addition to answering these requests for information, the DIDR also undertakes the publication of major studies, documentation packages and chronologies for specific countries of origin. The DIDR will in some cases participate in fact-finding missions in cooperation with other colleagues of the OFPRA.

In the past year, the DIDR has responded to a growing number of research requests within shorter timeframes.

⁸ See the section above on Review/Appeal.

⁹ *Ibid.*

¹⁰ *Ibid.*

**Box 6:
Restructuring the Provision of COI at the OFPRA**

In 2008, OFPRA undertook a review of its operations and a decision was made to restructure the former Centre for Documentation and Research (Centre d'étude de documentation et de recherche, CEDRE) into the DIDR. This change came into effect in January 2009. One of the purposes of this restructuring was to allow the DIDR to focus its attention on the impact of the situation in the top ten countries of origin on the asylum applications received by OFPRA, to monitor the situation in safe countries of origin and to better anticipate emerging crises.

The DIDR is made up of four sections, two of which are responsible for research and for improving the quality of research documents. In 2009, the DIDR will be developing a new database to house its country information.

7 Efficiency and Integrity Measures

7.1 Technological Tools

7.1.1. Fingerprinting

Fingerprints of all applicants over the age of 14 are taken, as provided for in Council Regulation (EC) No 2725/2000.¹¹

7.1.2. DNA Tests

No DNA tests are carried out for the purposes of the asylum procedure.

7.1.3. Forensic Testing of Documents

OFPRA does not have the capacity to undertake forensic testing of documents.

7.1.4. Database of Asylum Applications/Applicants

Applicants are registered in the overall database of foreign nationals maintained by the Ministry of Immigration and in the OFPRA database.

7.2 Length of Procedures

Under the normal procedure, the application form is to be sent to the OFPRA no later than 21 days after the issuance of an APS.

Under the priority procedure, the OFPRA must make a decision on an asylum claim within 15 days of application. This time limit may be reduced to four days (96 hours) when the applicant is in detention.

As at December 2008, the average length of the normal procedure at first instance was 91 working days.

7.3 Pending Cases

Beginning in 2003, the OFPRA was granted additional financial and human resources. The OFPRA was thus able to successfully implement reforms and reduce its backlog from 22,900 applications (as at 31 December 2003) to a normal working reserve equivalent to three months of activity by the end of 2008. At the same time, the OFPRA shortened the average length of the examination of applications from 184 working days in 2003 to 91 days in 2008.

7.4 Information Sharing

The exchange of information on individual asylum applicants among EU Member States, Norway, and Iceland is undertaken according to provisions the conditions laid down in Article 21 of the Dublin II Regulation. On the basis of a Memorandum of Understanding (MOU) with its Swiss counterpart (Federal Office for Migration), the OFPRA checks fingerprints submitted by the Swiss party in order to determine whether a previous application has been made in France.

7.5 Single Procedure

When making an asylum claim, asylum-seekers are not required to specify which type of protection they are requesting. Claims are processed within a single procedure. The OFPRA will examine the application first in relation to refugee status, and, if criteria are not met, in relation to subsidiary protection.

7.6 Other Measures

As indicated above, the OFPRA and the CNDA obtained additional staff in order to reduce their backlog and improve the efficiency with which they examine applications. An effort was also made to expand the capacities of the COI unit at the OFPRA.

Applicants under the priority procedure are not entitled to the benefits normally granted to asylum-seekers in general (accommodation in a reception centre or

¹¹ Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention (Eurodac Regulation).

temporary allocation). This stipulation may have had a deterrent effect on asylum-seekers from those countries listed as safe countries of origin who would make a claim in France.

Box 7: Cooperation with UNHCR

The UNHCR in France has a representative sitting as an observer on the Management Board of the OFPRA who may make observations on all subjects under consideration or examination. At the CNDA, a UNHCR representative sits, with voting rights, on the board responsible for appointing adjudicators to panels which hear asylum appeals at the Court.

The presence of the UNHCR representative on the CNDA board is one of the innovative features of the French asylum system. The CNDA is the only Court in France where a representative of an international organisation sits and is entitled to speak and vote.

The UNHCR has access to waiting zones (*zones d'attente*) at airports where undocumented arrivals are held. A UNHCR implementing partner ensures that those who wish to seek asylum have access to the procedure.

The UNHCR in France maintains contact with the Ministry of Immigration and takes part in consultations with the government on various asylum-related matters.

To obtain legal aid, the asylum-seeker must make a request in writing to the Office of Legal Assistance (Bureau d'Aide Juridictionnelle, BAJ), located within the CNDA. The asylum-seeker must, as before, meet a fixed ceiling for financial need.

Asylum-seekers may be assisted by a lawyer during the procedure before the CNDA.

Asylum-seekers may choose to be assisted by a lawyer at the first instance. The OFPRA, however, is under no obligation to allow the lawyer to be at the interview, since it is an administrative procedure and not a judicial one. Observations by the counsel may be heard after the individual interview.

8.1.2. Interpreters

Interpreters are provided by the administration for interviews at the OFPRA and hearings of the CNDA. During the procedure at OFPRA, the need for the services of an interpreter is usually established when planning the interview.

8.1.3. NGOs

Non-governmental organisations (NGOs) play a crucial role in helping asylum-seekers throughout the asylum procedure, such as by providing legal advice. However, they do not have access to individual asylum case files during the procedure.

8.2 Reception Benefits

The National Agency for the Reception of Foreigners and Migration (Agence nationale de l'accueil des étrangers et des migrations, ANAEM) is the government agency responsible for coordinating the national plan of action for the reception of asylum-seekers (Dispositif national d'accueil des demandeurs d'asile, DNA).

The Department for Refugees and Reception of Asylum Seekers within the Ministry of Immigration, Integration, National Identity and Solidarity Development deals with, among other things, questions related to social benefits and related measures for asylum-seekers. In this regard, the Department is in charge of the formulation and follow-up on standards concerning the reception of asylum-seekers. The Department ensures the strategic management of the DNA and the implementation of regulations on the Temporary Allowance (ATA), and works with the reception centres for asylum-seekers (CADA), in close cooperation with ANAEM.

Asylum-seekers whose applications are examined under the priority procedure (according to Article L. 741-4 of CESEDA) receive neither the APS nor a receipt from the *préfecture*. They are, therefore, not entitled

8 Assistance and Reception Benefits for Asylum-Seekers

8.1 Procedural Support and Safeguards

8.1.1. Legal Assistance

Legal Aid

Up until a change in law in 2007, persons appealing an OFPRA decision were eligible for legal aid if they had entered France through legal channels, had no means of financial support exceeding a ceiling fixed by law each year, and had made a claim for asylum that was not deemed manifestly unfounded.

Beginning on 1 December 2008, the Law of 20 November 2007 provides for universal legal aid irrespective of the conditions of entry or residence of the asylum-seeker.

to specific social benefits (e.g., CADA, temporary allowance, Universal Health Insurance Coverage, etc.).

8.2.1. Accommodation

Accommodation at a Reception Centre

The French reception system, which is made up of centres scattered over the whole territory of France, is accessible only to persons who have applied for asylum. This system is financed by the French State and generally managed by NGOs. There are two types of accommodation centres where asylum-seekers may be accommodated: transit centres and reception centres for asylum-seekers.

Transit centres are intended for asylum-seekers at the beginning of the procedure (who have at a minimum been issued a summons by the *préfecture*). Asylum-seekers may be accommodated there for a few weeks while waiting for accommodation in a CADA.

In order to be eligible for accommodation at a Reception Centre for Asylum-Seekers (CADA), an asylum-seeker must be in possession of the one-month Provisional Residence Authorisation (*Autorisation Provisoire de Séjour*, APS) or the three-month receipt (*récépissé*). Accommodation is provided for the duration of the procedure, including any subsequent appeal before the CNDA.¹²

Usually, an admission commission will examine the possibility for accommodating an asylum-seeker at a CADA and will make determinations on accommodation depending on the number of places available over the whole French territory. Accommodation is not always offered in the same department in which applicants have made their asylum claims.

If, after having applied for accommodation, the asylum-seeker refuses the place offered as part of the State social aid, the ASSEDIC may suspend the payment of the Temporary Allowance. Whatever accommodation centre asylum-seekers are admitted to, they will benefit from administrative support (asylum application, legal advice), social services (health, schooling for children), and financial aid for sustenance, which cannot be added to the amount of the integration benefit (*allocation d'insertion*).

Accommodation outside a Centre

The CADA's reception capacity is far below the number of requests for accommodation, so application for

accommodation may not be successful. Asylum-seekers who are not accommodated as part of the State social aid can receive financial aid (Temporary Allowance) only if they have not declined an accommodation offer or this offer was not possible.

Emergency Accommodation

Asylum-seekers, in particular those who have been denied an APS, can obtain accommodation at various centres for the homeless. These centres receive people only on a nightly basis and do not, in principle, provide meals. The accommodation period may vary according to the centres but is fairly short.

8.2.2. Social Assistance

Asylum-seekers who are not accommodated at a reception centre can receive financial assistance (the Temporary Allowance, ATA) on the condition that they have not refused an offer of accommodation or that this is not possible.¹³

To receive the ATA, asylum-seekers must be in possession of the one-month APS or the three-month receipt. They must then apply to the ASSEDIC (Association pour l'emploi dans l'industrie et le commerce) by providing a copy of the registration letter issued by the OFPRA, as well as a document certifying that they do not have any means of support or that they cannot benefit from accommodation as part of the State social aid. This temporary waiting allowance of about 300€ per month and per adult (there is no increase for dependent children) is paid throughout the asylum application procedure.

If asylum-seekers cannot be accommodated in a reception centre and if they lack financial means, the General Council (local executive assembly) of their department of residence or the social services of their municipality can grant them financial assistance on an exceptional basis.

Unaccompanied Minors

Unaccompanied minors are not eligible for the temporary social assistance allocation during the asylum procedure. French law considers UAMs to be a vulnerable group, and makes no distinction between foreign and French children. The child welfare services are legally responsible for assisting unaccompanied foreign minors. Minors may be referred to the public prosecutor's office by the child welfare services, the police or specialised NGOs.

¹² Consequently, in the case of his or her asylum application being rejected by either OFPRA or the CNDA, the asylum-seeker must leave the centre.

¹³ This stipulation is in accordance with Directive No 2006-25 of 22 November 2006.

8.2.3. Health Care

Universal Health Insurance Coverage

Asylum-seekers may benefit from Universal Health Insurance Coverage (*Couverture maladie universelle*, CMU). This coverage is offered to asylum applicants as soon as they have filed their asylum claim, upon the presentation of evidence of either an appointment or a summons or the APS (or receipt), accompanied by a proof of residence. The CMU covers all medical and hospital expenses as well as those of his or her spouse and minor children. If asylum-seekers have no civil status documents certifying family ties, they are required to fill out a sworn declaration. The same procedure must be followed if the asylum-seekers have no documents proving their financial need.

To benefit from the CMU, asylum-seekers must contact the Social Security offices of their place of residence or certain NGOs. Once their application has been registered, they will receive a certificate of support. Then applicants will be issued a one-year certificate, which entitles them to the mutual insurance (*CMU complémentaire*) and a temporary registration number.

Emergency Healthcare

While waiting to benefit from the CMU, applicants have access to hospitals where there is a Health Care Access Service (*Permanences d'Accès aux Soins de Santé*, PASS). Doctors will examine them, and medication will be delivered free of charge.

In addition, there are certain NGOs which offer access to dental care, ophthalmological care, and psychological care to those who do not have health care insurance coverage.

The local authorities usually provide services to follow up on medical treatment of children, such as vaccinations, without requiring health care insurance coverage. There are also Centres for Family Planning and Education for women at the local level that provide such services as information on maternity care.

As mentioned above, if an asylum-seeker's application is subject to the priority procedure, the asylum-seeker will benefit from the State health care benefit on the condition that he or she has been present in France for three months. A request is to be made to the Social Security services of his or her place of residence or to a hospital PASS. The person then has access to hospitals, city doctors and pharmacies.

8.2.4. Education

From the age of three years, asylum-seekers' children may be sent to nursery school, although the school

is under no obligation to receive them. However, in France, schooling is free and compulsory for children between six and 16 years of age.

To enroll their children in primary school, asylum-seekers must show a document proving their family ties. If they do not have any documents from their homeland, they must show a document issued by the French administration that states the relationship (for instance, a CMU certificate). They must also give a proof of address and prove that their child has received all the necessary vaccinations. Enrolment takes place at the town hall closest to one's place of residence.

For secondary schools, asylum-seekers must enroll their children at the school corresponding to the area of their place of residence.

8.2.5. Access to Labour Market

An asylum-seeker may not take up paid work during the procedure. However, if the OFPRA has not rendered a decision on his or her application within a one-year period or if an appeal decision is still pending, an asylum-seeker may make an application for a work permit to the Directorate of Labour, Employment and Professional Development (*Direction départementale du travail, de l'emploi et de la formation professionnelle*) in his or her place of residence.

8.2.6. Family Reunification

Asylum-seekers do not have a right to family reunification. However, under the Dublin II Regulation, asylum-seekers may be reunited with their family as follows:

- When the asylum-seeker has a family member who has been allowed to reside as a refugee in a Member State, that Member State will be responsible for examining the asylum application
- Where the asylum-seeker has a family member whose asylum application is being examined under a normal procedure in a Member State, that Member State will be responsible for examining the asylum application.

8.2.7. Access to Integration Programmes

Asylum-seekers are not entitled to benefit from integration programmes.

8.2.8. Access to Benefits by Rejected Asylum-Seekers

Rejected asylum-seekers are not entitled to any specific social benefits.

9 Status and Permits Granted outside the Asylum Procedure

9.1 Humanitarian Grounds

An asylum-seeker who has received a final negative decision on his or her claim may make an application for a temporary residence permit to the prefecture if, in accordance with Article 313-14 of the CESEDA, exceptional grounds of a humanitarian nature exist. To be eligible for a residence permit on humanitarian grounds, the applicant must not be in a polygamous relationship or pose a threat to public order. If the applicant has resided in France for more than 10 years, the *préfecture* will seek the advice of the Departmental Commission for Residence Permits (Commission départementale du titre de séjour).

Persons who have received a final negative decision on their asylum claim may also be eligible for an exceptional residence permit if, in accordance with Article 313-11-7 of the CESEDA, they present such personal or family ties in France and levels of integration and participation in French society that a refusal of a residence permit would have a disproportionate effect on the respect of family and private life of the person.

A residence permit granted on humanitarian grounds is valid for a period of one year and is renewable. Holders of this permit have access to the labour market.

9.2 Withholding of Removal/Risk Assessment

The decision to return a person who has received a final negative decision on an application for asylum is made separately from the asylum decision. Before issuing a removal order, the prefecture, under the oversight of the administrative judge, must verify that there are no obstacles to return arising from risks present in the country of origin. This risk assessment is in line with France's obligations under Article 3 of the European Convention on Human Rights (ECHR). The authorities must also determine whether obstacles to return exist in relation to Article 8 of the ECHR (respect of private and family life) or there are any practical obstacles preventing the implementation of return.

Persons who cannot be returned to the country of origin or to another country may be granted a designation of place of residence (*assignation à résidence*). This decision is a stay of removal with a restriction on freedom of movement rather than a residence permit. Beneficiaries must reside in a pre-determined location and report periodically to the Police. The designation of place of residence is valid until such time as return

to a third country or to the country of origin becomes possible. It may entitle the holder to a work permit if this is necessary for the person to support himself or herself. A decision to grant a designation of place of residence may be taken by the Minister of Interior or by the prefecture, depending on the case.

Annulment of Removal Order

A person who has been served a removal order and is not subject to detention or a designation of place of residence may request an annulment of the removal order within five years of the removal order being served. The Law of 26 November 2003 allows a systematic re-examination of removal orders every five years. The Commission for Removal (*Commission d'expulsion*) examines any changes in the applicant's personal and family situation and any possible professional or social guarantees for integration into French society. For that purpose, the applicant may submit written observations.

9.3 Temporary Protection

Temporary protection may be granted to displaced persons who are unable to return to their country of origin in a case of mass influx, as provided for in Council Directive 2001/55/EC.¹⁴ Following the designation of a specific group of persons in need of temporary protection by the European Union, and internally by the Minister of Immigration and the Minister of Foreign Affairs, temporary permits valid for an initial period of six months are issued. In some cases, the permit may be accompanied by work authorisation. The permits are renewable for a maximum period of three years and are issued by the prefecture.

Persons who pose a threat to public order or who are believed to have committed crimes against humanity, war crimes or other serious crimes or acts contrary to the principles of the United Nations (UN) may be excluded from temporary protection. Temporary protection may be withdrawn or refused if the beneficiary has obtained temporary protection in another EU Member State or has obtained refugee status or subsidiary protection in France.

9.4 Regularisation of Status over Time

There are no possibilities for regularising the status of a person on the sole basis of that person's length of residence in France. The Law of 24 July 2006 abolished

¹⁴ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (Temporary Protection Directive).

the provision¹⁵ that granted a temporary residence permit to persons who were habitually resident in France for more than 10 years.

As noted above, asylum-seekers who have received a final negative decision on their application may be granted a residence permit on the grounds of family or personal ties to France.

9.5 Regularisation of Status of Stateless Persons

Stateless persons may apply to the OFPRA to have their stateless status recognised. Applications must be made in writing and an official form completed. An interview is usually conducted with the applicants. Applicants are not granted a stay authorisation for the duration of this procedure, and may be returned before a final decision is made.

Persons over the age of 18 whose stateless status is recognised by the OFPRA will be issued a stateless person's card and a temporary residence permit (labelled "private and family life") valid for one year. The permit is renewable and allows holders to access the labour market. Children under the age of 18 are entitled to the same permit upon reaching the age of majority (or age 16, if they wish to work).

A refusal of an application for stateless status may be appealed within two months of the decision before the administrative tribunal where the person resides. The appeal has no suspensive effect.

10 Return

10.1 Pre-departure Considerations

Following a negative decision by the OFPRA or the CNDA, an asylum-seeker loses his or her right of stay in France and must, in principle, leave the country. The *préfecture*, after having checked that the person is not entitled to residence on other grounds, and that there are no obstacles to his or her return – and in particular no breach of ECHR provisions – will issue an order to leave French territory within one month. If the foreign national is found to be in an irregular situation in France after this one-month period has ended, the *préfecture* may implement the order by detaining the person and arranging for departure under escort.

All removal orders may be appealed at the local Administrative Tribunal with suspensive effect.

France will not return a rejected asylum-seeker if an administrative judge rules that return would be in violation of Article 3 of the ECHR.

The Minister of Immigration may give instructions to the prefecture in order to waive a removal order or grant a residence permit.

10.2 Procedure

Return and Reintegration Assistance

Reintegration assistance for persons returning to their country of origin is administered by the ANAEM.

Reintegration assistance consists of the following:

- Material aid for return, covering travel costs from France to the country of origin for the asylum-seeker and his or her family
- Administrative aid to prepare for departure (such as obtaining any necessary documents for returning to the country of origin)
- Financial assistance
- Assistance with reintegration, including advice and support for seeking work.

Sanctions

A person who has received a removal order may face a sentence of up to three years of imprisonment as well as a ten-year ban on accessing the French territory if he or she absconds and the removal order cannot be enforced. The same penalties may apply if the person does not present all necessary travel documents to the administration or give the necessary information to facilitate his or her removal.

10.3 Freedom of Movement/ Detention

In cases where an asylum-seeker has received a final negative decision, is under a removal order but cannot be returned to the country of origin or to a third country, designation of place of residence (*assignation à résidence*) or other restrictions on freedom of movement may apply.

Designation of Place of Residence

The prefecture or the Minister of Interior may decide to designate a place of residence to a person awaiting the enforcement of a removal order. Freedom of movement is thus restricted.

¹⁵ Article L.313-11, 3° of the CESEDA.

Administrative Detention

A decision to hold a person in administrative detention pending removal may be made by the prefecture and communicated to the Prosecutor General. Administrative detention is initially valid for a period of 48 hours or for the time necessary for removal to be implemented. Administrative detention may be extended to fifteen days but cannot exceed 32 days. Extensions of detention must be authorised by a judge treating questions of freedom and detention (*juge de la liberté et de la détention*).

11 Integration

Refugees and beneficiaries of subsidiary protection are entitled to the benefit of the Reception and Integration Contract (*Contrat d'accueil et d'intégration*). This contract includes the following:

- A medical check- up
- An introduction to French institutions and the core values of the Republic as well as to the political and administrative organisation of the country
- An information session about daily life in France and the public services
- Where necessary, French language lessons enabling a prescribed level of fluency.

12 Annexe

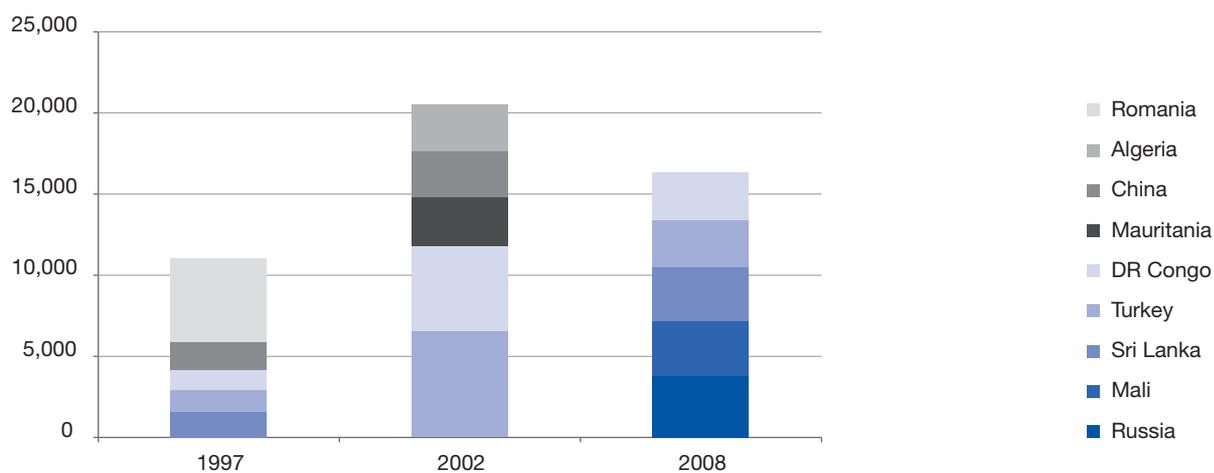
12.1 Processing Costs

The average cost per unit of a decision at OFPRA is estimated at 570€.

12.2 Additional Statistical Information

Figure 5:

Asylum Applications* from Top Five Countries of Origin in 1997, 2002 and 2008



* First applications only

Figure 6:

Decisions Made at the First Instance, 1992-2008

Year	Convention Status*		Humanitarian Status and Other Authorisations to Remain		Rejections		Other Decisions		Total Decisions
	Count	% of total	Count	% of total	Count	% of total	Count	% of total	
1992	5,272	28%	0	0%	9,075	72%	0	0%	14,347
1993	5,040	28%	0	0%	11,271	72%	0	0%	16,311
1994	4,808	24%	0	0%	13,467	76%	0	0%	18,275
1995	4,576	16%	0	0%	15,663	84%	0	0%	20,239
1996	4,344	20%	0	0%	17,859	80%	0	0%	22,203
1997	4,112	17%	0	0%	20,055	83%	0	0%	24,167
1998	4,342	19%	0	0%	18,063	81%	0	0%	22,405
1999	4,659	19%	0	0%	19,492	81%	0	0%	24,151
2000	5,185	17%	0	0%	25,093	83%	0	0%	30,278
2001	5,049	12%	0	0%	35,730	88%	0	0%	40,779
2002	6,326	13%	0	0%	43,880	87%	0	0%	50,206
2003	6,526	10%	0	0%	59,818	90%	0	0%	66,344
2004	6,358	9%	0	0%	61,760	91%	0	0%	68,118
2005	4,184	8%	0	0%	47,088	92%	0	0%	51,272
2006	2,929	8%	0	0%	34,786	92%	0	0%	37,715
2007	3,401	12%	0	0%	25,922	88%	0	0%	29,323
2008	5,153	16%	0	0%	26,648	84%	0	0%	31,801

*Beginning in 2004, data includes granting of subsidiary protection.

Germany



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1 Background: Major Asylum Trends and Developments

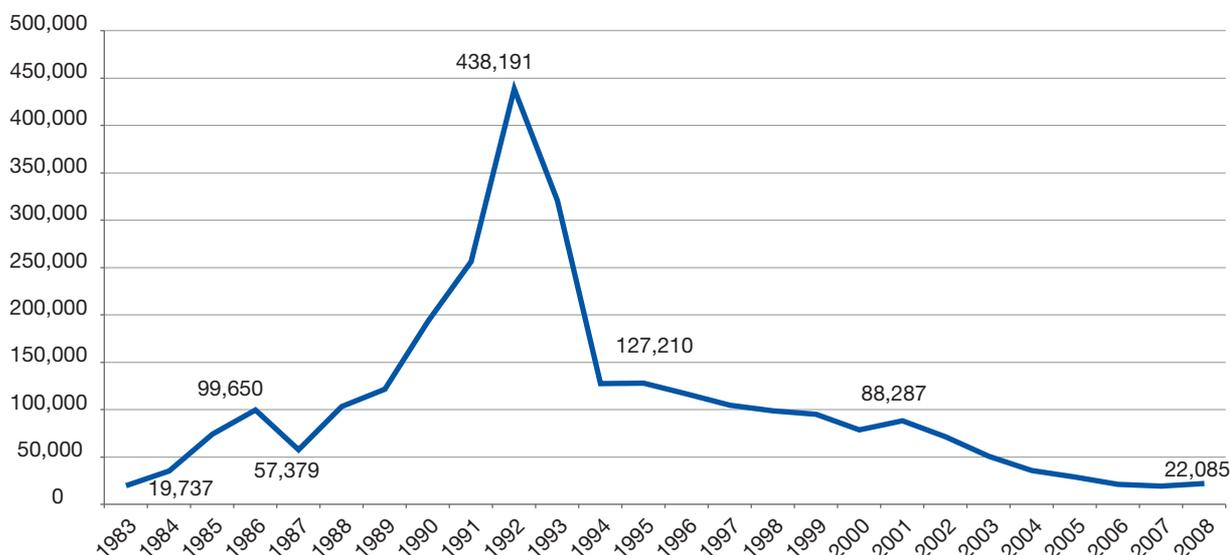
Asylum Applications

In 1980 for the first time, Germany registered more than 100,000 asylum-seekers in a single year. Although figures went down again in the following years, there was a steady increase from the mid-1980's onward, which culminated in peak figures of 438,000 asylum-seekers in 1992. The fall of the Iron Curtain on one hand and the relatively generous benefits granted to asylum-seekers on the other were the main factors accounting for the significant increase in asylum-seekers. By late 1992 there was an accelerated increase of claims with up to 50,000 applicants per month, the majority of whom did not present a need for international protection.

At that point, the German parliament decided on a comprehensive reform of the asylum system, which impacted virtually all asylum-related laws including the Constitution. The measures took effect in the course of the first half of 1993 and had an almost instant impact. They resulted in a significant and continuous decrease of asylum-seekers in the following years. In 2008 a total of 22,000 applications were lodged.

Figure 1:

Evolution of Asylum Applications* in Germany, 1983-2008



* From 1993 onward, data refers only to first applications

Top Nationalities

In the early 1990's, most asylum-seekers came from the former Yugoslavia, Romania, Bulgaria and Turkey. In 2008 by far the largest group of asylum-seekers came from Iraq, followed by Turkey, Vietnam and Kosovo.

Figure 2:

Top Five Countries of Origin in 2008*

1	Iraq	6,836
2	Turkey	1,408
3	Viet Nam	1,042
4	Kosovo	879
5	Iran	815

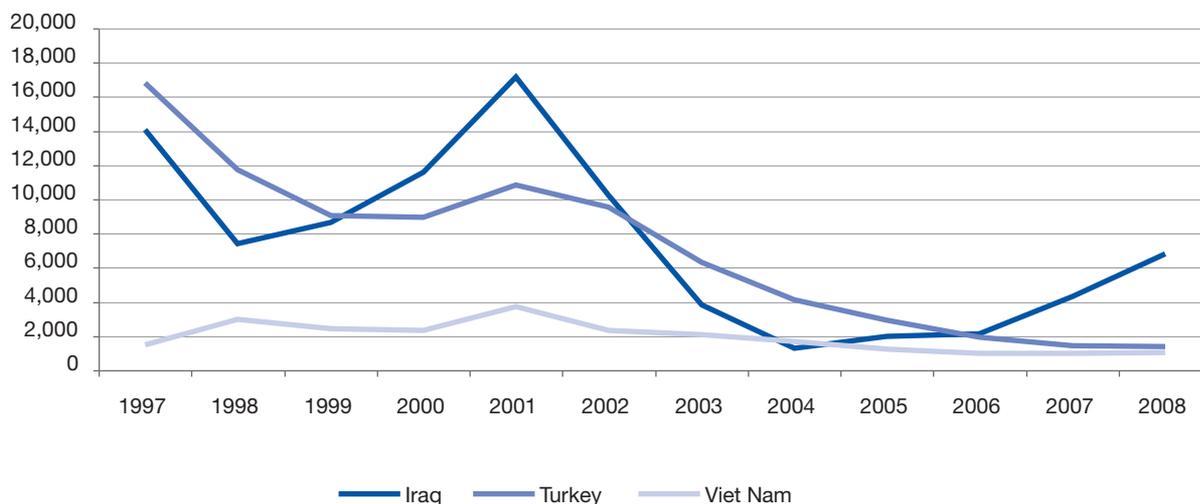
* First applications only

Important Reforms

The Asylum Procedure Act of 16 July 1982 introduced provisions aimed at accelerating the asylum procedure while safeguarding the right to asylum. Further attempts at achieving more efficient procedures were made in 1987, with the coming into force of the Act to Amend the Regulations Governing Legal Questions of Asylum Procedure, Work Permits and Foreigners Law. Germany joined the Dublin system and the Schengen area in 1990.

Figure 3:

Evolution of Applications* from Top Three Countries of Origin for 2008



* First applications only

Regarding Asylum and Migration in 1992, and changes to the reception benefits regime for asylum-seekers.

In 2005, a new Immigration Act, which included several important amendments to the asylum law, came into force, marking an overhaul of the German migration system. The Act provided for, *inter alia*, improved status rights for Convention refugees and for beneficiaries of subsidiary protection. Under this Act, gender-related persecution and persecution by non-state agents were henceforth to be considered to constitute grounds for granting refugee status.

More recently, the entry into force of the Act on the Implementation of Residence and Asylum-Related Directives of the European Union (19 August 2007) marked the transposition into German law of all relevant Council directives on asylum.¹

¹ The Directives transposed are the Asylum Procedures Directive (Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, the Qualification Directive (Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted and the Reception Conditions Directive (Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers).

2 National Legal Framework

2.1 Legal Basis for Granting Protection

German asylum law provides for two types of refugee status:

- Asylum status granted in accordance with Article 16a para. 1 of the Constitution (known as the Basic Law for the Federal Republic of Germany)
- Refugee status granted in accordance with Section 3 para. 4 of the Asylum Procedure Act, which reproduces the 1951 Convention relating to the Status of Refugees (1951 Convention) inclusion criteria.

Both asylum and refugee status are granted according to a similar interpretation of the term “refugee.” However, with the transposition of the Qualification Directive into German law, these interpretation practices are likely to change, in part because the Qualification Directive applies only to Convention status but not to asylum status, as understood in German asylum law.

German law also includes provisions for granting complementary forms of protection (subsidiary protection) on the basis of the Qualification Directive (Section 60 para. 2, 3 and 7, sentence 2 of the Residence Act), the European Convention on Human Rights (ECHR; Section 60 para. 5 of the Residence Act), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT; Section 60 para. 2 of the Residence Act), and on a national basis

(Section 60 para. 7, sentence 1 of the Residence Act and Section 60a para. 2 of the Residence Act).

The granting of Convention refugee status and asylum is governed by the Asylum Procedure Act. An application for asylum is an application for both asylum status and refugee status. Under the single procedure, a person who does not meet criteria for asylum or refugee status may be granted a complementary form of protection.

2.2 Pending Reforms

There are currently no significant reforms to asylum procedures pending in Germany.

3 Institutional Framework

3.1 Principal Institutions

The Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF) under the Ministry of Interior is the competent authority for assessing asylum claims. It decides on the granting of refugee status and on the granting of subsidiary protection within a single procedure.

The Aliens Offices, which fall under the responsibility of each Federal State, determine applications for subsidiary protection, if these applications are made separately from applications for asylum. The Aliens Offices are also responsible for examining and making determinations on applications for subsidiary protection under the terms of Section 60a para. 2 of the Residence Act.²

The administrative courts are responsible for hearing appeals of decisions made by the BAMF or the Aliens Offices.

4 Pre-entry Measures

To gain entry into Germany, a foreign national must have a valid passport or passport substitute, unless he or she is exempt from this obligation by virtue of a statutory instrument.

4.1 Visa Requirements

For a majority of foreign nationals, a visa is required in order to enter and remain in Germany. The issuance of visas rests with the Ministry of Foreign Affairs.

² The granting of subsidiary protection under this provision is further described in the section below on Status and Permits Granted outside the Asylum Procedure.

4.2 Carrier Sanctions

A carrier may only transport foreign nationals into Germany if they are in possession of a passport and a residence title (i.e., a visa or a residence permit). Violations of this obligation will subject the carrier to a fine. The fine ranges between 1,000 € and 5,000 € for each foreigner. Legal actions against the imposition of the fine have no suspensive effect.

If a foreign national is refused entry, the carrier who transported him or her to the border will be required to transport him or her from Germany. This obligation applies for a period of three years with regard to foreign nationals without a passport, passport substitute or a residence permit. It does not apply to individuals who were allowed entry because they cited grounds for refugee status or subsidiary protection. The obligation to remove the foreign national from German territory expires if he or she has been granted a residence permit pursuant to the Aliens Act.

4.3 Interception

The Federal Police is the competent authority for border control. Its tasks include *inter alia* intercepting undocumented migrants at the border, within a 30-kilometre area inside the German border and at international airports. As a rule, the Federal Police will return individuals who entered illegally to the state where they came from. This does not apply, if the return would amount to a violation of the *non-refoulement* principle and, in the case of asylum-seekers, if Germany is responsible for processing their claims.

5 Asylum Procedures

5.1 Application Possibilities and Requirements, Procedures and Legal Remedies

Foreign nationals may make a request for asylum with border guards at the border or at an airport or seaport. Asylum requests may be filed inside the territory with any federal state or central government authority, such as the Police or an Aliens Office. The authorities will refer the foreign national to a reception centre for asylum-seekers.

The BAMF is the responsible authority for determining asylum claims. It is composed of a central office located in Nuremberg and 21 branch offices nationwide. As a rule, the branch offices are responsible for accepting formal asylum applications and for processing the claims. Reception centres are always located near a branch office of the BAMF.

Access to Information

The BAMF instructs all asylum applicants about the course of the procedure and about their rights and duties. In addition, the reception centres will provide them with information on their rights and duties regarding social assistance and medical care, as well as on who could provide counselling on legal and other issues.

5.1.1. Outside the Country

Applications at Diplomatic Missions

It is not possible to apply for asylum from abroad.

Resettlement/Quota Refugees

Germany does not have in place a regular resettlement programme. However, it has engaged in ad hoc resettlement of refugees. Germany is currently in the process of resettling Iraqi nationals from Jordan and Syria in cooperation with the United Nations High Commissioner for Refugees (UNHCR) and as part of a collective European Union (EU) initiative. The aim is to resettle about 2,500 Iraqis in Germany.

Under the scheme, the UNHCR submits cases to the BAMF for consideration. The BAMF conducts a mission to Amman, Jordan, at which time interviews and security checks take place. Decisions on eligibility for resettlement are taken by the BAMF, and departures are organised in cooperation with the International Organization for Migration (IOM). Thereafter, the BAMF determines the area of residence for the refugees. All the resettled refugees are granted humanitarian status, with benefits similar to those given to persons who obtain refugee status.

5.1.2. At Ports of Entry

At the Border

Asylum applications may be made at border guard posts. These applications are then referred to the competent or the nearest asylum-seeker reception centre for examination under the normal procedure, as described below.

At Airports

In certain cases, asylum applications at international airports may be processed prior to the entry of the applicant into Germany. The airport procedure is an accelerated procedure, as there are deadlines for each procedural step. In cases where the authorities are not able to meet these deadlines, the asylum applicant is

entitled to enter Germany and to have his or her claim processed inside the country.

The airport procedure applies in the following cases:

- When an asylum-seeker does not have valid identity documents, or
- When an asylum-seeker hails from a safe country of origin (Ghana or Senegal).

Asylum-seekers whose applications are streamed under the airport procedure are accommodated at a reception centre at the airport. The branch office of the BAMF located inside or close to the airport will examine his or her claim. Immediately after an interview, the asylum-seeker will be given the opportunity to contact a legal adviser of his or her choice.

If the BAMF makes a negative determination on the claim on the basis that the application is manifestly unfounded³, the asylum-seeker is not entitled to enter Germany, and removal may be implemented. If the BAMF is not able to arrive at a decision within two days or if the claim is not deemed to be manifestly unfounded, the applicant will be permitted to enter Germany.

If the asylum application and the application for entry are being rejected, the applicant can file an urgent motion with the Administrative Court, in order to stave off his or her removal. The motion must be filed within three days. If it is filed in time, the applicant cannot be removed prior to the Court's decision. The Administrative Court must decide on the application within two weeks. If the Administrative Court does not come to a decision within the two weeks, the applicant will be allowed to enter Germany. The Court decision cannot be appealed.

Box 1: **Asylum Case Law: The Constitutionality of the Airport Procedure**

In a decision dated 14 May 1996, the Constitutional Court ruled that the provisions on safe third countries, safe countries of origin and the accelerated airport procedure were all in line with the German Constitution.

5.1.3. Inside the Territory

Requests for asylum inside the territory are usually made with the police or an Aliens Office. The authorities

³ See the sections below on the normal procedure and on decision-making for information on grounds for rejecting an application as manifestly unfounded.

will refer the foreign national to the nearest reception centre for asylum-seekers. This reception centre will either receive the person or refer him or her to the competent reception centre. Reception centres are always located near a branch office of the BAMF where a foreign national can formally apply for asylum. Prior to making the formal application for asylum, the foreign national is not considered an asylum applicant.

Responsibility for Processing the Claim

The Dublin System

Application and Procedure

The BAMF considers the application of Council Regulation (EC) No 343/2003⁴ once an asylum claim has been registered. If the BAMF finds that another State is responsible for processing the claim, the application for asylum is deemed inadmissible (Section 27a of the Asylum Procedure Act) and the asylum-seeker will be ordered to leave Germany. He or she will be issued a *laissez-passer* in order to be able to travel to the destination state. An asylum application made at a border guard post will not be referred to a BAMF branch office if it is found that another State party to the Dublin II Regulation is responsible for the claim.

Freedom of Movement/Detention

Asylum-seekers are not usually detained during the asylum procedure.

Conduct of Transfers

As a rule, transfers are carried out on the basis of a mutual agreement between the states concerned. If an asylum-seeker refuses to leave voluntarily, the Aliens Office will implement the transfer to the responsible state.

Review/Appeal

Refusals under the Dublin II Regulation may be appealed to the administrative courts. Appeals do not have suspensive effect.

Application and Admissibility

Once an application for asylum has been registered with the BAMF, the identity of the applicant will be established. The applicant is obliged to submit identity documents, if there are any. Fingerprints and photographs will be

taken. This information is then compared against data contained in the Central Register of Aliens and identity records stored by the Federal Criminal Police Office. The information will also be compared against the data in the EURODAC database in order to find out whether Germany is responsible for processing the claim under the Dublin Regulation.

Before interviewing the claimant, the branch office of the BAMF will determine whether the application is a first application, a repeat application or a multiple application. First applicants will receive official permission to reside in Germany for the duration of the asylum procedure.

The German asylum system does not comprise an admissibility procedure in the strict sense of the term.

Accelerated Procedures

Besides the airport procedure, which is described above, there are no accelerated asylum procedures in Germany.

Normal Procedure

A caseworker of the BAMF will interview the asylum applicant either on the same day or within a few days of the asylum-seeker having made the application. Caseworkers are specialised according to specific countries of origin. Some caseworkers are also specially-trained in handling claims from specific vulnerable groups, such as unaccompanied minors or victims of gender-based persecution. The interview is not open to the public. It may be attended by representatives of the Federation, the Federal States or the UNHCR. Other individuals may attend, if permitted by the head of the BAMF or his or her deputy.

It is up to the applicant to present the facts justifying his or her fear of persecution and to provide the necessary details.

The applicant will be provided with a copy of the minutes of the interview.

The caseworker will clarify the facts of the case and compile the necessary evidence. To this end, he or she will use country of origin information (COI) from a number of sources, including foreign-service reports, and publications from non-governmental organisations (NGOs) and UNHCR.

Claims that are considered to be unfounded or manifestly unfounded are examined further by the BAMF to determine whether there exist grounds for granting complementary (subsidiary) protection.

⁴ Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (Dublin II Regulation).

A claim may be deemed manifestly unfounded in one of the following circumstances:

- The criteria for granting asylum status or refugee status are clearly not met
- It is clear that an asylum application has been made in order to gain entry into Germany for economic or other, non-protection-related reasons
- The person meets the criteria for exclusion as set out in Articles 1F and 33(2) of the 1951 Convention.

Review/Appeal of the Procedure

A negative decision on an asylum claim may be appealed before an administrative court. There are three stages of appeal, one before each of the Administrative Court, the High Administrative Court and the Federal Administrative Court.

The Administrative Court and the High Administrative Court review decisions on points of fact and law, while the Federal Administrative Court considers points of law only.

The courts examine the claims without being bound by evidence presented by the parties. The court proceedings will normally comprise an oral hearing.

The court proceedings depend on whether a claim has been rejected as “unfounded” or “manifestly unfounded.”

Unfounded Claims

Where the BAMF has determined a claim to be “unfounded,” an appeal may be lodged within two weeks of the decision. In this case, the appeal has suspensive effect.

If the court rules in favour of the asylum-seeker, the BAMF decision will be annulled and the BAMF will be requested to grant refugee status. If the court upholds the decision of the BAMF, the asylum-seeker will be required to leave Germany unless he or she has been granted complementary (subsidiary) protection.

The asylum-seeker and the BAMF may, under certain conditions, appeal the decision of the Administrative Court before the High Administrative Court. As a rule, appeals may be made with the leave of the Administrative Court or – on special request – with the leave of the High Administrative Court.

The decision of the High Administrative Court may be appealed before the Federal Administrative Court,

provided that leave is granted either by the High Administrative Court or by the Federal Administrative Court. Usually, leave is granted in one of the following circumstances:

- The appeal invokes a breach of federal law
- The decision of the High Administrative Court is not compatible with the jurisprudence of the Federal Administrative Court
- The decision of the High Administrative Court is based on a legal issue of fundamental importance.

Manifestly Unfounded Claims

A decision to reject an application on the basis that it is “manifestly unfounded” may be appealed within one week of the decision of the BAMF. The appeal has no suspensive effect, and the applicant may be removed from Germany before the Administrative Court has decided on the appeal. However, the applicant may file an urgent motion, also within one week of the decision of the BAMF, in order to stave off removal proceedings.

If the Administrative Court rules in favour of the applicant, the BAMF decision is annulled and the BAMF will be requested to grant refugee status. If the Court rejects the appeal as manifestly unfounded, the applicant will be required to leave Germany. The decision to reject an appeal as manifestly unfounded cannot be appealed beyond the Administrative Court.

Freedom of Movement during the Procedure

Detention

Asylum-seekers are not detained for merely having applied for asylum and have freedom of movement during the procedure, although this movement is geographically restricted to the district of the competent Aliens Office.

Reporting

Asylum-seekers must inform the authorities of any change of address.

Repeat/Subsequent Applications

Repeat applications are subject to specific procedures. Applications are considered to be repeat applications if the asylum-seeker makes an asylum claim after having obtained a final negative decision on a previous claim or after withdrawing a previous claim.

Box 2: Asylum Case Law: Repeat Applications

In a decision dated 18 December 2008, the Federal Administrative Court provided an interpretation of Article 5 (3) of Council Directive 2004/83/EC (Qualification Directive.) The provision in the Directive stipulates that an asylum-seeker “who files a subsequent application will normally not be granted refugee status if the risk of persecution is based on circumstances which the applicant has created by his own decision since leaving the country of origin.”

The Court stressed that the purpose of the provision is to prevent asylum-seekers from making subsequent applications on the basis of participation in post-flight activities. Thus, post-flight activities presented for the first time in support of a repeat application are presumed to be abusive. While previous activities of a similar kind may indicate that the new activities are genuine, this is not sufficient to rebut the assumption of an abusive claim, if there is no coherence between previous and later activities. For example, if an asylum-seeker has shunned public political activities in the past, but, following an unsuccessful first asylum claim, engages in public activities, he or she must provide plausible reasons for this sudden change.

An assessment of the merits of a repeat application will take place only if the applicant presents new facts or evidence, which through no fault of the applicant was not presented during a previous asylum procedure. A repeat application must be lodged within three months of these new facts or evidence coming to light.

If an asylum-seeker fails to produce new facts or evidence or fails to make a repeat application within the time limit, no new asylum procedure will be conducted. In such a case, removal is possible, once the BAMF has informed the Aliens Office that there will be no assessment on the merits of the claim. Removal can be effected even before a written decision on the claim has been served on the applicant.

The applicant can appeal a negative decision on a repeat application before the Administrative Court. The appeal does not have suspensive effect. The applicant may file an urgent motion in order to stave off the implementation of the removal order.

5.2 Safe Country Concepts

5.2.1. Safe Country of Origin

The legal basis for the safe country of origin principle is Article 16a (3) of the Constitution, in line with Section 29a of the Asylum Procedure Act. Safe countries of origin are countries in which, on the basis of law, implementation practices, and general political conditions, it can safely be concluded that neither political persecution nor inhuman or degrading punishment or treatment exists.

Safe countries of origin are specified by law. The current list of safe countries of origin includes the EU Member States, Senegal and Ghana. Claims made by persons from a safe country of origin are examined on their merits. However, there is a refutable presumption that an asylum-seeker from such a country is not persecuted. If the asylum-seeker can refute the presumption by

demonstrating that he or she is persecuted, refugee status will be granted. Otherwise, claims made by persons from a country considered to be a safe country of origin will be deemed manifestly unfounded and rejected on that basis.

5.2.2. First Country of Asylum

Section 27 of the Asylum Procedure Act stipulates that an asylum-seeker who benefited from protection in another country will not be granted refugee status. If an asylum-seeker holds a travel document issued by a safe third country or by another third country pursuant to Article 28 of the 1951 Convention, it is presumed that he was safe from persecution in that country. The same applies to asylum-seekers who lived for more than three months in another country where they were safe from persecution. However, the asylum-seeker may rebut the presumption of safety by demonstrating that *refoulement* to a country where he or she would face a risk of persecution could not be ruled out with reasonable certainty.

The decision regarding the first country of asylum principle can be appealed before the Administrative Court. The appeal does not have suspensive effect.

5.2.3. Safe Third Country

German law stipulates that any foreign national who arrives at the border and claims asylum will not be allowed to enter the territory if he or she is arriving from a safe third country.

The safe third country rule does not apply under the following circumstances:

- The foreign national held a residence title for Germany at the time he or she entered the safe third country

- Germany is responsible for processing claims based on European Community law or an international treaty with the safe third country
- The foreign national has been admitted by the Federal Ministry of the Interior on humanitarian grounds, for reasons of international law or in the political interest of Germany.

The list of safe third countries includes the Member States of the European Union, Norway and Switzerland. Currently, the safe third country rule has little practical effect, as the Dublin II Regulation supersedes it.

The decision to apply the safe third country rule can be appealed to the Administrative Court. The appeal does not have suspensive effect.

5.3 Special Procedures

5.3.1. Unaccompanied Minors

German asylum law distinguishes between minor asylum-seekers below the age of 16 and minors aged 16 and 17 years.

Asylum-seekers aged 16 and above are considered to have the full legal capacity to lodge an asylum claim on their own and to undergo each step of the procedure. During the asylum procedure, the minor will be treated in the same manner as adult asylum-seekers. However, for all other legal procedures, the minor will be represented by a guardian.

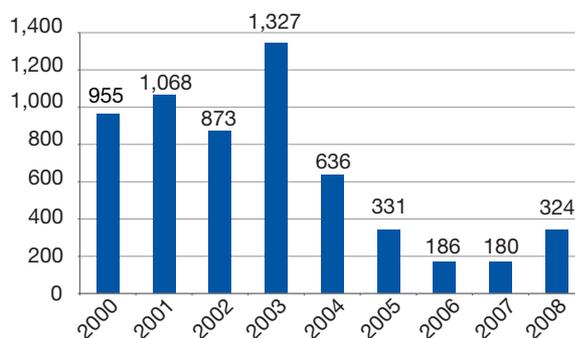
Asylum-seekers under the age of 16 are considered to lack the full legal capacity to undergo the asylum procedure and are appointed a guardian. The guardian assists minors in making their claim, and through each step of the asylum procedure. The guardianship court is responsible for appointing guardians to unaccompanied minors. The guardian may be a family member or a representative from the local Youth Office, if the minor does not have relatives in Germany.

The branch offices of the BAMF employ specially trained caseworkers to deal with unaccompanied asylum-seekers in order to ensure that the child's level of maturity and development will be taken into account. The guardian will always be present during the interview.

Some Federal States have in place special reception arrangements for unaccompanied minors. Clearing agencies look after the unaccompanied minors, provide assistance with accommodation and try to obtain information on the whereabouts of their parents or legal guardians.

Figure 4:

Total Applications Made by Unaccompanied Minors*, 2000-2008



* Data refer to minors between 0 and 15 years of age. (Germany began collecting data on unaccompanied minors aged 16-17 years only in 2008, when 403 applications were received by minors in this age group.)

5.3.2. Stateless Persons

The asylum application of a stateless person is treated in the same manner as an application made by any other asylum-seeker. The risk of persecution or risk to life or to the person will be examined against conditions in the country of former habitual residence. As a rule, this is the last country of residence.

A stateless asylum-seeker who has received a negative decision on a claim may be removed to the country of former habitual residence or to a third country where there is no risk of persecution.

6 Decision-Making and Status

6.1 Inclusion Criteria

6.1.1. Convention Refugee

As noted above, there are two types of refugee status granted in Germany:

- Asylum status granted in accordance with Article 16a para. 1 of the Constitution
- Refugee status granted in accordance with Section 3 para. 4 of the Asylum Procedure Act, which reproduces the 1951 Convention inclusion criteria.

The criteria that have to be met for either status are similar, although the asylum status is more narrowly construed. Asylum status cannot be granted in cases where an asylum-seeker arrives in Germany via a safe third country or where the claim is based on post-flight

Box 3: Asylum Case Law: Granting Subsidiary Protection

In a 24 June 2008 decision in the case of *BVerwG 10 C 43.07¹*, the Federal Administrative Court set out criteria that have to be met in order to grant subsidiary protection on the basis of Article 15(c) of Council Directive 2004/83/EC.

The Court ruled that the concept of international and internal armed conflict is to be construed taking international humanitarian law into account, in particular the Geneva Conventions and the Additional Protocols of 1977. An internal armed conflict need not extend through the entire territory of a country. However, its existence does not in and of itself suffice to make a person eligible for subsidiary protection. Instead, the conflict must be such that it poses a danger to the entire population on the territory. This danger of a general nature can be made more serious by individual circumstances, including circumstances arising from a person's membership in a group.

¹ The full text of the decision, in English, may be found on the website of the Federal Administrative Court: www.bundesverwaltungsgericht.de.

events for which the asylum-seeker is responsible. In contrast, refugee status on the basis of the 1951 Convention is not precluded where the safe third country rule or post-flight events are applicable.

The Qualification Directive (Council Directive 2004/83/EC) is applicable only to refugee status granted under the 1951 Convention and not to asylum status. Thus, it is expected that with the transposition of the Directive into German law, the differences in inclusion criteria between the two types of status will widen. The Federal Constitutional Court determines the criteria for granting asylum status.

6.1.2. Subsidiary Protection

An asylum-seeker is granted complementary ("subsidiary") protection if he or she is not entitled to asylum but cannot be removed to the country in question for one of the following reasons:

Subsidiary protection based on Article 15 of the "Qualification Directive"

- A risk of the death penalty or execution
- A risk of torture or inhuman or degrading treatment or punishment, or
- A serious and individual threat to a civilian's life or person by reasons of indiscriminate violence in situations of international or internal armed conflict.

Subsidiary protection based on other legal criteria

- A breach of rights under Article 3 of the ECHR, or
- Other substantial and concrete dangers to life, limb or liberty, such as natural disasters or

risks arising from the particular situation of the applicant.

6.2 The Decision

Both positive and negative decisions of the BAMF are made in writing. Negative decisions are reasoned and are accompanied by a fact sheet outlining the possibilities for appealing the decision. Decisions are always served on the asylum-seeker or his representative.

6.3 Types of Decisions, Status and Benefits Granted

The BAMF may make one of the following decisions on an asylum claim:

- Grant asylum status in line with Article 16a para. 1 of the Constitution and refugee status in line with the 1951 Convention
- Grant refugee status in line with the 1951 Convention
- Grant subsidiary protection
- Deny asylum status, refugee status and subsidiary protection
- Determine that the claim should not be processed as the asylum-seeker entered Germany via a safe third country – thus, the claim is not examined on its merits.

Claims may be rejected on the basis that they are unfounded, manifestly unfounded or that they are irrelevant because it is obvious that the foreigner was already safe from persecution in another country (first country of asylum).

Claims that are considered to be unfounded may be rejected as manifestly unfounded, *inter alia*, in the following cases:

- Key aspects of the reasons invoked in the application have not been substantiated, are contradictory, do not correspond to the facts or are based on fraudulent evidence
- The person has concealed or provided misrepresentations of his or her identity or nationality
- The person has made another asylum application using different personal information
- The claim was made in order to avoid an imminent termination of a residence title and had ample opportunity to make the claim at an earlier date.

Applicants with claims deemed irrelevant will normally be returned to the country where they had been safe from persecution. If it is not possible to return the individual within three months, the asylum procedure will be resumed.

Convention Refugee or Asylum Status

Persons granted asylum status or refugee status are entitled to the following benefits:

- A residence permit which is valid for three years and renewable
- The same (unrestricted) access to the labour market as nationals
- The same social welfare benefits as nationals (including housing)
- The same health care as nationals
- Integration measures, including language training and cultural orientation.

Members of the nuclear family (spouse and unmarried minor children) of a refugee residing in Germany are generally entitled to asylum status or refugee status as well without the need to show persecution. Members of the nuclear family (spouse, unmarried minor children, parents who are legal guardians of minor children) who are not residing in Germany are as a rule entitled to family reunification.⁵

As a rule, a refugee becomes eligible for a permanent residence (“unlimited settlement”) permit after three years, unless there are reasons for withdrawing his asylum or refugee status. To this end, all positive decisions will be re-examined by the BAMF no later than three years after the decision became final and non-appealable.

If the prerequisites for granting refugee status are still met, the refugee status will be upheld, and the refugee

will be granted a permanent residence permit. If not, refugee status will be withdrawn. Once this decision has become final and non-appealable, the competent Aliens Office will decide whether to withdraw the residence permit. The latter is a discretionary decision and will depend on a number of factors, *inter alia* the degree of integration of the individual into German society, the length of stay in the territory, length of absence from the country of origin, any criminal record, and family ties.

Beneficiaries of Subsidiary Protection

Beneficiaries of subsidiary protection are entitled to the following benefits:

- A residence permit valid for at least one year and renewable
- Access to the labour market, subject to a labour market test⁶
- Access to the same core social welfare benefits as nationals (including housing)
- Access to the same core health care as nationals
- Integration measures (on a discretionary basis).

Close family members (spouse, unmarried minor children, and parents who are legal guardians of minor children) of beneficiaries of subsidiary protection are granted family reunification under certain conditions (e.g., secured livelihood and adequate accommodation space).

Beneficiaries of subsidiary protection may obtain a permanent residence permit after seven years, upon a decision by the competent Aliens Office.

Negative Decisions

An asylum-seeker whose claim is determined to be “unfounded” is given a notification of return along with the negative decision. The person must leave Germany within one month of the decision, if he or she does not appeal the decision. The appeal has suspensive effect.

An asylum-seeker whose claim is determined to be “manifestly unfounded” is given a notification of return along with the negative decision. The person must leave Germany within one week of the decision. The appeal against the decision does not have suspensive effect, unless the asylum-seeker files an urgent motion to this end and the urgent motion is successful.

⁵ Section 29 para. 2 of the Residence Act.

⁶ Access to the labour market is dependent on the following factors: whether the employment of the person entitled to subsidiary protection would have an adverse effect on the labour market; and whether German citizens, EU citizens or other foreign nationals with a work permit are qualified for the job.

Asylum-seekers who are found to have arrived through a safe third country are required to return to the safe third country.

6.4 Exclusion

6.4.1. Refugee Protection

The Counter-Terrorism Act of 9 January 2002 introduced grounds for excluding persons from refugee status in line with Article 1F of the 1951 Convention. Prior to that date, exclusion clauses were not applied during the asylum procedure.

In addition to Article 1F cases, refugee status will not be granted in cases where there are serious reasons for considering that the asylum-seeker constitutes a risk to national security or to the public because he or she has been sentenced to a prison term of at least three years for a criminal offence.

6.4.2. Complementary Protection

Exclusion clauses, as outlined below, are applicable when considering the granting of complementary protection. Complementary protection is construed as an absolute right of protection against removal, as there are no other protection provisions in German law. Thus, while complementary protection as such cannot be excluded, the relevant status rights can be denied.

If a person who meets the criteria for complementary protection is also subject to the exclusion clauses, the individual will be granted neither a residence permit nor other rights and benefits attached to complementary protection status. The individual will be obliged to leave Germany. If removal cannot be effected, he or she will have the same status rights as an asylum-seeker.

The applicable exclusion clauses, based on Article 17 of the Qualification Directive, are as follows:

- There are serious reasons to believe the person has committed a crime against peace, a war crime or a crime against humanity in line with Article 1F a of the 1951 Convention
- There are serious reasons to believe the person has committed a serious non-political crime in line with Article 1F(b) of the 1951 Convention
- There are serious reasons to believe the person has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations (Article 1F(c) of the 1951 Convention)

- There are serious reasons to believe the person constitutes a danger to the community or to national security (Article 33 para. 2 of the 1951 Convention).

In addition to the exclusion clauses above, a person who meets the criteria for complementary protection on the basis of non-European Union law may be excluded for the following additional reasons:

- It is possible and reasonable for the applicant to reside in another state or
- The applicant has repeatedly or grossly breached duties to cooperate with the authorities.

6.5 Cessation

Germany applies the cessation clauses of Article 1C of the 1951 Convention.

In cases pursuant to Article 1C (5) and (6) of the 1951 Convention (ceased circumstances clauses), the BAMF will inform the refugee in writing about the possibility of his status being withdrawn. The refugee will be given due process. The BAMF may request that the refugee provide a written comment within one month. If the refugee fails to do so, the decision will be taken on the basis of the record as it stands. The decision will be served upon the individual in writing. The individual can appeal the decision. As a rule, the appeal has suspensive effect.

Subsidiary protection status may be withdrawn if the person no longer meets criteria for being granted protection. The same procedural rules apply as in cases pursuant to Article 1C (5) and (6). The decision can be appealed. As a rule, the appeal has suspensive effect.

In all cessation cases, it is up to the competent Aliens Office to decide whether the residence permit should be withdrawn as well. The decision is discretionary and will be based on a number of criteria (*inter alia* integration of the individual in Germany, length of stay, any criminal record and family ties).

6.6 Revocation

Asylum status, refugee status or subsidiary protection status may be revoked if the granting of protection status was incorrect. This applies in cases where the decision was based on false information provided by the asylum-seeker (e.g., a false identity or a false country of origin) or on the concealment of essential facts. The same rules of procedure and legal remedies apply as in cessation cases as described above.

The revocation of status will also normally lead to the revocation of the residence permit (*ex tunc*).

6.7 Support and Tools for Decision-Makers

In addition to a country of origin information service and a language analysis tool, the BAMF provides its decision-makers with policy guidelines regarding the situation in countries of origin and the interpretation of the law.

6.7.1. Country of Origin Information

The Information Centre for Asylum and Migration (Informationszentrum Asyl und Migration, IZAM) of the BAMF is responsible for storing and producing country of origin information (COI). The IZAM COI collection comprises information from a wide range of sources, such as foreign service reports published by Germany and other countries, information from UNHCR, human rights organisations, NGOs, academics, and from liaison officers deployed in a number of EU Member States. The information made available to asylum decision-makers is regularly updated.

The IZAM conducts research and produces reports on countries of origin as well as on specific subjects such as political organisations or the situation of particular groups in countries of origin. The IZAM also compiles legal information, in particular decisions by courts.

All the research produced and gathered by the IZAM is made available on the database MIlO (Migration-Information-Logistics), which is fully accessible to BAMF staff as well as to administrative judges at the second instance. Parts of MIlO are made available to the public on the Internet. The IZAM also operates a central reference desk, which responds to caseworkers' queries for COI when the requested information is not available on MIlO.

6.7.2. Language Analysis

Language analysis may be used in cases where the alleged country or region of origin is in doubt. To this end, the asylum-seeker's oral statements are recorded on audio and data media. Such recordings may be made only if the asylum-seeker is informed beforehand.

7 Efficiency and Integrity Measures

7.1 Technological Tools

The identity of any asylum-seeker will be established by means of identification measures unless he or she is under 14 years of age. Only photographs and prints of all ten fingers may be taken. Fingerprinting is crucial for identifying asylum-seekers who have already applied for

asylum in other EU Member States, and for determining whether the application is a first or repeat application.

7.1.1. Fingerprinting

Fingerprints are taken from all asylum-seekers aged 14 and above. Fingerprints are stored in a central database with the Federal Criminal Police Office. They will be compared with fingerprints of other asylum-seekers included in the database in order to establish whether an asylum-seeker is making a first or repeat or a multiple application for asylum. The information will also be compared against the data in the EURODAC database and identity records stored by the Federal Criminal Police Office and obtained from such sources as criminal investigations.

The fingerprints taken are also stored in the Eurodac database, which facilitates the comparison of fingerprints of asylum-seekers and persons without permits in EU countries, in order to determine the EU Member State responsible for processing a claim under the Dublin Regulation.

7.1.2. DNA Tests

There are no possibilities for undertaking DNA tests during the asylum procedure.

7.1.3. Forensic Testing of Documents

In order to check the authenticity of identity documents or other documents, forensic tests are used.

7.1.4. Database of Asylum Applications/Applicants

Data on the application of all asylum-seekers is stored in a centralised database at the BAMF called the Maris database.

In addition, the personal data on an asylum-seeker is entered into the Central Aliens Register. The Central Aliens Register is a centralised, national file containing personal data *inter alia* of foreign nationals who are staying in the Federal territory for longer than three months, and foreign nationals who are in Germany on special residence grounds, such as asylum-seekers. The Central Aliens Register is also maintained by the BAMF.

7.1.5. Biometric Data Checks

In order to check the authenticity of an asylum-seeker's document or identity, biometric data and other data stored electronically in or her or she passport or other identity documents may be read, and the necessary biometric data may be obtained from the asylum-

seeker and compared with the biometric data from the document. Biometric data may include only fingerprints, photographs and iris scans.

7.2 Length of Procedures

While there are no time limits for making a first asylum application, a person who has delayed in making an application for asylum after arriving in Germany may find his or her credibility assessment affected. Repeat applications must be made within three months of the day the person learnt of the grounds for the new application. Otherwise the repeat application will be rejected.

7.3 Pending Cases

As at 31 December 2008, there was a total of 18,278 pending cases at the BAMF (14,092 first applications and 4,186 repeat applications).

7.4 Information Sharing

Information sharing agreements exist with states under the Dublin II Regulation. UNHCR is provided with anonymised copies of all asylum decisions.

7.5 Single Procedure

If an asylum-seeker asks for asylum and/or refugee status, the BAMF will automatically also decide on the granting of subsidiary protection in cases where asylum and refugee status were denied. In that sense, there is a single procedure.

However, if a foreign national applies for subsidiary protection only, the decision rests with the Aliens Office. In order to ensure consistency in decision-making, the Aliens Office consults the BAMF before making a decision on the application.

8 Assistance and Reception Benefits for Asylum-Seekers

8.1 Procedural Support and Safeguards

8.1.1. Legal Assistance

There is no requirement for asylum-seekers to have legal representation or assistance during the asylum procedure at the BAMF. Nor is legal counsel required for appeals before the Administrative Court. Legal representation is obligatory for appeals before the High Administrative Court and the Federal Administrative Court.

At the first instance, asylum-seekers have access to free legal counselling but not free legal representation. At the appeal stage, an asylum-seeker may be granted free legal aid that includes legal representation, provided that there are sufficient prospects for success of the appeal and the appellant is lacking in financial resources.

8.1.2. Interpreters

During the asylum procedure at the BAMF, an interpreter is made available during the interview if the applicant does not have sufficient command of the German language.

8.1.3. UNHCR

According to Section 9 of the Asylum Procedure Act, every asylum-seeker in Germany may contact the UNHCR. The office may present its views regarding individual applications for asylum to the BAMF. The UNHCR also has access to persons in detention and in airport transit zones.

Box 4: Cooperation with UNHCR, NGOs

While the UNHCR does not have a formal role in the asylum procedure, the BAMF will, upon request, provide the UNHCR with information necessary for the Refugee Agency to fulfill its mandate under Article 35 of the 1951 Convention. This includes the provision of anonymised copies of all asylum decisions and reports of hearings.

A sub-office of the UNHCR is located in the building of the BAMF in Nuremberg. Exchange takes place on all aspects of the asylum procedure and on decisions taken, including several institutionalised exchange fora addressing questions relating to the quality of procedures and decision-making. The UNHCR is also involved in providing training and information to asylum authorities (including the BAMF and the border police) and to asylum law judges.

NGOs are not involved in the asylum procedure. However, there is a wide range of NGOs and private initiatives engaged in counselling and support work for asylum-seekers and refugees.

In order to assess asylum claims, the BAMF *inter alia* draws upon information from UNHCR and NGOs.

8.2 Reception Benefits

The Federal States have overall responsibility for the reception of asylum-seekers.

8.2.1. Accommodation

Asylum-seekers are accommodated in asylum reception centres run by the Federal States during the first three months of the procedure. Thereafter, asylum-seekers will be transferred to local asylum centres, which are also run by the Federal States or local authorities. The obligation to reside in a reception centre may be terminated for reasons of public health, for other reasons of public security and order or for other compelling reasons, including humanitarian reasons.

Unaccompanied minor asylum-seekers under the age of 16 are provided accommodation in special reception centres run or supervised by the Youth Welfare Services. In a number of Federal States, this type of accommodation is also available to unaccompanied minors above the age of 16.

8.2.2. Social Assistance

Asylum-seekers are entitled to government aid if they have no income or assets of their own. The Asylum Seekers Benefits Act defines the scope and form of assistance granted to asylum-seekers. As a rule, in-kind benefits have priority over financial aid. In-kind benefits comprise *inter alia* accommodation, heating, electricity, furniture and appliances. Everyday items can be purchased using coupons or credit cards loaded with fixed credit amounts. Asylum-seekers receive the following monthly financial aid for everyday items, such as food, clothing, and health care products:

- For each head of the household: 184.07 €
- For each child under the age of eight: 112.48 €
- For all other family members: 158.50 €.

In addition, asylum-seekers receive pocket money as follows:

- Children under the age of 15: 20.45 € per month
- Individuals over 15 years of age: 40.90 € per month.

Additional benefits may be granted in special situations, such as to accommodate the special needs of children and infants, the cost of school materials or field trips or the special needs of pregnant women.

If, after four years, an asylum application is still pending, the asylum-seeker is entitled to increased financial

assistance based on the benefits granted to German nationals.

8.2.3. Health Care

Asylum-seekers are entitled to medical and dental care if they suffer from an illness requiring treatment. Unless there is an emergency, asylum-seekers must receive approval from the Social Services Office prior to visiting a doctor. Medical treatment may be refused if it is not absolutely necessary or it can be performed at a later date.

Additional health care services may be granted if they are necessary for the overall health of the asylum seeker. Asylum-seekers are entitled to regular medical examinations and essential vaccinations.

Children under the age of six can undergo special pediatric medical exams, including dental examinations. Pregnant women and mothers with infants may have access to a wider range of health care services.

Asylum-seekers who have resided in Germany for more than 48 months (four years) while awaiting a decision on their claim will generally be granted health care based on the benefits granted to German nationals.

8.2.4. Education

Responsibility for granting access to education, including language classes, rests with the Federal States. Thus, there is no uniform policy regarding education for asylum-seekers in Germany. In some Federal States school attendance for minors is compulsory, while in other States minors have the possibility to attend school but are not obliged to do so. Similarly, access to language classes varies across Germany.

8.2.5. Access to Labour Market

After having resided in Germany for a year while awaiting a decision on their claim, asylum-seekers may take up employment. However, a person's access to a specific job is subject to a labour market test. Asylum-seekers will be considered for a position only if there are no German citizens or other foreign nationals qualified for the job.

8.2.6. Access to Integration Programmes

Asylum-seekers are not entitled to participate in state-run integration programmes pending a decision on their claim. However, there are numerous programmes designed to assist asylum-seekers in their everyday life. These cover a wide range of issues, including legal

counselling, joint activities with the local communities or language classes.

8.2.7. Access to Benefits by Rejected Asylum-Seekers

Asylum-seekers who have obtained a negative decision on their claim continue to be entitled to benefits for asylum-seekers until their departure from Germany.

9 Status and Permits Granted outside the Asylum Procedure

9.1 Subsidiary Protection

Applications for subsidiary protection claims are examined by the Aliens Office if the applicant does not apply for asylum at the same time. These applications are considered separately from the asylum procedure.

The Aliens Office is also responsible for examining applications for subsidiary protection if the application raises issues related to the person's situation, such as health issues or lack of fitness to travel. Such applications are usually made after a negative decision on an asylum claim by the BAMF.

Any negative decision taken by the Aliens Office on an application for subsidiary protection may be appealed. The appeal has suspensive effect.

All beneficiaries of subsidiary protection, regardless of whether it was granted by the Aliens Office outside the asylum procedure or by the BAMF, are entitled to the same benefits described above.

9.2 Humanitarian Grounds

The Aliens Office may grant on a discretionary basis temporary residence for humanitarian reasons or for reasons related to the public interest. The temporary residence permit is valid for a maximum period of six months.

Decisions by the "Commissions for Hardship Cases" ("Härtefallkommission")

Federal States may issue a residence permit to a person who is subject to a removal order, if a Commission for Hardship Cases determines that there are compelling reasons for doing so. Commissions for hardship cases exist in all Federal States. For example, a person who has been integrated into German society and has resided in the country for many years may be eligible for a residence permit. Persons who have

been convicted of a serious crime are excluded from consideration.

The Commission's decisions are recommendations and non-binding on authorities. Hence, an individual cannot appeal the decision of the Commission.

If a residence permit is granted on the basis of the Commission's recommendation, the person is entitled to the same rights as any other legally resident foreign national.

9.3 Temporary Protection

Temporary protection is granted on a group basis outside the asylum procedure, in accordance with Section 24 of the Residence Act, which gives effect to Council Directive 2001/55/EC.⁷ Temporary protection is limited to a maximum of two years. If beneficiaries of temporary protection apply for asylum, the decision on the asylum claim will be suspended until temporary protection comes to an end.

Beneficiaries of temporary protection are entitled to rights and benefits similar to those of beneficiaries of subsidiary protection. Beneficiaries of temporary protection are settled in Germany on a voluntary basis. Thus, it is not possible for foreign nationals to apply for temporary protection or to make an appeal against a decision not to grant temporary protection.

9.4 Group-Based Protection

While refugee status is granted within the asylum procedure on an individual case-by-case basis, if mere affiliation with an ethnic, religious or other, well-defined group of persons is the basis for persecution (group-based persecution), it is possible to grant refugee status to members of the group collectively. Thus, individual applicants do not need to prove they are specifically targeted for persecution but rather, that they are a member of that particular group.

This form of group-based protection is granted by the Interior Ministries of the Federal States outside the asylum procedure for humanitarian or political reasons. This is done on a discretionary basis, and it requires the consent of the central Ministry of Interior.

In addition, the central Ministry of Interior in coordination with the Federal States has the discretion to accept a

⁷ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (Temporary Protection Directive).

group of persons from specific countries, if this is in the specific political interest of Germany.⁸

Decisions of the Supreme Land Authorities

Under German law, the supreme Land authorities (Ministries of the Interior of the *Länder*) have the possibility, in consultation with the central Ministry of the Interior, to grant residence permits to foreign nationals both inside and outside Germany who originate from specifically-designated countries or are members of specifically-designated groups. The decisions are based on international law or humanitarian or foreign policy considerations.

9.5 Obstacles to Return

An asylum-seeker who has received a negative decision on a claim, or any other foreign national who has an obligation to leave Germany, may be eligible for a residence permit on humanitarian grounds, if removal cannot be implemented for reasons of fact or law and the obstacle to removal is not likely to cease in the foreseeable future.

If a suspension of removal (“toleration” or “Duldung”) has lasted for 18 months, a residence permit will generally be granted. This does not apply in cases where the foreign national obstructed removal efforts.

The residence permit entails rights and benefits similar to those granted to beneficiaries of subsidiary protection.

9.6 Regularisation of Status over Time

There have in the past been temporary, ad hoc regularisation programmes to grant residence permits to foreign nationals under tolerated status (Duldung). The Act on the Implementation of Residence and Asylum-Related Directives of the European Union of 19 August 2007 includes a legal regularisation programme for foreign nationals who *inter alia* have been continuously resident in the Federal territory for a minimum of eight years on 1 July 2007 and fulfill certain integration requirements.⁹

In case of a suspension of a removal, an individual may – if a number of requirements are met – receive

⁸ This discretion has been exercised, for example, in the case of the Iraqi nationals currently being resettled from Jordan and Syria (see section on Resettlement above). The resettled Iraqis are granted a renewable residence permit valid for three years.

⁹ These requirements include adequate accommodation space, knowledge of the spoken German language, secured livelihood, and no convictions or suspicion of having participated in extremist or terrorist activities or serious criminal offences.

a residence permit after a period of time has elapsed, as described above.

9.7 Regularisation of Status of Stateless Persons

Germany has ratified the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. A stateless person whose application for asylum has been rejected and who cannot return to the country of habitual residence may regularise his or her stay in Germany, provided certain conditions are met.

9.8 Victims of Trafficking

The Aliens Office may, on a discretionary basis, grant a temporary residence permit to victims of human trafficking, provided that a court or prosecutor has requested them to give testimony in a court case. The permit is valid for an initial period of six months and is renewable. The benefits and entitlements attached to this temporary permit are similar to those available to beneficiaries of subsidiary protection.

10 Return

10.1 Pre-departure Considerations

An unsuccessful asylum-seeker will be requested to leave Germany within a specific timeframe. The decision regarding the removal will be served on the asylum-seeker together with the negative decision on the asylum claim.

Returnees are encouraged to return voluntarily. There are a number of programmes that provide financial support to those returnees without the financial means to return on their own.

10.2 Procedure

Voluntary Return

The REAG (Reintegration and Emigration Programme for Asylum Seekers in Germany) and GARP (Government Assisted Repatriation Programme) are two combined programmes to assist voluntary return and emigration. They are organised by IOM on behalf of the Ministry of the Interior and the competent Federal States ministries, in coordination with the local authorities, welfare organisations and UNHCR. The programmes are conditional on returnees not having sufficient funds to meet the cost of return and emigration.

The BAMF has set up a database (*Zentralstelle für Informationsvermittlung zur Rückkehrförderung, ZIRF*) with relevant data related to voluntary return, such as conditions in the country of origin, and promotional programmes such as those mentioned above.

While REAG provides return assistance in the form of transport costs and travel subsidies, GARP grants reintegration assistance. The GARP assistance is allocated to each person, with the amount adjusted according to the person's age and destination country.

Assisted returns also take place under programmes of the European Refugee Fund (relating to information- and advice-provision) and the European Return Fund.

Forced Return

Returns may be enforced if the person is not willing to leave Germany after the deadline for departure has passed.

10.3 Freedom of Movement/ Detention

Detention pending deportation may be ordered for up to six months. A non-cooperative returnee may be detained for a maximum duration of 18 months, if there are indications that his or her removal would otherwise become difficult or impossible. This may be the case, if, for example, the returnee has obstructed removal efforts before, or if there are indications that he or she would abscond.

A returnee will be released from detention if a removal through no fault of his or her own cannot be implemented (for example because the country of destination is not accessible). Detention may be ordered only by a judge.

10.4 Readmission Agreements

Germany has in place readmission agreements with a number of States, but none of them is dedicated to specific groups of asylum-seekers.

11 Integration

Beneficiaries of asylum status or refugee status are entitled to participate in integration courses. Integration courses comprise basic and advanced language courses that provide an adequate knowledge of the language and an orientation course to impart knowledge of the legal system, culture and history of Germany. The aim is to provide refugees with the knowledge and tools necessary to live independently.

Integration courses are coordinated and implemented by the BAMF. To this end, the BAMF enlists the services of private or public organisations.

Beneficiaries of subsidiary protection are not entitled to integration courses but may take part in them, depending on the available resources.

Integration courses are complemented by additional integration measures organised by the Federation and the Federal States, in particular social education and migration-specific counselling services.

Finally, there are many NGO-based integration programmes and private initiatives throughout Germany, which support refugees and others in their integration efforts.

12 Annexe

12.1 Selection from the Basic Law for the Federal Republic of Germany¹⁰

Article 16a

Right of asylum

(1) Persons persecuted on political grounds shall have the right of asylum.

(2) Paragraph (1) of this Article may not be invoked by a person who enters the federal territory from a member state of the European Communities or from another third state in which application of the Convention Relating to the Status of Refugees and of the Convention for the Protection of Human Rights and Fundamental Freedoms is assured. The states outside the European Communities to which the criteria of the first sentence of this paragraph apply shall be specified by a law requiring the consent of the Bundesrat. In the cases specified in the first sentence of this paragraph, measures to terminate an applicant's stay may be implemented without regard to any legal challenge that may have been instituted against them.

(3) By a law requiring the consent of the Bundesrat, states may be specified in which, on the basis of their laws, enforcement practices, and general political conditions, it can be safely concluded that neither political persecution nor inhuman or degrading punishment or treatment exists. It shall be presumed that a foreigner from such a state is not persecuted, unless he presents evidence justifying the conclusion that, contrary to this presumption, he is persecuted on political grounds.

(4) In the cases specified by paragraph (3) of this Article and in other cases that are plainly unfounded or considered to be plainly unfounded, the implementation of measures to terminate an applicant's stay may be suspended by a court only if serious doubts exist as to their legality; the scope of review may be limited, and tardy objections may be disregarded. Details shall be determined by a law.

(5) Paragraphs (1) through (4) of this Article shall not preclude the conclusion of international agreements of member states of the European Communities with each other or with those third states which, with due regard for the obligations arising from the Convention Relating to the Status of Refugees and the Convention for the Protection of Human Rights and Fundamental Freedoms, whose enforcement must be assured in the contracting states, adopt rules conferring jurisdiction to decide on applications for asylum, including the reciprocal recognition of asylum decisions.

12.2 Selections from the Asylum Procedure Act¹¹

Section 3

Recognition of refugee status

(1) A foreigner is a refugee within the meaning of the Convention related to the status of refugees if in the country of his citizenship or in which he habitually resided as a stateless person he faces the threats listed in Section 60 (1) of the Residence Act.

(2) A foreigner shall not be recognized as a refugee under (1) if there is good reason to believe that he

1. has committed a crime against peace, a war crime or a crime against humanity within the meaning of the international instruments drawn up for the purpose of establishing provisions regarding such crimes,

2. committed a serious non-political crime outside the Federal territory before being admitted as a refugee, in particular a brutal act, even if it was supposedly intended to pursue political aims, or

¹⁰ Basic Law for the Federal Republic of Germany, 23 May 1949 (as amended July 2002). Available online on UNHCR Refworld at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=3ae6b5a90&skip=0&query=Germany%20basic%20law> [Accessed 2 April 2009].

¹¹ Asylum Procedure Act in the version promulgated on 27 July 1993, last amended by Article 3 of the Act to Implement Residence- and Asylum-Related Directives of the European Union of 19 August 2007. Available online on UNHCR Refworld at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=48e5d6582&page=search> [accessed 2 April 2009].

3. acted in violation of the aims and principles of the United Nations.

Sentence 1 shall apply also to foreigners who have incited others to commit the crimes or acts listed there or otherwise been involved in such crimes or acts.

(3) Nor shall a foreigner be a refugee under (1) if he enjoys the protection or assistance of an organization or other institution of the United Nations, with the exception of the United Nations High Commissioner for Refugees under Article 1, section D of the Convention relating to the status of refugees. (1) and (2) shall apply if such protection or assistance is no longer provided, without having finally clarified the situation of those affected in accordance with the relevant resolutions of the General Assembly of the United Nations.

(4) A foreigner who is a refugee under (1) shall be recognized as having refugee status unless he fulfils the prerequisites of Section 60 (8) first sentence of the Residence Act.

Section 27

Safety elsewhere from persecution

(1) A foreigner who was already safe from political persecution in another third country shall not be recognized as a person entitled to asylum.

(2) If the foreigner holds a travel document issued by a safe third country (Section 26a) or by another third country pursuant to the Convention related to the status of refugees, it shall be presumed that he was safe from political persecution in that country.

(3) If before entering the Federal territory, a foreigner has lived for more than three months in another third country where he is not threatened by political persecution, it shall be presumed that he was safe there from political persecution. This shall not apply if the foreigner provides plausible evidence that deportation to another country where he is threatened by political persecution could not be ruled out with reasonable certainty.

Section 29a

Safe country of origin

(1) The asylum application of any foreigner from a country within the meaning of Article 16a (3) first sentence of the Basic Law (safe country of origin) shall be turned down as being manifestly unfounded, unless the facts or evidence produced by the foreigner give reason to believe that he faces political persecution in his country of origin in spite of the general situation there.

(2) In addition to the Member States of the European Union, safe countries of origin are those listed in Appendix II.

(3) The Federal Government shall resolve by statutory ordinance without the consent of the Bundesrat that a country listed in Appendix II is no longer deemed a safe country of origin if changes in its legal or political situation give reason to believe that the requirements mentioned in Article 16a (3) first sentence of the Basic Law have ceased to exist. The ordinance shall expire no later than six months after it has entered into force.

Section 30

Manifestly unfounded applications for asylum

(1) An asylum application shall be manifestly unfounded if the prerequisites for recognition as a person entitled to asylum and the prerequisites for granting refugee status are obviously not met.

(2) In particular, an asylum application shall be manifestly unfounded if it is obvious from the circumstances of the individual case that the foreigner remains in the Federal territory only for economic reasons or in order to evade a general emergency situation or an armed conflict.

(3) An unfounded asylum application shall be rejected as being manifestly unfounded if

1. key aspects of the foreigner's statements are unsubstantiated or contradictory, obviously do not correspond the facts or are based on forged or falsified evidence;

2. the foreigner misrepresents his identity or nationality or refuses to state his identity or nationality in the asylum procedure;
3. he has filed another asylum application or asylum request using different personal data;
4. he filed an asylum application in order to avert an imminent termination of residence although he had had sufficient opportunity to file an asylum application earlier;
5. he grossly violated his obligations to cooperate pursuant to Section 13 (3) second sentence, Section 15 (2) nos. 3 through 5, or Section 25 (1) above, unless he is not responsible for violating his obligations to cooperate or there are important reasons why he was unable to comply with his obligations to cooperate;
6. he has enforceably been expelled pursuant to Sections 53 and 54 of the Residence Act; or
7. the asylum application has been filed on behalf of a foreigner without legal capacity under this Act, or is considered under Section 14a to have been filed after asylum applications by the parent(s) with the right of custody has been incontestably rejected.

(4) Furthermore, an asylum application shall be rejected as manifestly unfounded if the requirements of Section 60 (8) first sentence of the Residence Act or of Section 3 (2) apply.

(5) An application filed with the Federal Office shall also be rejected as manifestly unfounded if, due to its content, it does not constitute an asylum application in the sense of Section 13 (1).

12.3 Selections from the Residence Act¹²

Section 24

Granting of residence for temporary protection

(1) A foreigner who is granted temporary protection on the basis of a resolution by the Council of the European Union pursuant to directive 2001/55/EC and who declares his or her willingness to be admitted into the Federal territory shall be granted a residence permit for the duration of his or her temporary protection as assessed in accordance with Articles 4 and 6 of said directive.

(2) No temporary protection shall be granted if one of the conditions stipulated in Section 60 (8) applies; the residence permit shall be refused.

(3) The persons admitted on the basis of a resolution pursuant to sub-section 1 shall be allocated to the various Länder. The Länder may agree quotas for admission to grant temporary protection and for allocation. Allocation to the various Länder shall be carried out by the Federal Office for Migration and Refugees. In the absence of any divergent allocation basis agreed between the Länder, the allocation basis stipulated for the allocation of asylum seekers shall apply.

(4) The supreme Land authority or the body appointed by the same shall pass an allocation ruling. The Land governments are authorised to regulate allocation within the Länder via statutory instruments, and may assign this authorisation to other bodies via statutory instruments; Section 50 (4) of the Asylum Procedure Act shall apply *mutatis mutandis*. The allocation ruling shall not be contestable. Any legal actions shall have no suspensory effect.

(5) The foreigner shall have no entitlement to stay in a specific Land or a specific place. He or she shall take up his or her accommodation and ordinary residence at the place to which he or she is allocated in accordance with sub-sections 3 and 4.

(6) Self-employment must not be excluded. The pursuit of an economic activity with employee status shall be subject to Section 4 (2). 2.

¹² Residence Act, 30 June 2004, last amended by the Act amending the Residence Act and other acts of 14 March 2005. Available online on UNHCR Refworld at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=455081074&skip=0&query=Germany%20residence%20act> [Accessed 2 April 2009].

(7) The foreigner shall be provided with written notification of the rights and obligations pertaining to the temporary protection in a language which he or she is able to understand.

Section 60

Prohibition of deportation

(1) In application of the Convention of 28 July 1951 relating to the Status of Refugees (Federal Law Gazette 1953 II, p. 559), a foreigner may not be deported to a state in which his or her life or liberty is under threat on account of his or her race, religion, nationality, membership of a certain social group or political convictions. This shall also apply to foreigners who enjoy the legal status of foreign refugees in the Federal territory or are recognised as foreign refugees outside of the Federal territory within the meaning of the Convention relating to the Status of Refugees. When a person's life, freedom from bodily harm or liberty is threatened solely on account of their sex, this may also constitute persecution due to membership of a certain social group. Persecution within the meaning of sentence 1 may emanate from

a) the state,

b) parties or organisation which control the state or substantial parts of the national territory, or

c) non-state parties, if the parties stated under letters a and b, including international organisations, are demonstrably unable or unwilling to offer protection from the persecution, irrespective of whether a power exercising state rule exists in the country, unless an alternative means of escape is available within the state concerned.

If the foreigner cites an obstacle to deportation pursuant to this sub-section, the Federal Office for Migration and Refugees shall establish whether the necessary conditions apply in an asylum procedure according to the provisions of the Asylum Procedure Act, except in cases covered by sentence 2. The ruling of the Federal Office shall only be appealable subject to the provisions of the Asylum Procedure Act.

(2) A foreigner may not be deported to a state in which a concrete danger exists of the said foreigner being subjected to torture.

(3) A foreigner may not be deported to a state in which he or she is wanted for an offence and a danger of the foreigner receiving the death penalty applies. In such cases, the provisions on deportation shall be applied accordingly.

(...)

(5) A foreigner may not be deported if deportation is inadmissible under the terms of the Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms (Federal Law Gazette 1952 II, p. 685).

(...)

(7) A foreigner should not be deported to another state in which a substantial concrete danger to his or her life and limb or liberty applies. Dangers in this state to which the population or the segment of the population to which the foreigner belongs are generally exposed shall receive due consideration in decisions pursuant to Section 60a (1), sentence 1.

(...)

Section 60a

Temporary suspension of deportation

(...)

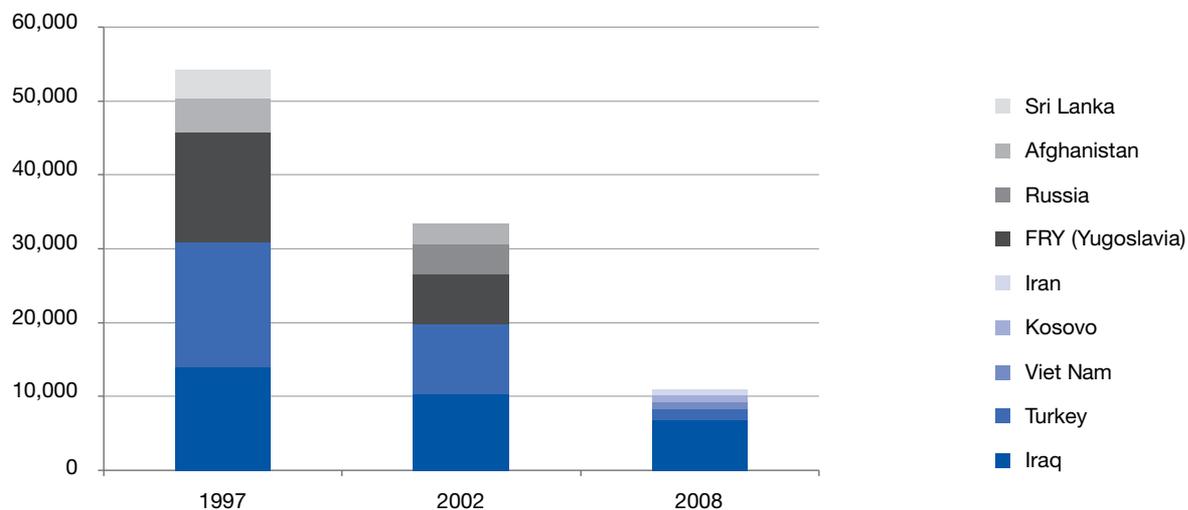
(2) The deportation of a foreigner shall be suspended for as long as deportation is impossible in fact or in law and no residence permit is granted.

(...).

12.4 Additional Statistical Information

Figure 5:

Asylum Applications* from Top Five Countries of Origin in 1997, 2002 and 2008



* First applications only

Figure 6:

Decisions Made at All Instances of the Asylum Procedure, 1992-2008

Year	Refugee and Asylum Status		Complementary Protection and Other Authorisations to Remain		Rejections		Other Decisions*		Total Decisions
	Count	% of total	Count	% of total	Count	% of total	Count	% of total	
1992	9,189	4%	0	0%	163,637	76%	43,530	20%	216,356
1993	16,396	3%	0	0%	347,991	68%	149,174	29%	513,561
1994	35,564	10%	0	0%	238,386	68%	78,622	22%	352,572
1995	23,468	12%	3,631	2%	114,308	57%	58,781	29%	200,188
1996	24,000	12%	2,082	1%	124,570	64%	43,799	23%	194,451
1997	18,222	11%	2,768	2%	99,118	58%	50,693	30%	170,801
1998	11,320	8%	2,537	2%	89,163	60%	44,371	30%	147,391
1999	10,261	8%	2,100	2%	80,231	59%	42,912	32%	135,504
2000	11,446	11%	1,597	2%	61,840	59%	30,619	29%	105,502
2001	22,719	21%	3,383	3%	55,402	52%	25,689	24%	107,193
2002	6,509	5%	1,598	1%	78,845	61%	43,176	33%	130,128
2003	3,136	3%	1,567	2%	63,002	67%	26,180	28%	93,885
2004	2,067	3%	964	2%	38,599	62%	20,331	33%	61,961
2005	2,464	5%	647	1%	27,462	57%	17,529	36%	48,102
2006	1,348	4%	603	2%	17,781	58%	11,027	36%	30,759
2007	7,197	25%	673	2%	12,749	45%	7,953	28%	28,572
2008	7,291	35%	562	3%	6,761	32%	6,203	30%	20,817

*Other decisions may include withdrawn claims, abandoned claims or claims otherwise resolved.

Greece



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1 Background: Major Asylum Trends and Developments

As one of the main gateways to the European Union (EU), Greece receives large numbers of asylum applicants from various countries of origin. While in 2004 the number of annual applications stood at 4,500, by 2006, Greece was receiving over 12,000 claims. That number increased to 25,000 in 2007, but decreased slightly in 2008, when Greece received close to 20,000 applications.

Taking account of the significant numbers of asylum-seekers arriving at its borders, by 1999 Greece had put in place a legislative framework for its national asylum procedure. Efforts have been made and continue to be made to mobilise administrative measures and policies in order to meet the needs of asylum-seekers and other migrants.

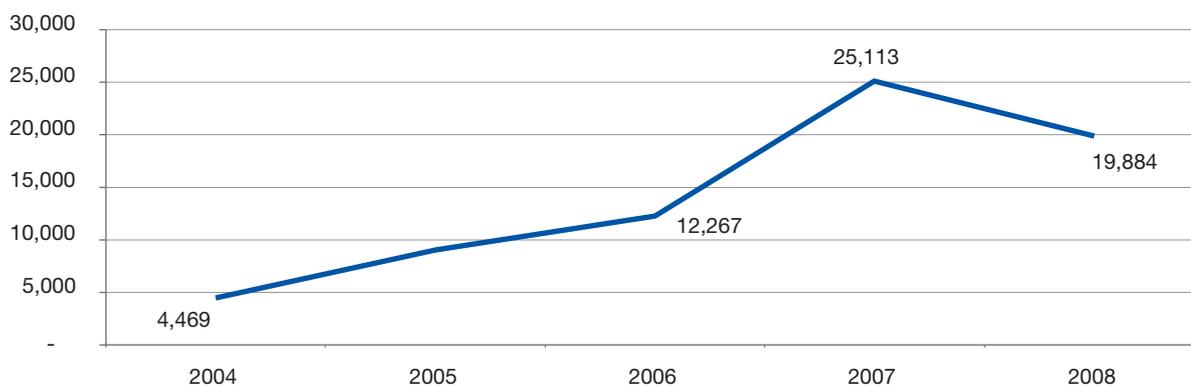
The following Council Directives, which have a bearing on asylum procedures, have been transposed into Greek national law since 2007:

- Directive 2003/9/EC¹
- Directive 2005/85/EC²
- Directive 2004/83/EC³
- Directive 2003/86/EC.⁴

Greece has ratified the European Convention on Human Rights (ECHR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

Figure 1:

Evolution of Asylum Applications in Greece, 2004-2008



2 National Legal Framework

2.1 Legal Basis for Granting Protection

Refugee status is granted on the basis of the 1951 Convention relating to the Status of Refugees (1951 Convention) and its 1967 Protocol. The asylum procedure and the competencies of asylum institutions in Greece are governed by Law 2452/1996 concerning Refugees and the relevant Presidential Decrees, including Presidential Decree No. 61/1999 on Refugee Status Recognition Procedure, Revocation of the Status and Deportation of an Alien, Permission for the Members of his Family and Mode of Cooperation with the UNHCR (Official Gazette No. 63(A) 6 April 1999).

Figure 2:

Top Five Countries of Origin in 2008

1	Pakistan	6,914
2	Afghanistan	2,287
3	Georgia	2,241
4	Bangladesh	1,778
5	Iraq	1,760

- 1 Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum-seekers (Reception Directive).
- 2 Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (Asylum Procedures Directive).
- 3 Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (Qualification Directive).
- 4 Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (Family Reunification Directive).

2.2 Recent Reforms

Presidential Decree 96/2008, which transposed the Qualification Directive into national law, introduced the possibility of granting subsidiary protection to persons who would face “serious harm” if returned to the country of origin. The Decree stipulates the benefits that may be granted with subsidiary protection.

Presidential Decree 90/2008, enacted in July 2008, introduces the possibility of obtaining legal aid for appeals before the Council of State.

The Asylum Experts Committee was replaced in 2008 by the Appeals Committee, a six-member committee including representatives from the Ministry of Interior, the Ministry of Foreign Affairs, the United Nations High Commissioner for Refugees (UNHCR) and the Athens Bar Association. The Appeals Committee hears appeals of negative decisions on asylum claims made by the Ministry of Interior and, unlike the previous Committee, has full decision-making power.

Presidential Decree 167/2008 reinforces the right to family reunification as laid down in Presidential Decree 131/2006, which was introduced to transpose the Family Reunification Directive into national law.

3 Institutional Framework

The Ministry of Interior (Aliens Division of the Hellenic Police Headquarters) is responsible for examining and making a determination on asylum applications. The Ministry is also responsible for the following:

- Issuing documents to asylum-seekers and residence permits to persons who are granted refugee status
- Detaining foreign nationals, where deemed necessary
- Implementing the return of rejected asylum-seekers.

The Ministry of Foreign Affairs is represented on the asylum Appeals Committee by two officials, one from the Diplomatic Branch and one from the Special Legal Service.

The Appeals Committee is an independent body that hears appeals of negative decisions on asylum claims made by the Aliens Division of the Ministry of Interior and has, under Article 26 of the Presidential Decree 09/2008, full decision-making authority.

The Council of State (highest administrative Court) is an independent body that hears appeals in cassation of negative decisions on asylum claims taken by the Appeals Committee.

The Ministry of Health and Social Solidarity oversees the reception of asylum-seekers.

4 Pre-entry Measures

The requirements for gaining entry into Greece are governed by Law 3386/2005 and Article 5 of Regulation 562/2006 of the European Council.

Specifically, third country nationals wishing to enter Greece must meet the following criteria:

- Possess a valid travel document or documents authorising them to cross the border
- Possess a valid visa, if required
- Justify the purpose of their visit and have sufficient financial means for their stay in Greece
- Not be included on the National List of Undesired Aliens or in the Schengen Information System (SIS)
- Not be considered to be a threat to public policy, internal security, public health or the international relations of any of the Member States.

A person may be refused entry into Greece if he or she does not possess valid entry documents such as a visa. The foreign national is provided with a standard form for refusal of entry (Annex V of Regulation 562/2006). All the necessary measures are taken to prevent his or her entry into Greece. When a foreign national is denied entry at a land border post, he or she must return without any delay to the country of origin. If denied entry takes place at an airport or a seaport, the carrier is responsible for transporting him or her back.

4.1 Visa Requirements

Any person wishing to obtain a visa to enter Greece may contact the competent consular authority at his or her place of residence or in exceptional cases the competent border authorities, if the conditions of Council Regulation 415/2003 on the issue of visas at the border apply.

4.2 Carrier Sanctions

Sanctions levied on carriers for allowing foreign nationals who do not meet entry requirements (as described above) to travel to Greece are governed by

Law 3386/2005 as it was amended by Law 3536/07. According to Article 88 of the Law, carriers are liable to a fine of between 5,000€ and 20,000€ per person and a minimum prison term of one year. In the case of death resulting from the transportation of the undocumented passenger, life imprisonment and fines of up to 500,000€ per person may be levied on the carrier.

5 Asylum Procedures

5.1 Application Possibilities and Requirements, Procedures and Legal Remedies

A number of key pieces of immigration legislation⁵ have recently been passed to provide immigrants with the opportunity to make a claim for asylum if they so wish. The Greek Police (under the Ministry of Interior), which has responsibility for implementing asylum procedures, may not remove an asylum-seeker from the territory until he or she has completed the asylum procedure.

Applications for asylum may be made at airports, seaports, land border posts, and in-country at police stations. The majority of asylum claims are made at the Asylum Department of the Attica Immigration Directorate (Police) in Petrou Ralli, Athens.

Information on the asylum procedure is provided to asylum-seekers in a fact sheet, “Basic Information for Asylum-Seekers,” which is available in five languages (Arabic, Turkish, Persian, English and French). The leaflet has been provided to all competent Police services. In addition, every foreign national under arrest or under a removal order or who has been found to have entered Greece without proper authorisation must be provided with a copy of the fact sheet. Asylum-seekers are also given information on their right to an interpreter, on legal representation and on the United Nations High Commissioner for Refugees and non-governmental organisations (NGOs).

The fact sheet on asylum procedures, which was issued in cooperation with the UNHCR within the framework of the European programme called Equal, is expected to be revised and re-issued to reflect recent changes to asylum legislation.

5.1.1. Outside the Country

Applications at Diplomatic Missions

Greece does not accept asylum applications from abroad.

⁵ See in particular Presidential Decrees 220/2007, 90/2008, 96/2008 and 167/2008.

Resettlement/Quota Refugees

Greece has not in the past operated a quota refugee programme or accepted quota refugees on an ad hoc basis.

5.1.2. At Ports of Entry

Asylum applications made at airports, seaports and land border posts are subject to an accelerated procedure. The Aliens Division of the Ministry of Interior receives the applications and conducts an interview with the asylum-seeker. At this stage, asylum-seekers have access to the services of an interpreter and may request the assistance of legal counsel. A decision on the application is taken by the Aliens Division of the Ministry of Interior to either grant refugee status, deny refugee status, or move the application to the normal procedure for further consideration.

For further information, see the section on Accelerated Procedures below.

5.1.3. Inside the Territory

Responsibility for Processing the Claim

The Dublin System

Application and Procedure

The Hellenic Dublin Unit, part of the Asylum Section of the Aliens Division of the Hellenic Police Headquarters within the Ministry of Interior, is the responsible authority for the application of Council Regulation (EC) No 343/2003.⁶ It determines whether an asylum claim should be examined in Greece or in another State party to the Regulation, and receives requests from other States parties to the Regulation for the transfer of an asylum-seeker back to Greece. Its personnel conduct all the necessary arrangements with the other Dublin Units in order to transfer an applicant and to handle information requests made within the framework of the Regulation.

The Ministry of Interior has an obligation to examine the asylum claims of persons returned to Greece under the Dublin II Regulation, including claims that were made in Greece and interrupted by the departure of the asylum-seeker for another European Union Member State.

In recent years, Greece has received high numbers of requests from other EU Member States for transfers

⁶ Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (Dublin II Regulation).

of asylum-seekers to its territory under the Dublin II Regulation.

Freedom of Movement/Detention

An asylum-seeker may be detained under certain circumstances, in accordance with Article 13 of Presidential Decree 90/2008. This is described below.

Conduct of Transfers

The Dublin Unit is also responsible for the transfers. All the necessary arrangements are made with the cooperation of the other Dublin Units, the Greek Asylum Authorities and the Police Authorities at Athens International Airport. The majority of persons subject to a Dublin transfer arrive and leave through this airport.

Review/Appeal

A decision by the Ministry of Interior to transfer an asylum-seeker under the Dublin II Regulation may be appealed to the Appeals Committee.

Application

To make an application for asylum, an asylum-seeker must appear in person before Police authorities and submit a written application form. Fingerprints and photographs are taken. In some cases, the asylum-seeker is required to undergo a medical examination. The asylum-seeker is required to submit all relevant identity documents. Family members who are accompanying the asylum-seeker may also be included in the asylum application.

Once an asylum application has been made, asylum-seekers are issued a “pink card” (Special Card of an Asylum-Seeker), an identity card that is valid for six months and renewable with Police authorities until a decision on the claim is made. The Greek government is currently considering the introduction of an electronic “pink card” similar to the new identity card for Greek citizens. This card would provide asylum-seekers direct access to all material reception benefits (for example, health care and accommodation) and would entitle them to legal status in Greece while they await a decision on their asylum claim.

Screening then takes place to determine the reasons for flight from the country of origin. Priority in processing is given to minors and persons belonging to vulnerable groups (e.g. the elderly and women) and families.

Asylum claims are subject either to an accelerated procedure or to the normal procedure.

Accelerated Procedures

According to Greek legislation, an asylum claim is subject to the accelerated procedure under one of the following circumstances:

- The asylum claim was made at the border, a seaport or airport
- The asylum-seeker entered the country without proper authorisation or delayed in making an asylum application following his or her unauthorised entry into the country
- The asylum claim is manifestly unfounded
- The asylum-seeker arrived in Greece from a safe third country or a safe country of origin.

A claim may be deemed manifestly unfounded, *inter alia*, in one of the following cases:

- The applicant has presented false information or fraudulent documents in support of the claim, or has withheld information or documents concerning his or her identity or nationality, and this information could have an impact on the decision
- The applicant has made another asylum application using personal data different from what is presented in the current application
- The applicant has made a subsequent claim for asylum which does not raise any relevant new elements with regard to his or her particular circumstances or circumstances in the country of origin
- The applicant is a danger to national security or public order or has been forcibly removed from Greece on serious public security grounds under national law.⁷

Under the accelerated procedure as under the normal procedure, the Police conduct a first interview with the asylum-seeker to determine the reasons for which the person is seeking asylum. At the end of the interview, the asylum-seeker’s statements are read out and he or she is asked to sign the interview notes, if he or she agrees that the content is accurate. The interview notes are then transferred to the Aliens Division of the Ministry of Interior for a decision. The Aliens Division of the Ministry of Interior may decide to grant refugee status, to deny refugee status or to move the application to the normal procedure for further consideration.

⁷ See the annexe to this chapter for the text of Article 17(3) of Presidential Decree 90/2008, which outlines all the circumstances that may give rise to a claim being deemed manifestly unfounded.

According to Presidential Decree 90/2008, claims may be deemed inadmissible under the following circumstances:

- Another Member State of the EU has previously granted refugee status to the applicant
- The applicant has obtained protection or a residence permit from a safe third country or a first country of asylum and faces no risk of *refoulement* if returned to that country
- The applicant is transferred to another State party to the Dublin II Regulation for examination of his or her claim
- The applicant has made an identical application for asylum following a final decision of the Hellenic Police or the Appeals Committee
- A dependant of an applicant has made a separate claim after having consented to having his or her claim considered together with the applicant's, and there are no facts relating to the dependant's situation that justify a separate application.

Claims under the accelerated procedure should as a rule be decided within one month of the application being made. Appeals on negative decisions may be made within thirty days of the decision for manifestly unfounded decisions, ten days for inadmissibility decisions and eight days for applications made at the borders. Appeals are made by application to the Appeals Committee. The appeal is heard by the Appeals Committee, which can either uphold the first instance decision or overrule it. A further appeal in cassation can be made before the Council of State.

Normal Procedure

Following the first interview, which is conducted by the Police to determine the reasons for which the person is seeking asylum, the interview notes are transferred to the Central Authority (Asylum Department of the Aliens Division) of the Ministry of Interior for consideration. The Ministry of Interior must make a decision on the claim within 60 days of the date of application.

The asylum requests are examined substantially and on an individual basis according to the domestic legislation regarding asylum procedures, without the requirement that pieces of evidence be filed.

Review/Appeal of the Normal Procedure

A negative decision on an asylum claim made under the normal procedure may be appealed within 30 days of the date the decision is issued. The Appeals Committee invites the asylum-seeker to an interview, at which point

any new information that was not previously disclosed or that has since emerged may be presented.

The Appeals Committee, which has full decision-making power and may either uphold or overrule the first instance decision, is composed of the following representatives:

- Two officials from the Ministry of Interior: one official from the State Legal Council of the Legal Counsel's Office in the General Secretariat of Public Order, who acts as chairperson of the Committee; and one official from the Aliens Division of the Asylum Department of the Hellenic Police Headquarters
- An official from the Special Legal Service and an official from the diplomatic section of the Ministry of Foreign Affairs
- A representative from the Athens Bar Association
- A representative from the UNHCR.

The Committee meets three times a week to examine the appeals and works in accordance with the Rules of the Administrative Procedure Code. The proceedings are recorded in writing. The fully justified decision of the Committee, which is issued by majority, is notified to the applicant shortly after it is made.

If the Committee upholds the negative decision of the Ministry of Interior, the asylum-seeker may appeal the Committee's decision before the Council of State. Such appeals are made in cassation to review whether there has been an error in law.

The appeals before the Council of State have suspensive effect.

Freedom of Movement during the Asylum Procedure

Under the law, an asylum-seeker whose claim is pending may not leave Greece before a decision has been made on the claim.

Detention

Asylum-seekers are not usually held in detention for entering Greece without proper authorisation. Persons already in detention for entering Greece without proper authorisation remain in custody after making an asylum application and pending a decision on the claim. The Hellenic Police are responsible for supervising the detention centres. The asylum claims of detained persons are prioritised.

Decisions to detain an asylum-seeker are taken by the Police Commissioner, in cooperation with the Service of

the Ministry of Health and Social Solidarity. According to Article 13 of Presidential Decree 90/2008, an applicant may be detained in order to determine the conditions of the person's entry into Greece, his or her identity, his or her origin (if the person arrived as part of a group of undocumented migrants) or in the interest of public order or to accelerate the procedure.

The detention of an asylum-seeker is subject to both a judicial review before the District Court and an administrative review by the Ministry of Interior, to determine whether the person should be released or whether the reasons for detention remain valid. The maximum period of detention after which the person must be released is 60 days.

Detention centres are often visited by representatives and lawyers of the UNHCR and NGOs.

An asylum-seeker who has obtained a final negative decision on a claim and has exhausted all appeal rights may be detained for a maximum period of three months. Detention may be deemed necessary in order to implement removal. If, after three months, the person has not been removed from Greece, the person is released from detention but given a deadline for leaving the territory.

Reporting

Asylum-seekers have an obligation to report any change of address to the Police authorities. Asylum-seekers who are accommodated at reception centres must receive permission to leave the centre.

If an asylum-seeker leaves the reception centre without permission or fails to inform the authorities of a change of address, the asylum claim may be either rejected or suspended. In such cases, the asylum-seeker may make an appeal within 30 days of the date of the decision.

Repeat/Subsequent Applications

Asylum-seekers whose have received a final negative decision on their claim are able to make a new claim for asylum, according to Presidential Decree 90/2008, provided there is new evidence to present. Thus, when a subsequent application is made, the authorities must first determine whether substantial new elements are being presented by the applicant. If this is the case and it appears that these new elements may lead to the granting of refugee status, the person's application will be examined under the normal procedure.

A person who has made a subsequent application for asylum may remain in Greece while the authorities determine whether to proceed with the application.

5.2 Safe Country Concepts

5.2.1. Safe Country of Origin

According to Presidential Decree 90/2008, asylum authorities may determine whether a country can be designated as a safe country of origin, following an assessment of whether, *inter alia*, persons in the country are not generally subject to persecution as defined in Article 9 of the Qualification Directive, to torture or inhuman or degrading treatment or punishment, or to a threat resulting from generalised violence in situations of armed conflict.

Applications made by persons from a safe country of origin are processed under the accelerated procedure.

5.2.2. First Country of Asylum

The concept of first country of asylum is laid down in Presidential Decree 90/2008, which states that a country may be considered a first country of asylum if the asylum-seeker has previously been granted refugee status there and he or she enjoys the protection of that country.

5.2.3. Safe Third Country

Greece applies the safe third country concept in accordance with Presidential Decree 90/2008 and Article 27 of the Asylum Procedures Directive. Applications made by persons from a safe third country are processed under the accelerated procedure. If an asylum-seeker cannot be returned to a safe third country, Greece will undertake the examination of the person's asylum application.

5.3 Special Procedures

5.3.1. Unaccompanied Minors

When an unaccompanied minor makes a claim for asylum, the Police must inform the Minors' Public Prosecutor and, where applicable, the local District Court Prosecutor, so that they may appoint a guardian for the minor. Efforts to locate relatives of the minor are undertaken. In order to protect the minor and his or her relatives, all efforts to collect information regarding the minor are made in strict confidentiality.

The asylum claims of unaccompanied minors are dealt with on a priority basis by specially trained staff. The minors are informed of their rights and are given the assistance of an interpreter. Minors also have access to assistance from competent NGOs for such support as legal aid and psychosocial counselling. Various departments of the Ministry of Interior, the Ministry of Health and Social Solidarity, the Ministry of Education and NGOs and other organisations cooperate on

matters related to the minor's asylum claim throughout the procedure.

6 Decision-Making and Status

6.1 Inclusion Criteria

6.1.1. Convention Refugee

Refugee status is granted to persons who meet the criteria as defined in the 1951 Convention and the 1967 Protocol relating to the Status of Refugees.

6.1.2. Complementary Forms of Protection

Subsidiary Protection

In 2008, subsidiary protection was introduced in line with the Qualification Directive. A residence permit may be granted on subsidiary protection grounds if the person does not meet the criteria for refugee status but would be subjected to "serious harm" if returned to the country of origin. "Serious harm" includes the threat of the death penalty, torture or other inhumane or degrading treatment, as well as serious threats to life or physical integrity as a result of indiscriminate violence during an armed conflict.

Humanitarian Status

According to Presidential Decree 61/1999, an asylum-seeker who does not qualify for refugee status may, in exceptional cases, be granted a residence permit on humanitarian grounds, if returning the person to his or her country of origin would be in contravention of Article 3 of the ECHR or Article 3 of the CAT or if return is impossible due to *force majeure* (for example, serious health problems of the applicant or a situation of civil conflict and violations of human rights in the country of origin).

6.2 The Decision

The Ministry of Interior is the competent authority for making a decision on an asylum claim at the first instance. Decisions are given in writing to the asylum-seeker, in a language that he or she understands. They may be given in person by a police officer or sent to the applicant by registered post or fax. Negative decisions contain information on rights of appeal and the right to make a subsequent application.

Efforts are currently being undertaken to provide the Ministry of Interior with the capacity to translate key sections of a decision in one of several languages.

6.3 Types of Decisions, Status and Benefits Granted

Types of Decisions

After examining an asylum claim, the Ministry of Interior may take one of the following decisions:

- Grant refugee status
- Grant subsidiary protection
- Grant humanitarian status
- Reject the asylum claim.

Asylum-seekers whose claims are rejected are required to leave Greece within 90 days.

Benefits

Beneficiaries of subsidiary protection and Convention refugees are entitled to the following benefits, which are equivalent to those enjoyed by Greek nationals:

- Access to the labour market
- Access to education
- Social welfare assistance
- Health care benefits.

Convention refugees are granted a residence permit valid for five years while beneficiaries of subsidiary protection receive a renewable residence permit valid for two years. The five-year residence permit for refugees may be renewed for an additional period of five years. Refugees are also granted a "Refugee Identity Card."

Recognised refugees have the right to request, at any given time, for reasons of family reunification, the entry and residence of their family members, under terms set out in national legislation.

Persons who are granted humanitarian status receive a one-year residence permit, which is renewable if return remains impossible. Humanitarian status holders do not have automatic work rights but may apply for a work permit.

6.4 Exclusion

Asylum authorities consider Article 1F of the 1951 Convention when examining applications. The Director of the Aliens Division of the Hellenic Police is competent for making decisions on exclusion. Such decisions may be appealed.

6.5 Cessation

Asylum authorities will give consideration to the cessation clauses of the 1951 Convention if and when appropriate. The Director of the Aliens Division of the Hellenic Police is competent for making decisions on cessation. Such decisions may be appealed.

6.6 Revocation

Refugee status may be revoked if it comes to light that the person provided false information during the asylum procedure or if cessation or exclusion clauses are applicable. According to Presidential Decree 90/2008, the authorities may also withdraw refugee status if the refugee is considered a danger to national security or to public safety or has been convicted of a crime punishable by a three-month prison term or more. A decision to withdraw status may be appealed in cassation before the Council of State.

6.7 Support and Tools for Decision-Makers

6.7.1. Country of Origin Information

A Documentation Office was established in 2007 at the Hellenic Police Headquarters of the Aliens Division of the Ministry of Interior to collect information on conditions in the countries of origin of asylum-seekers. The information is intended for use by asylum officers in the Department of Asylum of the Immigration Directorate of the Ministry. The country of origin information (COI) collected is stored on the Greek Police intranet for internal use. There are four persons who work in the Documentation Office and they produce reports based on Internet research from official sites.

6.7.2. Training

Staff involved in the asylum procedure at the Attica Asylum Department and in all of Greece receive training on refugee status determination through programmes designed in cooperation with the UNHCR and NGOs.

7 Efficiency and Integrity Measures

Asylum procedure services have been improved with the establishment of separate Asylum Departments in the Attica Immigration Directorate and the Salonica Immigration Directorate of the Ministry of Interior. The infrastructure of the departments has also been upgraded.

7.1 Technological Tools

7.1.1. Fingerprinting

Asylum-seekers are fingerprinted by Police upon making an asylum claim. Fingerprints are taken for identification purposes. Minor asylum-seekers over the age of 14 are fingerprinted.

7.1.2. Database of Asylum Applications/Applicants

A nationwide electronic data processing application system was created to record all asylum applications and their progress through each stage of the procedure.

7.2 Length of Procedures

According to Presidential Decree 90/2008, decisions on asylum applications must be made within six months of application. If this time frame is not met, the asylum authorities must, upon request, inform the applicant of a new time frame for a decision on his or her claim.

7.3 Pending Cases

The large increase in the number of asylum applications received in the last four years has led to a significantly longer average processing period for claims.

In order to deal with the large number of pending cases, the Appeals Committee will be meeting six times a week to examine appeals, which represents an increase from the previous practice of three sessions per week.

8 Assistance and Reception Benefits for Asylum-Seekers

8.1 Procedural Support and Safeguards

8.1.1. Legal Assistance

According to national legislation, asylum-seekers may use the assistance of a lawyer for the duration of the asylum procedure. Since 2008, following the coming into force of Law 3226/2004, legal aid is available for appeals in cassation before the Council of State, provided the appeal is not manifestly inadmissible or groundless, in the judge's estimation.

Representatives or lawyers of the UNHCR or NGOs often visit asylum-seekers at detention centres.

Box 1: Cooperation with UNHCR, NGOs

According to an agreement with asylum authorities, the UNHCR and its implementing partner, the Hellenic Council for Refugees, undertakes a partial monitoring of asylum interviews conducted at the Central Police Asylum Department in Athens. The UNHCR fulfils this monitoring role in an observer capacity and addresses its findings and recommendations to the authorities.

Since 2005, the UNHCR has taken part in a joint Ministry of Interior/UNHCR Informal Working Group, which meets three or four times a year at the Secretary-General level in order to discuss issues pertaining to asylum procedures.

In 2008, in cooperation with the Ministry of Interior, the UNHCR completed a joint analysis of Greek asylum procedures and contributed to a final joint report containing recommendations for improvements. Subsequent to that effort, a Plan of Action for the implementation of these recommendations was discussed.

The UNHCR is a voting member of the Appeals Committee which makes decisions on asylum at the second instance.

The Greek asylum authorities also engage in cooperation efforts aimed at improving asylum procedures with NGOs, such as the Hellenic Council for Refugees and the Ecumenical Programme of Refugees. Both the UNHCR and NGOs have access to detention and accommodation centres in order to provide information to asylum applicants and to offer them legal assistance.

8.1.2. Interpreters

The services of interpreters are mandated by law and efforts are being made to cover the needs for interpretation at all stages of the procedure, in cooperation with non-governmental organisations (NGOs).

8.1.3. UNHCR

The UNHCR provides assistance to asylum-seekers in Greece primarily through funding of implementing partners such as the Hellenic Council for Refugees and cooperation with operational partners. The UNHCR is also engaged in EU-funded projects aimed at addressing the reception of migrants at the border and facilitating access to asylum procedures.

8.1.4. NGOs

As indicated above, NGOs such as the Hellenic Council for Refugees have access to detention centres and usually provide legal assistance to asylum-seekers during the procedure.

8.2 Reception Benefits

The Ministry of Health and Social Solidarity is the competent authority for overseeing reception benefits, including accommodation, for asylum-seekers.

As long as an asylum-seeker has made his or her application, there is a list of rights and obligations to which he or she is entitled, such as protection from deportation until the finalisation of the examination procedure, free access to labour, accommodation, public education, health care, etc.

8.2.1. Accommodation

Asylum-seekers may be accommodated in Refugee Reception Centres (open centres) staffed by specially trained personnel, including doctors and social workers, who must ensure that the needs of asylum-seekers are met.

Unaccompanied minors may find accommodation with adult relatives in Greece, a foster family, or a reception centre or guest house specially geared toward minors. Siblings are generally accommodated in the same location.

8.2.2. Social Assistance

According to Article 12 of Presidential Decree 220/2007, asylum-seekers may be granted material reception benefits to ensure a standard of living that covers health care and other necessities. Persons are eligible for such benefits if they do not have sufficient means to ensure subsistence.

8.2.3. Health Care

Asylum-seekers have access to public health care, including medical, pharmaceutical and hospital care, if they do not have the means to cover their own health care costs.

Vulnerable persons, such as victims of trauma, may seek the assistance of medical experts and specialised organisations for treatment.

8.2.4. Education

Children have access to the public education system until the age of 18.

Adults have the right to take free language classes and vocational training courses.

8.2.5. Access to Labour Market

Asylum-seekers have the right to work during the procedure and may be granted a temporary work permission in accordance with Presidential Decree 189/2008 (Article 4(2)). Asylum-seekers may retain their work permission until a final decision on their claim is taken.

8.2.6. Access to Benefits by Rejected Asylum-Seekers

Asylum-seekers who have obtained a negative decision continue to receive reception benefits during the appeal procedure.

9 Status and Permits Granted outside the Asylum Procedure

9.1 Humanitarian Grounds

A person who has obtained a final negative decision on an asylum claim may make an application to obtain a permit on humanitarian grounds. The General Secretary of the Ministry of Interior is the competent authority for making decisions on such applications. The grounds for granting a humanitarian residence permit, as outlined in Article 8 of Presidential Decree 61/1999, include *force majeure* (such as serious health considerations and civil conflict and violations of human rights in the country of origin), Article 3 of the ECHR and Article 3 of the CAT.

The permit granted is valid for one year and is renewable upon application, if conditions in the country of origin or with respect to the applicant and his or her family continue to make return impossible.

10 Return

10.1 Pre-departure Considerations

An asylum-seeker may not be removed from Greece if the asylum procedure has not been completed. In accordance with Article 33 (1) of the 1951 Convention, Article 3 of the European Convention on Human Rights,

and other relevant international obligations, Greece cannot return a person to a country where it is found that his or her life or freedom would be at risk.

10.2 Procedure

A decision to remove a third country national must be issued according to Article 76 of Immigration Law 3386/05.

10.3 Freedom of Movement/ Detention

A decision may or may not involve detention.

10.4 Readmission Agreements

Practically speaking, readmission agreements may not be applied to rejected asylum-seekers, since by the examination of an asylum application at the second instance a long period of time will have passed, and the readmission deadline will have expired.

11 Integration

Persons who are granted refugee status in Greece have access to a range of integration services and programmes developed by Greek authorities under the multi-annual programme of the European Refugee Fund (ERF). The EQUAL Community Initiative, for example, aims to improve access to the job market by vulnerable groups of the population, such as refugees. Other programmes have been geared toward promoting equality and combating discrimination in a number of sectors, including employment, education and health care.

In the coming years, Greek authorities plan to expand the reach of existing integration programmes, including in the area of promoting access to schools for refugee children, offering advice and support services for gaining employment, introducing cultural orientation classes and providing broader access to vocational training and language classes.

12 Annexe

12.1 Selections from Presidential Decree 90/2008 ⁸

CHAPTER B

BASIC PRINCIPLES AND GUARANTEES

Article 4

(Article 6 of the Directive)

Access to the procedure

1. Any third-country national or stateless person shall be entitled to make an application for asylum. Authorities responsible for receiving and examining the application shall ensure that each adult shall be entitled to make an application, provided that such adult makes the application in person before the said authorities.

(...)

3. Minors, unaccompanied or not, being over 14 years of age can make an application on their own behalf, provided that the said competent authorities consider that they are mature enough to understand the meaning of their actions.

(...)

Article 10

(Articles 12, 13 and 14 of the Directive)

Personal interview

1. Before a decision is taken by the determining authority, the applicant for asylum shall be given the opportunity of a personal interview on his/her application for asylum with an employee of the competent service. The interview shall always be conducted with the assistance of an interpreter, competent to ensure proper communication, in order for the applicant to confirm the contents of his/her application and provide explanations, especially relating to his/her identity or non possession of passport or other official travel document, the exact itinerary followed to enter into Greek territory and the reasons that forced him/her to abandon their country of origin and seek protection. Before the interview, the applicant may be granted a reasonable period of time to prepare and consult the lawyer who shall assist him/her throughout the procedure. Such reasonable period shall be determined by the Department that examines the applicant and cannot be more than three months, including any extensions. The Department shall provide the applicant with a note stating, apart from the applicant's identity, the exact date of the interview and the full name of the person who will conduct the interview. When a woman will be interviewed who, due to her experience or for cultural reasons, finds it difficult to show the reasons for her application, the interview shall be conducted by a female employee, in the presence of a female interpreter. A separate personal interview shall be conducted with each adult dependant. A personal shall be conducted with minors, taking into consideration their maturity and the psychological effects of their traumatic experiences.

(...)

Article 11

(Articles 15 and 16 of the Directive)

Right to legal assistance and representation

1. Applicants for asylum shall be entitled, at their own cost, to consult in an effective manner a legal adviser or other counsellor, on matters relating to their asylum applications.

⁸ Harmonisation of Greek legislation to the provisions of Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status (L 326/13.12.2005). Official translation, Ministry of Foreign Affairs of the Hellenic Republic.

2. In the event of appeal against a negative decision under article 29, free legal assistance shall be granted to the applicant, pursuant to the procedure stipulated by Law 3226 2004 (A-24), if the judge finds that the appeal is not evidently inadmissible or invalid.

(...)

Article 13
(Article 18 of the Directive)
Detention of applicants

1. Third-country nationals or stateless persons who have applied for asylum shall not be held in detention for the sole reason that they have illegally entered and remain in the country. During the period held in detention pending the deportation procedure, applicants for asylum shall remain in detention and their application shall be examined by priority. They shall not be deported before the completion of the administrative procedure for asylum.

2. The competent Police Commissioner and, in case of the General Police Directorates of Attica and Thessaloniki, the Police Commissioner responsible for foreign nations or a higher-ranking officer appointed by the competent General Police Commissioner may decide, in collaboration with the competent Service of the Ministry of Health and Social Solidarity, confine applicants in appropriate facilities when and for the period required to determine the conditions of entry, the identity and the origin of massively and illegally entered applicants or on grounds of public interest or public order or when deemed necessary for the speedy completion of this procedure. The period of confinement cannot be over sixty (60) days.

3. Applicants detained or confined in appropriate facilities pursuant to the previous paragraphs shall be entitled to appeal and file objections, as provided for by article 76, para.3, of Law 3386/2005.

(...)

CHAPTER C

PROCEDURES AT FIRST INSTANCE

Article 17
(Article 23 of the Directive)
Examination procedure

The examination of applications for asylum shall be accelerated when they are manifestly unfounded or because the applicant is from a safe country of origin within the meaning of Article 22 or because the country which is not a Member State, is considered to be a safe third country for the applicant, without prejudice to Article 20. An application shall be considered to be manifestly unfounded when:

(a) the applicant, in submitting his/her application and presenting the facts, has only raised issues that are not relevant or of minimal relevance to the examination of whether he/she qualifies as a refugee; or

(b) the applicant clearly does not qualify as a refugee or for refugee status under Council Directive 2004/83/EC; or

(c) the applicant has misled the authorities by presenting false information or documents or by withholding relevant information or documents with respect to his/her identity and/or nationality that could have had a negative impact on the decision; or

(d) the applicant has filed another application for asylum stating other personal data; or

(e) the applicant has not produced information establishing with a reasonable degree of certainty his/her identity or nationality, or it is likely that, in bad faith, he/she has destroyed or disposed of an identity or travel document that would have helped establish his/her identity or nationality; or

(f) the applicant has made inconsistent, contradictory, improbable or insufficient representations which make his/her claim clearly unconvincing in relation to his/her having been the object of persecution; or

- (g) the applicant has submitted a subsequent application which does not raise any relevant new elements with respect to his/her particular circumstances or to the situation in his/her country of origin; or
- (h) the applicant has failed without reasonable cause to make his/her application earlier, having had opportunity to do so; or
- (i) the applicant is making an application merely in order to delay or frustrate the enforcement of an earlier or imminent decision which would result in his/her removal; or
- (j) the applicant has failed without good reason to submit as soon as possible all information required to document the application or to comply with obligations referred to in Article 9, para. 1, items (a) and (b) or article 14, para.2; or
- (k) the applicant entered the country unlawfully or prolonged his/her stay unlawfully and, without good reason, has either not presented himself/herself to the authorities and/or filed an application for asylum as soon as possible, given the circumstances of his/her entry; or
- (l) the applicant is a danger to the national security or public order of the country, or the applicant has been forcibly expelled for serious reasons of public security and public order under national law; or
- (m) the applicant refuses to comply with an obligation to have his/her fingerprints taken in accordance with relevant Community and/or national legislation; or
- (n) the application was made by an unmarried minor, after the application, under article 4, para.2, of the parents or parent responsible for the minor has been rejected and no relevant new elements were raised with respect to his/her particular circumstances or to the situation in his/her country of origin.

Article 18

(Article 25 of the Directive)

Inadmissible applications

An application for asylum shall be inadmissible if:

- (a) another Member State has granted refugee status;
- (b) international protection status or residence permit has been granted to the applicant who benefited, inter alia, by the principle of *non-refoulement* from a country which is not a Member State is considered as a safe third country for the applicant, pursuant to Article 20 or as a first country of asylum for the applicant pursuant to Article 19;
- (c) another Member State has undertaken to examine the application under Council Regulation 343/2003;
- (d) the applicant has lodged an identical application after a final decision of the determining authority or the appeals committee;
- (e) a dependant of the applicant lodges an application, after he/she has in accordance with Article 4 consented to have his/her case be part of an application made on his/her behalf, and there are no facts relating to the dependant's situation, which justify a separate application.

CHAPTER D

PROCEDURES AT SECOND INSTANCE

Article 25

Right to appeal

The applicant shall be entitled to lodge an appeal before the Appeals Committee referred to in article 26 as follows:

- (a) against the decision rejecting the application for asylum or a subsequent application as unfounded or revoking the asylum status, within thirty (30) days of the date of service;

- (b) against the decision finding the application inadmissible, within ten (10) days of the date of service;
 - (c) against the decision rejecting a request for asylum under article 24, within eight (8) days of the date of service.
- (...)

12.2 Selections from Presidential Decree 220/2007 ⁹

Article 6

(Article 7 of the Directive 2003/9/EC)

Residence and freedom of movement

1. Subject to paragraph 5, the asylum-seekers may move freely within the territory or within an area assigned to them by the Central Authority and choose the place of their residence. The assigned area shall not affect the unalienable sphere of the applicants' private life and must give them the possibility of exercise of all the rights provided for in the present Decree. In any case the applicants are obliged to inform immediately the competent authorities of collection and examination about any change of the address of their residence.

No previous approval for the change of the place of residence is required.

2. To an applicant who does not have a shelter or sufficient means to cover the needs of his accommodation, accommodation is offered in an Accommodation Centre or another place, according to the provisions of paragraph 3, upon his request, which is lodged with the competent authorities of collection and examination.

(...).

Article 12

(Article 13 of the Directive 2003/9/BC of the Council)

Material reception conditions and health care

1. The competent authorities of reception and accommodation shall ensure that material reception conditions are available to asylum-seekers. Such conditions grant the applicants a standard of living ensuring the health, the cover of living necessities and the protection of their fundamental rights. The above mentioned standard of living is also ensured in the special case of persons with special needs according to article 17 of these presents, as well as in the case of persons who are in detention.

2. In case of persons with disability of 67% and more, certified by an expert opinion of the relevant Health Committee, the Ministry of Health and Social Solidarity grants a disability allowance as long as the examination of the application lasts, since the residence of the applicants in Accommodation Centres is not feasible. Such allowance is paid by the competent agency of the Prefectural Local Government of the place of the applicant's residence.

3. The provision of all or some of the material reception conditions and health care is subject to the condition that applicants do not have sufficient means to have a standard of living adequate for their health and to enable their subsistence. This condition is examined by the competent authorities of reception and accommodation. If it transpires that the applicant has sufficient means according to the above, the above mentioned authorities may interrupt the allowances granted to the extent to which the living conditions of the applicants are covered by their own resources.

4. The applicants cover, depending on the means they have, totally or partially the cost of the material reception conditions and their health care.

⁹ Adjustment of Hellenic Legislation to the provisions of the Council Directive 2003/9/EC of 27 January 2003, in relation to the minimum requirements for the reception of asylum-seekers in the Member States (EEL 31/6.2.2003). Official translation, Ministry of Foreign Affairs of the Hellenic Republic.

Ireland



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1 Background: Major Asylum Trends and Developments

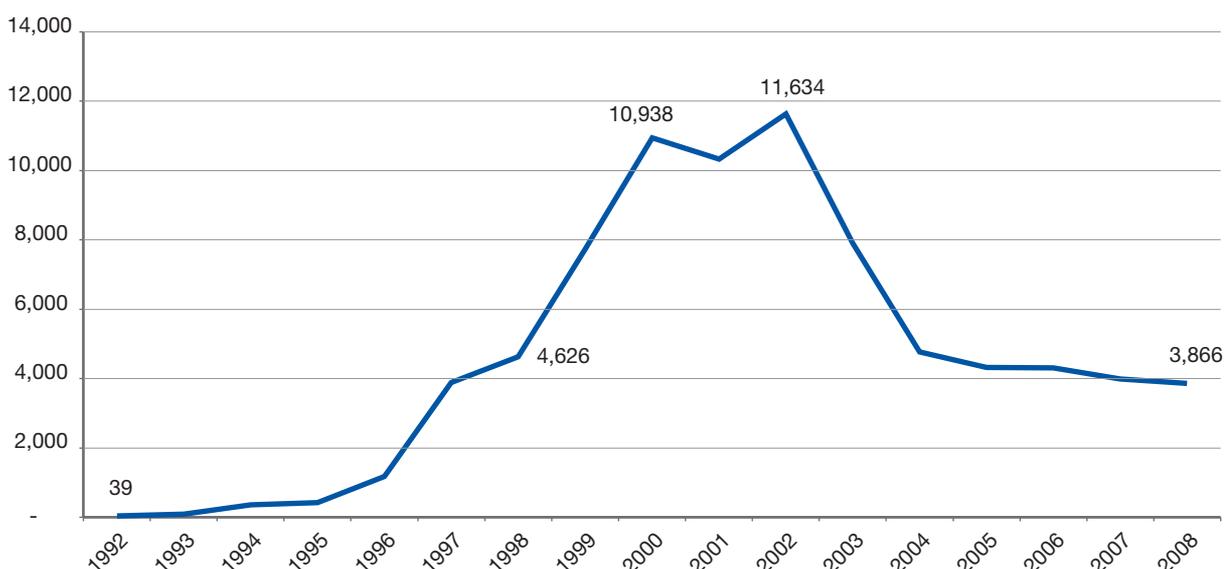
Asylum Applications

Ireland started to receive asylum applications only in the early 1990's. Annual inflows increased dramatically in the late 1990's, reaching a peak of over 11,600 in 2002. Numbers have decreased significantly since 2003 and have been running at some 4,000 new applications annually in recent years.

Other institutions with a role in asylum procedures were also created. The Reception and Integration Agency (RIA) was established in 2001 to coordinate accommodation and other support needs of asylum-seekers. In 2005, the Irish Naturalisation and Immigration Service was set up within the Department of Justice, Equality and Law Reform and has, among other things, responsibility for making decisions on subsidiary protection claims and for determining whether any other grounds exist for granting a residence permission.

Figure 1:

Evolution of Asylum Applications* in Ireland, 1992-2008



* First applications only

Top Nationalities

In the early 1990's, the majority of asylum-seekers originated from Romania, Cuba and the former Yugoslavia. Since the late 1990's, the top countries of origin have been Nigeria, Romania and the Democratic Republic of Congo. The top five stated countries of origin in 2008 were Nigeria, Pakistan, Iraq, Georgia and China.

Important Reforms

Since the late 1990's, the procedural and institutional framework for refugee status determination has undergone significant reforms. Chief among these was the establishment of two independent offices responsible for the examination of claims: the Office of the Refugee Applications Commissioner (ORAC), set up to consider applications at the first instance, and the Refugee Appeals Tribunal (RAT), which hears appeals of ORAC recommendations.

As a consequence of these developments, there has been an exponential increase in the number of staff working in the asylum area.

As well as the measures introduced to improve the processing and support of asylum applications, initiatives were also undertaken to tackle abuses in the asylum system. Among the latter, two were targeted at reforming reception conditions. A system of direct provision was introduced, whereby asylum-seekers became entitled to benefits in-kind rather than in cash for the duration of the asylum procedure. In addition, the Habitual Residence Condition (HRC), which came into effect in 2004, introduced requirements that asylum-seekers must meet in order to be eligible for social assistance or child benefit payments.

The Immigration Act 2003 brought into effect a regime of carrier liability in respect of the transportation to Ireland of foreign nationals who did not meet entry requirements.

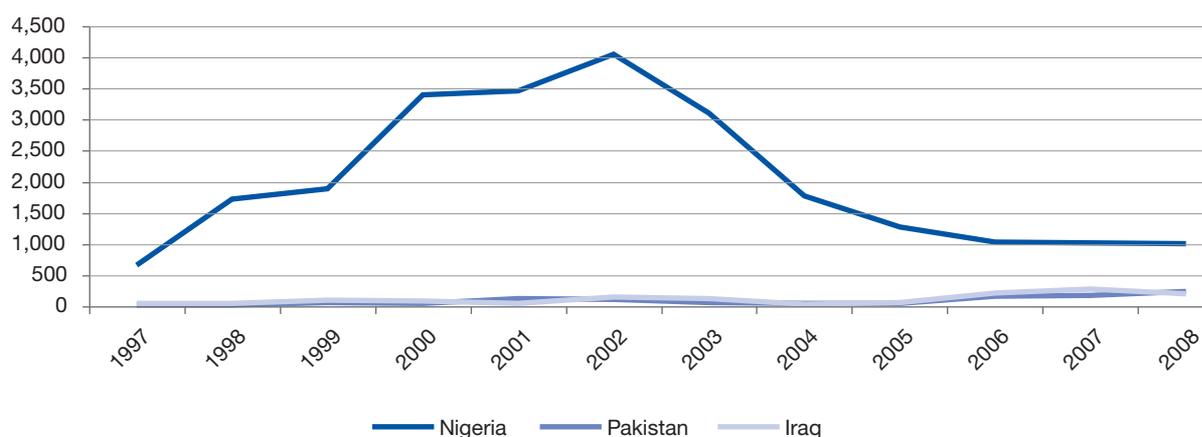
Prior to 2005, the foreign-national parents of Irish-born children were granted permission to remain in the State on the basis of their child's Irish citizenship. Ireland's laws in relation to citizenship were changed following an amendment to the Irish Constitution and the enactment of the Irish Nationality and Citizenship Act 2004. As a result of this change to the law, citizenship is no longer an automatic entitlement for all children born in Ireland. Beginning in 2005, foreign-national parents of Irish-born children have had to follow new procedures to apply for permission to remain in the State.

establishment of the Office of the Refugee Applications Commissioner as well as the Refugee Appeals Tribunal, and sets out a framework for the determination of asylum applications and family reunification applications. The 1996 Act has been amended by the Immigration Act 1999, the Illegal Immigrants (Trafficking) Act 2000 and the Immigration Act 2003.

The European Communities (Eligibility for Protection) Regulations, 2006 (Statutory Instrument No. 518 of 2006) came into force on 10 October 2006. These Regulations

Figure 2:

Evolution of Applications* from Top Three Countries of Origin for 2008



* First applications only

Figure 3:

Top Five Countries of Origin* in 2008

1	Nigeria	1,009
2	Pakistan	237
3	Iraq	203
4	Georgia	181
5	China	180

* First applications only

gave effect to Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection (commonly known as the Qualification Directive). These Regulations set out, *inter alia*, the eligibility criteria for subsidiary protection, the means by which applications for subsidiary protection are made and investigated, the exclusion provisions that apply, as well as the rights and entitlements accompanying such status, and the circumstances under which a subsidiary protection decision can be revoked or not renewed.

2 National Legal Framework

2.1 Legal Basis for Granting Protection

The principal domestic legislation dealing with refugees and asylum-seekers is the Refugee Act 1996 (as amended), which entered into force in 2000. The Act incorporates the 1951 Convention Relating to the Status of Refugees (1951 Convention). It provided for the

2.2 Pending Reforms

The Immigration, Residence and Protection Bill 2008, published in January 2008, is currently before the National Parliament. The Bill will introduce comprehensive reforms that will simplify the asylum procedure. The Bill envisages a single procedure to investigate all grounds for protection put forward by applicants. The investigation of such applications will also include the consideration of whether, when not being entitled to protection, an applicant should be otherwise permitted to remain in the State.

Under the Bill, the functions currently carried out by the ORAC to examine claims for refugee status will be subsumed into the Irish Naturalisation and Immigration Service (INIS). Under the reforms, the single procedure will allow an applicant to obtain a final decision on his or her application, in a more timely and efficient manner.

The introduction of a single procedure will also result in procedural changes to the asylum appeals process. The existing Refugee Appeals Tribunal will be replaced by a Protection Review Tribunal. The new tribunal will have an expanded remit to consider appeals against both decisions not to grant refugee status and decisions not to grant subsidiary protection as defined in the Qualification Directive.

It is expected that the Bill will be enacted and implemented in 2009.

3 Institutional Framework

3.1 Principal Institutions

The Office of the Refugee Applications Commissioner (ORAC) is the first instance decision-making body. The ORAC is required to investigate each asylum application filed in Ireland and to make recommendations to the Minister of Justice, Equality and Law Reform in relation to whether a person should be granted refugee status. It is also responsible for investigating applications made by refugees for family reunification.

The Refugee Appeals Tribunal (RAT) hears appeals against negative first-instance recommendations.

Upon the recommendation of the ORAC or the RAT, the Minister of Justice, Equality and Law Reform makes the decision to either grant or refuse an asylum claim. The Minister does not make a final decision until the time period for lodging an appeal has elapsed or until the RAT makes its recommendation.

The Reception and Integration Agency (RIA) is responsible for coordinating the reception services provided to asylum-seekers.

Under current arrangements, the Irish Naturalisation and Immigration Service (INIS) assesses applications for subsidiary protection and the validity of any other reasons to remain in the State.¹ The INIS is part of the Department of Justice, Equality and Law Reform.

¹ Other grounds for obtaining a residence permit are found under section 3 of the Immigration Act 1999.

The Garda National Immigration Bureau (GNIB) is responsible for the enforcement of immigration policies, including the enforcement of Deportation Orders, Dublin II Transfer Orders and Removal Orders² issued by the Minister.

3.2 Cooperation between Government Authorities

In accordance with its obligations under the 1951 Convention, Ireland places a high priority on maintaining an asylum process that is both fair and transparent and that is geared towards providing protection to those in genuine need of such protection, as quickly as possible. A key element of this work involves ongoing and essential liaison among all the various agencies and offices listed above. This interaction is essential to maintain communication on European Union (EU) developments, to have an accelerated asylum processing system, to process Dublin II transfers in a timely manner and to coordinate issues as they arise.

4 Pre-entry Measures

To enter Ireland, all foreign nationals (with the exception of United Kingdom citizens travelling from within the Common Travel Area) must have a valid travel document, such as a passport, and in certain cases, a visa issued by Ireland.

4.1 Visa Requirements

The Irish Naturalisation and Immigration Service is responsible for Irish visa policy.³ All foreign nationals who are visa required must have a valid visa to travel to Ireland. A visa is merely a pre-entry clearance to seek permission to enter the State – no automatic right of entry or residence is conferred. Whether the person is permitted to enter and the exact period for which he or she is allowed to remain are matters for the Immigration Officer at the port of entry.

4.2 Carrier Sanctions

Carrier liability was introduced in the Immigration Act 2003.⁴ Carriers are required to check that individuals have appropriate documentation before allowing them

² Removal Orders pertain to European Union citizens subject to Article 20 of the European Communities (Free Movement of Persons) Regulation 2006.

³ Visas are issued through cooperation between INIS Visa Offices, located in Dublin and at the Irish Embassies in Cairo, Moscow, Abuja, London, New Delhi and Beijing as well as at Irish Missions overseas, which are run by the Department of Foreign Affairs. The Department issues short stay visas (90 days or less) under delegated sanction from INIS. Decisions not to issue a visa may be appealed in almost all circumstances. Appeals are not entertained where there has been fraud or deception in the visa application.

⁴ See the provisions on carrier liability contained in the Immigration Act 2003 in the annexe to this chapter.

Box 1: Asylum Case Law: Applications of Dependants

In 2002, the Minister of Justice, Equality and Law Reform issued a mother and children with deportation orders as failed asylum-seekers pursuant to Section 3(2)(f) of the Immigration Act 1999.¹

The applications for asylum were in the mother's name but not in the children's names. The children had not been issued with refugee status determinations. The applicants challenged the children's deportation orders on the basis that their designation as failed asylum-seekers was wrong in law.

The Supreme Court, in a decision on the case,² quashed the children's deportation orders, finding that there was no record of any decision refusing asylum applications on behalf of the children. The Court held that such a refusal was a fundamental prerequisite to using the Minister's power under Section 3(2)(f) of the Immigration Act 1999.

In response to this judgement, a new process has been put in place to ensure that dependants receive a refugee status determination. In this regard, when an application is made, guardians decide if they want their dependants to be assessed as part of their application or if the dependants' claim is to be determined on its own merits.

¹ See the provisions contained in Section 3 of the Immigration Act in the annexe to this chapter.

² *A.N. & Ors v The Minister for Justice & Anor* [2007] IESC 44 Supreme Court, 18/10/2007.

to board a vehicle. They are required to check that all persons on board disembark in compliance with directions given by Immigration Officers, and that all persons are presented to Immigration Officers. Any carrier in breach of these requirements may be fined 3,000€ for each foreign national found to be in contravention of these provisions.

4.3 Interception

If a person who is not entitled to enter the State is intercepted at a border control point or is encountered within the State having illegally entered in the preceding three months, that person may be refused leave to land by an Immigration Officer under Section 5 of the Immigration Act 2003. Unless a person seeks to make an application for asylum, he or she will be refused leave to land and may be detained and removed from the State.

When the Garda National Immigration Bureau becomes aware of or encounters a person who is illegally present within the State, it will make an application for a Deportation Order under Section 3(4) of the Immigration Act 1999.

In disseminating information on those persons who are refused leave to land, the Garda National Immigration Bureau identifies routes being used by persons attempting to enter the State illegally.

Airline Liaison Officers

The Garda National Immigration Bureau has trained members to be Airline Liaison Officers (ALOs). ALOs are engaged to counteract attempts made to enter the State illegally. These officers work in conjunction with airline carriers and with immigration authorities of other jurisdictions.

5 Asylum Procedures

5.1 Application Possibilities and Requirements, Procedures and Legal Remedies

An individual who arrives at the border and seeks asylum is legally entitled to be given leave to enter and make an asylum application with an Immigration Officer. Inside the territory, asylum applications may be made at the Office of the Refugee Applications Commissioner (ORAC) in Dublin. Applications may also be accepted from persons in detention.

Children of asylum-seekers may have their asylum claims included with those of their parents. Persons over the age of 18 must file their own asylum claims.

Access to Information

Applicants are given a number of documents as well as advice when they make their initial application, as follows:

- An information leaflet on the asylum procedure and refugee status in Ireland (available in 25 languages)
- A questionnaire in connection with their application for a declaration
- A Refugee Legal Service information leaflet
- A Change of Address form
- Advice on their right to consult legal counsel and the United Nations High Commissioner for Refugees (UNHCR).

5.1.1. Outside the Country

Applications at Diplomatic Missions

Section 8 of the Refugee Act 1996 provides that any person who arrives at the frontiers of the State or any person who at any time is in the State seeking the status of a refugee may apply to the Minister for a declaration of refugee status. On this basis, applications for asylum may not be made from outside the State.

Resettlement/Quota Refugees

Ireland joined the UNHCR-led Resettlement Programme following a government decision in November 1998, through which it was decided to admit 10 applicants plus their immediate families for resettlement each year (usually about 40 persons per year). Following a decrease in the number of people seeking asylum in Ireland, the quota was increased to 200 persons per year in June 2005. The resettlement programme is coordinated by the Office of the Minister for Integration.

The resettlement programme is a humanitarian programme. Persons must have a resettlement need but are not required to undergo a full refugee status determination. According to the Refugee Act 1996 (as amended), details of a person admitted under the resettlement programme must be entered on a register, and such a person is given the status of “programme refugee.”

The country of origin and country of refuge of those to be resettled are determined following consultations between the Office of the Minister for Integration, the Irish Naturalisation and Immigration Service, the Minister for Foreign Affairs and the UNHCR.

Face-to-face interviews are carried out by a team that includes a member of the Garda National Immigration Bureau and resettlement and integration experts from the Office of the Minister for Integration.

The resettlement programme is managed using a partnership approach involving various national and international organisations. The International Organization for Migration (IOM) conducts pre-departure health screening prescribed by the Irish Health Service Executive and also makes travel arrangements and organises pre-departure training to prepare the refugee for travel. UNHCR supports the selection and transfer process.

5.1.2. At Ports of Entry

A person who arrives at the frontiers of Ireland seeking asylum may make an application for refugee status. The Immigration Officer will interview the applicant as soon as practicable and will take the initial details of his or her asylum application and will fingerprint the applicant. A

copy of this interview is provided to the applicant and another copy is forwarded to the ORAC. The applicant will also be informed that he or she is entitled to consult a legal counsel and the UNHCR.

Ireland does not have an application determination process in operation at ports of entry. Applicants are provided with information in relation to the asylum application process, and arrangements are made for their transfer to the Office of the Refugee Applications Commissioner. Persons approaching an Immigration Officer outside of office hours will be guided to a reception centre for overnight accommodation before being transferred to the ORAC on the next working day.

5.1.3. Inside the Territory

Responsibility for Processing the Claim

The Dublin System

Application and Procedure

A decision on the responsibility of another State party to Council Regulation (EC) No 343/2003⁵ may be made at any time during the asylum procedure.

The operation of the Dublin II system is governed by the Refugee Act 1996 (as amended) and Statutory Instrument No. 423 of 2003 (known as the (section 22) Order). Under the Order, if it appears that the claim should be dealt with in another State, the ORAC will attempt to establish the movements of the applicant, will inform the applicant of the consequences of the Dublin II process, and will refer the applicant to the Refugee Legal Service. The applicant has an opportunity to submit reasons as to why his or her case should be dealt with in Ireland.

ORAC makes a determination on the case, which is issued to the applicant and his or her legal representative. The determination contains the following information:

- A summary of the legal position in relation to the Dublin Regulation
- A summary of the proof that the person has been in another Member State
- A brief outline of the applicant’s case as presented at reception and in any representations
- An outline of the decision referencing the Article and proofs required and supplied
- The statement of the determination.

⁵ Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (Dublin II Regulation).

The file is then forwarded to INIS and a Transfer Order is drawn up in line with national legislation in order to effect the transfer of the applicant from the jurisdiction.

Freedom of Movement/Detention

If it is suspected that a person who has been served with a Transfer Order intends to avoid removal from the State, he or she may be arrested and detained without further notice for the purposes of his or her removal.

Conduct of Transfers

The transfer of the asylum application is arranged by the Department of Justice, Equality and Law Reform. The transfer takes place as soon as is practicably possible and at the latest within six months of the date of acceptance by the other Regulation State.

Suspension of Dublin Transfers

Article 19(2) of the Dublin II Regulation states that the decision to transfer an applicant “may be subject to an appeal or a review. Appeal or review concerning this decision does not suspend the implementation of the transfer unless the courts or competent bodies so decide on a case by case basis.” According to the Illegal Immigrants (Trafficking) Act 2000, “a person shall not question the validity of a determination of the Commissioner or a decision of the Refugee Appeals Tribunal under section 22 (as amended by section 11(1) (p) of the Immigration Act 1999) of the Refugee Act, 1996, otherwise than by way of an application for judicial review under Order 84 of the Rules of the Supreme Courts (S.I. No. 15 of 1986).” Such an application must be made within a period of 14 days from the date of the decision.

Review/Appeal

The asylum-seeker may make an appeal before the Refugee Appeals Tribunal (RAT) within 15 working days of the date of ORAC’s determination. Any appeal to the RAT will not suspend the transfer of the asylum-seeker to the other country.

If the RAT overturns the determination of the ORAC, the application will be returned to the ORAC for examination. If the asylum-seeker has already been transferred to another country, arrangements will be made for his or her return to Ireland.

Application and Admissibility

There are no formal admissibility arrangements in place in respect of asylum applications. All applications for asylum made in Ireland are examined on their merits, with some applications prioritised accordingly. Exceptions to this rule include the following:

- Asylum applications made by nationals of Member States of the European Union. Under the EU Treaty Protocol, Ireland does not accept asylum applications from nationals of EU Member States
- Accompanied minors whose application is considered to be part of the application of their parent or guardian unless they make an application in their own right.

Accelerated Procedures

Prioritisation of Applications

Section 12 of the Refugee Act 1996 (as amended)⁶ allows the Minister of Justice, Equality and Law Reform to prioritise certain classes of applications based on one or more of the following criteria:

- The grounds of the application
- The country of origin or habitual residence of applicants
- Any family relationship between applicants
- The ages of applicants
- The dates on which applications were made
- Considerations of national security or public policy
- The likelihood that the applications are well-founded
- Special circumstances regarding the welfare of applicants or the welfare of family members of applicants
- Lack of grounds for contention that the applicant is a refugee
- False or misleading representations in relation to a person’s application
- Prior applications for asylum in another country
- The making of an application at the earliest opportunity after arrival in the State
- Being a national of or having a right of residence in a country of origin designated as safe
- Being someone to whom paragraph (a), (b) or (c) of section 2 of the Refugee Act 1996 (as amended) applies.

In addition, under section 12(4) of the Refugee Act 1996, the Minister may, after consultation with the Minister for Foreign Affairs, designate a country as a safe country of

⁶ See the provisions contained in Section 12 of the Refugee Act in the annex to this chapter.

origin.⁷ Asylum-seekers from designated safe countries of origin may have their applications prioritised.

Certain specific categories of applications are also given priority. For example, applications from asylum-seekers in detention are given priority.

Prioritised applications are generally examined and processed within 17 to 20 working days of the date of application, except where medical or other compelling reasons may prevent this. This time limit aside, the examination process follows the normal procedure.

Normal Procedure

Preliminary Interview

When an asylum claim is made, a preliminary interview with the applicant is conducted. The purpose of this interview is to establish whether the person wishes to make an application for a declaration for refugee status and if so, the general grounds upon which the application is based, the person's identity and nationality and the route taken to the State. The interview is conducted in the presence of an interpreter when necessary and possible.

If the asylum-seeker made the application at a port of entry, he or she will be required to proceed to the ORAC office to complete the initial asylum process.

Application Form

Following the preliminary interview, the applicant completes and signs a standard form (ASY1 form). The application must be accompanied by original travel and identity documents in the asylum-seeker's possession, and if appropriate, those of his or her children who are under 18 years old.

Questionnaire

The asylum-seeker is then given a detailed questionnaire on which he or she is to provide biographical details and the reasons for seeking asylum. The completed questionnaire must be returned to the ORAC within seven days of the preliminary interview (within six days for prioritised cases). All applicants are photographed and those over 14 years are also fingerprinted in the ORAC. They are then issued with a Temporary Residence Certificate/Card as evidence that they have applied for asylum.

Asylum-seekers are then referred to the Reception and Integration Agency (RIA) where arrangements will be made for them to be taken to a Reception Centre in

the Dublin Area. Applicants can also make their own accommodation arrangements.

Substantive Interview

The asylum-seeker is invited to an interview carried out by an ORAC caseworker, with the assistance of an interpreter where required. Applicants may also have their legal representative present at the interview.

Recommendation

On the basis of the findings of the preliminary interview, the completed questionnaire, the substantive interview and any relevant information, including country of origin information, the caseworker prepares a report on the application which will incorporate a recommendation of whether or not refugee status should be granted as well as the reasons for this recommendation. A copy of the report is given to the applicant and his or her legal representative at the end of the procedure if the recommendation is to refuse refugee status.

Review/Appeal of the Procedure

Refugee Status

Applicants who receive a negative recommendation following their interview with the ORAC may appeal the recommendation before the Refugee Appeals Tribunal (RAT) within 15 working days of the sending of the notice. The appeal has suspensive effect. The RAT has the power to affirm the ORAC recommendation or to set it aside and grant refugee status. The Minister does not make a final decision until the time period for making an appeal has elapsed or until such time as the RAT makes a recommendation.

Asylum-seekers are entitled to request an oral hearing for this appeal.

The timeframe to make an appeal on a negative recommendation is 10 working days if the ORAC's recommendation includes in its findings one of the following elements:

- The applicant showed either no basis or a minimal basis for the contention that he or she is a refugee
- The applicant made statements or provided information in support of the application of such a false, contradictory, misleading or incomplete nature as to lead to the conclusion that the application is manifestly unfounded
- The applicant, without reasonable cause, failed to make an application as soon as reasonably practicable after arrival in the State

⁷ See the section on Safe Country Concepts below for more information on the safe country of origin policy.

- The applicant had made a prior application for asylum in another state party to the 1951 Convention (whether or not that application had been determined, granted or rejected)
- The applicant is a national of, or has a right of residence in, a safe country of origin for the time being so designated by the Minister.⁸

Any such appeal will be dealt with by the Tribunal without an oral hearing.

The Minister also has the power to direct that certain categories of applications be dealt with in accordance with procedures set out in section 13(8) of the Refugee Act.⁹ If the Minister issues such a direction and an application is to be dealt with in this way the applicant and his or her legal counsel (if known) will be notified in writing in advance by the Commissioner.

Under these procedures, should a negative recommendation be made by the Commissioner and should any one of the additional elements listed above apply, the applicant will have four working days to appeal from the sending of the notice. Any such appeal will be dealt with by the Tribunal without an oral hearing.

In all instances the Tribunal furnishes the applicant with the reasons for its recommendation including the material which was relied upon in coming to that recommendation.

When an application is withdrawn or deemed withdrawn, there is no possibility of an appeal.

Freedom of Movement during the Procedure

Detention

There is no systematic detention of asylum applicants for the purpose of processing applications. However, under section 9(8) of the Refugee Act (as amended) applicants may be detained if it is suspected that they:

- Pose a threat to national security or public order in the State
- Have committed a serious non-political crime outside the State
- Have not made reasonable efforts to establish their true identity
- Intend to avoid removal from the State in the event of their application for asylum being transferred under the Dublin II Regulation

⁸ These elements are contained in section 13(6) of the 1996 Refugee Act.

⁹ As at this writing, these procedures have not yet been invoked in Ireland. See the terms of Section 13(8) of the Refugee Act in the annex.

- Intend to leave the State and enter another state without lawful authority, or
- Without reasonable cause have destroyed their identity or travel documents or are in possession of forged identity documents.

A person detained under these provisions must be brought before a judge of the district court as soon as practicable. The judge may:

- Commit the person concerned to be detained for up to 21 days
- Release the person
- Release the person subject to certain reporting requirements.

A person failing to comply with any imposed reporting conditions may also be detained. Any persons detained may have their period of detention extended for further periods, each period not exceeding 21 days, pending the determination of their application. These provisions are not applicable to minors.

Under Section 10 of the Refugee Act, the Commissioner or the Tribunal shall ensure that the application for asylum of a person detained in relation to specific matters shall be dealt with as soon as may be and, if necessary, before any other application of a person who is not detained.

Reporting

According to the Refugee Act, an applicant shall not attempt to leave the State without the consent of the Minister. He or she is also obliged to inform the Commissioner of his or her address and of any change of address as soon as possible. An asylum-seeker may make arrangements for his or her own accommodation at the start of the asylum procedure and must provide the address within five working days of making an asylum application. If the address is not reported to the authorities within the time limit, the asylum application will be deemed to be withdrawn.

An applicant may be required to reside or remain in particular districts or places in the State, or report at specified intervals to an Immigration Officer or persons authorised by the Minister or a member of the Garda Síochána.

Repeat/Subsequent Applications

Under section 17(7) of the Refugee Act, it is not possible for a person who has been refused refugee status to make a further application under the Refugee Act without the consent of the Minister. A reapplication will be accepted only if the applicant submits new information

that was not previously submitted or available to the ORAC and if there are genuine reasons for the applicant not to have been able to submit that information at an earlier stage. If accepted, reapplications follow the same procedure as first instance applications.

5.2 Safe Country Concepts

5.2.1. Safe Country of Origin

Under section 12(4) of the Refugee Act (as amended), the Minister may, by order, designate certain countries as safe countries of origin. If it appears to the ORAC that the asylum-seeker is a national of, or has a right of residence in a country designated by the Minister as a safe country of origin, then the asylum-seeker is presumed not to be a refugee, unless he or she can provide evidence to the contrary.

In deciding whether to designate a country as a safe country of origin, the following considerations must be taken into account:

- Whether the country is a party to, and generally complies with, obligations under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the International Covenant on Civil and Political Rights, and, where appropriate, the European Convention on Human Rights (ECHR)
- Whether the country has a democratic political system and an independent judiciary
- Whether the country is governed by the rule of law.

Croatia and South Africa are considered safe countries of origin and therefore applications made by persons from these countries are prioritised.

Asylum Claims Made by Citizens of the EU

As Ireland applies the EU Protocol on asylum, annexed to the Treaty of Amsterdam, the ORAC does not process asylum claims from EU nationals. Under the EU Treaty Protocol, Member States are regarded as safe countries of origin in respect of each other in relation to asylum matters. Therefore, applications for refugee status from EU nationals are inadmissible for processing in Ireland except in very exceptional circumstances.

5.2.2. First Country of Asylum

Where an applicant is found to have resided in another country (without making an application for asylum) prior to travelling to Ireland to claim asylum, the application is processed following the normal procedure. However,

the applicant is given 10 working days to appeal to the Refugee Appeals Tribunal if a negative recommendation includes one of the following elements:

- A finding that the applicant, without reasonable cause, failed to make an application as soon as reasonably practicable after arrival in the State
- A finding that the applicant had made a prior application for asylum in another State party to the 1951 convention.

Such an appeal is determined without an oral hearing.

5.2.3. Safe Third Country

Ireland does not apply any safe third country policy in the context of asylum procedures.

5.3 Special Procedures

5.3.1. Unaccompanied Minors

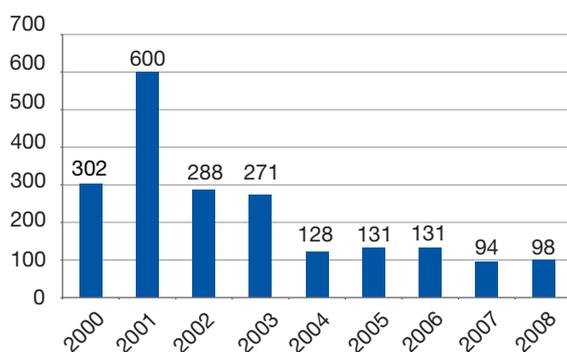
Under section 8(5) of the Refugee Act 1996 (as amended), where an unaccompanied child under the age of 18 (a minor) arrives at a port of entry or at the ORAC, the Health Service Executive (HSE) must be informed and the child placed in its care. The HSE will decide if and when it is in the best interests of the minor to make an application on his or her behalf.

In the event that an application is made, the HSE then assists the minor throughout the procedure, including accompanying the child to the interview.

The following features are specific to the examination of asylum applications made by unaccompanied minors (UAMs):

- All UAMs are interviewed by experienced ORAC caseworkers who receive additional specialised training
- UAMs' applications are prioritised
- There is greater emphasis on certain objective factors such as country of origin information in determining the application of the UAM
- HSE and legal representatives are always in attendance at interviews.

Figure 4:

Total Applications by Unaccompanied Minors*, 2000-2008

* First applications only

5.3.2. Temporary Protection

Ireland has exercised its option, under the EU Treaty Protocol relating to the position of the United Kingdom (UK) and Ireland, to take part in Council Directive 2001/55 of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons, and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (Temporary Protection Directive). This Directive was transposed into Irish Law under the Refugee Act 1996 (as amended).

The existence of a mass influx of displaced persons must be established by a Council Decision. No such decision has been taken to date. Ireland will afford such displaced persons permission to enter and remain in the State on a temporary basis.

5.3.3. Stateless Persons

Where the ORAC is satisfied that an individual is stateless, it will accept an asylum application from the person and process it according to the normal determination procedure.

6 Decision-Making and Status

At present, the ORAC determines asylum applications at first instance, the RAT hears appeals against negative first instance recommendations and the INIS considers applications for subsidiary protection and any other reasons to remain in the State.

6.1 Inclusion Criteria

Refugee status is granted if an applicant meets the requirements set out in section 2 of the Refugee Act, which incorporates criteria set out in Article 1(A) 2 of the 1951 Convention.

Section 1 of the Refugee Act 1996 (as amended) explicitly states that “social group” can include membership in a trade union or a group of persons whose defining characteristic is their gender or particular sexual orientation.

6.2 The Decision

The Minister for Justice, Equality and Law Reform is responsible for granting an asylum-seeker a determination of refugee status.

Where a recommendation to grant refugee status is made by the ORAC or where the RAT overturns a negative recommendation of the ORAC, the Minister shall grant refugee status. However, under section 17(2)(a) of the Refugee Act 1996 (as amended), if the Minister considers that issues of national security or public policy arise, he or she may refuse to grant refugee status.

Where a recommendation to refuse refugee status has been made by the ORAC and where the RAT does not overturn that recommendation, the Minister may refuse to give a determination of refugee status.

The Minister’s decision is issued by mail to the applicant.

6.3 Types of Decisions, Status and Benefits Granted

The ORAC may make the following recommendations:

- Grant refugee status
- Refuse on the basis of the application having been withdrawn, or deemed to be withdrawn
- Refuse (substantive)
- Refuse with additional section 13(6) findings.¹⁰

An applicant granted refugee status receives a statement in writing declaring that he or she is a refugee. Refugee status is granted on an indefinite basis, subject to the power of the Minister to revoke a declaration under section 21 of the Refugee Act (as amended). Refugees are required to register with the immigration authorities and are issued a residence permit. An applicant may apply for a 1951 Geneva Convention Travel Document.

¹⁰ See the section on Review/Appeal above for section 13(6) additional findings.

Under section 3 of the Refugee Act 1996 (as amended), persons granted refugee status are entitled to the following benefits, on the same basis as Irish citizens:

- Right to travel
- Access to the Courts
- Access to the labour market
- Right to form or be a member of a trade union
- Access to medical care
- Social welfare benefits
- Access to education and training.

A recognised refugee may apply for Irish citizenship three years after having made an application for refugee status. A refugee is also entitled, upon application to the Minister, to family reunification.¹¹

6.4 Exclusion

The definition of a refugee does not apply if Article 1F of the 1951 Convention is applicable, as follows:

- The person has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes
- The person has committed a serious non-political crime outside the State prior to his or her arrival in the State
- The person has been guilty of acts contrary to the purposes and principles of the United Nations.

In addition, under section 17(2)(a) of the Refugee Act 1996 (as amended), the Minister may provide that the right to be granted leave to enter the State for the purposes of making an asylum application, to be entitled to the rights afforded to a recognised refugee or to be entitled to family reunification may be withheld if it is considered that issues of national security or public policy arise. Furthermore, such a person may be required to leave the State and may be temporarily detained for this purpose.

According to the Refugee Act, a person who is the subject of such a removal cannot be removed until at

¹¹ A person granted refugee status in Ireland may apply for family reunification under section 18 of the Refugee Act 1996 (as amended). The Act defines “family members” for the purposes of family reunification as follows: spouse; parents of the refugee if, on the date of the application, is under 18 years of age and not married; and children of the refugee, who, on the date of the application are under 18 years and unmarried. The Act also specifies that the Minister may also, at his or her discretion, grant permission to a “dependent family member” to enter and reside in the State.

least 30 days after the making of such an order and the Minister is required to notify the UNHCR and the individual’s legal counsel. An applicant can appeal this decision to the High Court.

6.5 Cessation

Under sections 21(e) and (f) of the Refugee Act 1996 (as amended),¹² if the circumstances giving rise to an applicant being recognised as a refugee cease to exist, his or her declaration (refugee status) may be revoked. The terms applicable to cessation are covered together with other grounds for revocation of refugee status, which are described below.

6.6 Revocation

Under section 21 of the Refugee Act 1996 (as amended), the Minister may revoke a person’s refugee status if the person:

- a) has voluntarily re-availed himself or herself of the protection of the country of his or her nationality
- b) having lost his or her nationality, has voluntarily re-acquired it
- c) has acquired a new nationality (other than the nationality of the State) and enjoys the protection of the country of his or her new nationality
- d) has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to fear of persecution
- e) can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of his or her nationality
- f) being a person who has no nationality is, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, able to return to the country of his or her former habitual residence
- g) is a person whose presence in the State poses a threat to national security or public policy

¹² See the provisions of section 21 of the Refugee Act in the annex to this chapter.

Box 2: **The Refugee Documentation Centre: Building on Best Practices**

Prior to the creation of the Refugee Documentation Centre, there was no centralised COI service available to all asylum authorities, as COI research was being conducted within each individual organisation.

The RDC established early contacts with other COI offices in partner countries to identify best practices as well as with other relevant organisations and agencies both in Ireland and abroad. A formal 'Query Service' was introduced in 2001, and this has been expanded considerably since then and is now managed electronically.

A strategic review and analysis of the RDC, completed in 2004, resulted in a number of recommendations relating to the future development of the Documentation Centre. Involvement in international COI meetings and networks was strongly encouraged as a way to build on best practices. In recent years, the training activities of the RDC have expanded from short courses developed in-house to intensive COI training programmes based on best practice models. For example, the RDC was involved with the COI Network in developing the Researching COI Training manual and its online equivalent. The RDC was also involved in the development and delivery of courses based on this manual both in Ireland and internationally. The RDC trainer is a member of the COI Network trainer pool and is also currently involved at the expert level in the COI module of the European Asylum Curriculum (EAC) and in the development of the training programme for the EAC.

A comprehensive COI document management system (E-Library) was launched in September 2007. This system gave end-users access to the RDC online collections of journals, COI documents and anonymised query responses. This new system will enable the RDC to maintain a richer, more up-to-date and more accurate knowledge base for country of origin information and permit the addition of new collections as required. Planned upgrades of the E-Library COI system will incorporate federated searching where possible.

The RDC has also recently developed Country Information Packs (reference documents for high priority countries on a broad range of COI topic areas, including subsidiary protection), which are available to all end-users.

- h) is a person to whom a declaration has been given on the basis of information furnished to the Commissioner or, as the case may be, the Tribunal which was false or misleading in a material particular.

A revocation order will not be made in respect of grounds (e) and (f) above if the refugee can demonstrate that there are compelling reasons arising from previous persecution for refusing to avail oneself of protection of his or her nationality or for refusing to return to the country of former habitual residence.

Where the revocation of refugee status is being considered, the applicant, his or her legal representative and the UNHCR are notified and are invited to submit written representations within 15 working days. Documentation received is considered and a submission outlining the case is made to the Minister. The decision to revoke rests with the Minister. A revocation order detailing the reasons for the revocation is issued in writing to the person.

If a person seeks to contest the revocation, he or she may make an appeal to the High Court within 15 working days of the decision of the Minister. The appeal has suspensive effect.

6.7 Support and Tools for Decision-Makers

6.7.1. Country of Origin Information

ORAC caseworkers rely on a number of support tools to assist in the refugee status determination process. Within the ORAC, a team of country of origin information (COI) researchers assist caseworkers in retrieving and collecting information on countries of origin that may be relevant in specific asylum cases. ORAC also encourages its caseworkers to utilise the facilities of the Refugee Documentation Centre.

The Refugee Documentation Centre (RDC) was established in 2000 as an independent service operating under the Legal Aid Board.

The role of the Centre is as follows:

- Provide a research and query service for key organisations involved in the asylum process
- Build and maintain a collection of objective and up-to-date COI, asylum, immigration, legal and human rights documentation for general access
- Provide training on country of origin information research

- Undertake other research activities and provide a lending and research library service
- Cooperate with similar agencies elsewhere to enhance knowledge of the country of origin research area.

The RDC publishes a comprehensive COI newsletter (“The Researcher”), which is posted on the Legal Aid Board website. Contributors include asylum agencies, UNHCR, non-governmental organisations (NGOs), academics and COI researchers.

Members of the public and other agencies may also use the Documentation Centre to conduct their own research.

6.7.2. Language Analysis

Following an ORAC pilot project on the use of language analysis in the asylum procedure, language analysis is now utilised to assist in the assessment of complex cases.

6.7.3. Other Support Tools

All caseworkers are provided with specific training that has been developed in conjunction with the UNHCR.

Formal policies and procedures on specific asylum-related matters are also available to caseworkers, while the office of the Attorney General is available to advise in respect of matters of a legal nature.

7 Efficiency and Integrity Measures

7.1 Technological Tools

7.1.1. Fingerprinting

Currently all asylum-seekers over 14 years of age are fingerprinted when making a claim for asylum at the ORAC.

An integrated Automated Fingerprint Identification System (AFIS), introduced in late 2007, changed the capture of fingerprints from a manual to an electronic system and provided an enhanced fingerprint capacity for the ORAC with better capability for exchange of information with EURODAC.

7.1.2. DNA Tests

While DNA tests are not routinely used by the ORAC, they have been used in the context of child protection

procedures in the determination of applications for family reunification.

7.1.3. Forensic Testing of Documents

The ORAC and the INIS may make a request to the police to verify identity documents when there are doubts about their authenticity. The need for forensic testing rarely arises in the case of asylum applications, as the majority of asylum-seekers claim not to have identity documents.

7.1.4. Database of Asylum Applications/Applicants

All asylum applications and the subsequent decisions are registered in a database that is maintained by the ORAC.

7.2 Length of Procedures

Prioritised applications are normally processed within 17 to 20 working days of their initial application, except where medical or other compelling reasons may prevent this. All other applications are normally processed within approximately 20 to 22 weeks of the initial application.

7.3 Pending Cases

The backlog of cases at first instance is small. At the end of 2008, there were 1,196 pending cases before the ORAC.

7.4 Information Sharing

Apart from the information sharing arrangements under the Dublin II Regulation, no information on an asylum-seeker may be released to a third country, unless the asylum-seeker consents to it.

7.5 Single Procedure

Ireland does not currently operate a single procedure. Under the Immigration, Residence and Protection Bill 2008, the functions currently carried out by the ORAC will be subsumed under the functions of the INIS. Thereafter, the consideration of refugee status, subsidiary protection and all other grounds for remaining in the State advanced by the applicant will be assessed in a unified application process or single procedure.

Box 3: Cooperation with UNHCR, NGOs

The UNHCR is notified of developments affecting applicants throughout the refugee determination process and is afforded the opportunity to make submissions at various stages. However, the UNHCR does not play an active role in the determination of individual asylum applications.

According to current legislation, the UNHCR must be notified in writing of the making of an asylum application. This notice includes the applicant's name and his or her country of origin. The UNHCR may make a request to attend an interview being conducted by the ORAC or receive a copy of the interview record and any other documents relied on. In addition, UNHCR can make representations on behalf of an applicant, and on request is informed of the recommendation of the ORAC on the claim.

Similarly, the RAT is required to notify the UNHCR of any appeals lodged and on request is obliged to furnish the UNHCR with all documents relating to the application. The UNHCR may, upon request, be present at appeal hearings and make submissions on behalf of the appellant. The UNHCR is also informed of the decision reached by the RAT.

The UNHCR is also notified of applications for family reunification, revocation of status, decisions to detain, changes of location of detention and detention for the purposes of removal from the State.

The UNHCR offers training to decision-makers at both the first and second instance on both legal and procedural matters.

The ORAC also liaises with other non-governmental organisations directly and via its Customer Liaison Panel. This panel provides a forum for consulting on a wide range of issues and for providing information to relevant NGOs on developments in the asylum process in Ireland.

8 Assistance and Reception Benefits for Asylum-Seekers

8.1 Procedural Support and Safeguards

8.1.1. Legal Assistance

The Refugee Legal Service (RLS) is an office established by the Legal Aid Board to provide low-cost, independent and confidential legal services to asylum-seekers and refugees. The RLS can provide assistance to applicants before submission of the questionnaire or prior to appearing at the interview, and can make written submissions to the ORAC in support of an application. The RLS can also provide legal representation before the RAT.

The RLS staff comprises legal counsel and caseworkers who have been trained in refugee status determination.

Asylum-seekers are also free to arrange for legal advice at their own expense.

8.1.2. Interpreters

The ORAC and the RAT use independent and impartial interpreters for interpretation into English during asylum interviews. Translators are also available to translate documents or declarations submitted by the asylum-seeker.

8.1.3. UNHCR

At the beginning of the procedure, asylum applicants are advised of their right to consult with the UNHCR. As stated above, the UNHCR may be present at the asylum interview and may make representations on behalf of an applicant, and on request will be informed of the recommendation of the ORAC. The UNHCR may also attend appeal hearings before the Refugee Appeals Tribunal and may make submissions on behalf of the asylum-seeker.

8.2 Reception Benefits

The Reception and Integration Agency (RIA) is a non-statutory agency of the Department of Justice, Equality and Law Reform, which is responsible for overseeing the reception of asylum-seekers in Ireland.

8.2.1. Accommodation

After an asylum-seeker makes his or her application for asylum in the ORAC, the RIA offers accommodation in a reception centre in Dublin for a period of between ten and fourteen days. During this period, asylum-seekers are given access to health, legal and welfare services. Asylum-seekers whose applications are not prioritised are then relocated to an accommodation centre outside the Dublin area.

The RIA is responsible for the accommodation of asylum-seekers in Ireland in accordance with the Government

policy of “direct provision” and “dispersal”. Direct provision is a policy whereby asylum-seekers can avail themselves of full board accommodation and certain ancillary services free of any cost while their asylum application is being processed. The policy of dispersal ensures that there is a distribution of the demand on State services accessed by asylum-seekers.

8.2.2. Social Assistance

Asylum-seekers are provided with State support through the system of direct provision. This is a largely cashless system based on the benefit-in-kind of free accommodation, health, education and other supports. Asylum-seekers in direct provision receive a nominal weekly payment of 19.10€ per week for adults and 9.60€ for children. In addition, asylum-seekers receive Exceptional Needs Payments and Urgent Needs Payments to cover the costs of essential and urgent needs.

These payments are administered by the Community Welfare Service on behalf of the Department of Social and Family Affairs (DSFA). The DSFA introduced a Habitual Residence Condition (HRC) with effect from 1 May 2004. Under the HRC, applicants for social assistance or child benefit payments must satisfy certain conditions before they are entitled to any payments.¹³

8.2.3. Health Care

Health care in Ireland is provided through the Health Services Executive (HSE). All asylum-seekers can access the public health service in the same way as do Irish citizens. In addition, asylum-seekers generally qualify for a medical card that entitles them to free medical services offered by a general practitioner and free medication. Asylum-seekers in need of psychological treatment can access a dedicated asylum-seekers’ psychological service through the HSE in Dublin.

8.2.4. Education

Asylum-seekers can access free primary and secondary level education up to age 18. In addition, English language supports are provided to adult asylum-seekers.

8.2.5. Access to Labour Market

Asylum-seekers are not able to access the labour market in Ireland for the duration of the procedure.

8.2.6. Family Reunification

No possibilities for family reunification exist for asylum-seekers awaiting a final decision on their claim.

8.2.7. Access to Integration Programmes

Asylum-seekers have access to local services such as primary and secondary education, primary health care, and sports organisations in the same way as do Irish citizens. Asylum-seekers may become involved in voluntary activities at a local level. These opportunities allow for interaction and integration at some level.

8.2.8. Access to Benefits by Rejected Asylum-Seekers

Asylum-seekers retain access to direct provision support, as described above, until a final determination is made in respect of their asylum application and any other grounds on which permission to remain in the State are sought, including subsidiary protection.

9 Status and Permits Granted outside the Asylum Procedure

9.1 Subsidiary Protection

Procedure

The decision-making authority for the determination of applications for subsidiary protection is the Irish Naturalisation and Immigration Service (INIS) of the Department of Justice, Equality and Law Reform. Where an application for subsidiary protection is received, a case processor (or caseworker) in the Repatriation Division of the INIS will examine the application. The case processor has access to the applicant’s entire asylum file.

The application is considered on the basis of the facts and circumstances, including the grounds for serious harm claimed by the applicant, all relevant facts relating to the country of origin, all documentation submitted by and on behalf of the applicant, whether internal protection would appear to be available to the applicant and the applicant’s overall credibility. Following the examination of the application, the case processor (or caseworker) compiles a written submission, which includes a recommendation as to whether or not the applicant is eligible for subsidiary protection in the State.

The submission and recommendation are reviewed by a more senior official in the Repatriation Division of the INIS who makes the final decision on the application.

¹³ These conditions include the requirement for the applicant to have a proven close link to Ireland or other parts of the Common Travel Area. Asylum-seekers who have arrived in the State since 1 May 2004 do not satisfy the HRC and are thus excluded from receipt of social assistance payments and child benefit payments.

Decision

The European Communities (Eligibility for Protection) Regulations 2006 govern applications for subsidiary protection. Under the Regulations, a person is eligible to apply for subsidiary protection if he or she:

- Has applied for and failed to be granted refugee status or has applied in writing to specifically seek subsidiary protection
- Demonstrates a credible, real risk of suffering serious harm, as defined in Article 15 of the Qualification Directive, and do not meet the criteria for exclusion, as defined by Article 17 of the Qualification Directive.

Decisions on subsidiary protection applications are conveyed in writing to the applicant and are copied to the applicant's legal representative, if known. The decision along with a copy of the submission and a copy of any country of origin information relied upon in arriving at the decision are conveyed in writing to the applicant and to the legal representative.

Benefits

A person eligible for subsidiary protection is entitled to the same rights as Convention refugees except that the permission to remain in the State granted is for a renewable three-year period and he or she is not entitled to a 1951 Geneva Convention Travel Document.¹⁴

Appeal

There is no statutory appeal procedure in respect of negative subsidiary protection decisions. However, any person refused subsidiary protection in the State would previously have been the subject of a negative asylum decision, in most cases following an appeal of a first instance determination.

Exclusion

Under sections 13(1) and (2) of the European Communities (Eligibility for Protection) Regulations 2006, a person is excluded from being eligible for subsidiary protection where there are serious grounds for considering that one of the following is applicable:

- The person has committed a crime against peace, a war crime, or crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes
- The person has committed a serious crime

- The person has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations
- The person constitutes a danger to the community or to the security of the State.

An applicant is also excluded if he or she instigates or otherwise participates in the commission of the aforementioned crimes or acts.

In addition, under section 13(3) of that Regulation, a person may be excluded from being eligible for subsidiary protection if he or she has, prior to his or her entry into Ireland, committed one or more crimes, outside the scope of the aforementioned crimes or acts, which would be punishable by imprisonment had they been committed in the State, and left his or her country of origin solely in order to avoid sanctions resulting from these crimes.

There is no statutory appeal procedure in respect of subsidiary protection decisions where an applicant is 'excluded' from being eligible for subsidiary protection in the State.

Cessation

Section 14(1)(a) of the European Communities (Eligibility for Protection) Regulation 2006¹⁵ provides for the cessation of subsidiary protection where the circumstances that led to the granting of the permission have ceased to exist or have changed to such a degree that protection is no longer required. The terms for revocation of subsidiary protection on cessation grounds are described below.

Revocation

Subsidiary protection may be revoked if the person should have been or is excluded from being a person eligible for subsidiary protection under section 13(1) and (2) of the European Communities (Eligibility for Protection) Regulations 2006, as outlined above, or where the misrepresentation or omission of facts resulted in the granting of subsidiary protection status.

In addition, subsidiary protection may be revoked where the circumstances which led to the granting of the permission have ceased to exist or have changed to such a degree that protection is no longer required; so long as the change of circumstances referred to is of such a significant and non-temporary nature that the person granted subsidiary protection no longer faces a real risk of serious harm.

¹⁴ See the section above on Decision-Making within the asylum procedure for information on benefits conferred on recognised refugees.

¹⁵ See the provisions of section 14 of the European Communities Regulations in the annexe to this chapter.

Subsidiary protection may also be revoked if the person should have been excluded from being a person eligible for subsidiary protection under section 13(3) of the European Communities (Eligibility for Protection) Regulations 2006, as outlined above.

9.2 Temporary Leave to Remain

Leave to remain is a status granted at the discretion of the Minister for Justice, Equality and Law Reform to, *inter alia*, persons whose claims for asylum or subsidiary protection have been rejected but who cannot be returned for humanitarian or other compelling reasons. This provision is set out in section 3 of the Immigration Act 1999 (as amended). The key considerations are set out as follows:

- The age of the person
- The duration of residence in the State
- The person's family and domestic circumstances
- The nature of the person's connection with the State, if any
- The employment (including self-employment) record of the person
- The employment (including self-employment) prospects of the person
- The character and conduct of the person both within and (where relevant and ascertainable) outside the State (including any criminal convictions)
- Humanitarian considerations
- Any representations duly made by or on behalf of the person
- The common good
- Considerations of national security and public policy.

Persons granted temporary leave to remain in the State are entitled to the following benefits:

- A residence permit (normally for one or two years, renewable at the end of the stated period)
- The right to work
- Access to social security on the same level as Irish citizens.

9.3 Risk Assessment

Before a person is issued with a deportation order,¹⁶ a risk assessment is conducted to take account of *refoulement* or any ECHR considerations.

¹⁶ A person who has been served a deportation order must leave Ireland and remain outside of Ireland.

The risk assessment consists of a detailed consideration of the applicant's case under section 3(6) of the Immigration Act 1999 (as amended) (described above) and section 5 of the Refugee Act 1996 (as amended) on the prohibition of *refoulement*. The competent authority is the Irish Naturalisation and Immigration Service (INIS) of the Department of Justice, Equality and Law Reform. Any perceived risk to the applicant would be identified through an objective examination of the security, political and human rights conditions prevailing in the country of origin at the time the decision is made. Where such a risk is identified, no steps would be taken to deport the applicant at that time and, instead, the applicant may be granted temporary leave to remain in the State for a defined period.

9.4 Obstacles to Return

If after a detailed consideration of a case prior to removal, it has been determined that there are no *refoulement* issues arising, but where obstacles to effecting return exist, such cases are kept under ongoing review. Such obstacles may include a difficulty in obtaining travel documents to facilitate the removal of the individual.

9.5 Regularisation of Status over Time

INIS may regularise the status of a rejected asylum-seeker by, where deemed appropriate, granting temporary leave to remain in the State on a case-by-case basis, as described above.

9.6 Regularisation of Status of Stateless Persons

Ireland is a signatory to the Convention Relating to the Status of Stateless Persons 1954 and the 1961 Convention on the Reduction of Statelessness. Every rejected asylum applicant, whether stateless or not, is afforded the opportunity to apply to the Minister for leave to remain in the State, and each case is considered on its individual merits.

10 Return

The INIS and Garda National Immigration Bureau (the Immigration Police) are responsible for the formulation and implementation of return procedures.

10.1 Pre-departure Considerations

When an asylum-seeker has been given a negative decision, he or she receives a written notification advising him or her of the option of voluntary return and is advised that assistance, if required, may be provided by IOM.

10.2 Procedure

Voluntary Return

Following the receipt of a negative decision, a rejected asylum-seeker is given a period of 15 days in which to notify the Minister of his or her decision to either voluntarily return to his or her country of origin or avail himself or herself of one of the other options open to him or her, that is, consent to deportation or make representations to remain temporarily in the State. Once the person has given notification that he or she will make a voluntary return, he or she is allowed a reasonable timeframe in which to make the practical arrangements for his or her departure. In most cases a period of up to one month is considered reasonable. The INIS and GNIB coordinate assisted voluntary return schemes with IOM.

Enforced Return

The Immigration Act 1999 (as amended) provides for a system of voluntary compliance in relation to the removal of persons served with a Deportation Order following the rejection of their asylum claims or after they become otherwise illegally present in the State. Where such persons are served with a Deportation Order, they are legally obliged to comply with that Order, which essentially means that they must leave the State and thereafter remain out of the State. However, where persons served with such an Order fail to comply with the Order, they are liable to arrest and detention pending their removal from the State. Where a person is subject to a Transfer Order in accordance with the Dublin II Regulation, arrangements are made by the INIS and GNIB for his or her transfer to the relevant Member State.

10.3 Freedom of Movement/ Detention

Where an Immigration Officer or a member of An Garda Síochána, with reasonable cause, suspects that a person against whom a Deportation Order (section 5(6)(a) of the Immigration Act 1999) is in force has failed to comply with a requirement put on him or her, or suspects that the person may abscond to avoid removal, he or she may arrest and detain that person. The person may be detained for a period not exceeding eight weeks pending his or her removal from the State. This eight-week period of detention applies for any one removal or attempted removal.

Under Article 40 of the Irish Constitution, any person detained may challenge the validity of his or her detention.

10.4 Readmission Agreements

Ireland and Nigeria have operated a readmission agreement since 2001 in respect of both failed asylum-seekers and persons found to be illegally present in the State.

11 Integration

While there are no formalised orientation programmes for persons granted refugee status or complementary forms of protection, a range of both statutory and non-statutory bodies are involved in initiatives to provide social support, information and English language training. Ireland adopts a mainstream policy of service provision in the integration area while recognising the need for targeted initiatives to meet specific short-term needs. In general, the delivery of integration services is the responsibility of mainstream Government departments, which respond to the needs of newcomers by developing responses appropriate to their areas of responsibility.

The responsibility for the promotion and coordination of integration measures for all legally resident immigrants rests with the Office of the Minister for Integration. This Office is also the responsible authority for the management of the European Refugee Fund (ERF), and is also a Public Beneficiary Body of the European Social Fund (ESF). Specific funding streams have been made available by the Office of the Minister for Integration to sporting bodies and local authorities to further increase the participation of migrants in all aspects of Irish life.

Box 4: Ministerial Statement on Integration Policy

In May 2008, the Minister for Integration launched "Migration Nation – Statement on Integration Strategy and Diversity Management". This document is a Ministerial statement on integration policy in Ireland and sets out the key principles that inform and underpin State policy. These include a partnership approach between the Government and other stakeholders, a strong link between integration policy and social inclusion, a clear public policy focus that avoids the creation of parallel societies and adopts a mainstream approach to service delivery, as well as effective local delivery mechanisms that align services to migrants with those of indigenous communities.

Resettled Refugees

Following arrival, resettled refugees are accommodated in the National Orientation and Training Centre (NOTC) where they undertake a 12-week orientation training programme provided by mainstream service providers to prepare the refugees for independent living before being transferred to a permanent resettlement location.

The Office of the Minister for Integration works in partnership with local authorities and the Voluntary and Community Sector to develop actions at a local level to promote the integration of refugees admitted under the resettlement programme. Local programmes are coordinated by the local authority and are generally implemented by the Community and Voluntary Sector. Receiving communities receive training to ensure that they are aware of any special needs of the group being resettled. Services are provided using a mainstream model, while taking account of the need for targeted services in exceptional circumstances.

Extensive language training is provided for resettled refugees for a period of up to one year following arrival.

12 Annexe

12.1 Selections from the Refugee Act 1996¹⁷

“Refugee”

2.—In this Act “a refugee” means a person who, owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his or her nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country; or who, not having a nationality and being outside the country of his or her former habitual residence, is unable or, owing to such fear, is unwilling to return to it, but does not include a person who—

- (a) is receiving from organs or agencies of the United Nations (other than the High Commissioner) protection or assistance,
- (b) is recognised by the competent authorities of the country in which he or she has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country,
- (c) there are serious grounds for considering that he or she—
 - (i) has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes,
 - (ii) has committed a serious non-political crime outside the State prior to his or her arrival in the State, or
 - (iii) has been guilty of acts contrary to the purposes and principles of the United Nations.
- (...)

Application for declaration

8.—(1) (a) A person who arrives at the frontiers of the State seeking asylum in the State or seeking the protection of the State against persecution or requesting not to be returned or removed to a particular country or otherwise indicating an unwillingness to leave the State for fear of persecution—

- (i) shall be interviewed by an immigration officer as soon as practicable after such arrival, and
- (ii) may apply to the Minister for a declaration.
- (...)

Provisions relating to detained persons

10.—(1) The immigration officer or, as the case may be, the member of the Garda Síochána concerned shall, without delay, inform a person detained pursuant to subsection (8) or (13)(a) of section 9 or cause him or her to be informed, where possible in a language that the person understands—

- (a) that he or she is being detained pursuant to section 9,
 - (b) that he or she shall, as soon as practicable, be brought before a court which shall determine whether or not he or she should be committed to a place of detention or released pending consideration of that person’s application for a declaration under section 8,
 - (c) that he or she is entitled to consult a solicitor,
 - (d) that he or she is entitled to have notification of his or her detention, the place of detention concerned and every change of such place sent to the High Commissioner and to another person reasonably named by him or her,
 - (e) that he or she is entitled to leave the State in accordance with the provisions of this paragraph at any time during the period of his or her detention and if he or she indicates a desire to do so, he or she shall, as soon as practicable, be brought before a court and the court may make such orders as may be necessary for his or her removal from the State, and
 - (f) that he or she is entitled to the assistance of an interpreter for the purpose of consultation with a solicitor pursuant to paragraph (c) and for the purpose of any appearance before a court pursuant to section 9.
- (2) The immigration officer or, as the case may be, the member of the Garda Síochána concerned shall also explain to a person detained pursuant to subsection (8) or (13)(a) of section 9, where possible in a language that the person

¹⁷ Refugee Act 1996, as amended by section 11(1) of the Immigration Act 1999, section 9 of the Illegal Immigrants (Trafficking) Act 2000 and Section 7 of the Immigration Act 2003, available on the Irish Immigration and Naturalisation Service website at: <http://acts.oireachtas.ie/zza17y1996.1.html>.

understands, that, if he or she does not wish to exercise a right specified in subsection (1) immediately, he or she will not be precluded thereby from doing so later.

(3) The immigration officer or, as the case may be, the member of the Garda Síochána concerned shall notify the Commissioner and the Tribunal of the detention or release of a person pursuant to the provisions of section 9.

(4) The Commissioner or, as the case may be, the Tribunal shall ensure that the application for a declaration of a person detained pursuant to subsection (8) or (13)(a) of section 9 shall be dealt with as soon as may be and, if necessary, before any other application for a declaration of a person not so detained.

(...)

Prioritisation of applications

12.—(1) Subject to the need for fairness and efficiency in dealing with applications for a declaration under this Act, the Minister may, where he or she considers it necessary or expedient to do so, give a direction in writing to the Commissioner or the Tribunal or to both requiring either or both of them, as the case may be, to accord priority to certain classes of applications determined by reference to one or more of the following matters:

- (a) the grounds of applications under section 8,
- (b) the country of origin or habitual residence of applicants,
- (c) any family relationship between applicants,
- (d) the ages of applicants and, in particular, of persons under the age of 18 years in respect of whom applications are made,
- (e) the dates on which applications were made,
- (f) considerations of national security or public policy,
- (g) the likelihood that the applications are well-founded,
- (h) if there are special circumstances regarding the welfare of applicants or the welfare of family members of applicants,
- (i) whether applications do not show on their face grounds for the contention that the applicant is a refugee,
- (j) whether applicants have made false or misleading representations in relation to their applications,
- (k) whether applicants had lodged prior applications for asylum in another country,
- (l) whether applications under section 8 were made at the earliest opportunity after arrival in the State,
- (m) whether applicants are nationals of or have a right of residence in a country of origin designated as safe under this section,
- (n) if an applicant is a person to whom paragraph (a), (b) or (c) of section 2 applies.

(2) The Commissioner or the Tribunal shall comply with a direction given to him, her or it under this section.

(3) The Minister may by a direction revoke or alter a direction given by him or her under subsection (1).

(4)(a) The Minister may, after consultation with the Minister for Foreign Affairs, by order designate a country as a safe country of origin.

(b) In deciding whether to make an order under paragraph (a), the Minister shall have regard to the following matters:

- (i) whether the country is a party to and generally complies with obligations under the Convention Against Torture, the International Covenant on Civil and Political Rights, and, where appropriate, the European Convention on Human Rights,
- (ii) whether the country has a democratic political system and an independent judiciary,
- (iii) whether the country is governed by the rule of law.

(c) The Minister may by order amend or revoke an order under this subsection including an order under this paragraph.

(...)

Recommendations and Reports of Commissioner

13.—

(...)

(5) Where a report under subsection (1) includes a recommendation that the applicant should not be declared to be a refugee and includes among the findings of the Commissioner any of the findings specified in subsection (6), then the following shall, subject to subsection (8), apply:

(a) the notice under paragraph (b) of subsection (4) shall, notwithstanding that subsection, state that the applicant may appeal to the Tribunal under section 16 against the recommendation within 10 working days from the sending of the notice, and that any such appeal will be determined without an oral hearing;

(b) notwithstanding paragraph (c) of subsection (4), where the applicant has not appealed against the recommendation within 10 working days after the sending of a notice under paragraph (b) of that subsection, the Commissioner shall, as soon as may be, furnish the report under subsection (1) to the Minister.

(6) The findings referred to in subsection (5) are—

(a) that the application showed either no basis or a minimal basis for the contention that the applicant is a refugee;

(b) that the applicant made statements or provided information in support of the application of such a false, contradictory, misleading or incomplete nature as to lead to the conclusion that the application is manifestly unfounded;

(c) that the applicant, without reasonable cause, failed to make an application as soon as reasonably practicable after arrival in the State;

(d) the applicant had lodged a prior application for asylum in another state party to the Geneva Convention (whether or not that application had been determined, granted or rejected); or

(e) the applicant is a national of, or has a right of residence in, a safe country of origin for the time being so designated by order under section 12(4).

(...)

(8) Where an application referred to in subsection (7) has been investigated under section 11 and the relevant report under subsection

(1) includes a recommendation that the applicant should not be declared to be a refugee and contains among the findings of the Commissioner any of the findings specified in subsection (6), then the following shall, subject to subsection (9), apply:

(a) the notice under paragraph (b) of subsection (4) shall, notwithstanding that subsection, state that the applicant may appeal to the Tribunal under section 16 against the recommendation within 4 working days from the sending of the notice, and that any such appeal will be determined without an oral hearing,

(b) notwithstanding paragraph (c) of subsection (4), where the applicant has not appealed against the recommendation within 4 working days after the sending of a notice under paragraph (b) of that subsection, the Commissioner shall, as soon as may be, furnish the report under subsection (1) to the Minister.

(...)

Revocation of declaration

21.—(1) Subject to subsection (2), if the Minister is satisfied that a person to whom a declaration has been given—

(a) has voluntarily re-availed himself or herself of the protection of the country of his or her nationality,

(b) having lost his or her nationality, has voluntarily re-acquired it,

(c) has acquired a new nationality (other than the nationality of the State) and enjoys the protection of the country of his or her new nationality,

(d) has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to fear of persecution,

(e) can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of his or her nationality,

(f) being a person who has no nationality is, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, able to return to the country of his or her former habitual residence,

(g) is a person whose presence in the State poses a threat to national security or public policy ("*ordre public*"), or

(h) is a person to whom a declaration has been given on the basis of information furnished to the Commissioner or, as the case may be, the Tribunal which was false or misleading in a material particular, the Minister may, if he or she considers it appropriate to do so, revoke the declaration.

(2) The Minister shall not revoke a declaration on the grounds specified in paragraph (e) or (f) where the Minister is satisfied that the person concerned is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself or herself of the protection of his or her nationality or for refusing to return to the country of his or her former habitual residence, as the case may be.

(3)(a) Where the Minister proposes to revoke a declaration under subsection (1), he or she shall send a notice in writing to the person concerned of his or her proposal and of the reasons for it and shall at the same time send a copy thereof to the person's solicitor (if known) and to the High Commissioner.

(b) A person who has been notified of a proposal under paragraph (a) may, within 15 working days of the issue of the notification, make representations in writing to the Minister and the Minister shall—

- (i) before deciding the matter, take into consideration any representations duly made to him or her under this paragraph in relation to the proposal, and
- (ii) send a notice in writing to the person of his or her decision and of the reasons for it.

(4)(a) A notice under subsection (3)(a) shall include a statement that the person concerned may make representations in writing to the Minister within 15 working days of the issue by the Minister of the notice.

(b) A notice under subsection (3) (b) (ii) shall include a statement that the person concerned may appeal to the High Court under subsection (5) against the decision of the Minister to revoke a declaration under subsection (1) within 15 working days from the date of the notice.

(5) A person concerned may appeal to the High Court against a decision of the Minister under this section and that Court may, as it thinks proper, on the hearing of the appeal, confirm the decision of the Minister or direct the Minister to withdraw the revocation of the declaration.

(6) A person concerned shall not be required to leave the State before the expiry of 15 working days from the date of notice of a proposal under subsection (3) and, if an appeal is brought against the decision of the Minister, before the final determination or, as the case may be, the withdrawal of the appeal.

(7) The Minister may, at his or her discretion, grant permission in writing to a person in respect of whom a declaration has been revoked under subsection (1) to remain in the State for such period and subject to such conditions as the Minister may specify in writing.

12.2 Selection from the Immigration Act 2003¹⁸

Liability carrier

2.—(1) Where a vehicle arrives in the State from a place other than Great Britain, Northern Ireland, the Channel Isles or the Isle of Man the carrier concerned shall ensure—

- (a) that all persons on board the vehicle seeking to land in the State or to pass through a port in the State in order to travel to another state disembark in compliance with any directions given by immigration officers,
- (b) that all persons on board the vehicle seeking to land in the State are presented to an immigration officer for examination in respect of leave to land,
- (c) that each non-national on board the vehicle seeking to land in the State or to pass through a port in the State in order to travel to another state has with him or her a valid passport or other equivalent document which establishes his or her identity and nationality and, if required by law, a valid Irish transit visa or a valid Irish visa.

(2) A person who contravenes paragraph (a), (b) or (c) of subsection (1) shall be guilty of an offence and, where a contravention by the person relates to more than one non-national, each such contravention shall constitute a separate offence.

(3) Where a vehicle arrives in the State from a place outside the State the carrier concerned shall, if so requested by an immigration officer, furnish him or her with—

- (a) a list specifying the name and nationality of each person carried on board the vehicle in such form, and containing such other information relating to the identity of the person, as may be prescribed,
- (b) details of the members of the crew of the vehicle.

¹⁸ Immigration Act 2003 (as amended to date: official restatement) available online at: http://www.inis.gov.ie/en/INIS/Immigration_Act_1999_amended.pdf/Files/Immigration_Act_1999_amended.pdf.

- (4) A person who contravenes paragraph (a) or (b) of subsection (3) shall be guilty of an offence.
- (5) It shall be a defence for a person charged with an offence under this section to show that he or she took all such steps as were reasonably open to him or her to ensure compliance with the provision of this Act.
- (6) It shall be a defence for a person charged with an offence under this section consisting of a contravention of paragraph (c) of subsection (1) to show —
- (a) that the non-national concerned had with him or her the relevant document before embarking on the vehicle concerned, or
 - (b) that he or she did not know and had no reasonable grounds for suspecting that the document was invalid.
- (7) A person guilty of an offence under this section shall be liable on summary conviction to a fine of €3,000.
- (8) The Minister may from time to time draw up and publish guidelines concerning steps to be taken by carriers to ensure compliance by them with this Act.
- (9) This section is without prejudice to the provisions of sections 8, 9 and 24 of the Refugee Act 1996 and to the discretion of the Minister to admit to the State a person whom the Minister considers to be in need of the protection of the State.

12.3 Selections from the Immigration Act 1999¹⁹

Deportation orders

3.—(1) Subject to the provisions of section 5 (prohibition of *refoulement*) of the Refugee Act, 1996, and the subsequent provisions of this section, the Minister may by order (in this Act referred to as “a deportation order”) require any non-national specified in the order to leave the State within such period as may be specified in the order and to remain thereafter out of the State.

(2) An order under subsection (1) may be made in respect of—

(...)

(f) a person whose application for asylum has been refused by the Minister,

(...)

(4) A notification of a proposal of the Minister under subsection (3) shall include—

(a) a statement that the person concerned may make representations in writing to the Minister within 15 working days of the sending to him or her of the notification,

(b) a statement that the person may leave the State before the Minister decides the matter and shall require the person to so inform the Minister in writing and to furnish the Minister with information concerning his or her arrangements for leaving,

(c) a statement that the person may consent to the making of the deportation order within 15 working days of the sending to him or her of the notification and that the Minister shall thereupon arrange for the removal of the person from the State as soon as practicable, and

(d) any other information which the Minister considers appropriate in the circumstances.

(...)

Arrest, detention, and removal of non-nationals

5.— Where a person detained under this section institutes court proceedings challenging the validity of the deportation order concerned, the court hearing those proceedings or any appeal therefrom may, on application to it, determine whether the person shall continue to be detained or shall be released, and may make any such release subject to such conditions as it considers appropriate, including, but without prejudice to the generality of the foregoing, any one or more of the following conditions:

(...)

¹⁹ Immigration Act 1999, available online at: <http://acts.oireachtas.ie/en.act.1999.0022.1.html>.

(6) (a) A person shall not be detained under this section for a period or periods exceeding 8 weeks in aggregate.

(...).

12.4 Selections from European Communities Regulations 2006²⁰

Exclusion from subsidiary protection

13. (1) A person is excluded from being eligible for subsidiary protection where there are serious reasons for considering that he or she—

(a) has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) has committed a serious crime;

(c) has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations; or

(d) constitutes a danger to the community or to the security of the State.

(2) Paragraph (1) applies also to persons who instigate or otherwise participate in the commission of the crimes or acts mentioned therein.

(3) A person may be excluded from being eligible for subsidiary protection if he or she has, prior to his or her admission to the State, committed one or more crimes, outside the scope of paragraph (1), which would be punishable by imprisonment had they been committed in the State, and left his or her country of origin solely in order to avoid sanctions resulting from these crimes.

Revocation of or refusal to renew subsidiary protection

14. (1) The Minister shall revoke or refuse to renew a permission granted to a person under Regulation 4 where—

subject to paragraph (2), the circumstances which led to the granting of the permission have ceased to exist or have changed to such a degree that protection is no longer required;

(...)

(2) In determining whether paragraph (1)(a) applies, the Minister shall have regard to whether the change of circumstances referred to in that provision is of such a significant and non-temporary nature that the person granted subsidiary protection no longer faces a real risk of serious harm.

(...)

12.5 Processing Costs

The average annual cost of maintaining an asylum-seeker in Ireland is estimated at approximately 20,000€ per annum. This figure comprises the following costs: INIS services, Refugee Legal Services; asylum accommodation costs; social welfare payments; GP (doctor) services and drugs; educational services; and costs associated with dealing with asylum-seeker legal challenges.

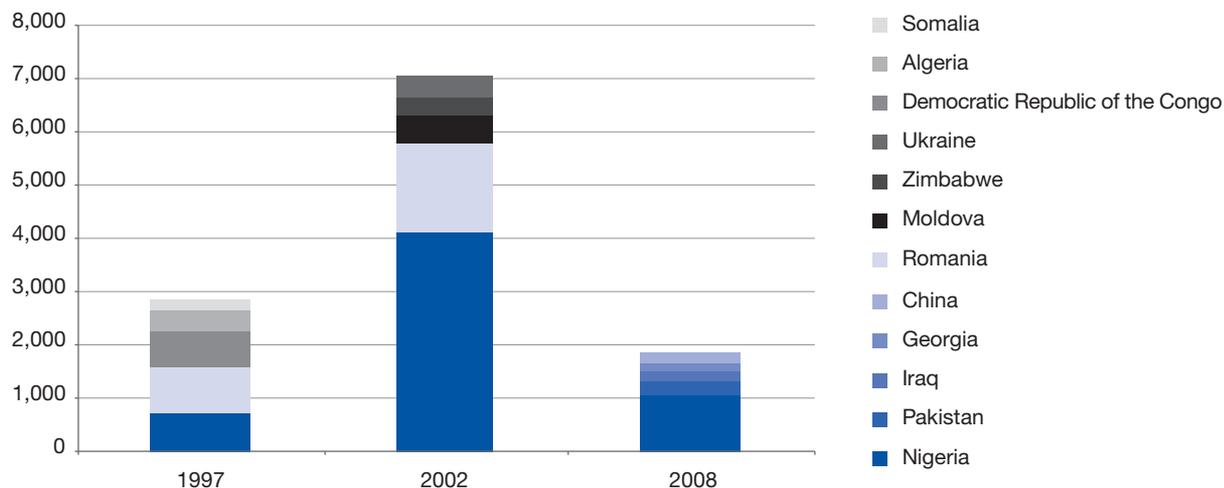
This costing does not include expenditure in areas such as maternity services, medical screening, funding provided under State sponsored programmes, or to NGO s dealing with asylum applicants. These costings are not currently readily available. The cost of maintaining asylum-seekers who entered the State before direct provision (i.e., bed and board for asylum-seekers in designated accommodation centres) was introduced will also be higher.

²⁰ European Communities (Eligibility for Protection) Regulations 2006, available online at: <http://www.inis.gov.ie/en/INIS/AsylumQual.pdf/Files/AsylumQual.pdf>.

12.6 Additional Statistical Information

Figure 5:

Asylum Applications* from Top Five Countries of Origin for 1997, 2002 and 2008



* First applications only

Figure 6:

Decisions Made at the First Instance, 1999-2008

Year	Convention Status		Humanitarian Status and Other Authorisations to Remain		Rejections		Other Decisions*		Total Decisions
	Count	% of total	Count	% of total	Count	% of total	Count	% of total	
1999	166	3%	0	0%	3,173	64%	1,623	33%	4,962
2000	211	3%	0	0%	4,783	74%	1,508	23%	6,502
2001	459	7%	0	0%	4,575	66%	1,930	28%	6,964
2002	894	11%	0	0%	5,965	71%	1,501	18%	8,360
2003	345	4%	0	0%	5,461	67%	2,386	29%	8,192
2004	430	6%	0	0%	4,906	71%	1,554	23%	6,890
2005	455	9%	0	0%	3,952	75%	835	16%	5,242
2006	397	9%	0	0%	3,249	77%	598	14%	4,244
2007	376	10%	0	0%	2,621	69%	811	21%	3,808
2008	295	7%	0	0%	2,942	70%	964	23%	4,201

*Other decisions may include withdrawn claims, abandoned claims or claims otherwise resolved.

Netherlands



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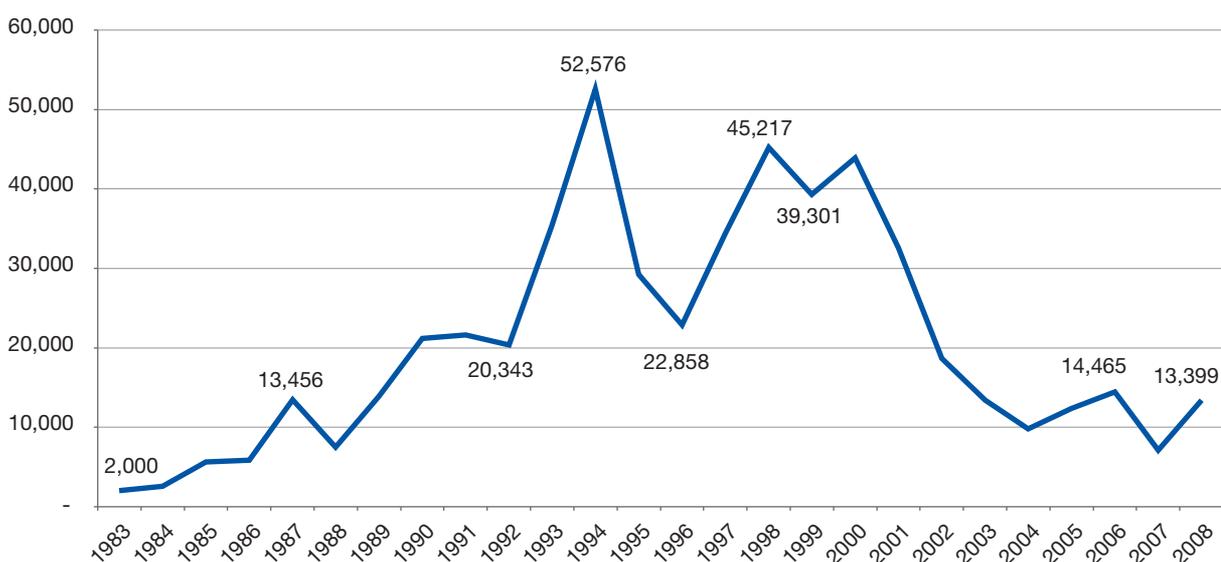
1 Background: Major Asylum Trends and Developments

Asylum Applications

In the late 1980's, the number of new asylum applications began to increase significantly, reaching a peak of over 52,500 in 1994. Between 1995 and 2001, annual receipt of applications fluctuated between 23,000 and 45,000. Since 2000, the number of applications has decreased significantly, reaching a level of 13,000 in 2008.

Figure 1:

Evolution of Asylum Applications in the Netherlands, 1983-2008*



* Beginning in 2007, data refers to first applications only

Top Nationalities

In the 1990's, the majority of asylum-seekers originated from the former Yugoslavia, Bosnia Herzegovina, Somalia, Iraq, Iran and, beginning in 1995, Afghanistan. In the period between 2000 and 2003 Angola, Afghanistan and Sierra Leone were the top three countries of origin. Since 2003, the majority of asylum-seekers are arriving from Iraq, Somalia and Afghanistan.

Figure 2:

Top Five Countries of Origin in 2008*

1	Iraq	5,027
2	Somalia	3,842
3	China	557
4	Afghanistan	395
5	Iran	322

* First applications only

Important Reforms

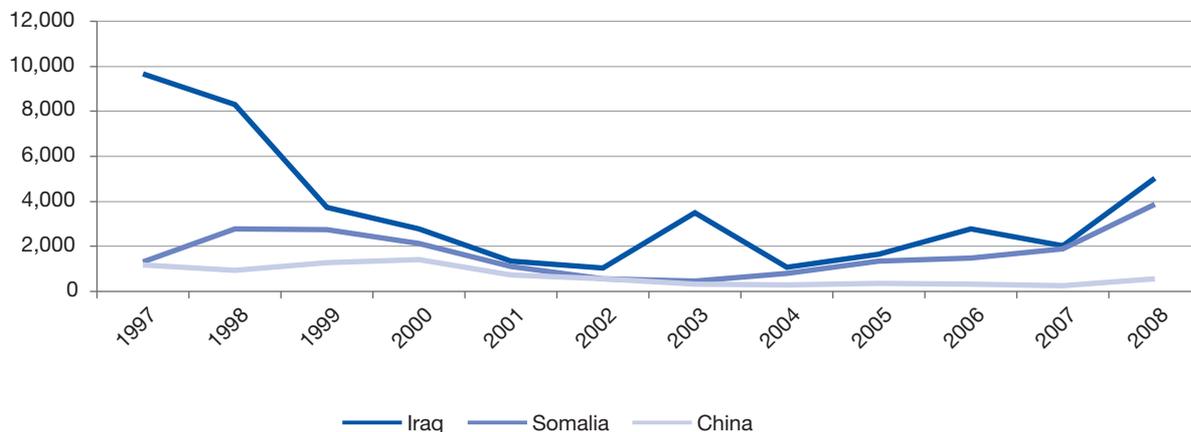
Prior to the creation of the Immigration and Naturalisation Service (IND) in 1994, the processing of asylum applications fell under the responsibility of the Ministry of Justice. The same year the principles of safe country of origin and safe third country were included in the Aliens Act, along with other grounds upon which an application could be declared inadmissible or manifestly unfounded. At the time, persons seeking protection needed to file separate applications for Convention refugee status and a residence permit based on humanitarian grounds.

Twice since the beginning of the 1990's, the legal framework for asylum procedures in the Netherlands has undergone significant reforms, with amendments to the Aliens Act taking effect in 1994 and 2001. Measures taken during that period were aimed at streamlining asylum procedures and reducing processing times. Part of the streamlining effort included the introduction of a single procedure whereby asylum-seekers needed to make only one application for Convention refugee status or a residence permit based on humanitarian grounds. As well, during this time dedicated application centres were created.

Since 2005, major reforms have been introduced. Under these reforms, a residence permit may be granted using the accelerated procedure. Also, application centres are closed during evening hours and on weekends (except for the application centre at Schiphol airport), and a third application centre (in Zevenaar) has been (re)introduced.

Figure 3:

Evolution of Applications from Top Three Countries of Origin for 2008*



* First applications only

2 National Legal Framework

2.1 Legal Basis for Granting Protection

Admission to the Netherlands and the granting of asylum are regulated by the Aliens Act 2000 (*Vreemdelingenwet*), which entered into force on 1 April 2001.

Council Directives relating to temporary protection (2001/55/EC)¹ and reception conditions (2003/9/EC)² were transposed into Dutch law in 2005 while the Directives on qualification (2004/83/EC)³ and asylum procedures (2005/85/EC)⁴ gained force of law in the Netherlands in 2008 and 2007, respectively.

The European Convention on Human Rights (ECHR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) are given effect in Dutch law.

¹ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (Temporary Protection Directive).

² Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum-seekers (Reception Directive).

³ Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (Qualification Directive).

⁴ Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (Asylum Procedures Directive).

2.2 Recent/Pending Reforms

In an agreement reached between the State Secretary of Justice and the Netherlands Association of Municipalities (Vereniging van Nederlandse Gemeenten, VNG) in May 2007, a regulation came into force to regularise the situation of persons who had lodged asylum applications under the previous Aliens Act and who had not received residence permits. Under the so-called “amnesty regulation,” persons who met the following criteria were eligible for permanent residence permits:

- They had made an asylum application under the previous Aliens Act (prior to 1 April 2001) or had reported themselves before that date for an asylum application
- They had resided in the Netherlands continuously since 1 April 2001, and
- They had chosen to withdraw their application from pending asylum procedures.

The regularisation schedule has been terminated as of 1 January 2009.

Pending Reforms

Further changes to asylum procedures are expected to take effect beginning in July 2010. The Ministry of Justice is planning the following changes with the aim of increasing both the efficiency and the integrity of procedures:

- The accelerated asylum procedure will be extended from 48 working hours (the equivalent

of three to six working days) to eight working days

- The extended (normal) procedure will be shortened by eight weeks
- The courts will have more possibilities to consider new circumstances and policy changes at the appeal stage
- Once the departure period has ended, rejected asylum-seekers will receive additional support with their return at a location where their freedom of movement is restricted for a maximum period of twelve weeks
- Financial assistance will be provided to rejected asylum-seekers to encourage their reintegration in the country of origin.

3 Institutional Framework

3.1 Principal Institutions

The Immigration and Naturalisation Service (Immigratie- en Naturalisatiedienst, IND), an autonomous agency under the political responsibility of the Minister of Justice, is responsible for processing asylum applications and implementing the Aliens Act.

The Central Agency for the Reception of Asylum Seekers (Centraal Orgaan opvang asielzoekers, COA), an independent administrative body funded by the Ministry of Justice, provides reception facilities to asylum-seekers.

The Repatriation and Departure Service (Dienst Terugkeer en Vertrek, DT&V) supervises the return of rejected asylum-seekers to their country of origin.

3.2 Cooperation between Government Authorities

Throughout the asylum procedure, the IND collaborates with a number of other partner agencies and organisations, as follows:

- The Royal Marechaussee (KMar), which is responsible for border control activities and examines the validity of travel documents
- The Aliens Police, which is in charge of registration of personal data and checks of places of residence
- The Legal Aid Foundation (Raden voor Rechtsbijstand, RvR), which provides legal assistance to the asylum-seeker

- The Ministry of Foreign Affairs, which provides information on conditions in countries of origin for use by asylum decision-makers and policy-makers
- The Dutch Council for Refugees (VluchtelingenWerk Nederland, VWN), an NGO that provides assistance to asylum-seekers during the procedure.

4 Pre-entry Measures

To enter the Netherlands, foreign nationals must meet the following requirements:

- Be in possession of valid travel documents or documents authorising entry
- Be in possession of a valid visa pursuant to Regulation 539/2001/EC, Annex I, or a valid residence permit, issued by a State Party to the Schengen Agreement
- Justify the purpose and conditions for their intended stay and show sufficient means of subsistence for the duration of the stay
- Not be included in the Schengen Information System alert system for the purposes of being refused entry, and
- Not be a threat to public safety, internal security, public health or international relations of a Member State of the European Union.

A person who does not fulfil these conditions is refused entry into the Netherlands unless it is considered necessary to derogate from that principle on humanitarian grounds, on grounds of national interest, or because of international obligations.

4.1 Visa Requirements

Holders of a Schengen visa are allowed to enter the Netherlands. The visa is valid for travel throughout the Schengen area for a maximum period of three months within a six-month timeframe.

The Netherlands provides for exceptions to the requirement for a Schengen visa in certain cases, such as for holders of diplomatic passports, within the Benelux framework. Persons who are subject to the visa requirement may apply for a visa at a diplomatic mission of the Ministry of Foreign Affairs.⁵

⁵ When in exceptional cases a visa is issued at the border (pursuant to Council Regulation EC 415/2003) by a border guard, the visa is also issued on behalf of the Minister of Foreign Affairs.

4.2 Carrier Sanctions

Sanctions may be imposed on carriers transporting into the Netherlands foreign nationals who are not in possession of valid travel documents. Carriers may be charged with costs related to the removal of the foreign national from, or their stay in, the Netherlands. Fines may also be imposed when carriers do not act according to other legal obligations, such as making copies of travel documents if so required or taking back a foreign national on a flight.

4.3 Interception

The Netherlands undertakes a variety of interception activities, in accordance with the Schengen Borders Code and the Dutch policy of identifying unauthorised movements of persons and goods before they reach Dutch borders.⁶ Border controls are carried out at border crossing points in the Netherlands to determine whether persons, vehicles and the goods they are carrying may enter or leave the Netherlands. Border patrols also take place away from the border crossing points in order to prevent persons from evading border checks.

Border control activities are carried out by various agencies, as follows:

- At the Coast Guard Centre in Den Helder, the Coast Guard gathers information from the various services with regard to enforcement in the North Sea and border surveillance
- The Royal Marechaussee (KMar) carries out border control activities at the airports, seaports,⁷ and land border crossings and undertakes internal surveillance within the Netherlands
- The Seaport Police (Zeehavenpolitie, ZHP) of the regional Rotterdam-Rijnmond police force supervise adherence to and carrying out of the legal provisions regarding border control in this region. ZHP officers patrol (mobile) border crossing points at the port of Rotterdam, including designated mooring sites (at sea), and carry out other border control activities in coastal and internal waters within this area
- The Customs authority carries out border control at all border crossings and along the maritime coastline by gathering a variety of data, including pre-arrival information and biometric

⁶ This policy fits in with the European obligations on the forwarding of details on goods consignments and passengers to the responsible authorities in good time before crossing European borders. This method of checking persons also fits in with the already existing position in the Netherlands that the term "border" is understood to mean a series of theoretical, successive concentric circles around the Netherlands.

⁷ The Royal Marechaussee does not, however, carry out border control at Rotterdam. This is done by the Seaport Police.

data. This practice is aimed at the heightened influx of (single minor) foreign nationals who may fall victim to human trafficking and is intended to prevent human trafficking.

4.4 Immigration Liaison Officers

The Netherlands has Immigration Liaison Officers (ILOs) stationed around the world⁸ to provide advice to carriers and local authorities as to whether or not to take passengers. ILOs also act as advisors to visa departments at Dutch missions abroad in the case of dubious applications. They provide training, upon request of local border authorities or carrier staff, on documentation and Schengen-related legislation and regulations. They also exchange information with liaison officers from other countries.

In addition to their advisory and trainer role, ILOs collect information on travel routes, illegal immigration and people trafficking trends, and help to develop risk profiles. ILOs investigate the possibilities of repatriation to the country of origin and transit countries using their network, by monitoring the involvement of particular organisations, investigating the repatriation policies of other Western nations and identifying reception facilities.

Liaison officers of the Royal Marechaussee seconded abroad are deployed mainly for the purpose of achieving a better position regarding migration-related crime. The Royal Marechaussee liaison officers report, analyse and advise on developments in (illegal) migration to and via the Netherlands and map out the illegal migration patterns and their relation to terrorism.

5 Asylum Procedures

5.1 Application Possibilities and Requirements, Procedures and Legal Remedies

Persons may apply for asylum at Schiphol airport in Amsterdam and in-country at Immigration and Nationality Service (IND) application centres. There are three IND application centres: one at Schiphol Airport (for people who are refused admission at the border and for unaccompanied minors), one in Ter Apel and one in Zevenaar. Applications for asylum may also be made by persons in detention.

⁸ ILOs are posted in the following cities: Accra, Amman, Bangkok, Dubai, Guangzhou, Istanbul, Moscow, Nairobi, Beijing, Pretoria and Yaoundé.

Information on the asylum procedure is provided in the form of a brochure issued by the IND and may be provided orally to asylum-seekers by the IND during the asylum interviews. The non-governmental organisation, the Dutch Council for Refugees, is also available to asylum-seekers for the provision of information on the procedure.

5.1.1. Outside the Country

Applications at Diplomatic Missions

It is not possible to lodge a formal application for asylum from outside the Netherlands. Since 11 September 2003, it is also no longer possible to submit an application for provisional sojourn (*Machtiging tot voorlopig verblijf, MVV*) at diplomatic missions in the country of origin or in a third country, for the purpose of making an asylum claim in the Netherlands.

Any Dutch diplomatic mission, however, can still offer protection on a temporary basis to a person who, according to the Dutch diplomatic authorities, is facing an acute emergency (diplomatic asylum). In exceptional cases, when the protection offered will not be sufficient, the Minister of Foreign Affairs can make a proposal to the Minister of Justice to allow the foreign national to come to the Netherlands.

Resettlement/Quota Refugees

The Netherlands has in place a resettlement programme that currently accepts 2,000 refugees over a four-year period. Refugees are selected during a maximum of four selection missions each year, as well as on the basis of dossiers prepared by the United Nations High Commissioner for Refugees (UNHCR). Selection missions are usually carried out by the IND, the Central Agency for the Reception of Asylum-seekers and Refugees (COA) of the Ministry of Justice, and a representative from the Ministry of Foreign Affairs (MFA). The IND organises interviews with the refugees and makes a final decision on selection, with the input of the MFA. The Netherlands places particular importance on the strategic use of resettlement. Together with other European resettlement countries, the Netherlands promotes resettlement in order to increase the number of resettlement places offered within the EU.

5.1.2. At Ports of Entry

A person who does not fulfil the conditions to enter the Netherlands will be refused entry into the territory. If this person states that he or she wants to apply for asylum, he or she will be brought to the Application Centre at Schiphol Airport (AC Schiphol). In order to prevent the person from entering the Netherlands, he or she must stay in a room or a place secured against unauthorised

departure. The procedure at AC Schiphol is the same as in the other application centres.⁹

5.1.3. Inside the Territory

Responsibility for Processing the Claim

The Dublin System

Application and Procedure

After an interview with the asylum-seeker, during which the asylum-seeker may give reasons why he or she thinks the Netherlands should process his or her application, the IND assesses which country is responsible for this application. If the IND is of the opinion that another country is responsible, a referral (application processing) or return request is made to the other country. The asylum-seeker receives an intended decision for refusal. Together with his or she legal representative, the asylum-seeker can respond to the intended decision. Thereafter, the IND decides whether or not it will change the intended decision. The asylum-seeker can appeal the decision of the IND to a judge.

Freedom of Movement/Detention

Dutch authorities are entitled to detain a foreign national, if necessary in the interests of public order or national security, in order to implement removal. Asylum-seekers who are subject to a decision of transfer under Council Regulation (EC) No 343/2003¹⁰ are usually detained prior to the transfer. The order imposing the detention measure or the continuation of detention is submitted to a periodic judicial review by the District Court. If the court holds that too little has been done to have the foreign national transferred, or that the foreign national has been kept in detention for too long, he or she will be released. These assessments are made on a case-by-case basis.

Conduct of Transfers

If the country agrees with the referral or return request of the IND, the asylum-seeker is transferred within six months.

Suspension of Dublin Transfers

Dublin transfers might be suspended for some time for medical reasons or due to a pending procedure at the higher or lower court.

⁹ The procedure at application centres is described below.

¹⁰ Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (Dublin II Regulation).

Review/Appeal

The asylum-seeker may appeal the decision of the IND before the District Court. The court must decide whether the IND's decision was correct or incorrect. Upon the judgment, the unsuccessful party may lodge a further appeal to the Council of State. The latter will verify whether or not the formalities in the proceedings have been correctly observed, and whether the court has correctly applied the law.

Application and Admissibility**Making an Asylum Application**

All asylum applications are lodged in an Application Centre and examined by the Immigration and Naturalisation Service (IND). The asylum-seeker's identity and personal details are established during an initial interview. He or she is also fingerprinted and photographed.

There are two types of procedures in place for examining an asylum claim: the 48-hour (accelerated) procedure at the application centre, and the extended procedure. Regardless of the type of procedure being applied, all asylum claims are subject to an initial interview and a detailed interview. The main difference between the procedure at the application centre and the extended procedure relates to the timeframes for arriving at a decision.

Procedures**Procedure at the Application Centre**

Legally speaking, there is no accelerated procedure. The IND adheres to a policy of coming to a decision on an asylum claim within 48 processing hours if this decision can be made following a meticulous examination of the application. In practice, this is an accelerated procedure during which full consideration is given to the obligations of the Netherlands under the 1951 Convention relating to the Status of Refugees (1951 Convention) and other legal instruments.

After an initial interview is conducted with the asylum-seeker to establish identity, nationality and travel route, the IND may decide that a decision may be made within 48 processing hours or the equivalent of three to six working days. Thus, the entire procedure, including the detailed interview, takes place at the application centre. The timeframes under the accelerated procedure are as follows:

- The asylum-seeker is allowed two hours to consult with the legal representative for the purpose of preparing the detailed interview

(under the extended procedure, six days are provided for consultation and preparation)

- The asylum-seeker is allowed three hours to respond to both the interview report and to the intended decision (under the extended procedure, the asylum-seeker has two days to respond and four weeks to react to the intended decision).

Detailed Interview

A more extensive interview is conducted with the assistance of an interpreter (if necessary) and in the presence of the legal representative. The detailed interview focuses on the reasons for departure from the country of origin and, if necessary, on the outcome of the investigations into the identity, nationality and travel route of the asylum-seeker.

Following the detailed interview, the IND determines whether the application requires further examination. If it does, the application is forwarded to a processing office of the IND and enters the extended procedure. If the application does not require further examination and a decision can be reached within 48 processing hours, the IND issues a written report of the interview to the asylum-seeker and the legal representative. The report is sent along with the Intended Decision. The asylum-seeker then has three hours to submit corrections and additions and his or her view on the Intended Decision.

The IND may, after receiving the response of the asylum-seeker to the Intended Decision, decide to forward the application to the extended procedure.

Pending Reforms

The Netherlands plans to introduce reforms to the asylum procedure at application centres. According to these reforms, there will be a general procedure that may last a maximum of eight working days, with certain exceptions.

Before the procedure begins, the asylum-seeker will have a rest and preparation time of six days. During this period, the asylum-seeker may consult with the Dutch Council for Refugees and his or her legal representative on the preparations for the procedure. The IND, meanwhile, will work on identity issues, by examining documents, and will determine the existence of any medical problems.

The eight working days of the general procedure are set out as follows:

- Day 1: Initial interview
- Day 2: Preparation for detailed interview
- Day 3: Detailed interview

- Day 4: Corrections and additions to detailed interview
- Day 5: Intended Decision
- Day 6: View of the asylum-seeker on the intended decision
- Day 7: Drafting of decision
- Day 8: Issuing of decision.

This new procedure would provide more time to the asylum-seeker and his or her legal representative than is currently available for preparation: in all, three of the eight days will be set aside for their use.

In contrast to the current situation, in all cases under the new general asylum procedure, the detailed interview relating to the reasons for asylum will be conducted. Some exceptions apply to this general rule, such as cases in which doing so is not possible or desirable for medical reasons, or in cases concerning an unaccompanied minor foreign national who is younger than 12 years old. The corrections and additions to the report of the detailed interview shall be handled at the application centre in all cases within the general procedure as well. This means that all stages of the process that are necessary to make a decision with regard to the application for asylum can be completed within eight days after which it can be determined whether a thorough decision can be made within eight days.

In contrast to the current procedure, not only the asylum-seeker's time but also that of the IND will be regulated. This means that if the IND exceeds the deadlines (as far as possible after submitting corrections and additions in the general asylum procedure), the asylum-seeker will be sent on to the reception centre, and the decision with regard to the application for asylum will be taken in the extended asylum procedure.

In the proposed procedure, the IND can decide to proceed to the extended procedure after receiving the corrections and additions to the detailed interview and after receiving the view of the person in question on the Intended Decision.

In the extended procedure, it will still be possible to hold an additional interview as part of the extended asylum procedure if necessary, to introduce additions and corrections or to produce further documents to support the asylum-seeker's account.

Extended Procedure at a Processing Office

The IND may decide to forward an asylum application to the extended procedure after the initial interview or the detailed interview or following receipt and consideration of the asylum-seeker's view on the Intended Decision

made at the application centre. A decision to apply the extended procedure is usually made if the IND believes further examination of the claim is required.

If the extended procedure is applicable, the asylum claim is forwarded to a processing office of the IND, and the asylum-seeker is moved from the application centre and accommodated at a reception centre. Asylum-seekers whose applications are being examined in the extended procedure at Schiphol continue to be accommodated at the detention centre near Schiphol.

If a detailed interview has not yet been conducted, this will take place at the processing office. A further detailed interview may also be conducted if necessary. The asylum-seeker then has four weeks to submit his or her corrections and additions to the interview report. Then the Intended Decision is made. The asylum-seeker has an additional four weeks to submit his or her view on the Intended Decision. These last four weeks are reduced to two weeks if the asylum-seeker is in a detention centre.

The pending reform to the procedure at application centres will result in there being only one detailed interview, which will be conducted at the application centre. The asylum-seeker will have one day to submit his or her corrections and additions to the interview report. Then, after the Intended Decision is made, the asylum-seeker has an additional day to present his or her view.

Review/Appeal of Asylum Decisions

The competent authority for appeal is the District Court (Rechtbank) and for further appeal, the Council of State (Raad van State).

Appeals may be made against decisions of the IND following either the accelerated procedure at the application centre or the extended procedure. Following the accelerated procedure, appeals may be made within 24 hours of the decision, while under the extended procedure appeals may be made within four weeks of the decision.

Appeals in the extended procedure have suspensive effect, while appeals under the accelerated procedure do not. However, the asylum-seeker can ask the Court for a provisional ruling.

Both the person and the State Secretary can lodge a higher appeal to the Council of State against the verdict of the Court. The higher appeal does not have suspensive effect.

Box 1:**Dutch Case Law: Freedom of Movement during the Procedure**

In October 2002, the Civil Court in The Hague published its judgment in a case brought forward by the Association of Asylum Lawyers in the Netherlands (Vereniging Asieladvocaten en juristen Nederland, VAJN) and the Dutch Lawyers' Committee for Human Rights (Nederlands Juristen Comité voor de Mensenrechten, NJCM) against the Dutch State. The VAJN and NJCM argued that the policy of limiting the movement of asylum-seekers to the application centre for the duration of the asylum procedure amounted to unlawful detention, in violation of Article 5, paragraph 1, of the ECHR.

The Court ruled that an asylum-seeker who is accommodated at an application centre during the procedure is in fact the subject of detention in the sense of Article 5, paragraph 1, of the ECHR. At the time, asylum-seekers had a limited amount of freedom of movement during their stay at application centres inside the Netherlands. If an asylum-seeker left the application centre, the procedure was terminated and the application was rejected. There is no legal basis for limiting asylum-seekers' movement to in-country application centres under Article 55 of the Dutch Aliens Act 2000, whereas the legal basis for limiting asylum-seekers' movement within the application centre at Schiphol Airport is contained in the Aliens Act 2000.

Because of this ruling the then Minister of Aliens Affairs and Integration changed the regime in the application centres. On the basis of Article 55 of the Aliens Act 2000, asylum-seekers are now entitled to leave the application centre under specific conditions, as described below.

Freedom of Movement during the Asylum Procedure

Detention

Procedure at Schiphol Airport

Asylum-seekers who are refused entry to the Netherlands are transferred to a closed application centre at Schiphol airport. If the application is rejected, the asylum-seeker remains in (border) detention. The (border) detention of families with children can last a maximum of four weeks after the final rejection of the asylum application (including the appeal before the Administration Court).

In-Country Procedure

There is no restriction on freedom of movement during the asylum procedure at the application centre or the processing office. Detention occurs if it is expected that the application will be rejected and public order or national security is at risk. In that case, the asylum-seeker is placed in a detention centre.

Procedure in Detention

Foreign nationals may also make an application for asylum while they are already in detention. In that case, detention of an asylum-seeker who is allowed to await the outcome of an asylum application in the Netherlands cannot last longer than six weeks. The detention of families with children who apply for asylum can last for a maximum of two weeks.

Appeal

Decisions to detain may be appealed before the Administrative Court. The IND has to inform the Administrative Court of the detention measure within 28 days, unless the decision to detain has been appealed by the foreign national.

Reporting

Asylum-seekers are required to report weekly to the Aliens Police during the asylum procedure, by means of a fingerprint recognition system. If they do not report for two consecutive weeks without having a good reason, the asylum procedure is ended, along with any reception benefits.

During the procedure in the application centre, the asylum-seeker is given an instruction based on Article 55 of the Aliens Act to stay at the application centre from 7:30 a.m. till 10 p.m. After 10 p.m. he or she may leave the centre, but he or she has to report back at 7:30 a.m. the following morning. He or she also has the option of spending the night at the application centre, in which case he or she has to keep to the centre's house rules. In case the IND or the Legal Aid Foundation (RvR) decides that his or her presence is no longer required that day for the assessment of his or her asylum application, he or she is also allowed to leave the application centre during the daytime.

Repeat/Subsequent Applications

Asylum-seekers who have received a negative decision on their original claim may make a subsequent application. An appointment must first be made by

telephone for the asylum-seeker to deposit his or her subsequent application at an IND application centre. The alien is required to submit all new documents, translated into Dutch, which will be entered in the application.

The procedure that applies to subsequent applications is the same 48-hour procedure that normally unfolds at the application centre. However, only new evidence or information will be considered in the examination of a subsequent claim.

5.2 Safe Country Concepts

5.2.1. Safe Country of Origin

The concept of safe country of origin is laid down in the Aliens Act 2000. While the Netherlands does not maintain a list of safe countries, the State Secretary of Justice is responsible for determining which countries may be considered safe on the basis of a set of criteria, namely the ratification of the following instruments:

- The 1951 Convention, and
- The ECHR, and/or
- The Convention against Torture (CAT).

If the alien originates from a country of origin considered to be safe and cannot demonstrate that this country does not comply with the obligations of these instruments, it is presumed that the alien will not be persecuted or run a real risk of being subjected to treatment described in Article 3 of the ECHR. The burden of proof rests with the asylum-seeker. However, if there is common knowledge that a country does not comply with the obligations of the aforementioned conventions, it will not be presumed to be a safe country of origin.

Asylum Claims Made by Citizens of an EU Member State

The Netherlands considers itself party to the Protocol annexed to the Treaty of Amsterdam and enforces the provisions of the Protocol. European Union (EU) Member States are considered safe countries of origin.

5.2.2. First Country of Asylum

The Netherlands does not have a policy of first country of asylum, but instead has a policy of country of former residence. This principle is laid down in the Aliens Act 2000.

An asylum application can be rejected on the basis of the country of former residence principle if the asylum-seeker meets the following criteria:

- The asylum-seeker has not travelled to the Netherlands directly from his or her country of

origin and, before coming to the Netherlands, received sufficient protection against *refoulement*

- The asylum-seeker has resided, or could have resided, in that country in conditions that are not uncommon in that country, and
- It is clear that this country will readmit the person until he or she has found enduring protection elsewhere.

5.2.3. Safe Third Country

The concept of safe third countries is laid down in the Aliens Act 2000. Similar to the principle of safe countries of origin, the Netherlands does not maintain a list of safe third countries. Instead, the State Secretary of Justice is responsible for determining which countries may be considered safe on the basis of a set of criteria, namely, the ratification of the following instruments:

- The 1951 Convention, and
- The ECHR, and/or
- The Convention against Torture (CAT).

If the alien has resided in a safe third country and cannot demonstrate that this country does not comply with the obligations laid down in these instruments, it is presumed that the alien will not be persecuted or run a real risk of being subjected to treatment described in Article 3 of the ECHR. The burden of proof rests with the asylum-seeker. However, if there is common knowledge that a country does not comply with the obligations from the aforementioned conventions, it will not be presumed a safe third country.

The concept of safe third country is applicable only if the asylum-seeker has resided in the third country and not merely travelled through it. As a guideline, it is presumed the person has resided in a country if he or she has stayed there for two weeks or longer, unless it is clear from facts and circumstances that he or she had intended to travel to the Netherlands. If the person stayed for less than two weeks in the third country, it is presumed that he or she had the intention of travelling to the Netherlands, unless facts and circumstances make clear that there was no such intention.

5.3 Special Procedures

5.3.1. Unaccompanied Minors

Procedures

When an unaccompanied minor (UAM) applies for asylum in the Netherlands, the authorities will first assess whether he or she qualifies for a residence permit according to the normal (in-country) asylum procedure. UAMs are

interviewed by specially trained staff and are assigned a guardian, who will assist them throughout the procedure.

If the UAM does not meet the criteria for obtaining international protection in the Netherlands, the authorities will determine whether it is possible to return the child to familiar surroundings, i.e., to his or her parents and family or to a reception centre in the country of origin. If return to the country of origin is not possible, then the IND may issue a residence permit for a year, which can be extended twice, each time for a period of one year. As soon as the child turns 18 or no longer satisfies all conditions, the UAM residence permit ends and will not be extended further.

An asylum-seeker who has not reached the age of 18 after three years with a UAM permit may, in principle, remain in the Netherlands, if there is no adequate reception found in the country of origin. When a child turns 18 and has at that point been in the Netherlands for less than three years on a residence permit, he or she must return to the country of origin. Only in exceptional cases will the minor be issued a permit for continued residence.

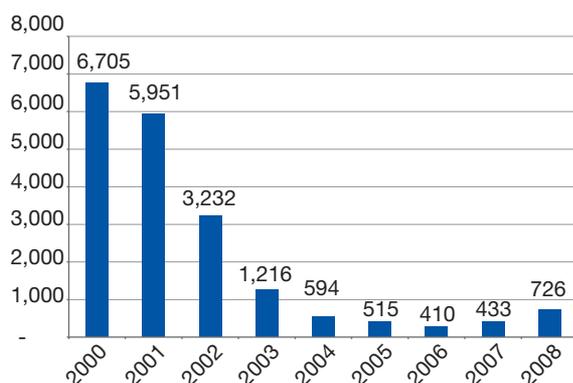
Age Assessment

If a UAM has no documents proving his or her age, an age test may be necessary. X-rays are taken of the collarbone and the joint between the hand and the wrist. The X-rays are assessed by independent radiologists. Results of the age test may be as follows:

- The age given by the minor is plausible
- The person is a minor, but the result of the examination of the joint between the hand and the wrist shows the examined person is older than he or she has declared himself or herself to be
- It appears from the exam that the collarbone is fully grown and the person is of age (that is, 18 years old or older).

Figure 4:

Total Applications Made by Unaccompanied Minors, 2000-2008



5.3.2. Temporary Protection

The Aliens Act stipulates that a temporary residence permit for asylum can be granted to a foreign national for whom, in the opinion of the State Secretary of Justice, return to the country of origin would pose a particular hardship as a result of the overall situation in that country. Grounds for granting asylum under Article 29 of the Aliens Act 2000 must be met.

Unlike the granting of protection under the asylum procedure, however, the decision to grant temporary protection is made according to whether the person belongs to a category or group of persons to whom the policy of temporary protection is being applied.

In determining whether a group of persons may be designated as being in need of temporary protection, the following aspects of the country situation are examined:

- The nature of the violence in the country of origin, in particular the seriousness of the violations of human rights and the law of war, the extent of the arbitrariness of the violations, the extent of the violence and the geographical spread of the violence
- The activities of international organisations, as far as they are a measure of the position of the international community with respect to the situation in the country
- The policy in other countries of the European Community with regard to the country.

5.3.3. Stateless Persons

The same asylum procedures and policies are applicable to all asylum-seekers, including those who are stateless. In the case of a stateless person making an asylum claim, the IND will usually examine the claim against conditions in the country of former habitual residence. In determining the country of former habitual residence, the IND will assess the length and nature of the person's stay in that country and the ties he or she has to the country. One determining factor is whether the person has had close ties (work, residence and family) in the country.

6 Decision-Making and Status

6.1 Inclusion Criteria

There is a single procedure in place for the examination of asylum claims. The IND first determines whether the asylum-seeker is a Convention refugee and if not,

whether other protection-related grounds exist for granting a permit. A single residence permit for asylum is granted on the basis of Convention refugee and other protection grounds.

6.1.1. Convention Refugee

Article 29, section 1 of the Aliens Act provides that a person will be granted Convention refugee status if he or she meets the criteria outlined in the 1951 Convention (and the 1967 New York Protocol).

6.1.2. Complementary Forms of Protection

Article 29, section 1 of the Aliens act also provides the grounds for granting a residence permit to persons who do not meet the criteria for Convention refugee status but who are in need of protection. These grounds are as follows:

- The person faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment
- There are compelling grounds of a humanitarian nature connected to the reasons for the person's flight from the country of origin that make return unreasonable
- Return to the country of origin would, in the opinion of the Minister of Justice, constitute an exceptional hardship for the person in connection with the overall situation there (this ground must be met in the case of temporary protection)
- The person is the spouse or minor child of a Convention refugee or a person who meets one of the three grounds described above, has the same nationality as the spouse or parent, and has entered the Netherlands either at the same time as the person or within three months of the date on which the spouse or parent was granted a residence permit
- The person is a dependant (partner or adult child) of the holder of a residence permit for asylum, is considered a member of that person's family, has the same nationality as the permit holder and has entered the Netherlands at the same time as the person or within three months of the date on which the partner or parent was granted a residence permit.

Humanitarian Grounds

As noted above, there may be compelling grounds of a humanitarian nature that may make return unreasonable and lead to the granting of an asylum residence permit.

There are three categories of humanitarian grounds that may form the basis for the asylum residence permit:

- The alien displays (mental) trauma as a result of events that took place in the country of origin
- There are humanitarian reasons beyond those related to the advanced age of the person, his or her health or the overall situation in the country of origin that come to light following a case-by-case assessment
- The person belongs to a specific group that, according to a decision of the Minister, can be granted residence on this ground.

6.1.3. Non-Protection-Related Permits

Within the asylum procedure, it is also possible to grant a regular residence permit to persons who do not need international protection. As described above, unaccompanied minor asylum-seekers may in certain cases obtain a regular residence permit if return to the country of origin is not possible.

In addition, persons whose return cannot be implemented for reasons beyond their control may be granted a regular residence permit. It is presumed that all persons can return to their country of origin. Nevertheless, in extraordinary situations when a person cannot leave the Netherlands, for example because he or she is not able to obtain the necessary documents for this, and there is no doubt about his or her identity and nationality, a residence permit for this reason can be granted. This can be the case if the person is stateless and he or she cannot return to his or her country of former habitual residence.

6.2 The Decision

The decision-making authority is the Immigration and Naturalisation Service (IND). The IND makes a written decision on whether to grant a residence permit or to refuse the application for asylum. All negative decisions are reasoned.

6.3 Types of Decisions, Status and Benefits Granted

There are four types of decisions that can be taken by the IND following an assessment of an asylum claim:

- The asylum-seeker meets the criteria set out in Article 29, section 1 of the Aliens Act and is granted a residence permit for asylum
- The asylum-seeker does not meet the criteria set out in Article 29, section 1 of the Aliens Act and is refused a residence permit for asylum

- The asylum-seeker is refused a residence permit for asylum but is granted a regular residence permit, because he or she satisfies the conditions as an unaccompanied minor, or because evidence is provided that he or she cannot be held accountable for not being able to leave the Netherlands
- The asylum-seeker does not satisfy the conditions and is refused a residence permit for asylum and refused a regular residence permit.

Benefits

There is a single type of residence permit – the residence permit for asylum – that is granted to persons who are Convention refugees and to persons who meet the other grounds for protection outlined in Article 29, section 1 of the Aliens Act.

Beneficiaries of a residence permit for asylum are entitled to the following benefits:

- A travel document for refugees
- Social benefits
- Health care benefits
- Access to the labour market
- Access to family reunification.

The residence permit for asylum is valid for five years. After five years, the person can apply for a permanent residence permit for asylum, if the grounds for granting the residence permit for asylum remain valid.

Holders of a regular residence permit who cannot obtain a passport from their own authorities can apply for a travel document for aliens. They are entitled to social benefits according to their residence permit and to health care. The regular resident permit is valid for five years. After this time, the person can apply for a permanent residence permit, if the grounds for granting the residence permit for asylum still exist.

6.4 Exclusion

The grounds for exclusion are prescribed in the Qualification Directive.

A person who meets the criteria set out in Article 1F of the 1951 Convention will not be granted a residence permit. The State Secretary must be able to demonstrate, but not “prove” in the sense of the evidence standard applied within the context of criminal law, that there are “serious grounds” upon which to presume the person meets the exclusion criteria. If a foreign national was aware, or ought to have been aware, of having committed the offence or offences

in question (“knowing participation”) and he or she personally took part in these offences (“personal participation”), it is possible to invoke Article 1F of the Convention.

Where it has been established that Article 3 of the ECHR constitutes an obstacle to the individual’s repatriation to his or her country of origin, a residence permit can in exceptional circumstances be granted if the excluded person has resided in the Netherlands for a period of ten years and cannot return to his or her country of origin or to a third country. This residence permit is valid for one year and may be renewed.

Family Members

Family members of persons excluded from the 1951 Convention can be granted a residence permit for asylum if one of the grounds set out in Article 29, paragraph 1(a), (b) and (c) of the Aliens Act 2000 applies to them personally.

A residence permit may not be granted to family members if considerations of public order override other concerns. However, if the ties between a family member and a person excluded from the 1951 Convention have been broken (for instance as a result of divorce or in the case of a child who has reached the age of maturity and moved out of his or her family home), the family member may be granted a residence permit subject to certain conditions.

Furthermore, if after having resided in the Netherlands for a period of ten years or more without a residence permit, family members of a person from the 1951 Convention make an application for a residence permit, the person’s exclusion from the 1951 Convention will have no bearing on the examination of the application of those family members. The attitude of the family members towards their own departure process will also be taken into account.

6.5 Cessation

The IND may apply the cessation clauses of the 1951 Convention to both Convention refugees and beneficiaries of complementary protection if changes in the country of origin warrant it. However, the IND will not apply the cessation clauses to persons who have obtained a permanent residence permit after five years of holding a permit for asylum.

A change in circumstances in the country of origin may be said to have occurred if the situation in the country of origin improves in such a manner that the fear of persecution, such as the removal of a repressive regime and the establishment of a new one based on respect for basic human rights, is no longer present.

Box 2: Developments in the Provision of COI by OCILA

Over the years, OCILA has made important adjustments to its research approach, becoming more proactive in its work. While OCILA continues to gather and deliver country information at the request of decision-makers, country experts keep abreast of developments in countries of origin, which allows them to produce topical reports that will be of interest to decision-makers. By anticipating the research needs of asylum decision-makers and producing reports before they are requested, OCILA is able to contribute to an efficient asylum procedure.

As the importance of engagement on COI at an international and European level has increased, OCILA has become more active in information-sharing and cooperative activities with partner countries and organisations. A recent example of cooperation is the agreement between the IND and the UNHCR on the use of the UNHCR database, Refworld. OCILA participates actively in a number of projects, such as the European COI Sponsorship (ECS) project, and the development of a European training programme for decision-makers (European Asylum Curriculum).

If the IND makes a decision to invoke the cessation clauses, the person has the right to appeal the decision to the District Court and further on to the Council of State.

6.6 Revocation

The IND may revoke the status granted to a Convention refugee or to a beneficiary of complementary protection in one of the following circumstances:

- On cessation grounds
- On exclusion grounds
- On evidence of fraud
- If the person is found to pose a danger to security and community.

Where cessation and exclusion clauses apply, the IND cannot revoke the person's status if he or she has obtained a permanent residence permit.

To revoke a residence permit because of breaches of public order and criminal offences, the Netherlands has a policy of "the sliding scale": the longer the person has resided in the Netherlands, the graver the breach has to be to constitute a ground for revoking the residence permit.

The IND sends an Intended Decision to the person. The person then has six weeks to present his or her view. After this, the person will be interviewed about his or her opinion.

The possibilities for appeal are the same as they are for the asylum procedure.¹¹

As long as no final decision has been made to revoke a residence permit, the holder of the permit retains his or her right to work.

¹¹ Possibilities for appeal are described above in the section on Review/Appeal of Asylum Decisions.

6.7 Support and Tools for Decision-Makers

6.7.1. Country of Origin Information

There are two offices within the Dutch administration that are responsible for producing country of origin information (COI) used by decision-makers in the asylum procedure. One is located within the Ministry of Foreign Affairs and one within the IND.

The Asylum and Migration Affairs Division, part of the Department of Movement of People and Aliens Affairs within the Ministry of Foreign Affairs, publishes around 35 reports each year on the human rights, security and political situation in countries of origin for use by asylum decision-makers and policy-makers. The Asylum and Migration Division may be requested by the COI office at the IND (OCILA) to produce more specific reports on countries of origin, and may undertake fact-finding missions for information-collection purposes. OCILA plays a role in the production of the country reports by coordinating the input for the Terms of Reference (ToR) for each report.¹²

OCILA is part of the Centre for Knowledge, Advice and Development within the IND. OCILA itself is divided in two subdivisions: the Country Subdivision (which itself is divided into a front office made up of four regional offices and a back office at headquarters) and the Language Analysis Subdivision.

The Country Subdivision produces country-specific and thematic reports and country analysis reports for use by asylum decision-makers and other officials of the IND. The Country subdivision produces about 45 reports each year. Apart from writing reports, the Country Subdivision organises workshops for decision-

¹² The content of the ToRs is not determined by the IND alone. Relevant NGOs such as Amnesty International are also requested to contribute to the ToRs for fact-finding missions.

makers on relevant topics or countries of origin. Another activity is answering specific COI questions of decision-makers. Each year there are about 1,700 of these.

6.7.2. Language Analysis

The Language Analysis Subdivision of OCILA records and analyses the speech of asylum-seekers, first to be able to confirm or deny the country or region from which the asylum-seeker claims to originate. If the results of a language analysis test indicate that the country of origin is not the one claimed by the asylum-seeker, further analysis may be carried out to determine the actual country or region of origin of the person.

Language-analysis plays an important role in determining the identity and origin of asylum-seekers. It has proved to be a useful instrument for decision-makers. Language analysis can prove to be an efficient way of assisting the IND in determining the identity of large numbers of asylum-seekers claiming to originate from a country or region for which the IND applies a policy of subsidiary protection. This tool has also been found by the high court to be a professional and reliable means of assisting decision-makers in their work. For these reasons, language analysis has gained in importance in recent years. OCILA produces about 1,300 language analysis reports annually.

7 Efficiency and Integrity Measures

7.1 Technological Tools

7.1.1. Fingerprinting

Rolled fingerprints of all asylum-seekers aged four years and older are taken and stored. The fingerprints are taken for identity verification purposes.

In the near future, scanned fingerprints of all foreign nationals who come into contact with the Dutch authorities will be taken and stored for identity verification purposes.

7.1.2. DNA Tests

DNA tests are used for verification purposes in the identification process for foreign nationals. Several laboratories carry out the DNA tests.

7.1.3. Forensic Testing of Documents

All source documents that are submitted by asylum-seekers at the start or during the course of the procedure undergo technical as well as tactical examination. This

may involve the use of the online database, DISCS (Document Information System of Civil Status). Any findings arising from the examination of the document may be taken into consideration when making a final decision on the request for asylum.

7.1.4. Database of Asylum Applications/Applicants

All asylum applications and subsequent decisions are registered in an IND database (Indis), which is linked to a Central Shared Database with basic information on applicants. The Central Shared Database is the central system used by government agencies involved in immigration processes.

7.2 Length of Procedures

There is no time limit for filing an application for asylum. However, the asylum-seeker has a maximum of 24 hours to make an appeal in the case of a rejected claim in the accelerated procedure and four weeks in the extended procedure. There are also time limits for authorities to examine and make a determination on an asylum application: six months in the extended procedure and 48 hours in the accelerated procedure.

7.3 Pending Cases

The number of pending cases at the end of December 2008 was 8,023. The backlog of cases is largely the result of the increasing number of (new) asylum applications received since 2007.

A number of measures have been taken by the IND to clear the backlog:

- Temporary (jurist) staff have been employed to work mainly as interviewers and decision-makers
- There is a greater focus on efficiency in order to reduce the processing time for each asylum claim
- Plans are under way to increase the human resource capacity of the organisation dedicated to the asylum procedure.

7.4 Information Sharing

The only information-sharing agreements to which the Netherlands is party are those that take effect under the Dublin II Regulation, including an agreement with Switzerland for this purpose. Thus, specific information on asylum-seekers can be released to other EU Member States, in accordance with Article 21 of the Dublin II Regulation. No information on asylum-seekers can be released to a third country, unless the asylum-seeker gives permission.

8 Assistance and Reception Benefits for Asylum-Seekers

8.1 Procedural Support and Safeguards

8.1.1. Legal Assistance

Legal aid is available to asylum-seekers at the first instance and at the appeal stage of the procedure. The role of the legal representative at first instance is to assist the asylum-seeker in preparing for the detailed interview and to be present at the interview. The legal representative may also write, on behalf of the asylum-seeker, his or her view on an Intended Decision to refuse an asylum claim.

8.1.2. Interpreters

Interviews at the IND take place in Dutch and therefore an independent and impartial interpreter is also present to assist the asylum-seeker. Translators are also available to translate documents or declarations submitted by the asylum-seeker.

8.1.3. UNHCR

The UNHCR in the Netherlands has a general monitoring function, and does not have a direct role in the determination of individual cases. The Regional Office of the UNHCR for the Benelux countries at times provides advice and information to NGOs and lawyers who have direct contact with asylum-seekers.

8.1.4. NGOs

The Council for Legal Aid and the Dutch Council for Refugees provide assistance to asylum-seekers during the procedure. The Council for Legal Aid is responsible for finding a lawyer to assist asylum-seekers during the procedure. The Dutch Council for Refugees provides advice on a variety of legal and practical questions.

8.2 Reception Benefits

Reception benefits are available to asylum-seekers awaiting a decision on their claim. Once a removal order is given, asylum-seekers are no longer entitled to benefits, with the exception of facilities in a location where the rejected asylum-seeker is placed under supervision (consisting of daily reporting duties).

8.2.1. Accommodation

With the exception of persons who have made an asylum application at the border, following registration,

asylum-seekers are accommodated at a temporary reception centre with basic facilities before making their application at an application centre.

Persons who make an asylum application at Schiphol airport are placed in a closed centre if entry into the country has been refused and the application is being examined at the Schiphol application centre.

In case the decision on the asylum application cannot be made within the so-called accelerated procedure at the application centre, the asylum-seeker is placed in a normal reception centre. Before the first decision, the asylum-seeker is placed in an integration and orientation centre. After the first negative decision, the asylum-seeker is transferred to a return centre.

Special accommodation arrangements are made for unaccompanied minors. Children under the age of 12 years are generally placed with foster parents; children between the ages of 12 and 15 are usually placed in a small unit with 24-hour supervision. The reception of UAMs consists in the majority of cases of regular houses. The houses are financed by the central government. Children over the age of 15 years are placed in special reception centres that offer specialised care or in small units (houses).

8.2.2. Social Assistance

The Central Organisation for the Reception of Asylum-Seekers (COA) provides the asylum-seeker with financial assistance for food and pocket-money. The Dutch Council for Refugee helps the asylum-seeker socially and in the asylum procedure throughout his or her stay in the reception centre.

If necessary, an asylum-seeker may consult a social worker.

8.2.3. Health Care

The asylum-seeker has the right to the same health care package that Dutch residents have, with the exception of a few medical procedures. Children get their regular dental expenses covered as well, until the age of 22.

8.2.4. Education

Asylum-seekers below the age of 18 receive education in regular schools, pursuant to the Compulsory Education Law. Adults receive some training as well. They learn Dutch language and acquire some background information on Dutch society in the Orientation and Integration centre prior to the first decision on the procedure. Adults can pursue any education, provided they pay for it.

8.2.5. Access to Labour Market

Work is permitted six months after the application for asylum. Asylum-seekers have the right to work during 24 weeks in a year. A work permit must be obtained first.

Asylum-seekers may also take part voluntarily in activities, such as garden work and minor maintenance jobs at the reception centres. They receive a small amount of money in return.

Reception centre house rules state that the asylum-seeker has to perform tasks that are mandatory and unpaid, such as cleaning of common rooms, showers, etc. If the asylum-seeker does not comply with any obligation to perform work tasks at the reception centre, the COA invokes house rules, which contain sanctions varying from a warning to the withholding of pocket money.

8.2.6. Access to Integration Programmes

If no final decision has been taken on the asylum application, the integration principally consists of learning Dutch and acquiring knowledge of Dutch society. After receiving a positive decision, the asylum-seeker can start an integration course which is usually financed by the Dutch government.

8.2.7. Access to Benefits by Rejected Asylum-Seekers

Free legal aid, social assistance and reception are available during appeal at the return stage. After the first negative decision the asylum-seeker is transferred to a return centre and is no longer eligible for Dutch language training.

After a first negative decision, asylum-seekers receive training activities that are meant to contribute to skills they need after their return to the country of origin. Rejected asylum-seekers can also apply for assistance from the International Organization for Migration (IOM) in arranging the return to the country of origin including through (in some cases) a financial contribution.

9 Status and Permits Granted outside the Asylum Procedure

9.1 Humanitarian Grounds

The State Secretary of Justice may, at his or her discretion and in exceptional cases, grant a residence permit to a foreign national, such as a rejected asylum-seeker, who does not otherwise meet the criteria for

a permit. Such a decision may be taken in instances where not granting a residence permit would cause undue hardship to the person. The type of permit granted and the attendant benefits are determined on a case-by-case basis.

9.2 Obstacles to Return

A regular residence permit, valid for one year (with the possibility of renewal) may be issued to rejected asylum-seekers when objective evidence is provided that they cannot be held accountable in any way for being unable to return to their country of origin (for example, if there is a lack of cooperation of country of origin authorities in providing the required documentation for return).

9.3 Regularisation of Status over Time

As described above, between May 2007 and 1 January 2009, a regulation was in force to regularise the situation of persons who had lodged asylum applications under the previous Aliens Act and who had not received residence permits. Persons who had made an asylum application before 1 April 2001, had withdrawn their application, and had resided in the Netherlands since then were eligible for a residence permit.

Regularisation of Status of Stateless Persons

The Netherlands is a party to the 1954 Convention relating to the Status of Stateless Persons. This, however, does not constitute a right for stateless persons to reside in the Netherlands, inside or outside the asylum procedure. Stateless persons can obtain a travel document for stateless persons.

10 Return

10.1 Pre-departure Considerations

Return is implemented by the Repatriation and Departure Service of the Ministry of Justice together with the Royal Marechaussee and the Aliens Police. The time limit for a person who has received a final negative decision on an asylum application to voluntarily leave the Netherlands is within 28 days of the decision. For asylum-seekers who have not finalised their departure within these 28 days, this period may be extended by a maximum of 12 weeks.

10.2 Procedure

IOM in the Netherlands provides voluntary return assistance to asylum-seekers who are subject to a removal decision. There are several return programs available,

including post-arrival and reintegration assistance, e.g. medical care, housing, schooling, on the job training, etc.

The Netherlands may also enforce returns and detain rejected asylum-seekers pending the return procedure. The Netherlands also finances a few post-arrival-assistance programmes for persons who are subject to enforced return.

10.3 Freedom of Movement/ Detention

Pending return, rejected asylum-seekers may be detained for a certain period, mainly awaiting the necessary travel documents and final departure. While there is no specific detention period laid out in the law, detention must be as short as possible. Two special pre-removal centres have been set up at the airports of Amsterdam and Rotterdam for persons who are expected to be removed within the short term and who are not willing or able to leave the Netherlands on their own.

10.4 Readmission Agreements

The Ministry of Justice and the Ministry of Foreign Affairs are responsible for negotiating readmission agreements. These are implemented by the Repatriation and Departure Service of the Ministry of Justice. The Netherlands observes readmission agreements concluded between the European Union and countries such as Russia, Ukraine, Pakistan and Moldova. Benelux (Belgium, the Netherlands and Luxembourg) plans to sign a readmission agreement with Armenia in the short term and is currently conducting negotiations with Georgia.

who hold a residence permit for asylum in order to purchase a civic integration package for themselves on the basis of the scheme known as the Amnesty Regulation (*Pardonregeling*); on settlement in a municipality, any remaining funds from the budget may be used to complete the programme of civic integration. This programme runs until 2010, on the assumption that this specific group will be assigned to a municipality by the end of 2009

- A more advanced language programme (above the A1 minimum level provided in the initial language training described above). Participants may follow a course of advanced language lessons at their own level of learning on a voluntary basis while awaiting assignment to a municipality. The COA is responsible for managing this programme. On the basis of an evaluation to be carried out in 2010, a decision will be made as to the form that the extended provision of language courses will take in 2011 and in subsequent years.

Any individuals who hold a residence permit for asylum and leave the reception centre for asylum-seekers to reside in a municipality will be offered a programme of civic integration by the relevant municipality.

11 Integration

Persons who are granted a residence permit for asylum are obliged to follow a programme of civic integration in accordance with the Civic Integration Act. During their (continued) stay in a reception centre, and prior to being assigned to a municipality for accommodation, holders of a residence permit for asylum may participate in civic integration activities on a voluntary basis.

The Central Agency for the Reception of Asylum Seekers (COA) runs a number of programmes as a preparation for civic integration in a municipality. These are as follows:

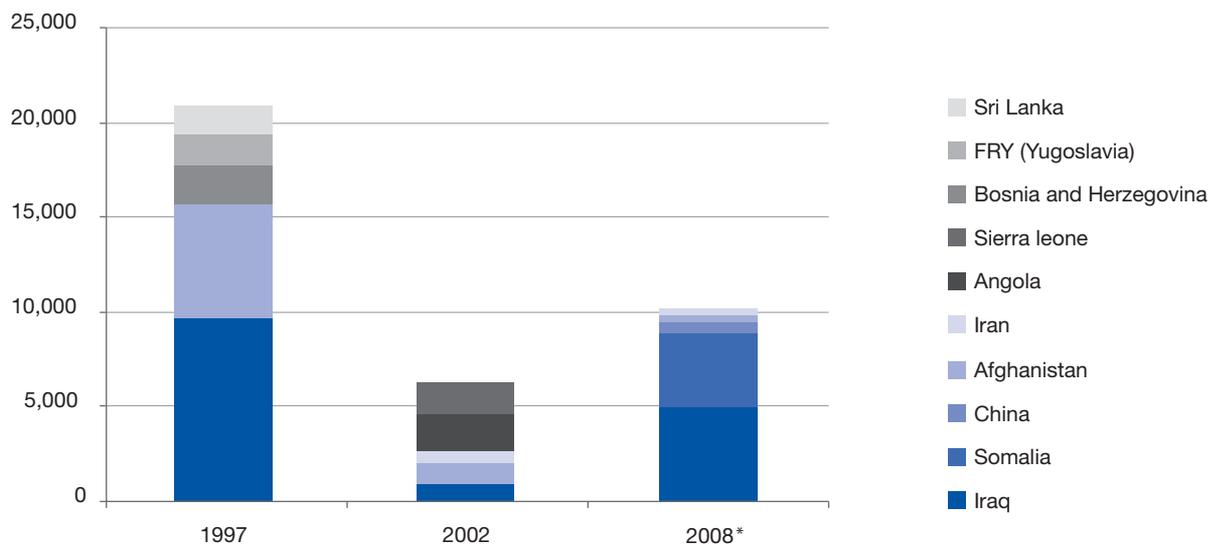
- Dutch language training and courses on Dutch society, intended as preparation for the civic integration programme provided in the municipalities
- A person-specific budget (*Persoonvolgend Budget – PVB*) that may be used by individuals

12 Annexe

12.1 Additional Statistical Information

Figure 5:

Asylum Applications* from Top Five Countries of Origin for the Netherlands in 1997, 2002 and 2008*



* First applications only

Figure 6:

Decisions Made at the First Instance, 1992-2008

Year	Convention Status		Complementary Protection and Other Authorisations to Remain		Rejections		Other Decisions*		Total Decisions
	Count	% of total	Count	% of total	Count	% of total	Count	% of total	
1992	4,828	9%	6,892	13%	20,296	39%	19,429	38%	51,445
1993	10,338	24%	4,674	11%	15,758	37%	11,935	28%	42,705
1994	6,134	13%	7,792	16%	30,206	63%	4,094	8%	48,226
1995	4,882	12%	6,679	17%	25,320	64%	2,605	7%	39,486
1996	3,133	10%	6,642	21%	19,297	62%	2,165	7%	31,237
1997	3,441	13%	6,323	24%	15,152	58%	1,284	5%	26,200
1998	1,067	3%	10,245	33%	17,513	56%	2,205	7%	31,030
1999	628	2%	6,022	15%	27,611	67%	6,942	17%	41,194
2000	896	2%	5,968	11%	42,304	79%	4,300	8%	53,468
2001	244	1%	5,161	14%	26,037	70%	5,610	15%	37,052
2002	198	1%	3,359	10%	26,478	77%	4,220	12%	34,255
2003	393	2%	4,228	19%	14,560	67%	2,583	12%	21,764
2004	480	3%	4,057	26%	8,178	52%	2,939	19%	15,654
2005	964	5%	7,854	40%	8,084	41%	2,848	14%	19,750
2006	358	3%	3,986	28%	7,519	53%	2,318	16%	14,181
2007	487	4%	3,963	31%	3,979	32%	4,173	33%	12,602
2008	515	5%	5,161	47%	5,247	48%	0	0%	10,923

*Other decisions may include withdrawn claims, abandoned claims or claims otherwise resolved.

Starting in 2008, the Netherlands no longer reports data on Other Decisions.

New Zealand



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1 Background: Major Asylum Trends and Developments

Asylum Applications

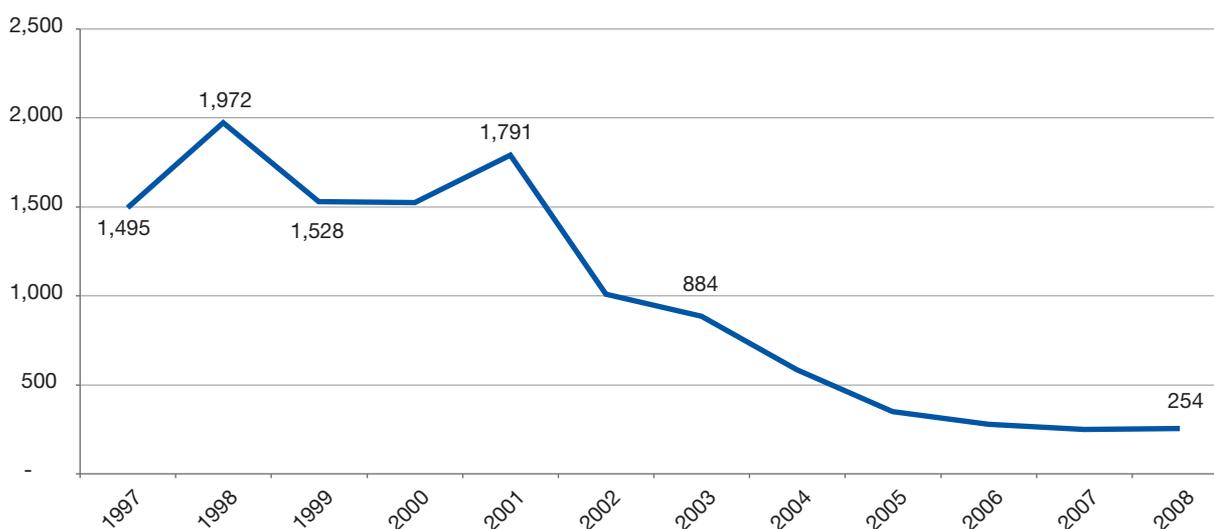
In the late 1990's, the number of asylum applications made in New Zealand began to increase significantly compared to previous years. In 1997, for example, over 1,500 claims were received. Numbers peaked in 1998 at over 1,900. However, the number of new applications decreased significantly from 2002 onwards, and in 2008, annual inflows were running at some 250 (a tenfold decrease compared to the peak).

The Immigration Amendment Act 1999 incorporated into the Immigration Act 1987 the 1951 Convention Relating to the Status of Refugees (1951 Convention) and its 1967 Protocol. It also gave statutory recognition to the RSAA and created the Refugee Status Officer (RSO) position to decide refugee claims made in New Zealand at the first instance. RSOs report to a single national branch, the Refugee Status Branch (RSB), of the Department of Labour.

Also in 1999, the current policy of granting recognised refugees the right to apply for Permanent Residence permits was introduced.

Figure 1:

Evolution of Asylum Applications in New Zealand, 1997-2008



Top Nationalities

In the late 1990's, most claimants came from China, Indonesia, Thailand and India. From 2000 to 2004, the majority of claimants originated in Thailand, Iran, India and China. From 2004 to date, the top claiming nationalities have been Iran, Iraq, China and Sri Lanka.

Important Reforms

During the early 1980's, asylum claims were decided by the Interdepartmental Committee on Refugees (ICOR). In 1991, non-statutory terms of reference were issued by the Cabinet to set in place a "two-tiered" determination system. First instance decisions were made by Immigration Officers, and *de novo* appeals made to the independent tribunal, the Refugee Status Appeals Authority (RSAA).

The current legislation governing refugee status determination in New Zealand came into effect in 1999.

In 2001, detention officials began using the Mangere Refugee Resettlement Centre in part as the Mangere Accommodation Centre. The Mangere Accommodation Centre provides low-security detention facilities for those refugee claimants who are detained.

Beginning in 2004, RSOs have undertaken a caseload of refugee status cancellation cases.

Additional legislative reforms to the asylum procedure are foreseen in a new Immigration Bill, which is expected to be implemented in the coming years.

Figure 2:

Evolution of Applications from Top Three Countries of Origin for 2008

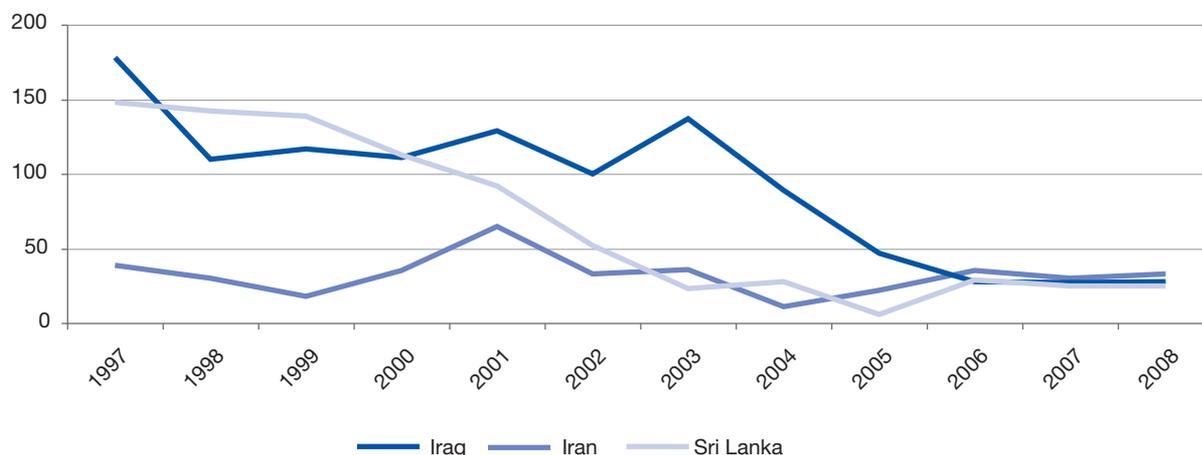


Figure 3:

Top Five Countries of Origin in 2008

1	Iraq	33
2	Iran	28
3	Sri Lanka	25
4	China	24
5	India	14

2 National Legal Framework

2.1 Legal Basis for Granting Protection

The asylum procedures and the competencies of asylum institutions are governed by the Immigration Act 1987, which was amended by the Immigration Amendment Act 1999. The 1951 Convention and its 1967 Protocol Relating to the Status of Refugees are attached as a schedule to the Immigration Act 1987.

New Zealand is party to the 1987 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the 1976 International Covenant on Civil and Political Rights (ICCPR). However, these treaties have not been incorporated into domestic law. Nevertheless, that New Zealand must take into consideration the rights these treaties declare when making removal decisions has been noted by the Supreme Court in *Attorney-General v Zaoui*-[2005] 1 NZLR 577.

2.2 Pending Reforms

On 16 August 2007, an Immigration Bill had its first reading in the New Zealand House of Representatives (Parliament). In March 2009 the new Immigration Bill had its second reading by the new government (which came to power in November 2008). If the Bill continues to progress, there will be a third and final reading in Parliament before referral to the Governor General for assent. At this stage, the Bill would become law, although there will be a passage of time before the commencement of the Act having force of law.

The new Bill introduces a number of changes to immigration matters in New Zealand. With regard to asylum and refugee protection, the main proposals are as follows:

- In deciding whether claimants are to be recognised as refugees on the basis of the 1951 Convention and 1967 Protocol, designated case officers will also, in a single procedure, determine whether grounds for preventing removal exist under Article 3 of the CAT and Article 7 of the ICCPR. The Bill does not apply the 1951 Convention exclusion clauses to CAT and ICCPR protection
- A single immigration appeal tribunal will hear all immigration appeals, including refugee and protection appeals
- Classified security information could be relied on in certain circumstances, including in refugee or protection claims.

The Bill does not address the level of economic and social rights that refugees and other protected persons will enjoy. There is currently no intention to alter the existing policy of granting permanent residence to a high majority of refugees and protected persons. It is likely that persons

Box 1: New Zealand Case Law: Confidentiality of Information

Confidentiality in the refugee determination process was tested at the Supreme Court (*Attorney General v. X and Refugee Status Appeals Authority [2008] NZSC 48*) to determine whether information provided in the course of refugee determination could be provided to other government agencies working on the refugee or claimant's prosecution or extradition for serious crimes.

While confidentiality is to be carefully protected, the requirement is not absolute and provision to agencies undertaking other functions is permissible where their function requires it and there is no reason to consider that the release of information would endanger any person. As the High Court and Court of Appeal held that the requirement of refugee confidentiality was absolute, it was the case that no information from refugee claims was released to other government agencies. However, it is now permissible, according to certain criteria, to release this information (due to a recent decision of the Supreme Court).

protected from removal by CAT or ICCPR, but excluded from refugee status under Article 1F of the 1951 Convention, will be granted temporary leave to remain in New Zealand, although this will be subject to a case-by-case decision.

3 Institutional Framework

3.1 Principal Institutions

Immigration New Zealand (INZ)

Immigration New Zealand (INZ) is a service of the Department of Labour. The Refugee Division of INZ contains the Refugee Status Branch (RSB), the Refugee Research and Information Branch (RRIB) and the Refugee Quota Branch (RQB). Also within INZ are the Settlement Division, and the Service Delivery and Border Security groups.

The Refugee Status Officers (RSOs) who staff the RSB decide refugee claims against the 1951 Convention only. RSOs are legislatively prevented from carrying out any other function, including decisions on removal, visa and permit matters, or any other decision of a humanitarian nature.

The Refugee Quota Branch facilitates entry of United Nations High Commissioner for Refugees (UNHCR) mandated "quota" refugees for resettlement in New Zealand and operates New Zealand's low-security detention facilities for detained refugee claimants.

Service Delivery, staffed by Immigration Officers, decides applications for temporary and permanent visas and permits, including applications by recognised refugees for permanent residence permits.

The INZ Border Security Group has responsibility for the detention of refugee claimants, where appropriate, and the removal of failed refugee claimants.

The Refugee Status Appeals Authority (RSAA)

The RSAA is an independent body that determines appeals against negative decisions made on asylum claims by an RSO. In some cases, RSOs appear before the RSAA to provide evidence.

3.2 Cooperation between Government Authorities

All INZ branches fully cooperate in the provision of relevant information, while decision-making is delegated and isolated to specific areas.

The Border Security Group works closely with other border security agencies, including the Customs Service and the Ministry of Agriculture and Forestry. In relation to detention in penal institutions, the Border Security Group liaises with New Zealand Police and the Department of Corrections.

INZ works with the Child, Youth and Family service of the Ministry of Social Development in relation to issues of child welfare, particularly with regard to unaccompanied minors.

4 Pre-entry Measures

4.1 Visa Requirements

INZ manages New Zealand's visa system. Non-citizens require visas to enter the country, unless they are nationals of a state that New Zealand has declared "visa free." On arrival, visitors are issued a permit providing temporary permission to remain in New Zealand. All non-citizens, however, must present a valid passport, and may be required to provide proof of onward travel tickets, funds for maintenance or sponsorship.

4.2 Carrier Sanctions

It is an offence, according to sections 125 and 126(1) of the Immigration Act 1987, for a carrier or person in charge of a craft to fail to ensure all persons on board a craft have the appropriate immigration documentation, as follows:

- A valid passport or certificate of identity
- A visa (if required)
- Evidence of onward travel arrangements
- Evidence of sufficient funds (if required).

Penalties for infringing these requirements include a fine of up to NZD 20,000 to the carrier, or up to NZD 10,000 or up to three months in prison for the person in charge of a craft.

4.3 Interception

Airline Liaison Officers

New Zealand has an Airline Liaison Officer (ALO) programme to assist airlines in meeting carrier requirements under immigration legislation, prior to aircraft departure for New Zealand. ALOs are stationed in ports in the Asia-Pacific area.

Advanced Passenger Processing System

New Zealand also has an Advanced Passenger Processing (APP) system, which assesses travel permission electronically. That is, travel permission, including requirements and authenticity, are checked upon boarding a carrier. If there is a problem with boarding permission, then the passenger and INZ staff may speak by telephone, and the passenger may be denied boarding.

5 Asylum Procedures

5.1 Application Possibilities and Requirements, Procedures and Legal Remedies

Asylum claims can be made to a Police Officer or official of the Department of Labour, either at ports of entry after landing, or immediately prior to removal. Departmental officials include Immigration Officers and RSOs, and also officers of New Zealand Customs Service at ports of entry. There is no time limit for making a claim.

Every individual, including children, must make a separate claim. However, adults may provide evidence in support of their children's claims.

Access to Information on Procedures

When a claim is made, the RSB provides the claimant with information, predominantly in English, concerning his or her rights and obligations. This information is tailored for persons detained and for those living in the community. An interpreter is available to communicate this information to asylum-seekers in detention.

5.1.1. Outside the Country

Applications at Diplomatic Missions

It is not possible to make a claim for asylum in New Zealand at a diplomatic mission abroad.

Resettlement/Quota Refugees

New Zealand has in place a resettlement programme, which is operated by the RQB, a branch of INZ. All

Box 2: Regional Movement Alert System

New Zealand is part of an APEC (Asia-Pacific Economic Cooperation) initiative known as the Regional Movement Alert System (RMAS). The objective of RMAS is to strengthen the collective capacity of participating APEC economies to detect lost, stolen and otherwise invalid travel documents and to prevent them from being used illegally. USA, Australia and New Zealand have been participating in this initiative since March 2006.

A key component of RMAS is the RMAS Broker. It acts like a switchboard for routing queries and answers to and from border systems and the passport databases of participating economies.

No data is stored in the RMAS Broker, which means that data is accessed and not exchanged, and each economy controls how much information is made available to another economy. This approach also ensures that only the most up-to-date data is accessed.

A vital part of RMAS is the contact between each economy's operational centres (which are open 24 hours a day, seven days a week) in order to clarify details and ensure lawful travellers are not inconvenienced when a participating economy receives a RMAS notification.

submissions for resettlement are made by the UNHCR for consideration by the RQB. The RQB may consider submissions on a dossier basis, but only where a selection mission is not possible or practicable. All other cases are scheduled for interview during an RQB selection mission.

Individual refugees submitted by the UNHCR for resettlement to New Zealand must meet the following criteria:

- They must be recognized by the UNHCR as refugees
- They must be referred for resettlement by the UNHCR in accordance with UNHCR resettlement guidelines and priorities
- They must fall within the regional and global priorities of the Government of New Zealand (with exceptions for emergency and family reunification cases) as set out in the Quota Composition established each year
- They must be assessed as admissible under RQB policy and procedures
- They must be otherwise admissible under New Zealand law.

The reasons an individual may be inadmissible for resettlement to New Zealand include past criminal activity or security grounds.

The quota programme year runs from 1 July to 30 June. In 2007-2008, the quota amounted to 750 places, broken down into three categories:

- Women-at-Risk
- Medical/Disabled
- UNHCR Priority Protection.

5.1.2. At Ports of Entry

The same application procedure applies at airports as at other ports of entry.

As noted above, refugee claims may be made at New Zealand borders to the Police or officials of the Department of Labour. Persons presenting claims to Customs or Police will be referred to INZ Immigration Officers at the border.

Immigration Officers, with the assistance of an interpreter, will interview claimants to determine their means of arrival and identity. The Immigration Officer will also make a decision whether or not to issue a permit or whether it is necessary to place the claimant in detention.¹

An RSO will usually travel to the border location and assist the claimant with the process, including helping to complete a claim form, providing basic information on the asylum process, and arranging access to legal representation for the claimant, if requested.

From that point, the standard (normal) refugee determination procedure is applicable.

5.1.3. Inside the Territory

Responsibility for Processing the Claim

New Zealand does not have in place a process for determining which State may be responsible for examining an asylum claim. New Zealand does not observe any safe third country policy and will consider an application for asylum from a national of any country, except New Zealand and Australia,² on a case-by-case basis. Under New Zealand law, and as required under the 1951 Convention, whether a refugee claimant already has protection in another State must be considered.

Application and Eligibility

A refugee claim is made as soon as a person expresses a wish to seek asylum in New Zealand, either orally or in writing, to a representative of the Department of Labour or to a member of the Police.

Eligibility

Any person in New Zealand is entitled to make a claim for asylum except under one of the following circumstances:

- The asylum-seeker is the holder of a residence permit for New Zealand
- He or she is a New Zealand citizen
- He or she is exempt from having to hold a permit. Present regulations place citizens of Australia in this category.

Accelerated Procedures

Procedure for Detained Asylum-Seekers

The Refugee Status Branch prioritises claims made by refugee claimants in detention. Refugee Status Officers (RSOs) operate to stricter time limits. Otherwise, the processing and determination of these cases do not differ from claims in the normal procedure.

¹ Please see section below on Freedom of Movement/Detention for information on when detention would be considered appropriate.

² Australian citizens receive Permanent Residence permits upon arrival in New Zealand.

Detained refugee claimants must confirm their claim in writing within five calendar days of signalling their intention to claim. This period of time may be shorter if the claim is a subsequent claim. Although the RSO is not obliged to give a detained refugee claimant an interview, the officer will always endeavour to conduct one. The interview, almost always carried out with the assistance of an interpreter, takes place 20 days after the completed application form is received. The RSO prepares an interview report, and the claimant is given ten working days in which to comment on the report.

If a refugee claim is rejected by the RSO, the decision may be appealed to the RSAA within five working days of notification of the decision.

Normal Procedure

In making a claim for asylum, all applicants must confirm their claim in writing by completing the form, "Confirmation of Claim to Refugee Status in New Zealand." Refugee claimants must also provide evidence of their identity (including a recent photograph), such as travel documents and a birth certificate, and of their country of origin. If such documents are not available, they must provide a statutory declaration outlining their personal details to the Refugee Status Branch (RSB) of Immigration New Zealand.

The refugee claimant must provide the RSO with all information relevant to his or her claim, including a written statement, ideally at least five working days before the interview. The written statement must include the following elements:

- Any evidence supporting the fact or likelihood of persecution
- If available, documents indicating the alleged agent of persecution or potential persecution and the reason for that persecution
- Details of persons who may be contacted to support or verify the claim.

The RSO conducts an interview with the asylum-seeker in the presence of his or her legal representative and an independent interpreter. A record of the interview is made in writing and / or by digital audio recording. The RSO usually completes a summary report of the interview. This report is sent to the claimant or his or her legal representative. The report may also contain prejudicial information or other questions for the claimant to comment on. This report is not a requirement of the process, but is usually used as it assists the claim process by confirming understanding of the claim and ensuring fairness.

Following receipt of final submissions from the claimant and his or her counsel, the RSO will make a decision whether or not to grant Convention refugee status.

The RSO prepares an interview report and the claimant is given fifteen working days in which to comment on the report.

Review/Appeal of Asylum Decisions

A rejection of an asylum claim, including a subsequent claim, may be appealed to the RSAA. The RSAA accepts appeals made within 10 working days (five days for detainees) of the decision, but may also at its discretion allow an appeal after the deadline has elapsed.

The RSAA conducts a *de novo* enquiry into the merits of the claim, usually having held a hearing with the appellant and the appellant's legal representative, and having been assisted by an interpreter. Appeals to the RSAA have suspensive effect on removal of the appellant. The RSAA process, like that at first instance, is inquisitorial, not adversarial.

Appeals against RSAA decisions may be made to the Courts by way of judicial review. Judicial review is made to the High Court, and decisions may be further appealed to the Court of Appeal and Supreme Court. Appeals to the courts do not automatically have suspensive effect on removal, but a request to that effect may be made by the appellant. Courts have the power to return cases to decision-makers, RSOs or RSAA when a reviewable fault has been found.

Freedom of Movement during the Asylum Procedure

Asylum-seekers, including those who make post-border claims, are usually granted a permit to allow them to remain in New Zealand while their claim is being assessed.

Detention

Refugee status claimants who have not been issued a permit to be in New Zealand may be placed in detention if concerns exist regarding their identity, whether or not their refugee claim is assessed as being made in good faith, and whether or not any risk to national security or public order is identified. These concerns must be balanced against the person's right to freedom of movement, and any issues of well-being related to their individual circumstances (for example, a person's status as a minor).

Persons detained pending removal from New Zealand may also claim refugee status. This detention is brought about in the course of proceedings to effect their removal.

Box 3: New Zealand Case Law: Detention

Detention of some refugee claimants has been found lawful in prescribed circumstances, based primarily on uncertainty of identity or concern as to criminality or security-related risks upon arrival, or in order to effect removal of a failed refugee claimant. The case of note in this regard is *Attorney General v. Refugee Council of NZ Inc (CA) [2003] 2 NZLR 577*.

However, limits have been placed on the amount of time a claimant may be kept in penal detention. Detention will be arbitrary if it is capricious, unreasoned, and without reasonable cause. According to the ruling in the case of *Neilsen v. Attorney-General [2001] 3 NZLR-433 (CA)* and *Zaoui v. Attorney-General [2005] 1 NZLR 577 (CA)*, detention which is initially lawful becomes arbitrary and unlawful if the purpose of detention under the Immigration Act could not be fulfilled, and the detention was therefore otherwise indefinite or permanent. Accordingly, there will be limits on the length of time a person may be detained even if he or she has failed in a refugee claim and will not cooperate with his or her removal from New Zealand.

Safeguards

In any detention situation, the refugee claimant's detention is reviewed on a weekly basis by a District Court Judge. As noted above, the courts have upheld detention in certain situations but have also placed limits on detention and the time of detention, especially in a penal institution. The court, on a case-by-case basis, balances the purposes of detention, especially danger to the community and the risk of claimant absconding, against the rights of all people to freedom of movement. In practice, the risk of absconding is unlikely to lead to a person being detained for more than six months.

Those in detention will be detained in a penal institution, a low-security area in which detainees may apply for day release, or in an accommodation centre, at which the claimant is not detained as such but remains on reporting conditions. Most frequent is detention in the low security centre, with the possibility to move to the open accommodation centre if the refugee claimant is detained for a significant period and is deemed low risk.

If the detained asylum-seeker is granted refugee status by the RSO or RSAA, INZ-BSG are notified, and they arrange for the refugee to be released from custody.

Reporting

All refugee status claimants have an obligation to inform the RSO of their up-to-date address. Those residing in the accommodation centre must report on a daily basis to the accommodation centre staff.

Repeat/Subsequent Applications

Subsequent claims for refugee status may be made by any failed refugee claimant and will be considered at first instance by an RSO.

Refusal to accept a subsequent claim may be appealed to the RSAA. If the subsequent claim is accepted for

substantive consideration either at first instance or on appeal, then it will be determined whether or not the claimant is a refugee.

To have a subsequent claim accepted for substantive consideration, the claimant must demonstrate that since the determination of his or her previous claim, circumstances have changed in his or her home country to such an extent that the claim is based on significantly different circumstances. In establishing that there has been such a change, the claimant may not challenge any finding of credibility or fact previously made by a RSO or RSAA Member in the decision on the initial claim, and the decision-maker is entitled to rely on any such previous finding.

The subsequent refugee claimant must be given the opportunity to attend an interview either at first instance or on appeal. Interviews are usually offered at first instance.

Legal aid may be available on subsequent claims, provided the claim is not considered to be without prospects of success by the agency that administers legal aid payments.

Subsequent claims may be made by persons already in detention or living in the community.

5.2 Safe Country Concepts

New Zealand does not observe any safe country policy and will consider an application for asylum that is made in New Zealand by a national of any country except New Zealand and Australia.

Asylum Claims Made by European Union (EU) Nationals

All claims are dealt with on a case-by-case basis, with no claims to refugee status rejected outright based on country of origin. Membership of all new Member States in the EU is considered to have improved the general

human rights situation. In addition, the availability of EU-level protection mechanisms is considered to bolster the level of state protection available to claimants from EU states. However, this has not led to all claims by these nationals being considered unfounded.

5.3 Special Procedures

5.3.1. Unaccompanied Minors

Representative

An Immigration Officer or RSO designates a responsible adult to act in the best interest of the unaccompanied minor (UAM) claiming refugee status. If no suitable person is available to act as the responsible adult, a guardian is designated by a Child, Youth and Family (CYF) social worker.

Procedures

UAMs claiming refugee status benefit from the following safeguards during the asylum procedure:

- The designation of a CYF representative and a legal representative who are present during the interview
- A flexible approach to interviews: interviews are scheduled for UAMs who have been assessed by an officer to be sufficiently mature to undergo the interview
- If the minor is under the age of 14, the interview lasts no longer than two hours; for UAMs between 14 and 17 years old, the time limit is three hours.

Age Assessment

If there is doubt as to the age of the UAM, the responsible adult is informed that the UAM may need to undergo formal medical age assessment, through either a dental examination or an x-ray. The consent of the UAM and his or her responsible adult is required for any medical test.

Family Unity

New Zealand engages the assistance of the International Committee of the Red Cross (ICRC) and any other relevant agency to assist in locating the UAM's family.

Removal

If the UAM's refugee claim fails, then an assessment is made as to whether or not to remove him or her. Efforts will be made to have the child removed in a sensitive manner, making attempts to locate his or her guardian(s) in the home country. Any decisions would need to be made taking account of obligations under the United Nations (UN) Convention on the Rights of the Child.

5.3.2. Temporary Protection

While it is not New Zealand's policy to provide temporary protection to recognised refugees, a small number of cases have occurred in which identity or criminality issues were not found sufficient to withhold recognition of refugee status but were sufficient to deny Permanent Residence under New Zealand's Immigration Policy. These persons were issued temporary (usually three-year) work permits.

5.3.3. Stateless Persons

New Zealand is not a signatory to the 1954 Convention relating to the Status of Stateless Persons. However, New Zealand refugee jurisprudence recognises that stateless persons may also be refugees. All other elements of the refugee definition being satisfied, a key consideration is the nexus between the persecution the stateless refugee claimant might suffer and the reasons for that persecution. It is recognised that some, but not all, situations of statelessness occur because of grounds outlined in Article 1(A) of the 1951 Convention.

6 Decision-Making and Status

6.1 Inclusion Criteria

6.1.1. Convention Refugee

Convention refugee status is granted on the basis of the 1951 Convention and its 1967 Protocol, with reference made to the relevant case law, where appropriate.³

6.2 The Decision

Following receipt of final submissions from the claimant and his or her counsel, the Refugee Status Branch (RSB) provides a reasoned decision to the claimant along with relevant information on either appeal rights or settlement in New Zealand.

All decisions by RSOs at the RSB or the RSAA, including negative decisions, are made in writing and are fully reasoned.

A decision to reject a claim includes information on the refugee claimant's right to appeal.

If the RSO recognises the claimant as a refugee, the written decision includes information on applying for

³ See the annexe to this chapter for a summary of New Zealand case law on determination practices.

residence in New Zealand and other settlement-related information.

6.3 Types of Decisions, Status and Benefits Granted

Decisions

Decision outcomes for refugee claims can only be to recognise, approve or decline refugee status. The RSO and RSAA have no power other than to confer or remove refugee status. The matter is separate from questions of permits, which they are barred from considering.

Benefits

Refugee status recognition allows the refugee to apply for a Permanent Residence permit. This is usually granted, unless concerns arise as to criminality in New Zealand or serious identity-related concerns. If the Permanent Residence application is refused, the refugee will be issued temporary permits to remain and work in New Zealand.

Permanent Residence allows a person to access a range of rights near equal to those of a citizen. Refugees may apply for a refugee travel document. After five years in New Zealand as a Permanent Resident, the person may apply for citizenship.

Recognised refugees may apply for accommodation assistance on the same basis as all New Zealanders.

Refugees can access health care on the same basis as New Zealand citizens. On application for permanent residence, refugees must undertake medical tests. However, a satisfactory health standard is waived for refugee permanent-residence applicants.

Recognised refugees may sponsor their spouse and dependant children to come to New Zealand during the course of their Permanent Residence Application. Unaccompanied minor refugees may sponsor their parents. Refugees without any immediate family may sponsor more distant family members under the Refugee Family Support Category. This policy uses a ballot system that provides 300 places a year for family members of refugees who are without family other than dependent children in New Zealand.

6.4 Exclusion

6.4.1. Refugee Protection

The exclusion clause is applied in refugee claims and may lead to a claim being declined. RSOs and Members of the RSAA consider grounds for exclusion provided for in Article 1F of the 1951 Convention in every case in which

they are relevant. If a claim is declined by an RSO on the grounds of Article 1F, the appeal to RSAA is considered afresh, regarding questions of inclusion and exclusion.

New Zealand refugee jurisprudence follows Canadian approaches to exclusion, in cases such as *Ramirez*, *Sivakimar* and *Mugasera*.

Persons subject to exclusion will not be issued a permit and will usually be denied permission to remain. However, effecting removal of such persons can be prevented by New Zealand's obligations under Article 3 of CAT, or more commonly by operational difficulties effecting removals to particular countries.

6.4.2. Complementary Protection

As noted, there is no formal process for consideration of complementary forms of protection in asylum processes in the current Immigration Act. The intention of the new Bill, once it is passed, is that the exclusion clause (Article 1F of the 1951 Convention) will not apply to complementary protection under ICCPR or CAT.

6.5 Cessation

Cessation of refugee status is only rarely utilised in New Zealand. The policy of providing refugees access to permanent residence and citizenship to promote settlement in New Zealand precludes the effectiveness of application of cessation in all but exceptional cases. However, cessation provisions exist in New Zealand law and have been applied in a small number of cases.

In order to determine refugee status cessation, an RSO must determine that the refugee no longer requires international protection because of the reasons given in Article 1C of the 1951 Convention. Before reaching such a decision, the RSO must notify the person concerned that the matter is to be considered and provide to him or her information on which he or she intends to base this decision. An interview may be requested by the subject. If cessation is applied, then the decision may be appealed to the RSAA.

6.6 Cancellation

Refugee status may be cancelled by an RSO if the original decision to grant status was made by an RSO. However, if refugee status was recognised by the RSAA, then an RSO may make an application to the RSAA only to reconsider its decision.

Refugee status cancellation may apply in one of the following cases:

- Refugee status may have been obtained by fraud, forgery, false or misleading representation, or by concealment of relevant information

- In any case where the matters dealt with in Articles 1E or 1F of the 1951 Convention were not properly considered for any reason, including fraud, forgery, false or misleading representation, or by concealment of relevant information.

On receipt of new information to indicate fraud or such events, a RSO conducts a brief investigation and issues one of the following recommendations:

- Status quo: the evidence is irrelevant, insubstantial or insufficient to cancel refugee status
- Further investigation required: the evidence is compelling but cannot stand alone to cancel refugee status
- Proceed to cancellation: the evidence is strong enough to cancel refugee status.

If the decision is to proceed, the RSO sends a Notice of Intended Determination concerning loss of refugee status, outlining the reasons why the refugee is being investigated for cancellation. The Notice includes copies of the evidence that the RSB holds relevant to the intended cancellation. The respondent has the right to request an interview within 20 days of being notified.

The enquiry into cancellation is a two-stage process, in which it is first determined whether refugee status was procured by fraud, and secondly whether there is any "fresh" reason to consider the subject a refugee; that is, whether despite the fraud there is reason to consider the person a refugee. Thus, the outcome of the case will be one of the following decisions:

- The determination of refugee status was properly made, and is retained
- The determination of refugee status was improperly made, but the respondent is a refugee, so refugee status is retained

- Refugee status was improperly made and the respondent is not a refugee, so refugee status is cancelled.

In the last of these outcomes, the decision may be appealed to the RSAA.

As noted above, in the case of refugees recognised as such by the RSAA, the RSO can apply to the RSAA to reconsider its decision. In such a case, an RSO serves documentation concerning the matter on the RSAA who, provided he or she believes there is a case to answer, will then notify the "refugee" of the cancellation enquiry. From that stage, the RSAA will follow a process, in considering whether cancellation is appropriate, similar to that outlined for RSOs. Thus, whether on appeal or by way of application to the RSAA, the case is then dealt with in the same two-stage manner as outlined above.

When refugee status is cancelled by the RSAA, the person may be subject to removal, or may face revocation of permits, including the Permanent Residence permit, and thus be subject to removal. If the person is a New Zealand citizen, it is possible to remove citizenship if it is established that the citizenship was procured based on fraudulent information.

6.7 Support and Tools for Decision-Makers

6.7.1. Country of Origin Information

The Refugee Research and Information Branch (RRIB), located within Immigration New Zealand, provides open-source country of origin information (COI) to refugee decision-makers at the RSB and the RSAA, as well as to other officials of INZ.

The RRIB undertakes in-depth research on the history, traditions, culture, languages, social groups, human

Box 4: Recent Major Developments in INZ's COI Service

The Refugee Research and Information Branch (RRIB) was established in 1996 in Auckland as the Nicholson Library to serve the information needs of officials making decisions on asylum claims. In 2005, the Wellington Research Unit was created to provide parallel information services to the Immigration Profiling Group, which processes applications from "high-risk" applications. Between 1997 and 2008, the staffing level of the RRIB was increased from one to close to eight full-time employees, all of whom are qualified librarians.

Over the last decade, the research requests made by decision-makers to the RRIB have become increasingly complex in nature. RRIB has responded to demand for its services by creating more advanced electronic databases, including an online catalogue introduced in 2008, and a database for tracking requests and searching for documents. The RRIB has also enhanced its presence on the Department of Labour Intranet site, which allows officials to have more efficient access to RRIB country information.

Increasingly, the RRIB is providing country information to other areas of Immigration New Zealand, including the Refugee Quota Branch and offshore branches of INZ.

rights, politics, war crimes and counter-proliferation efforts in countries of origin. This information is presented in country background packs, situation reports, thematic papers as well as bi-weekly bulletins. The RRIB also has resources to translate documents from a number of languages and is available to provide seminars to decision-makers and other officials on selected countries or themes as well as on the use of COI resources.

The RRIB makes available its thematic resource guides, fact sheets and major COI reports on the Department of Labour Intranet so officials may have easy access to the material.

6.7.2. Contacts Abroad

RSOs have access to verification services by a contracted agency in foreign countries, and, where applicable, they may ask New Zealand government staff in diplomatic embassies or consulates or Immigration branches to provide verification assistance.

In cases where refugees have a travel or immigration history in a third country, RSOs may request that the country provide information on the refugee claimant, particularly in relation to travel, refugee claim information, immigration status or serious criminal information.

6.7.3. Contacts inside New Zealand

If the claimant has been in New Zealand for a significant period of time, the RSO may request information from third parties or other government departments that may be relevant to deciding the claim.

As noted above, in cases where age is at issue, the RSO may request that the claimant undergo a medical age assessment. Consent is required.

6.7.4. Language Analysis

Language analysis has been carried out under contract with a Swedish company, but is very rarely used. The reliability of language analysis has been criticised by the RSAA.

6.7.5. Quality Check

All decisions on asylum claims made by the RSO must pass through a second-person check, and this can involve assistance to an RSO by a peer or a more experienced RSO on the individual case.

7 Efficiency and Integrity Measures

7.1 Technological Tools

7.1.1. Fingerprinting

RSOs may request that refugee claimants provide copies of their fingerprints to assist in establishing their identity or nationality. Fingerprinting requires the cooperation of the Police, as at present INZ does not have resources to take or match fingerprints. Fingerprints may be checked against the New Zealand Police fingerprint database or that of foreign jurisdictions.

7.1.2. DNA Tests

DNA tests are not routinely undertaken, but have been carried out to determine family links with the refugee claimant's consent. These tests may be requested, but it is not mandatory for asylum-seekers to comply. The testing is carried out by a contracted medical company.

7.1.3. Forensic Testing of Documents

RSOs have access to forensic document examination experts within INZ, who will examine documents as required. This service is rarely used as documentation in refugee-producing countries is usually considered to be of limited value given the ease with which fraudulently issued genuine documents may be obtained.

7.1.4. Database of Asylum Applications/Applicants

The RSB has an Access database of refugee claimants for case management rather than decision-making. The RSB Access database records procedural and other information related to the refugee claimant or possible cancellation subject. The database supports the RSB information needs of the centralised INZ case management database, known as the Application Management System.

7.2 Length of Procedures

As noted above, there are no time limits for applications for refugee status at first instance. The appeal timeframe is within 10 days of decline or five days in the case of a detained refugee claimant. However, the RSAA may allow an out-of-time appeal if it sees fit to do so.

There is no time limit in law for deciding cases. However, the Department of Labour expects claims to be decided within 20 weeks. The average time from application to decision is 13 weeks at first instance and four months on appeal.

Box 5: Cooperation with UNHCR, Non-governmental Organisations (NGOs)

While claims to refugee status are reported to the UNHCR regional office in Canberra, Australia, the UNHCR does not have a direct role in the determination procedure. In accordance with its supervisory role, UNHCR engages the government by, for example, making representations, often on special invitation, on legal matters, policy changes or practices as they relate to asylum. Recommendations made by UNHCR on ensuring consistency with the 1951 Convention, UNHCR positions, country of origin information and best practices are well received by the government. Additionally, UNHCR provides non-binding feedback to RSB on decisions made on an annual basis.

The RSAA has one *ex officio* Member, who is a representative of the UNHCR. However, this position has not been exercised in at least ten years.

NGOs, particularly the New Zealand Refugee Council, Auckland Refugee Council, and Amnesty International, have an advocacy function primarily, and no formal role in refugee claim decision-making.

7.3 Pending Cases

New Zealand does not have a backlog of cases at present. At the end of 2008, there were 80 claims on hand at first instance.

Around the year 2000, there was a significant backlog of cases, such that decision times were approaching three years at first instance. In response to this, claims made before a specified date were backlogged and allocated to a specific team, while newly incoming cases were immediately allocated for determination. Since the backlog has been cleared, claim numbers have remained low.

7.4 Information Sharing

New Zealand does not currently have information-sharing agreements in place with third parties.

Third parties outside New Zealand requesting information must comply with section 141AA of the Immigration Act 1987, and if the information concerns a refugee, they must comply with the Act's section 129T.

Section 129T allows confidential information regarding a refugee claim to be disclosed to the following persons:

- A person necessarily involved in the determination of the relevant refugee claim
- An officer or employee of a New Zealand government department, or Crown agency whose function requires knowledge of the particulars of a refugee claim
- A representative of the UNHCR.

Information concerning a refugee claim may also be disclosed to other persons only if there is no serious possibility that the safety of the person would be endangered.

7.5 Single Procedure

New Zealand is considering establishing a single procedure system in its Immigration Bill. The purpose of the single procedure would be to ensure all of New Zealand's immigration-related humanitarian obligations are addressed as fully and efficiently as possible.

8 Assistance and Reception Benefits for Asylum-Seekers

8.1 Procedural Support and Safeguards

8.1.1. Legal Assistance and Interpretation Services

Asylum-seekers are entitled to the advice of legal counsel as well as to an independent interpreter during the interview with the RSO and on appeal to the RSAA. The services of interpreters are provided by the INZ.

Box 6: Immigration Advisor's Authority

An Immigration Advisors Act, introduced in 2007, requires immigration advisors who work on behalf of would-be immigrants and refugee claimants to be registered with a regulatory body. The Act also sets out criteria for anyone wishing to practise as an immigration advisor, and stipulates a code of conduct for advisors. An oversight body, the Immigration Advisor's Authority, has been established to investigate and take action on breaches of the advisor's conduct provisions, including banning persons from working as advisors.

Legal aid is available for making refugee claims and appeals, and is provided on the basis of the asylum-seeker's income (it must be below NZD 42,000 annually) and the claim's prospects of success. If the claim is considered by the Legal Services Agency (LSA) to be unfounded, then legal aid will be denied. This decision is made by the LSA after receipt of an application for a grant of legal aid by the refugee claimant's counsel, usually at the beginning of the asylum procedure. Decisions to deny legal aid may be appealed to LSA peer review and to the independent Legal Aid Review Board.

Legal aid is also available in matters of cancellation of refugee status, subject to the requirements of a prospect of success for the subject, and the financial circumstances test.

Box 7:
New Zealand Case Law: Access to Legal Aid

In the case of *Legal Services Agency v. Hosseini* (CIV 2005-404-743, NZHS 21 February 2006), it was found that legal aid must be made available in refugee status matters. To be eligible for legal aid, the refugee claimant must satisfy national requirements that there be a reasonable prospect of success for his or her case and that he or she has a low annual income.

8.1.2. UNHCR

While an asylum applicant has the right to contact the UNHCR, UNHCR submissions to the authorities are in practice limited to those subjects reflecting significant differences in interpretation of the Refugee Convention or any problems that may be viewed as systemic.

8.1.3. NGOs

While NGOs in New Zealand are involved mainly in policy advocacy, some provide day-to-day support to asylum-seekers. For example, the Auckland Refugee Council runs an accommodation hostel for asylum-seekers while the Shakti Asian Women's Safe House Inc. provides shelter and support to asylum-seekers and other persons without permanent residence who are victims of domestic violence.

8.2 Reception Benefits

Asylum-seekers who have been placed in a low-security detention (accommodation) centre are not issued permits to remain in New Zealand, and therefore cannot legally work in New Zealand, but have their basic needs

met by the accommodation centre and are provided a small weekly allowance (see below).

8.2.1. Accommodation

Asylum-seekers who are not subject to detention for the duration of the procedure may make their own arrangements for accommodation. However, the hostel run by the Auckland Refugee Council provides accommodation to refugee claimants and failed asylum-seekers.

8.2.2. Social Assistance

Asylum-seekers may apply for unemployment benefits ("income assistance") on the same basis as Permanent Residents or citizens, if they are not being held in detention.

Refugee claimants detained in the low-security Mangere Accommodation Centre have their basic needs provided for and receive a weekly stipend depending on their age, as follows:

- 20 years and older: NZD 21
- 16-20 years: NZD 15
- 0-15 years: NZD 5.

Refugee claimants who have been refused permits but who are not subject to detention measures are provided NZD 85 per week to cover food and other necessities other than accommodation, which is provided.

8.2.3. Health Care

Refugee claimants have access to New Zealand's full range of health care on the same basis as citizens.

Refugee claimants are encouraged to undertake free health screening. The screening covers a range of health tests, including tests for general health and tests for communicable diseases. All claimants are encouraged to take the test at the beginning of the asylum procedure.

8.2.4. Education

Schooling for any child aged five to 16 is mandatory, regardless of immigration or other status. Child refugee claimants are thus issued student permits to allow them to attend school.

8.2.5. Access to Labour Market

Refugee claimants may apply for a work permit while waiting for a decision. If they are unable to find employment, and are otherwise unable to support themselves, they may claim the "income assistance" benefit, as may all New Zealanders who are unemployed.

In many cases, especially for families, a work permit will be issued to allow the claimant(s) to either work or access welfare provisions.

8.2.6. Access to Integration Programmes

Asylum-seekers detained in low-security centres have access to integration or settlement information, English lessons and recreational activities. Once recognised as such, refugees have access to a range of settlement assistance as detailed below under Integration.

8.2.7. Access to Benefits by Rejected Asylum-Seekers

There is no provision in the Immigration Act 1987 for support to failed refugee claimants, whether a barrier to departure exists or not. In some cases, based on humanitarian grounds, consideration may be given to grant failed asylum-seekers temporary work permits until such time as the barrier to departure no longer exists. This is based on a case-by-case approach, and failed asylum-seekers have no entitlement or right to a permit under section 35A (Minister's intervention).

Failed refugee claimants may have access to government funding for emergency health care services. Their children are issued student permits in order to attend school.

9 Status and Permits Granted outside the Asylum Procedure

9.1 Humanitarian Grounds

Humanitarian grounds are considered separately from the refugee determination procedure. Leave to remain on humanitarian grounds is granted when there are exceptional circumstances of a humanitarian nature that would make it unjust or unduly harsh for the person to be returned to his or her country of origin. His or her stay in New Zealand may not be contrary to the public interest. Determining whether or not allowing a person to remain is in the public interest generally requires an assessment of the person's criminal history, and as a result, of whether he or she poses a threat to public safety.

Compliance Officers within INZ's Border Security Group will consider these grounds. In addition, the Minister of Immigration may consider these factors when deciding whether or not to prevent a removal.

If a Compliance Officer considers that there are no "exceptional circumstances of a humanitarian

nature," this matter may be raised in an appeal to the independent Removal Review Authority.

9.2 Policy Grounds (Bona Fide Migrants)

While Immigration Officers, including Compliance Officers, may issue a permit to a rejected asylum-seeker, it is not possible for rejected asylum-seekers to apply for a permit. Persons who have not been granted refugee status but who would otherwise qualify for a work or residence permit under current immigration policy (based on qualifications, skills and work experience) may be issued a permit to remain in New Zealand by INZ provided they meet the policy criteria, including character and health requirements.⁴

9.3 Temporary Withholding of Removal/Risk Assessment

As noted, the assessment of humanitarian leave to remain is a risk-based assessment for both the failed refugee claimant and New Zealand society (public interest test). There may be a stay on removal of nationals from particular states because of generalised violence in those states. The Minister of Immigration and INZ, Compliance Officers are guided by UNHCR return advisories in this regard, and a case-by-case decision-making process is applied.

9.4 Obstacles to Return

If there are obstacles to return, there will be a case-by-case assessment of whether the person's status should be regularised in New Zealand. There is no policy regarding stateless persons outside of the refugee process. However, as removal may be impossible, regularisation on a case-by-case basis may be considered. The general principle is that a person not entitled to remain in New Zealand has a responsibility to effect his or her own departure.

9.5 Temporary Protection

As noted above, temporary protection may be provided by INZ by way of long-term permits issued to a failed refugee claimant whose removal from New Zealand was stopped by obligations under the CAT.

⁴ Health and character requirements are described in the INZ operational policy manual: applicants must be found to not pose a risk to public health (such as by carrying infectious diseases) and to not be a significant financial burden (over NZD 25,000) on the public health care system. Regarding character, applicants must show they have not been convicted of a serious criminal offence (subject to more than five years' imprisonment at any time in the past or to more than one year's imprisonment in the previous ten years). Permanent residence will not be issued to a person deemed by the Minister of Immigration to be a security risk, a member of a criminal organisation or someone who has supported terrorist activities.

9.6 Group-based Protection

There is no group-based protection procedure in place, as every case is individually assessed. However, as noted, removal decisions will take into account UNHCR advisories. Temporary protection (stay of removal) may also be extended to groups in cases of natural disasters or other regional catastrophes.

9.7 Regularisation of Status over Time

While there is no specific policy regarding regularisation over time, circumstances of being “well settled” may be considered by Compliance Officers or the Minister of Immigration on a case-by-case basis provided doing so is not contrary to the public interest.

10 Return

The section of INZ’s Border Security Group called Compliance Operations is responsible for the return and removal of failed asylum-seekers.

10.1 Pre-departure Considerations

New Zealand’s immigration laws provide for the removal of both failed refugee claimants and refugees on grounds of national security.

10.2 Procedure

The New Zealand procedure for removal includes a humanitarian interview that is conducted to establish whether there are any special circumstances that might affect a person’s removal.

As noted above, from time to time, New Zealand will designate certain states as ones to which removal should be temporarily suspended, and this is generally in accordance with UNHCR return advisories.

10.3 Freedom of Movement/ Detention

Those whose claims have been finally rejected are required to leave New Zealand. In general, voluntary departure is promoted and is achieved with the cooperation of the person. If a person refuses to cooperate, or absconds and is later located, that person may be detained. The courts have determined that indefinite detention is not consistent with New Zealand law. Thus, after a period of some months, a failed claimant who is detained and cannot be removed may be released.

10.4 Readmission Agreements

New Zealand has not signed any readmission agreements with countries of origin or third countries.

11 Integration

With approximately one third of New Zealand citizens born abroad, the New Zealand settlement strategy aims at integrating all newcomers, including refugees, with mainstream services. Immigration New Zealand has a dedicated integration section, called the Settlement Division, the role of which is to assist all newcomers to integrate or settle in New Zealand. Newcomers are defined as those who have been in New Zealand for less than two years. The INZ’s Settlement Division funds organisations, both government and private, to assist newcomers to find work, housing, education opportunities, health services and language courses, and to develop their own communities.

UNHCR mandated refugees brought to New Zealand under its quota programme (resettled refugees) start the integration process earlier. Such refugees apply for and receive a residence permit before they arrive in New Zealand. They initially undergo a six-week orientation course at the Mangere Refugee Resettlement Centre, following which they have access to work, education, health, benefits and welfare on the same basis as all New Zealanders. They can also access all services offered through the Settlement Division.

12 Annexe

12.1 Selections from the Immigration Act (1987)⁵

129B Definitions

(1) In this Part, unless the context otherwise requires:

authority means the Refugee Status Appeals Authority referred to in section 129N

claim means a claim in New Zealand to be recognised as a refugee in New Zealand

claimant, or refugee status claimant, means a person who has made a claim in New Zealand to be recognised as a refugee in New Zealand and whose claim has not been finally determined under this Act

129C Refugee status to be determined under this Part

(1) Every person in New Zealand who seeks to be recognised as a refugee in New Zealand under the Refugee Convention is to have that claim determined in accordance with this Part.

(2) Every question as to whether a person in New Zealand should continue to be recognised as a refugee in New Zealand under the Refugee Convention is to be determined in accordance with this Part.

Section 129C: inserted, on 1 October 1999, by section 40 of the Immigration Amendment Act 1999 (1999 No 16).

129J Limitation on subsequent claims for refugee status

(1) A refugee status officer may not consider a claim for refugee status by a person who has already had a claim for refugee status finally determined in

New Zealand unless the officer is satisfied that, since that determination, circumstances in the claimant's home country have changed to such an extent that the further claim is based on significantly different grounds to the previous claim.

(2) In any such subsequent claim, the claimant may not challenge any finding of credibility or fact made in relation to a previous claim, and the officer may rely on any such finding.

129K Claim not to be accepted from holder of residence permit or New Zealand citizen

(1) A refugee status officer may not consider a claim for refugee status by a person who is

(a) the holder of a residence permit; or

(b) a New Zealand citizen; or

(c) exempt under section 12 from the requirement to hold a permit.

(2) This section does not affect the power of an officer to determine the question of such a person's continued refugee status arising under section 129L.

Section 129K: inserted, on 1 October 1999, by section 40 of the Immigration Amendment Act 1999 (1999 No 16).

129U Special provision relating to refugee status claimants granted temporary permits

⁵ Immigration Act 1987 (last amended 1999), 21 April 1987, available online on UNHCR Refworld at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=3ae6b5e50&skip=0&query=New%20zealand> [accessed 27 February 2009].

- (1) This section applies to any person who
- (a) is a refugee status claimant to whom a temporary permit has been granted on or after 1 October 1999 (whether before or after the person became a claimant); or
 - (b) having been a person to whom paragraph (a) applies, ceases to be a refugee status claimant by virtue of having his or her claim under this Part to be recognised as a refugee declined.
- (2) A person to whom this section applies may not, whether before or after the expiry of the temporary permit,
- (a) apply for a further temporary permit or for a permit of a different type while in New Zealand; or
 - (b) while in New Zealand, request a special direction, or a permit under section 35A; or
 - (c) bring any appeal under this Act to the Residence Review Board.
- (3) Despite subsection (2)(a), a claimant may apply for a further temporary permit for such period as may be required to maintain the claimant's lawful status in New Zealand while the claim is determined.
- (4) Nothing in this section prevents a person from bringing an appeal to the Removal Review Authority under Part 2.
- (5) This section ceases to apply to a person if and when his or her claim under this Part to be recognised as a refugee is successful.

12.2 New Zealand Case Law: Determination Practices

New Zealand's refugee determination case law is most developed at the Refugee Status Appeals Authority (RSAA), with courts having mainly upheld RSAA judgments.

Cases from the late 1980's saw the RSAA and the New Zealand courts interpreting the 1951 Convention seeking assistance from UNHCR publications, especially the Handbook on Procedures and Criteria for Determining Refugee Status, Australian and Canadian jurisprudence, and academic work.⁶

With regard to credibility, New Zealand courts have maintained that only the highest standards of fairness suffice in refugee matters.⁷ Courts have also directed that while a person claiming refugee status has the burden of establishing the elements of the claim, that rule should not be applied mechanically.⁸

A "well-founded fear of being persecuted" is considered to require a "real chance" of serious harm and a failure of state protection. New Zealand has followed the test, as formulated by the High Court of Australia in *Chan v. Minister for Immigration and Ethnic Affairs (1989) 169 CLR 379*.⁹ Core norms of international human rights law are used to define the forms of serious harm amounting to persecution.¹⁰

State protection analysis has drawn on the Canadian case of *Ward*¹¹ and required that the protection be effective protection that is sufficient to reduce the risk of being persecuted to below that of a real chance.

"Being persecuted" is read as focusing on the consequences to the victim, rather than the state of mind of the agent of persecution. Moreover, that agent need not be a state.¹² Importantly, there is no requirement for the refugee to avoid the risk of harm where doing so is an exercise of a protected right.¹³

6 Particularly Hathaway J., *The Law of Refugee Status* (1991) Toronto and Vancouver: Butterworths.

7 *Khalon v. Attorney General (Minister of Immigration)* [1996] 1 NZLR 458. The decision concerned whether notice of a proposed adverse credibility finding must be given, and found that while there needed to be notice, this notice needed to be reasonably clear.

8 *Butler v. Attorney General* [1999] NZLR 205.

9 This test was adopted in *Refugee Appeal No. 1/91 Re TLY and Refugee Appeal No. 2/91 Re LAB* (11 July 1991).

10 *Refugee Appeal No 74665/03* [2005] NZLR 60; [2005] INLR 68 at [36] - [125].

11 *Canada (Attorney General) v. Ward* [1993] 2 SCR 689, 709 (SC:Can).

12 *Refugee Appeal Nos. 1/91 and 2/91 Re TLY and LAB* (11 July 1991).

13 *Refugee Appeal No. 1312/93* (30 August 1995).

The reasons for a person being persecuted need not be solely or mainly Convention grounds (for example, religion) to qualify as Convention-related. The persecution will be “for reasons of” a Convention ground if Convention-related factors are found by the decision-maker to be a “contributing cause” to the claimant’s well-founded fear of being persecuted.¹⁴

New Zealand has interpreted “particular social group” using a *eusem generis* approach.¹⁵ The meaning assigned to “particular social group” takes into account the underlying themes of respect for human rights and anti-discrimination that underpin international refugee protection.¹⁶ Three possible categories can be identified:

- Groups defined by an innate or unchangeable characteristic
- Groups whose members voluntarily associate for reasons so fundamental to their human dignity that they should not be forced to forsake the association
- Groups associated by a former voluntary status, unalterable due to its historical permanence.

The first category includes persons fearing persecution on the basis of gender, linguistic background and sexual orientation, while the second encompasses, for example, human rights activists. The third branch is included more because of historical intentions, although it is also relevant to the anti-discrimination influences, in that one’s past is an immutable part of the person.¹⁷

Claims concerning “generalised violence” or civil war were addressed by the RSAA in *Refugee Appeal No. 71462/99* (27 September 1999), where it was noted that equality of risk of harm must not be confused with the equality of reason for that harm. The well-foundedness element (i.e., the risk of persecution) is a separate inquiry to that of the ‘for reason of’ element (i.e., the nexus issue). Assessing the well-foundedness of claims originating in civil war situations involves consideration of two fundamental issues:

- Whether the anticipated state-tolerated harm is of sufficient gravity to constitute persecution
- Whether there is a connection between the risk faced and a Convention reason for the imposition of that harm.

Internal Protection / Flight / Relocation has recently been re-examined by the RSAA. The Canadian approach based in protection was reaffirmed as the preferred New Zealand approach, rather than those of the UK, Australia and the European Union, which were characterised as looking to the question of risk rather than the existence of protection.¹⁸

Regarding claims to refugee status by stateless persons the New Zealand approach has been that stateless persons may be refugees if they face a well-founded fear of being persecuted for a Convention reason, but are not automatically *per se* refugees.¹⁹

Turning from the Convention’s inclusion clauses, the New Zealand approach to exclusion under Article 1F has been to predominantly follow Canadian approaches, including *Sivakumar*, *Ramirez*, and *Mugasera*. However, there is no balancing exercise undertaken between the acts committed by the claimant and the threat to their life and security should they return to their home country.²⁰

¹⁴ *Refugee Appeal No. 73635* (8 September 2001).

¹⁵ *Op cit* note 1.

¹⁶ *Refugee Appeal No. 71427/99* (16 August 2000). See also *Refugee Appeal No. 1312/93 Re GJ* (30 August 1995).

¹⁷ *Refugee Appeal No. 71427/99* (16 August 2000) at [98]. See also *Refugee Appeal No. 1312/93 Re GJ* (30 August 1995) at ‘Particular Social Group’.

¹⁸ *Refugee Appeal No. 76044* (11 September 2008). The RSAA addressed and rejected *Januzi v. Secretary of State for the Home Department [2006] 2 AC 426 and AH (Sudan) v. Secretary of State for the Home Department [2007] 3 WLR 832*. It also declined to follow *SZATV v. Minister for Immigration and Citizenship (2007) 237 ALR 634* and *SZFDV v. Minister for Immigration and Citizenship (2007) 237 ALR 660*.

¹⁹ *Refugee Appeal No. 72635/01* (6 September 2002)

²⁰ *Refugee Appeal No. 71398/99* (10 February 2000).

12.3 Additional Statistical Information

Figure 4:

Asylum Applications from Top Five Countries of Origin for 1997, 2002 and 2008

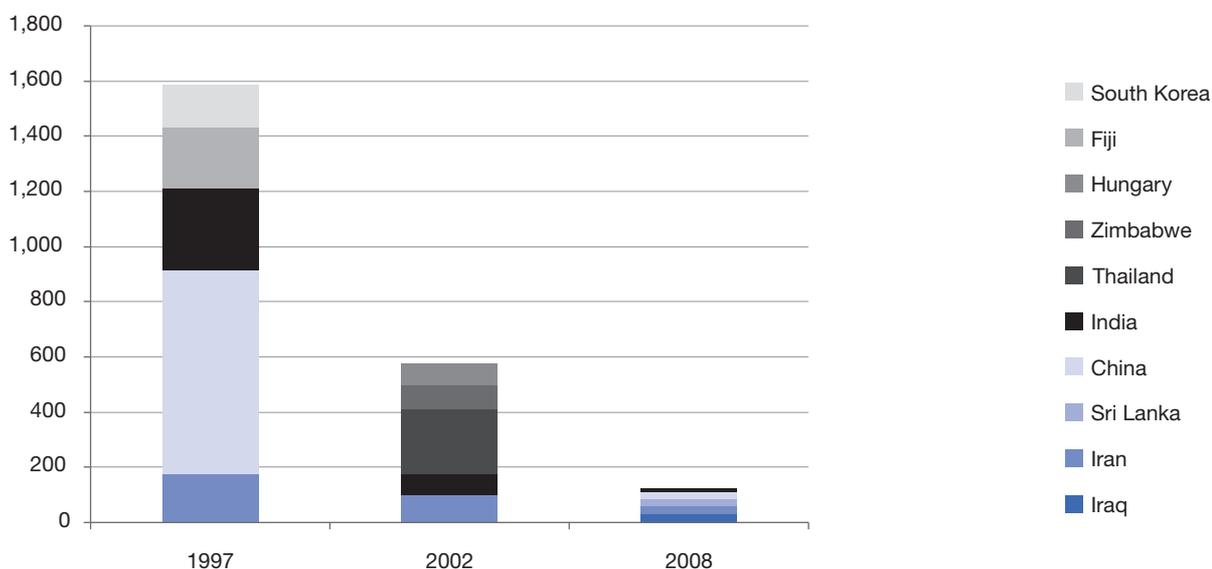


Figure 5:

Decisions Made at the First Instance, 1998-2008

Year	Geneva Convention Status		Humanitarian Status and Other Authorisations to Remain		Rejections		Other Decisions		Total Decisions
	Count	% of total	Count	% of total	Count	% of total	Count	% of total	
1998	260	23%	0	0%	890	77%	0	0%	1,150
1999	536	22%	0	0%	1,932	78%	0	0%	2,468
2000	467	21%	0	0%	1,708	79%	0	0%	2,175
2001	311	13%	0	0%	2,091	87%	0	0%	2,402
2002	627	24%	0	0%	2,002	76%	0	0%	2,629
2003	247	19%	0	0%	1,042	81%	0	0%	1,289
2004	115	14%	0	0%	686	86%	0	0%	801
2005	81	16%	0	0%	418	84%	0	0%	499
2006	68	20%	0	0%	272	80%	0	0%	340
2007	66	25%	0	0%	199	75%	0	0%	265
2008	91	36%	0	0%	164	64%	0	0%	255

Norway



277 - BACKGROUND: MAJOR ASYLUM TRENDS AND DEVELOPMENTS

278 - NATIONAL LEGAL FRAMEWORK

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280 - ASYLUM PROCEDURES

285 - DECISION-MAKING AND STATUS

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289 - ASSISTANCE AND RECEPTION BENEFITS FOR ASYLUM-SEEKERS

291 - STATUS AND PERMITS GRANTED OUTSIDE THE ASYLUM PROCEDURE

292 - RETURN

293 - INTEGRATION

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1 Background: Major Asylum Trends and Developments

Asylum Applications

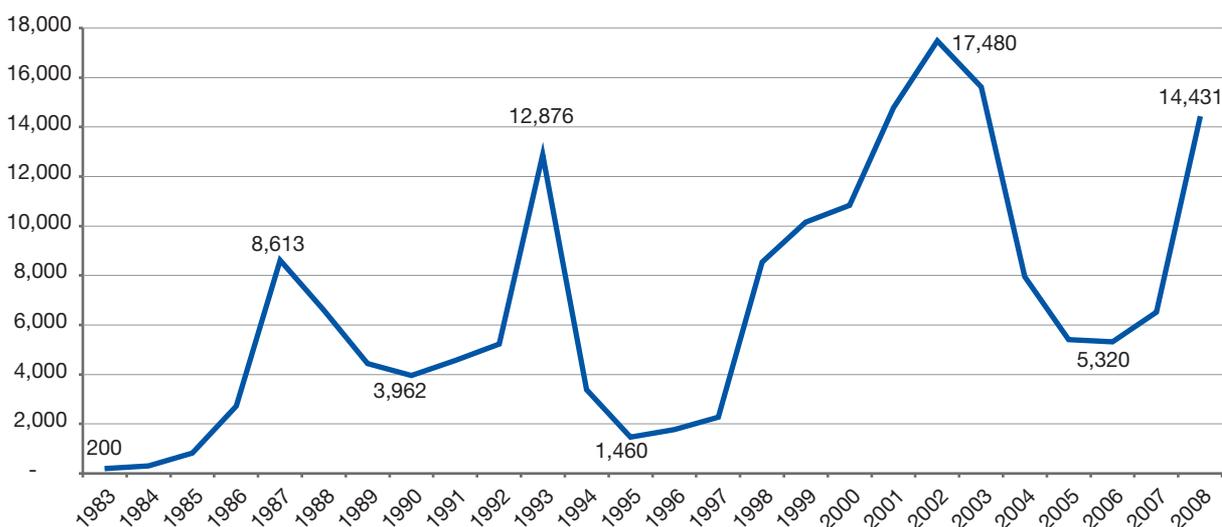
In the early 1980's, asylum applications made in Norway were in the hundreds per year. The numbers started to increase in 1986, reaching a first peak of 12,800 in 1993. Numbers decreased significantly from 1994 to 1997 and increased again in the late 1990's to reach a second peak of 17,500 in 2002. The intake of asylum applications began to decline in 2003, reaching a low of some 5,300 in 2005 and 2006. In the second half of 2007, the number started to increase, reaching more than 6,500 that year. In 2008 there were 14,431 applications.

Prior to the creation of the UDI, responsibility for immigration policy had been spread among several ministries. Since then, the UDI has grown considerably, both in the range of its responsibilities and in the level of human resources. The Directorate took over responsibility for interviewing asylum-seekers in 2000, a task previously performed by the police. In January 2006, the responsibility for integration and inclusion was assigned to a separate directorate, the Directorate of Integration and Diversity (Integrerings- og mangfoldsdirektoratet, IMDI).¹

The Norwegian Immigration Appeals Board (Dette er Utlendingsnemnda, UNE), an independent, quasi-judicial body, was established in 2001 to hear appeals against decisions made by UDI. Prior to the creation of the Board, the Ministry of Justice was responsible for hearing appeals.

Figure 1:

Evolution of Asylum Applications in Norway



Top Nationalities

In the 1990's, the highest number of applicants came from the former Yugoslavia, Somalia, Sri Lanka, Iran, and Iraq. Since 2000, countries of origin accounting for the greatest number of applicants have included the former Yugoslavia, Iraq, Eritrea, Afghanistan, Somalia, and Russia.

Important Reforms

The Act concerning the Entry of Foreign Nationals into the Kingdom of Norway and their Presence in the Realm (Immigration Act of 1988) replaced the Immigration Act of 1956 and established the Norwegian Directorate of Immigration (Utlendingsdirektoratet, UDI) on 1 January 1988. This new body represented a reorganisation of responsibility for immigration policy and immigration-related activities.

A revised Immigration and Asylum Act will come into force on 1 January 2010.²

Figure 2:

Top Five Countries of Origin in 2008

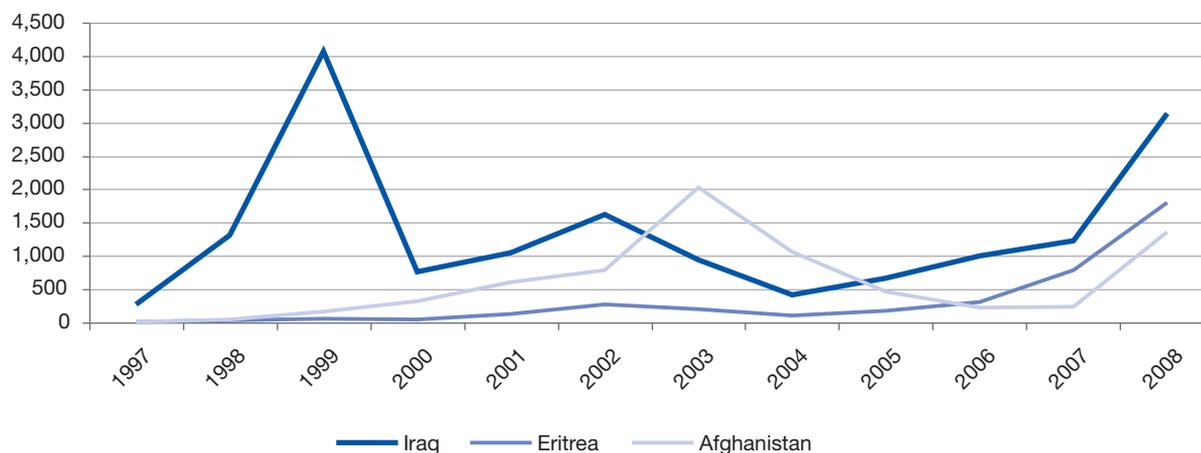
1	Iraq	3,137
2	Eritrea	1,799
3	Afghanistan	1,363
4	Somalia	1,293
5	Russia	1,078

¹ Both the UDI and the Directorate of Integration and Diversity report to the Ministry of Labour and Social Inclusion.

² For more information on the new Act, please see the section below on Pending Reforms.

Figure 3:

Evolution of Applications from Top Three Countries of Origin for 2008



2 National Legal Framework

2.1 Legal Basis for Granting Protection

The asylum procedure and the competencies of asylum institutions are governed by the Norwegian Immigration Act of 1988 (and the Immigration Regulations based on the Act). The 1951 Convention relating to the Status of Refugees (section 16, para.1) and the European Convention on Human Rights (ECHR) (section 3) are incorporated in the Immigration Act by reference.

According to section 4 of the Immigration Act, the Act shall be applied in accordance with the international rules by which Norway is bound, when these are intended to strengthen the position of a foreign national.

2.2 Pending Reforms

A revised Immigration and Asylum Act was passed by the Norwegian Parliament in April 2008, and will enter into force on 1 January 2010.

In the revised Act, the term “refugee” will comprise both persons falling within the definition of the 1951 Convention and other persons in need of international protection. Every person who has the right to international protection in accordance with Norway’s international obligations will be granted refugee status and given the rights and benefits corresponding to this status.

The revised Act includes new clauses directly incorporating the 1951 Convention criteria for Convention refugee status, exclusion from Convention refugee status, and a clause referring to Article 35 of the Convention, thereby formalising the requirement to cooperate with the United Nations High Commissioner for Refugees

(UNHCR). The Regulations that will accompany the new Act will include a clause emphasising the normative weight of UNHCR recommendations on protection. The Regulations will stipulate that, where Norwegian practice is found to conflict with such recommendations, the case will, as a rule, be referred to the Immigration Appeals Board for a hearing before the Grand Board.

An important goal for the Norwegian government is to reinforce the legal protection of minors. The revised act will, *inter alia*, strengthen children’s right to family reunification.

The revised Immigration and Asylum Act includes a new and stronger provision concerning *pro forma* marriages, and the government has presented several new initiatives to combat forced marriages, which will be implemented in the Regulations. In addition, there will be changes regarding removal and expulsion. This will enhance the possibility for authorities to react to breaches of the Immigration and Asylum Act.³

Under the current Immigration Act, a foreign national who does not have a permit to reside in Norway may be removed when he or she has been sentenced in Norway for a criminal offence that is punishable by imprisonment for a term of three months or more. Foreign nationals with a residence permit have greater protection against removal as the criminal offence must be punishable by a term of imprisonment for one year or more.

³ A distinction is made between an expulsion decision and a removal decision. Expulsion entails that a foreign national must leave Norway and may only re-enter if special conditions are met. The person will normally also be entered into the Schengen Information System (SIS). A decision for removal entails that the person must leave Norway, but he or she will not be denied subsequent re-entry. A person who has received a removal decision will not be entered into SIS.

According to the new Immigration and Asylum Act, a foreign national should not be able to invoke the extended protection against removal, even if he or she was granted a residence permit at the time the sentence was imposed, if the criminal offence was committed before the permit was granted.

According to the current Immigration Act, a foreign national who satisfies the conditions for a settlement permit may, as a rule, be removed only if the criminal offence is punishable by imprisonment for a term of two years or more. According to the new Immigration and Asylum Act, only a person who has been granted a permanent residence permit will be able to invoke extended protection against removal. Further, if the criminal offence was committed before the permit was granted, the foreign national would not be able to invoke such protection even if he or she had been granted a permanent residence permit at the time the sentence was imposed.

3 Institutional Framework

3.1 Principal Institutions

The Ministry of Labour and Social Inclusion (AID)

The Ministry of Labour and Social Inclusion (Arbeids- og inkluderingsdepartementet, AID) has overall responsibility for refugee, immigration, and integration policies. The Ministry supervises the Directorate of Immigration (UDI), the Directorate of Integration and Diversity (IMDi), and the Norwegian Immigration Appeals Board (UNE) through Acts, regulations, budgets and letters of budgetary allocation. Although the Ministry may instruct the Board through legislation, regulations, budget, and general priorities, it may not instruct the Board on interpretations of the law, the exercise of discretion or decision of individual cases.

The Directorate of Immigration (UDI)

The UDI implements provisions in the Immigration Act by processing applications for various types of residence and work permits, and ensuring that refugees receive protection through the asylum application consideration process. The UDI also gives professional input into the development of policies and regulations.

The Norwegian Immigration Appeals Board (UNE)

The Norwegian Immigration Appeals Board (UNE) is an independent, quasi-judicial appeals board that handles appeals of rejections by the Directorate of Immigration

(UDI), pursuant to the Immigration Act. A special body within UNE, a Grand Board, reviews cases on issues of principle, cases with wide-ranging economic and social consequences, as well as cases in which the board's practice varies. Decisions of the Grand Board are precedent-setting for other cases.

Police

The National Police Immigration Service and the 27 Police districts are responsible for a range of tasks in the field of immigration, both in asylum cases and in other cases. This includes border control, registration, and identity checks in asylum cases. The Police also handle the removal of asylum-seekers who have had their applications rejected. The Police report to the Ministry of Justice and the Police (Justis- og politidepartementet, JD).

The Directorate of Integration and Diversity (IMDi)

The IMDi was established on 1 January 2006 to act as a centre of excellence and a driving force for integration and diversity. The directorate cooperates with immigrant organisations or groups, municipalities, government agencies, and the private sector. It provides advice and implements government policy. The IMDi's goal is to contribute to equality in living conditions and diversity through employment, integration, and participation.

A Single Asylum Procedure

Both the UDI and UNE have full authority to deal with every aspect of a particular case. Refugee protection and complementary forms of protection are assessed within a single asylum procedure. The UDI and UNE will, if asylum or subsidiary protection is not granted, also take into account and examine the case for the existence of other "humanitarian" reasons (such as serious health problems) or other (immigration) grounds (such as a particular connection or ties that the person may have with Norway) for granting a residence permit. All of these grounds will be considered during the procedure, if raised by the applicant or considered relevant to the case by the decision-makers.

4 Pre-entry Measures

In order to enter Norway, foreign nationals must have a valid travel document, such as a passport. In addition, some foreign nationals must have a visa issued by Norway or one of the other States parties to the Schengen Agreement.

4.1 Visa Requirements

The Directorate of Immigration (UDI) is the competent authority for issuing visas. However, this authority has been delegated to a majority of Norwegian diplomatic missions. Where there is no Norwegian diplomatic presence in a host country, the authority for issuing visas is delegated to the diplomatic mission of another country. If a diplomatic mission has rejected an application for a visa, the applicant is entitled to appeal the decision to UDI. If UDI has rejected the application in the first instance, the decision may be appealed to the Immigration Appeals Board (UNE).

4.2 Carrier Sanctions

Carrier sanctions are applicable to airplanes and ships. According to the Immigration Act, administrative fines may be imposed on private or public carriers if it is found that they have transported into Norway passengers who are not in possession of a valid travel document.

4.3 Interception

Norway does not engage in interception activities.

5 Asylum Procedures

5.1 Application Possibilities and Requirements, Procedures and Legal Remedies

Applications for asylum may be made at airports, at seaports, at the border and in-country at a police station. Applicants at these locations are sent to the National Police Immigration Service in Oslo for registration, and are accommodated at a transit centre. Persons over the age of 18 must file their own asylum claims, while a parent or an appointed guardian may make a claim for children under the age of 18. A separate claim may be made for a child born to a mother who is awaiting a decision on her own claim for asylum in Norway.

Not all diplomatic missions accept applications for asylum claims. Norway also runs an annual resettlement programme.

Access to Information

Information for asylum-seekers on the application process, privileges and obligations is provided by a non-governmental organisation (NGO).

The police will inform the applicant about his or her rights and duties, the asylum process, and his or her obligation to cooperate with the Norwegian immigration authorities during the procedure.

Applicants are also informed that forced marriages are illegal in Norway, while asylum-seekers from certain nationalities are also informed that female genital mutilation (FGM) is illegal and punishable under Norwegian law.

UDI is responsible for providing additional information while the applicants are accommodated in transit reception centres. The applicants are given information on the asylum process in Norway, their rights and obligations, and the importance of giving complete and correct information to UDI on their reason(s) for applying for asylum. Furthermore, the applicants are informed of the consequences of the different outcomes, including the right to appeal if the application is rejected and their duty to leave the country after a final rejection. They are also informed of the possibility of benefiting from assisted voluntary return through the International Organization for Migration (IOM), and given information on involuntary (forced) return conducted by the police.

UDI has published leaflets in a number of different languages regarding the normal asylum procedure and the accelerated procedures. UDI has also produced two informational videos in up to 15 different languages: one on the general asylum procedure and another on the accelerated 48-hour procedure. Furthermore, leaflets on the Dublin procedure are available in 17 languages, while those on unaccompanied minor asylum-seekers (UMAs) have been produced in 13 languages. The Norwegian Organisation for Asylum-Seekers (Norsk Organisasjon for Asylsøkere, NOAS), an NGO, is responsible for distributing this information on behalf of UDI. Representatives from NOAS organise viewings of the films and are available for one-on-one conversations with each applicant in order to provide information tailored to each person, answer any questions he or she may have, and prepare him or her for the interview with UDI.

Representatives of IOM are also present at the transit centre and provide information on assisted return to rejected asylum-seekers who wish to return voluntarily to the country of origin.

5.1.1. Outside the Country

Applications at Diplomatic Missions

Asylum applications cannot be processed at diplomatic missions. However, a person may apply for asylum in Norway at a diplomatic mission abroad. The application is forwarded to the UDI for consideration, although in the past applications made at diplomatic missions have been denied on the basis that the asylum-seeker was not physically at the Norwegian border or in Norway.

Resettlement/Quota Refugees

Norway has in place an annual resettlement programme. The Ministry of Labour and Social Inclusion establishes the composition of the quota based on an assessment of resettlement needs by UNHCR, as well as on consultations with other Ministries, UDI and the Directorate of Integration and Diversity (IMDi). The UDI is responsible for the selection of refugees for resettlement. The decision is not subject to appeal. IMDi is responsible for the placement and integration of resettled refugees.

In 2008, the resettlement quota was 1,200 places. The size of the quota has varied between 1,000 and 1,500 during the last few years.

Resettlement selection is made on a dossier basis and through selection missions. An entry visa and a residence or work permit are issued prior to departure for Norway. In dossier cases, status determination is made following entry. In the case of selections made following a selection mission, determination is made prior to arrival.

The following considerations are applied to the decisions:

- The need for international protection
- The need for resettlement.

The possibility of finding other durable solutions is also considered in the short as well as in the longer term.

At least 55 per cent of the total number of persons resettled under the quota system are women, including “women at risk.”

Norway has a medical sub-quota. When refugees with medical needs and victims of violence and torture require special treatment, the availability of appropriate medical services in Norway is considered before decisions are made.

There is also an emergency sub-quota. Norway offers accelerated processing in situations where a refugee’s life or freedom depends on emergency resettlement.

Exclusion

Persons who come under the exclusion clauses of the 1951 Convention shall, as a rule, not be offered resettlement in Norway.

Persons known to be criminals or heavy drug users are also, as a rule, not to be offered resettlement in Norway.

5.1.2. At Ports of Entry

Persons arriving at a border post who wish to make a claim for asylum are usually directed to the National

Police Immigration Service (PU) in Oslo. When an asylum application is submitted to the PU, the PU registers the application and conducts a short interview with the applicant. The aim of the interview is to establish the person’s family background, including whether he or she has any relatives or friends in Norway, the travel route to Norway and the reasons for seeking asylum. If the applicant is judged to be 14 years of age or older, the police take the applicant’s fingerprints, which are registered and checked in EURODAC, and try to obtain any other information regarding ties to States party to the Dublin II Regulation.

5.1.3. Inside the Territory

Responsibility for Processing the Claim

The Dublin System

Application and Procedure

Norway applies Council Regulation (EC) No 343/2003⁴ in cases where asylum-seekers first submitted their application or were granted a residence permit or a Schengen visa by a State party to the Dublin II Regulation. However, an exception is made for unaccompanied minor asylum-seekers (UAMs).

When an asylum application is submitted to the National Police Immigration Service (PU), the PU registers the application, carries out a short interview with the applicant, takes the applicant’s fingerprints, which are registered and checked in EURODAC, and obtains any other information regarding any ties the asylum-seeker may have to States party to the Dublin II Regulation.

The case is then sent to the Directorate of Immigration (UDI), which decides whether Norway or another State is responsible for the processing of the asylum application, pursuant to the Dublin II Regulation and national legislation.

If the UDI determines that another State is responsible for the application, it rejects the asylum application and the applicant must leave Norway. When the application is rejected, legal counsel is appointed for the applicant if he or she is not already represented. The applicant may appeal the decision within three weeks of notification, and may submit a petition for suspensive effect within 48 hours of the decision being served. PU gives the applicant a *laissez-passer* travel document and arranges for the applicant to be transferred to the responsible State.

⁴ Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (Dublin II Regulation).

Freedom of Movement/Detention

Asylum-seekers whose applications fall under the Dublin II Regulation may, as a rule, decide whether they wish to stay at an asylum reception centre or at a private address while the UDI processes their case.

It is the applicant's duty to be available at the registered address. If the applicants are staying at an asylum reception centre, they must give notice of where they will be staying, if they are to be away for more than three days. There are otherwise no limitations on applicants' freedom of movement.

Detention may be implemented in the following cases:

- The applicant refuses to state his or her identity or there are reasonable grounds for suspecting that the person has given a false identity. This applies to applicants who, for example, present a false passport or if, during registration, applicants are found to have tampered with their fingerprints. The detention period cannot exceed 12 weeks, except on special grounds
- The person has evaded the implementation of the Dublin II Regulation decision, and detention is necessary in order to secure implementation. In such cases, the detention period may last up to two weeks. Detention may be extended only twice, which means a maximum period of six weeks' detention.

As a rule, persons detained on these grounds are placed in an immigrant detention centre.

Suspension of Dublin Transfers

The Directorate receives and processes petitions for suspensive effect. The main rule for Dublin cases is that suspensive effect is not granted. A petition for suspensive effect may be granted by the Appeals Board (UNE) in special cases, particularly when the applicant is able to show that he or she is unfit for travel.

At times, Norway has refrained from transferring certain vulnerable groups from individual countries, on the basis of a concrete evaluation of the circumstances. Furthermore, transfers may be postponed or stopped if there is information that suggests that the applicant will be subject to *refoulement* if he or she is returned to the responsible State.

Review/Appeal

When the UDI has decided to transfer an applicant to the responsible State, the applicant has the right to appeal within three weeks of the decision. The

UDI prepares the appeal before it is forwarded to the Immigration Appeals Board.

Application and Admissibility

When registering an application for asylum, the police must determine whether the application fulfils the criteria for the normal procedure, the Dublin procedure or the accelerated procedures (the three-week procedure and the 48-hour procedure).

All applications, with the exception of those which are processed under the accelerated procedures, are then considered by the Directorate's Dublin unit. The remaining applications are sent to the coordination unit for determining whether the application will be processed under the three-week procedure, before being distributed to the responsible country unit.

Applications made by persons with a criminal record, repeat applications made within a year of a final rejection, and applications presented in order to delay the enforcement of an earlier or pending decision that would result in removal are transferred to an accelerated procedure. During this procedure, the UDI considers information given to the police during an extended registration process.

*Accelerated Procedures**Forty-Eight-Hour Procedure*

On 1 January 2004, Norway introduced the 48-hour procedure.

The Directorate has developed a list of countries⁵ for which the Directorate has sufficient information on the general security and human rights situation and from which the majority of applications have often been found to be manifestly unfounded. An asylum-seeker from one of these countries will initially have his or her application processed on its individual merits under the 48-hour procedure. Following an examination of the claim, those applications that are not found to be manifestly unfounded will be removed from the 48-hour procedure. The list of countries to which the 48-hour procedure applies is reviewed and updated on a regular basis.

⁵ As at February 2009, the list included the following countries and territories: Argentina, Australia, Austria, Barbados, Belgium, Bulgaria, Canada, Chile, Costa Rica, Croatia, the Czech Republic, Denmark, Estonia, the Faeroes, the Falklands, Finland, France, Germany, Gibraltar, Greece, Greenland, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Mongolia, the Netherlands, New Zealand, Poland, Portugal, Romania, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, the UK, the Ukraine, the USA, the Vatican City State. Applications from nationals of Cyprus are also considered according to this procedure.

Applicants in this procedure are accommodated at a transit reception centre in the Oslo area while awaiting removal.

Three-Week Procedure

The three-week procedure was introduced in June 2005. Under this procedure, the UDI processes the applications within three weeks of their registration by the police.

Asylum applications are processed under the three-week procedure if the applicant hails from one of the following countries: Albania, Belarus, Bosnia-Herzegovina, Georgia, Kosovo (minorities excepted), Macedonia (FYROM), Montenegro, Serbia and Russia (ethnic Russians). Information on the security and human rights situation in these countries of origin is considered to be thorough, and little or no further investigation or verification is required following the interview.

There is also an accelerated procedure for asylum-seekers with a criminal record, who are not in need of protection and who can be returned to the country of origin.

Appeals

Asylum-seekers whose claims are rejected under the accelerated procedure may make an appeal before the Immigration Appeals Board (UNE). A petition for suspensive effect may be granted, except where the claim for protection was considered by the UDI to be manifestly unfounded. When a case is processed within the 48-hour procedure, the asylum-seeker must submit a petition for suspensive effect within three hours of notification of the UDI decision.

Cases processed within the three-week procedure are given priority in appeal. The Appeals Board makes a determination on the appeal within three weeks.

Normal Procedure

After the asylum-seeker has been registered with the police, he or she is sent to a transit reception centre and, while there, is asked to complete a personal declaration form (available in 33 languages). The personal declaration form contains information on the applicant, any family members, and the basis for seeking asylum. The application is then forwarded to UDI, which will conduct an interview with the asylum-seeker.

Interviews are held on Directorate of Immigration premises or at the transit reception centre by specially trained UDI asylum caseworkers. The information is recorded in writing and the transcript of the interview is read to the applicant. After the interview has been conducted, the asylum-seeker is moved to a reception centre while the case is being processed.

Following the interview, caseworkers assess the merits of the claim in order to come to a decision. The following aspects of the case are examined in particular:

- Information obtained during the interview, from the registration form completed with the police and from the personal declaration form
- Any language tests and other checks (such as enquiries made to diplomatic missions abroad)
- Any other information provided by an organisation, the applicant or a representative of the applicant (including a legal representative, if appointed).

Review/Appeal of Asylum Decisions

Immigration Appeals Board

An asylum-seeker whose claim is rejected by the Directorate of Immigration is assigned a legal representative and given the option of appealing the decision before the Immigration Appeals Board (UNE) within three weeks of notification of the decision. The asylum-seeker may apply for an extension on the time limit for making an appeal by stating the reasons for such an extension. The asylum-seeker also has the option of making a request to reopen the claim if the deadline for appeal has passed.

The appeal is first processed by the UDI to determine whether there are any new elements in the case. If UDI does not amend its original decision, the appeal is forwarded to the UNE. The appeal has suspensive effect unless the case was found by the UDI to be manifestly unfounded.

Appeals may be decided according to a paper-based process, following a hearing held with the appellant and his or her legal representative, or following an ad hoc hearing without the appellant present.

The UNE hearings are chaired by a board leader who is assisted by two lay board members. The Board leaders are usually qualified magistrates. Cases submitted to the hearing process are decided by a majority vote.

Decisions made in individual cases cannot be reversed by the Ministry, the Government or UNE's administration, but may be appealed through the regular judicial system.

The Grand Board

A Grand Board located within the UNE may review cases that involve issues of principle, cases with wide-ranging economic and social consequences, and cases in which the UNE's practice has been found to vary. Three board leaders and four lay board members sit on the Grand Board.

Decisions of the Grand Board are precedent setting.

Freedom of Movement during the Asylum Procedure

Detention

Section 37 (6) of the Aliens Act provides that an asylum-seeker may be detained by police at the border if, upon arrival, he or she refuses to state his or her identity or if there are reasonable grounds to suspect that he or she has given a false identity. The detention period cannot exceed 12 weeks except on special grounds. Detained asylum-seekers are held in an immigration detention centre or regular prisons. According to Section 41 of the Immigration Act, detention may also be enforced if deemed necessary to ensure implementation of a final negative decision on an asylum claim.

Reporting

Asylum-seekers are obliged to report their whereabouts to the police, who will register a new address in the immigration authorities' data system. If an asylum-seeker is absent from the reception centre for more than three days without notice, he or she will be registered as having moved to an unknown address.

The police may also, as a substitute to detention, decide that an asylum-seeker must report on a regular basis.

Repeat/Subsequent Applications

A repeat asylum application may be made if the asylum-seeker provides the authorities with new information that he or she believes may affect the outcome of the asylum claim. The UNE decides whether the applicant will be allowed to remain in the country while his or her application is being processed.

If a person reapplies after receiving a final rejection on an initial claim, the UNE is responsible for processing the claim. However, if the applicant has been in the country of origin or outside Norway before reapplying, the UDI will process the application. The applicant has the right to appeal the UDI's decision to the UNE.

5.2 Safe Country Concepts

Apart from implementing the Dublin II Regulation and applying accelerated procedures for asylum claims from specific countries of origin⁶, Norway does not have in place any safe country policies.

⁶ See the section above on Accelerated Procedures for a list of the countries of origin subject to an accelerated procedure.

5.3 Special Procedures

5.3.1. Unaccompanied Minors

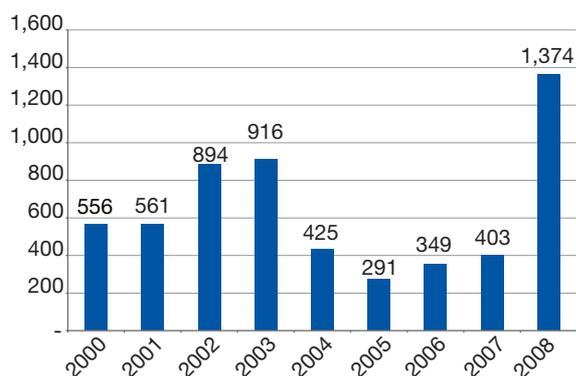
A special unit at the UDI handles applications made by unaccompanied minor asylum-seekers (UAMs). The caseworkers in this unit are specially trained to interview and assess their applications.

There is no minimum age for a person to seek asylum in Norway. Those claiming to be unaccompanied minors are registered by the police and placed under the care of the State Child Welfare programme if they are under 15 years old. Minors of that age group are accommodated in a centre run by specially trained staff. Those aged between 15 and 18 are offered accommodation in separate reception centres while the asylum claim is processed.

All minors are provided with a guardian who provides assistance during the asylum procedure. The minor applicant is also given the assistance of a lawyer free of charge.

Figure 4:

Unaccompanied Minors: Total Applications per Year, 2000-2008



Age Assessment

Age assessment in the form of dental X-rays is carried out if there is doubt about the stated age of a minor. Staff at reception centres, guardians, a lawyer and teachers may also be asked to provide an opinion on the age of the minor. The UDI is exploring possibilities for using X-rays of the hand and medical examinations by pediatricians as alternative methods of age assessment.

Age assessment is voluntary and will not be carried out unless the asylum-seeker confirms in writing that he or she agrees to take the test. Consent for age testing is obtained during the interview.

5.3.2. Group-based Protection

Group-based protection may be granted in cases of mass influx of displaced persons as a result of conflict. According to provisions in the law, the Government may decide if and when to grant protection to a specific group and when this protection will cease to apply.

A foreign national who is already in Norway may make an application to be granted protection on a group basis if he or she is affected by the group designation. Persons granted protection on this basis are entitled to a residence or work permit, which does not lead to permanent residence.

The permit may be renewed or extended for a period not exceeding three years from the date the applicant received a permit for the first time. Thereafter, a new permit may be granted that may constitute a basis for permanent residence (a settlement permit). A settlement permit may be granted one year following the renewal of the protection-based permit, provided that the conditions that led to the grant of the permit remain applicable.

Any application for asylum made by a person subsequently granted a permit under group-based protection may be suspended for a period not exceeding three years from the date the applicant received a permit for the first time. When the power to grant group protection has ceased, or a period of three years has elapsed since the applicant received a permit the first time, the person must inform the authorities whether he or she wishes to pursue the asylum claim. Any decision to grant a permit and to suspend an application for asylum is made by the Directorate of Immigration, which may also delegate these tasks to the Police.

5.3.3. Temporary Protection

Under the single asylum procedure, the UDI may grant temporary protection to persons who do not meet the criteria for Convention status or subsidiary protection but who have other compelling reasons to be granted a permit. Depending on the circumstances of the case, the permit granted may be issued with or without possibilities of renewal, family reunification or permanent residence (settlement).

Persons who are granted temporary protection are entitled to the same rights and benefits as those who are granted ordinary permits, but they are not eligible for the integration programme. The length of stay will correspond to the period of need, the minimum length usually being six months.

5.3.4. Stateless Persons

Asylum applications made by stateless persons are considered in the same manner as are all other asylum applications. The only unique consideration made is an assessment of whether the status of statelessness gives rise to humanitarian considerations if the person is found to not be in need of international protection. Persons who have no rights of residence in their host country and therefore are stateless in the true meaning of the word, and who cannot be returned to the host country will be given a residence permit in Norway based on humanitarian grounds. Such a permit on humanitarian grounds is granted to stateless persons by the UDI.⁷

6 Decision-Making and Status

6.1 Inclusion Criteria

Under the single procedure, the UDI will first consider whether a person meets criteria for Convention refugee status, then for subsidiary protection, and finally for a permit on humanitarian grounds.⁸

6.1.1. Convention Refugee

Convention refugee status is granted if the following conditions are met:

- The cause of persecution is connected to one of the grounds set out in Article 1A(2) of the 1951 Convention
- The persecution is of an individual nature
- Fear of persecution is the reason the applicant does not wish to return to his or her country of origin.

Gender-based persecution and persecution due to sexual orientation may also provide grounds for asylum.

⁷ The granting of a residence permit to stateless persons on humanitarian grounds is different and separate from the granting of a residence permit to rejected asylum-seekers on humanitarian grounds, which is a competence of the UNE (see Status and Permits Granted outside the Asylum Procedure, below).

⁸ As described below, UDI may also make a decision as follows: application of the 15-month rule, suspension of removal, grant of a temporary permit to persons whose identity has not been established, and determination of a manifestly unfounded claim.

Box 1:
Asylum Case Law: Defining Who is a Refugee

A precedent-setting ruling by the Norwegian Supreme Court in the Abdi case ¹ in 1991 provided an interpretation of the refugee definition found in the 1951 Convention. According to the Court, the refugee definition has a core area defined by public international law, while outside this core area, States are allowed a margin of interpretation. The Court's decision also raised issues concerning whether the rejected asylum-seeker, Abdi, could be considered a refugee "sur place," and what constituted a "burden of proof" and "real risk."

¹ *Abdi v. Norwegian Ministry of Justice and Police (RT, 1991 s. 586).*

6.1.2. Subsidiary Protection

A residence permit may be granted on protection grounds if a person does not meet the inclusion criteria for Convention refugee status but runs a risk of torture or other inhuman or degrading treatment or a situation of general unrest that may lead to life-threatening danger if he or she is returned to the country of origin. The grant of subsidiary protection fulfils Norway's obligations under the ECHR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

6.1.3. Humanitarian Status

If a person does not meet the criteria for Convention refugee status or subsidiary protection, decision-makers must determine whether the asylum-seeker may be granted a permit on humanitarian grounds. Grounds such as serious health problems, a situation of armed conflict in the country of origin, or child- or gender-sensitive considerations may lead to the granting of a permit on humanitarian grounds.

Victims of human trafficking may also be granted a residence permit on humanitarian grounds if they do not qualify for protection.

6.2 The Decision

The UDI caseworker, after having considered all information pertinent to the asylum claim, presents a proposal for a decision to a senior caseworker. Both caseworkers then sign the decision.

Decisions (positive or negative) are always given in writing. Negative decisions are sent to an appointed lawyer who will inform the applicant. If the decision is positive, the

UDI sends the decision to the police, who will inform the applicant in writing. Negative decisions are reasoned.

6.3 Types of Decisions, Status and Benefits Granted

UDI may make the following types of decisions:

- Grant of Convention refugee status
- Grant of subsidiary protection
- Grant of humanitarian status
- Grant of a residence permit according to the 15-month rule. This applies when the asylum claim has been in the procedure for more than 15 months, the applicant is not to blame for the delay, and the identity of the applicant was established at an early stage in the procedure
- Suspension of removal – removal may be suspended as a result of developments in the country of origin
- Grant of a temporary permit for medical reasons or on humanitarian grounds in the absence of an established identity
- Determination of a manifestly unfounded claim.

Benefits

Beneficiaries of Convention refugee status, subsidiary protection, humanitarian status, and the 15-month rule are entitled to the following:

- A provisional residence permit, usually valid for one year, and with the right of renewal. The person is entitled to apply for a permanent residence permit after three years
- Right to work
- Right to family reunification, usually for a spouse or cohabitant (over the age of 18) and/or children under the age of 18 without a spouse or cohabitant
- Social benefits – beneficiaries are subject to Act No. 19 of 28 February 1997 concerning National Insurance, and are entitled to health care, child benefits, and education.

Beneficiaries of group-based protection are entitled to the following:

- A provisional residence permit
- Right to work
- Some social benefits.

Beneficiaries of suspension of removal have the right to work during the period of suspension.

6.4 Exclusion

Exclusion applies to both refugees and beneficiaries of subsidiary protection. It does not apply to suspension of removal. The grounds for exclusion are Article 1F of the 1951 Convention and security-risk cases. Excluded persons may be granted a one-year renewable residence permit if they cannot be returned to the country of origin.

The UDI considers Article 1F of the 1951 Convention when examining an asylum claim and has a special unit responsible for assessing exclusion cases.

If a person has been excluded, he or she has the right to lodge an appeal within three weeks of notification of the decision. If the UDI does not amend the decision before the case proceeds to appeal, the UNE has the authority to confirm, change or annul the decision. A person who has been excluded also has the right to ask the determining body to review its decision if the right to appeal is no longer possible. However, the determining body is not required to consider the request.

According to its obligations under the ECHR and CAT, Norway does not forcibly return excluded persons. An excluded person is not entitled to a residence permit on refugee or subsidiary protection grounds, but may be granted a residence permit on humanitarian grounds with or without restrictions depending on the circumstances of the case. The permit may be renewed as long as international obligations under ECHR and CAT pose an obstacle to return. In addition, the permit may not lead to the possibility of family reunification and/or obtaining a permanent residence permit. Application for an immigration passport may also be rejected in cases of exclusion.

6.5 Cessation

The cessation clauses of the 1951 Convention are applied in individual cases of expulsion and revocation of status, as well as when changes have occurred before asylum applications have been decided. Article 1C of the Convention is incorporated in section 16 of the Immigration Act.⁹

The cessation clauses do not apply to subsidiary protection under current Norwegian legislation.

Cessation considerations may be triggered in such instances as when the Police forward to the UDI information concerning trips taken by refugees to their country of origin or when information comes to light during applications for permit renewals.

Each case is considered individually and no concept of automatic cessation is applied. The main rule, however, is that return to the country of origin is seen as grounds for cessation and the refugee must provide a credible explanation for requiring international protection. Prior consent from authorities, such as participation in a voluntary return programme, would normally not lead to cessation considerations. Because of the relatively strict practice in relation to Article 1C(1), Article 1C(4) is rarely invoked.

With regard to changed circumstances, the main requirement for cessation is whether the claim of persecution as outlined in Article 1A(2) of the 1951 Convention remains valid. The country situation is therefore closely monitored and assessed to determine whether the changed circumstances are lasting.

According to Norwegian Law, the refugee claimant in question will be notified in advance that the Directorate of Immigration is considering cancellation of status on the basis of cessation, and will have the opportunity to object before a decision is made.

Cessation of refugee status does not automatically lead to loss of the legal right to stay. According to section 64 of the Immigration Regulation, the Directorate of Immigration is obliged to consider the granting of other types of permits in such cases.¹⁰

6.6 Revocation

In addition to the application of the cessation clauses of the 1951 Convention (described above), according to Norwegian law, the UDI may revoke or withdraw status if it comes to light that the refugee provided false information or concealed information that had or would have had an important effect on the decision on the asylum claim.

The UDI will notify the person in advance if the Directorate is considering revocation of a person's residence permit, and he or she will have the opportunity to object before a decision is made.

Refugees who receive a decision to revoke status may appeal within three weeks of notification of the UDI's decision. If the UDI does not amend the decision before it proceeds to appeal, UNE has the authority to confirm, change or annul the decision. An asylum-seeker also has the right to ask the determining body to review its decision if the right of appeal is no longer possible.

⁹ See the annexe to the chapter for the content of section 16 of the Act.

¹⁰ The person's appeal rights are described under the section on Revocation.

Box 2:**Country of Origin Information (COI) Research as a Specialised Profession in Norway**

In the last decade, the provision of COI has undergone important developments, chief among them the increased professionalisation of the service. In the 1990s, country of origin information was collected in-house by senior caseworkers at the UDI and the Ministry of Justice, in what was largely a paper-based process. With the creation of the Immigration Appeals Board in 2001, COI analysts at the Ministry of Justice were transferred to the new appeals body while a COI documentation unit was established at the UDI. The new documentation unit set out to introduce an electronic database from which asylum decision-makers could easily have access to all relevant COI.

The creation of Landinfo in 2005 marked a further step in the professionalisation of COI research. Landinfo brought together COI expertise from the UDI and UNE, consolidating COI services for the first instance (UDI), the Immigration Appeals Board, and the Ministry of Labour and Social Inclusion within a single, independent entity. Landinfo is staffed by regional advisors (COI analysts) who, in addition to undertaking fact-finding missions, may be called on to provide expert testimony in asylum court proceedings, and to engage in COI training activities for immigration and asylum authorities. Increasingly, Landinfo is asked to provide country information not only for asylum decision-makers, but for a wider range of immigration authorities. The outlook for COI in Norway is one of continued development towards improving the quality and transparency of Landinfo's service.

6.7 Support and Tools for Decision-Makers

6.7.1. Country of Origin Information

Landinfo is an independent body within the Directorate of Immigration (UDI) responsible for providing up-to-date information on asylum-seekers' countries of origin to the Directorate of Immigration, the Immigration Appeals Board and the Ministry of Labour and Social Inclusion. Landinfo employs regional advisors who collect and analyse information and produce reports on the political, human rights, and security situation in countries of origin. Part of their methodology involves undertaking fact-finding missions to key countries and regions.

All COI reports are accessible to asylum decision-makers via an internal database. Some COI reports are also made available to the public on the Landinfo website (www.landinfo.no/).

6.7.2. Exclusion Unit

On 1 January 2009, the UDI unit handling cases involving exclusion and security risks was established.

6.7.3. Language Analysis

The police or UDI may conduct a language test by recording its conversations with asylum-seekers, upon the asylum-seekers' consent. The recordings are sent to the Swedish language analysis firm (Språkanalys AB), which will make a determination on the country or the region of origin of the applicant. The conclusions of the language analysis are considered among the many elements that may determine the final decision of the UDI.

6.7.4. Special Training Unit

The UDI has established its own education unit with the aim of enhancing the competence of its staff through tailored training courses.

The Asylum Department also has a specific team of staff members who are responsible for refugee law, international development and work in this area, and the law more generally. The team acts as a support unit for the entire department.

7 Efficiency and Integrity Measures

7.1 Technological Tools

7.1.1. Fingerprinting

All foreign nationals, including asylum-seekers, arriving in Norway have an obligation to provide information on their identity. To assist with establishing the identity of asylum-seekers and to determine whether the Dublin II Regulation is applicable, the National Police Immigration Service in Oslo takes fingerprints at the time of registration. Only asylum-seekers over the age of 14 are fingerprinted.

7.1.2. DNA Tests

While doing so is rare, the UDI may request a DNA test in asylum cases. Such tests may be used to establish family ties if doing so is important in making a determination regarding humanitarian status. DNA tests are much more frequently used in cases concerning family reunification.

7.1.3. Forensic Testing of Documents

The UDI may make a request to the police to verify identity documents when there are doubts about their authenticity. The documents are sent to the police department that specialises in fraudulent documents. Forensic testing of documents is rarely undertaken in the asylum procedure as most asylum-seekers claim not to be in possession of identity documents.

7.1.4. Database of Asylum Applications/Applicants

All foreign applicants and their applications for asylum or residence permits in Norway are registered in a dedicated database. All concerned government agencies, such as the Police, UDI, and UNE, regularly update and use the information in the database.

7.2 Length of Procedures

As noted above, there are time limits for turnaround of decisions in the 48-hour procedure and the three-week procedure. The claims of unaccompanied minors are handled on a priority basis.

There are no time limits for asylum-seekers to turn in their applications or for the turnaround of decisions under the normal procedure.

7.3 Pending Cases

At the end of 2008, there were 9,314 pending cases. In order to reduce the backlog, the Directorate of Immigration has hired additional caseworkers, reorganised the Asylum Department and introduced pilot projects.

One of the projects is the application of a fast-track procedure for particular groups for which a large proportion of the applications are expected to be rejected, based on experience with similar applications. The Directorate of Immigration (UDI) and the Police established the fast-track pilot in a transit reception centre in Oslo, to process asylum applications from Iraqis that can be decided quickly. The objective of the project is to ensure that the entire procedure, including registration, interview, processing and decision-making, becomes more efficient. Having every step of the process take place at the reception centre is the main mechanism used to achieve this.

7.4 Information Sharing

Norway is a party to the Dublin II Regulation. Specific information on asylum-seekers may therefore be released to other States party to the Regulation in

accordance with Article 21 of the Dublin II Regulation.¹¹ Information on an asylum-seeker cannot be released unless the asylum-seeker consents to it.

7.5 Single Procedure

Asylum-seekers need to make only one application for international protection for the Norwegian authorities to assess whether they will be granted Convention refugee status, subsidiary protection or a permit on humanitarian grounds.

Box 3: Cooperation with UNHCR

The UNHCR Regional Office for the Baltic-Nordic Region, located in Stockholm, Sweden, has no formal role in the Norwegian asylum procedure. However, upon the request of a party in the procedure, UNHCR may provide updated country of origin information (COI), legal advice or UNHCR's recommendations and guidelines. In exceptional precedent-setting cases, the UNHCR may submit *amicus curiae* to the last instance body.

As noted above, the new Immigration and Asylum Act, which will come into effect in 2010, contains a reference to cooperating with UNHCR, in accordance with Article 35 of the 1951 Convention.

8 Assistance and Reception Benefits for Asylum-Seekers

8.1 Procedural Support and Safeguards

8.1.1. Legal Assistance

Access to legal counsel is regulated through the Legal Assistance Act, which applies to every person in Norway, regardless of residence status. Asylum-seekers are given additional rights through the Immigration Act and the Administrative Regulation on Fee Rates for Legal Advisors.

Legal counsel is available to asylum-seekers at the applicant's expense. Legal aid is provided by the authorities in the first instance to unaccompanied minor asylum-seekers and to applicants who are found to pose a threat to national security, to whom exclusion clauses may apply or whose claims may affect diplomatic relations. In addition, asylum-seekers

¹¹ See the annexe on Selected Regional Instruments for the content of this provision.

who have received a negative decision on their claim are provided the services of a legal counsel for a period of five hours at the UDI's expense.

Legal counsel in other matters is available to asylum-seekers at the applicant's expense. General free legal aid regulations may apply and are available to asylum-seekers.

8.1.2. Interpreters

Asylum-seekers have access to the services of an interpreter and may have any necessary documents translated throughout the process and at appeal. The UDI Asylum Department has a separate unit that provides interpretation, translation, and other language services. Interpreters, language analysts and translators are hired from outside the UDI Asylum Department. The UNE has access to the same pool of interpreters.

8.1.3. UNHCR

The UNHCR Regional Office in Stockholm responds to inquiries from asylum-seekers and refugees and provides general information about the asylum procedure, contact details of legal counselors as well as contact details of relevant national institutions. The UNHCR office also provides training, advice and information to NGOs and lawyers who have direct contact with asylum-seekers.

8.1.4. NGOs

The Norwegian Organisation for Asylum-Seekers (NOAS) aims to advance the interests of asylum-seekers in Norway. According to NOAS' principle, the organisation provides legal aid or general welfare to persons who seek and/or have been granted asylum status and protection in Norway.

The services of NOAS, including legal aid, information provision, academic and political efforts, aim at ensuring that asylum-seekers have the appropriate judicial and welfare assistance during the procedure. NOAS may also act as legal counsel for some asylum-seekers.

8.2 Reception Benefits

The Ministry of Labour and Social Inclusion has overall responsibility for the reception of asylum-seekers.

8.2.1. Accommodation

Transit Centres

Asylum-seekers are initially accommodated in transit centres where they undergo medical exams and an interview. Asylum-seekers whose cases are being handled within the accelerated procedure (48-hour or three-week) or who are subject to the

Dublin II Regulation are accommodated in transit centres for the duration of the procedure. Families with children are offered accommodation in regular asylum centres.

As a consequence of the large increase in the number of asylum-seekers since the autumn of 2007, the transit centres are at full capacity. Therefore, persons with cases being considered under the Dublin II Regulation are being temporarily placed at regular asylum centres.

Asylum Centres (Reception Centres)

When the applicant has concluded an asylum interview, he or she is transferred to an asylum centre, where he or she is accommodated until a final decision is reached.

Asylum-seekers must take up residence in asylum centres in order to receive financial support. Alternative accommodation arrangements may be made in special cases, such as for those suffering from an illness. They may stay with family members or be temporarily settled while their case is being processed.

Asylum-seekers must participate in activities such as cleaning their own rooms and shared facilities, as well as in outdoor tasks while they are being accommodated at asylum centres.

8.2.2. Social Assistance

Asylum-seekers residing at a reception centre receive a cash allowance from the UDI. The amount of this allowance varies according to the type of reception centre (transit or regular) and whether these centres include canteens.

8.2.3. Health Care

Asylum-seekers have access to the same health care benefits as do other residents of Norway.

8.2.4. Education

Asylum-Seekers Aged Six to 16

Asylum-seeking children, whether accompanied or not, have the right and obligation to attend primary and secondary school until the age of 16.

Asylum-Seekers Aged 16 to 18

The municipalities are responsible for vocational education for asylum-seekers between 16 and 18 years of age. Persons in this age group may have access to vocational education, which is necessary for pursuing further education. The State is responsible for providing secondary education, to which asylum-seekers have

access. Asylum-seekers may also apply for financial support to pursue this education.

Adult Asylum-Seekers

Adult asylum-seekers are entitled to receive Norwegian language training once they are transferred to regular reception centres.

8.2.5. Access to Labour Market

Asylum-seekers may be granted a temporary work permit until their case has been decided. The following conditions must be met:

- The asylum interview has taken place
- There is no doubt about the identity of the asylum-seeker
- He or she is above the age of 15. The legal guardian's consent is necessary if the asylum-seeker is between 15 and 18 years old.

The permit is valid until a final decision is issued and if the appeal following the first rejection from the first instance is given suspensive effect. The temporary work permit is not granted to persons who may return voluntarily. The decision to not grant a temporary work permit cannot be appealed.

8.2.6. Family Reunification

No possibilities for family reunification exist for asylum-seekers awaiting a final decision on their claim.

8.2.7. Access to Integration Programmes

As noted above, asylum-seekers are offered Norwegian language classes at reception centres while they await a final decision on their claim.

All asylum-seekers must take part in an information programme about Norwegian society upon their arrival in reception centres. They can also participate in sports and cultural activities. The costs of these activities for children may be covered by the UDI.

8.2.8. Access to Benefits by Rejected Asylum-Seekers

Asylum-seekers who have received a final negative decision on their claim may no longer be accommodated in a regular reception centre but are offered accommodation in a return centre. Rejected asylum-seekers have access to emergency health care but are required to cover all medical expenses. They are also provided with a cash allowance. Children may continue to attend school.

Rejected asylum-seekers may make an application to work until return is implemented. They are also eligible for emergency social assistance.

9 Status and Permits Granted outside the Asylum Procedure

9.1 Humanitarian Grounds

According to Article 21(C) of the Immigration Regulations, the Immigration Appeals Board (UNE) may grant a permit on humanitarian grounds to an asylum-seeker who has received a final negative decision, under the following conditions:

- More than three years have passed since his or her application for asylum was made and it is not likely that removal will be possible
- There is no doubt about the identity of the applicant; as a rule, the applicant must have cooperated to prove his or her identity
- The applicant must have cooperated on return efforts
- There must be no reasons for expulsion, such as on the grounds of having committed criminal offences.

A residence permit on humanitarian grounds may be granted one year after the final negative decision or later, and not before all asylum procedures are completed. The permit is renewable, and after three years a permanent residence permit may be granted.

9.2 Withholding of Removal/Risk Assessment

Once a negative decision on an appeal has been reached by the UNE, a rejected asylum-seeker may be removed from Norway. However, in special cases and on a case-by-case determination, the UNE may be contacted by the Police before removal, for a reconsideration of the case. This may be warranted if the situation in the country of return has changed since the rejection of the application.

9.3 Temporary Protection

Temporary permits on humanitarian grounds may be granted in cases in which the person requires specific medical treatment or attention in Norway.

9.4 Group-based Protection

As described above, the Government may grant group-based protection in situations of mass influx. The residence or work permit is temporary (Article 8a of the Immigration Act and Article 21a of the Immigration Regulations).¹²

10 Return

10.1 Pre-departure Considerations

Rejected asylum-seekers who are accommodated in reception centres are given information on the voluntary return programme (VARP), which is implemented by the IOM. In addition, obligatory individual counselling is part of the return preparatory activities in the centres. IOM is also implementing an outreach information campaign as part of the VARP information activities. This outreach information campaign is directed at persons without a residence permit who are staying outside of the reception centres.

For Afghan and Iraqi nationals, Norway offers a special return and reintegration programme that includes specific information and career planning prior to departure to their home countries. Beneficiaries of these programmes receive reintegration support in cash as well as in kind after return.

UDI is now in the process of reviewing and looking into return information routines, procedures and methodologies in order to improve the provision of return information.

10.2 Procedure

If the Norwegian authorities reject an application for asylum, and there are no grounds for granting a residence permit on protection or humanitarian grounds, the asylum-seeker must leave the country (as per Article 41 of the Immigration Act). He or she must contact the police for an agreement on voluntary return. Alternatively, the asylum-seeker may apply to the IOM for assistance with his or her return. If the person does not leave the country voluntarily, the police may escort him or her to the country of origin.

10.3 Freedom of Movement/ Detention

Detention may be implemented if the applicant refuses to state his or her identity or if there are reasonable grounds for suspecting that the person has given a false identity. This condition applies to applicants who, for example, present a false passport or are found during registration to have tampered with their fingerprints. The detention period cannot exceed 12 weeks, except on special grounds.

Detention may also be implemented if it is necessary in order to secure implementation of a final rejection. In such cases, the detention period is a maximum of two weeks. Detention may be extended only twice, which means a maximum period of detention of six weeks. The National Police Immigration Service makes the decision to detain someone pending removal.

10.4 Readmission Agreements

Norway has completed readmission agreements with the following countries of origin: Afghanistan (tripartite agreement), Bosnia, Croatia, Moldova, Romania, Slovakia, Switzerland, Sweden and Vietnam. A readmission agreement with Russia has been signed and is now being implemented. Readmission agreements have also been signed with Hong Kong, Macedonia (FYROM) and Ukraine. The government has given high priority to establishing a readmission agreement with Iraq.

¹² The content of Article 8a of the Immigration Act can be found in the annexe to the chapter.

11 Integration

Established by the Introductory Act of 2005, the right and obligation to take part in the introductory programme and Norwegian language classes are important measures in the Norwegian integration policy. Refugees, persons granted humanitarian status, persons who have obtained group-based protection and their family members between 18 and 55 years of age have a statutory right and obligation to take part in the programme.

Box 4: The Government's Commitment to Integration

The Norwegian Government wishes to pursue an active integration and social inclusion policy. As part of the government's budget for 2009, a comprehensive Plan of Action for integration and social inclusion of the immigrant population was presented. The objectives of the Plan are to prevent lower participation rates and poorer living conditions among immigrants than those found within the population in general; to facilitate immigrants' contribution to the Norwegian labour market and society as quickly as possible; and to ensure equal opportunities for migrants and their offspring. Additional labour market measures, Norwegian language classes, and targeted assistance for immigrants are also central elements of the plan.

The purpose of the programme is to provide basic Norwegian language skills, basic insight into Norwegian society, and preparation for participation in work life and/or education. Participants receive an introduction benefit that is equivalent to twice the basic amount from the National Insurance Scheme. The annual benefit is now NOK 133,624. The duration of the programme may be up to two years, with an extension in the case of an approved absence. Municipalities provide programmes for immigrant residents as soon as possible after arrival and no later than three months after a person's arrival. Monitoring and evaluation conducted in 2007 indicate that the effects of the programmes are positive and that the main elements in the Introductory Act have been implemented in the municipalities to a large extent.

Since 2005, it is compulsory for certain newly arrived adult immigrants to take 300 lessons in Norwegian language and social studies. Beyond the compulsory instruction, those who have further need for instruction will have the opportunity to take additional classes (up to 3,000 lessons, depending on the needs of

the individual). This system applies to those who are refugees, persons granted humanitarian status, persons granted group-based protection and their family members. Persons who come from outside of the European Economic Area/European Free Trade Area (EEA/EFTA) and have a work permit are entitled to take part in 300 lessons of instruction, but have no legal right to take the courses free of charge. People from the EEA/EFTA have no legal obligation to take part in language courses.

12 Annexe

12.1 Selections from the Immigration Act (1988)¹³

CHAPTER 3 PROTECTION AGAINST PERSECUTION (REFUGEES, ETC.)

§ 8 a. Collective protection in a situation of mass outflow

(...) Any foreign national who is included in the situation of mass outflow and who comes to the realm or is here when this section comes into effect, may on application be given protection on the basis of a group assessment (collective protection). This means that the foreign national is granted a work permit or a residence permit pursuant to § 8 second paragraph. Such a permit does not constitute a basis for a settlement permit (...)

§ 15. Protection against persecution

Any foreign national must not pursuant to the Act be sent to any area where the foreign national may fear persecution of such a kind as may justify recognition as a refugee, or where the foreign national will not feel secure against being sent on to such an area. Corresponding protection shall apply to any foreign national who for reasons similar to those given in the definition of a refugee is in considerable danger of losing his life or of being made to suffer inhuman treatment.

When the authority with the power of decision in a matter under the Act concludes that any foreign national does not come under the provisions of the first paragraph of this section, it shall on its own initiative consider whether the provisions of § 8 second paragraph should be applied.

Protection in accordance with the first paragraph does not apply in the case of any foreign national whom there are reasonable grounds for regarding as a danger to national security or who, having been convicted by a legally enforceable judgement of a particularly serious crime, constitutes a danger to the community. Nor does protection apply when there are circumstances of the kind mentioned in the Convention relating to the Status of Refugees, Article 1 F.

Protection in accordance with the first paragraph applies in the case of all forms of decision under the Act.

§ 16. Refugee

A refugee within the meaning of the Act is any foreign national who falls under Article 1 A of the Convention relating to the Status of Refugees of 28 July 1951, cf. the Protocol of 31 January 1967.

Any refugee who falls under Article 1 C - F of the Convention relating to the Status of Refugees may be totally or partly denied the rights and the protection which are laid down in this Chapter and which do not apply to administrative procedure.

Nevertheless any refugee who falls under Article 1 C - E cannot be denied protection against persecution pursuant to § 15.

§ 17. The right to asylum (refuge), etc.

Any refugee who is in the realm or at the Norwegian border has on application the right to asylum (refuge) in the realm. This does not, however, apply to any refugee who

- a) falls under the exceptions to the provisions concerning protection in § 15 third paragraph or § 16 second paragraph,
- b) has been granted asylum in another country,

¹³ Act Concerning the Entry of Foreign Nationals into the Kingdom of Norway and Their Presence in the Realm (Immigration Act) (last amended 28 July 2002), 24 June 1988. Available online on UNHCR Refworld at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=3ae6b4fd14&skip=0&query=Norway%20immigration%20act> [accessed 27 February 2009].

c) has travelled to Norway on his or her own initiative after having acquired protection in another country, or after having stayed in a state or area where the refugee was not persecuted nor had any reason to fear repatriation,

d) at the demand of the Norwegian authorities must be accepted by another Nordic state in accordance with the rules contained in the Nordic Passport Control Convention,

e) must be denied asylum on the grounds of compelling social considerations.

The power to return a refugee to another state pursuant to sub-paragraphs c and d in the first paragraph of this section shall not be used if the refugee has any connection with the realm which makes Norway the most appropriate country to give the refugee protection.

The refugee's spouse or cohabitant and children under the age of 18 years without spouse or cohabitant also have the right to asylum unless there are particular reasons to the contrary.

Any passport or other travel document of which the applicant is in possession must be submitted together with the application for asylum.

The King may by regulations lay down that any foreign national who applies for asylum must reside in the municipality in which the foreign national is placed until the application has been finally decided.

Any asylum-seeker may be granted a temporary work permit or residence permit until the application for asylum has been decided. An asylum-seeker who has received final rejection which for the time being is not being implemented may on request be granted temporary leave until the rejection is implemented. The King may lay down further rules by regulations. Such leave is granted by the Directorate of Immigration, which may also empower the police to grant such leave. Chapters IV to VI of the Public Administration Act concerning preparation of cases, decisions and appeals do not apply to any decision concerning temporary leave.

Amended by Act No. 5 of 10 Jan. 1997 (commencement 15 June 1997 pursuant to Decree No. 489 of 23 May 1997) and by Act No. 22 of 30 April 1999 (immediate commencement pursuant to Decree No. 427 of 30 April 1999). To be amended by Act No. 67 of 16 July 1999 (commencement from such date as the King decides).

§ 18. The effect of asylum

The granting of asylum means that the foreign national has the status of a refugee and is granted a work permit or a residence permit. The foreign national has the juridical status that follows from Norwegian law and the Convention relating to the Status of Refugees or any other agreement with a foreign state on refugees.

Asylum granted may be revoked when the refugee no longer falls under the definition of a refugee, cf. § 16, or if this otherwise follows from general rules in public administrative law. Any decision to revoke is made by the Directorate of Immigration.



12.2 Statistical information

Figure 5:

Asylum Applications from Top Five Countries of Origin for 1997, 2002 and 2008

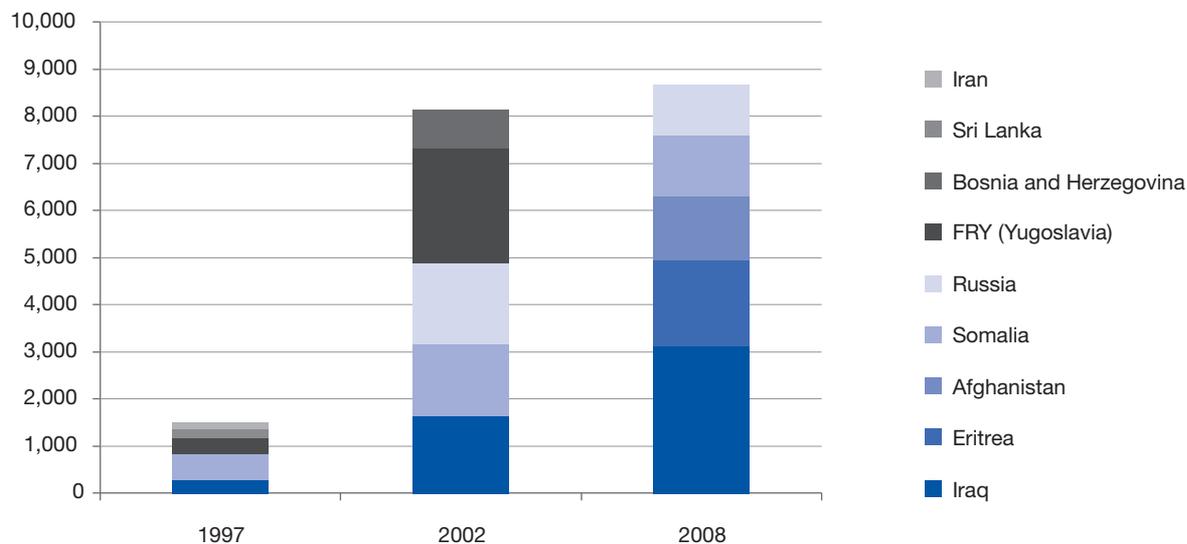


Figure 6:

Decisions Made at the First Instance, 1992-2008

Year	Convention Status		Complementary Protection and Other Authorisations to Remain		Rejections		Other Decisions*		Total Decisions
	Count	% of total	Count	% of total	Count	% of total	Count	% of total	
1992	63	2%	1,044	26%	2,884	72%	0	0%	3,991
1993	54	1%	471	9%	4,685	90%	0	0%	5,210
1994	22	0%	1,353	28%	2,963	62%	424	9%	4,762
1995	29	1%	913	34%	1,414	53%	320	12%	2,676
1996	6	0%	610	29%	1,410	66%	111	5%	2,137
1997	83	4%	550	23%	1,531	65%	199	8%	2,363
1998	86	2%	1,594	38%	2,260	54%	218	5%	4,158
1999	198	2%	2,609	33%	3,301	41%	1,872	23%	7,980
2000	90	1%	2,864	26%	5,227	47%	2,937	26%	11,118
2001	292	2%	4,036	28%	8,976	61%	1,357	9%	14,661
2002	332	2%	2,958	17%	12,829	72%	1,734	10%	17,853
2003	585	4%	2,972	18%	11,834	72%	1,016	6%	16,407
2004	457	4%	3,023	24%	8,289	66%	752	6%	12,521
2005	579	8%	1,935	26%	4,289	57%	685	9%	7,488
2006	461	11%	1,225	29%	2,025	48%	505	12%	4,216
2007	1,013	16%	1,921	30%	2,945	46%	573	9%	6,451
2008	1,077	11%	1,975	20%	5,963	61%	685	7%	9,700

*Other decisions may include withdrawn claims, abandoned claims or claims otherwise resolved.

Spain



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1 Background: Major Asylum Trends and Developments

Asylum Applications

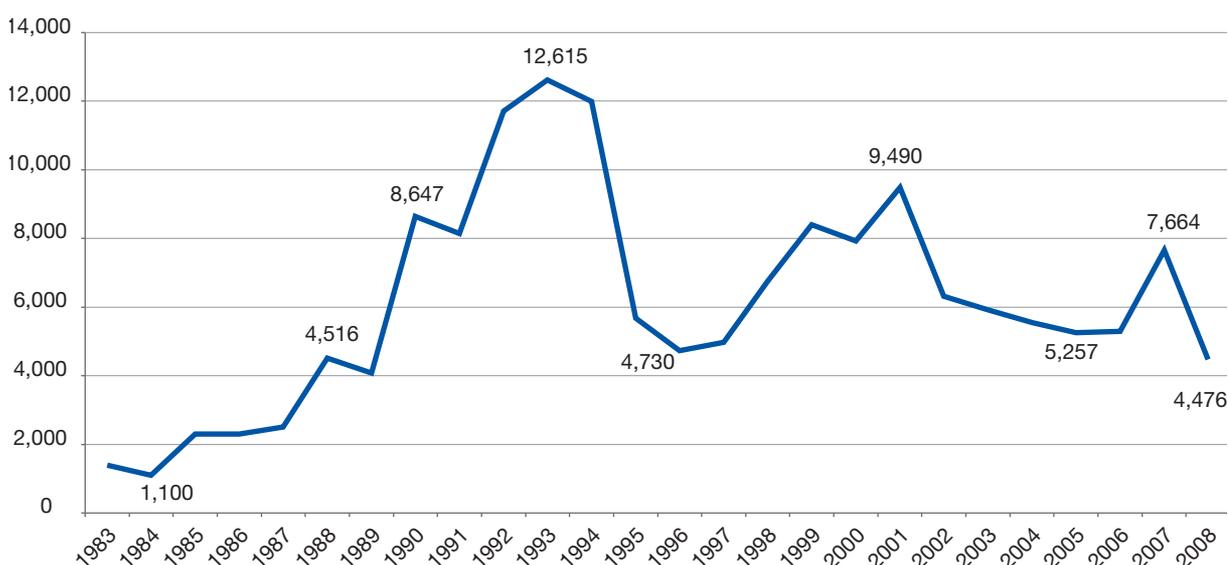
From the early to mid-1980's, Spain was receiving between 1,000 and 2,500 asylum applications per year. The numbers increased significantly to 4,500 in 1988 and peaked at over 12,600 in 1993. From 1993 to 1996, numbers decreased significantly. Annual inflows in more recent years have been between 5,000 and 9,000. In 2008, Spain received a total of 4,476 asylum claims, an important drop from the previous year.

Important Developments

Law 5/1984 regulating the Right to Asylum and Refugee Status underwent significant reforms in 1994,¹ a reflection of Spain's preoccupation with safeguarding the integrity of the asylum system against abuse while also ensuring better protection for refugees. Key changes included the elimination of dual status (refugee status and asylum status), the introduction of an admissibility procedure (screening phase) for all asylum claims made in-country or at the border, and the possibility of obtaining a residence permit on humanitarian grounds.

Figure 1:

Evolution of Asylum Applications in Spain, 1983-2008*



* First applications only

Top Nationalities

In the 1990's, the majority of asylum-seekers originated from Romania, Nigeria, Algeria and Cuba. Since 2000, the top countries of origin have been Colombia, Nigeria, Algeria, Mali, Guinea (Conakry), Ivory Coast and Cuba.

Figure 2:

Top Five Countries of Origin in 2008*

1	Nigeria	801
2	Colombia	753
3	Ivory Coast	496
4	Somalia	195
5	Algeria	151

* First applications only

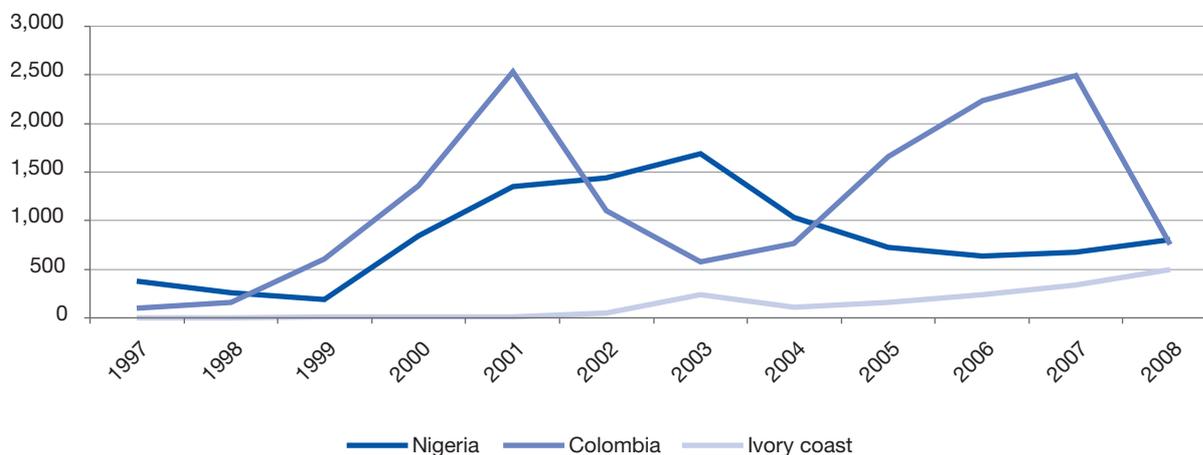
In addition, the border procedure became an accelerated procedure, whereby the Ministry of Interior had four days from the time of application to decide whether the claim was admissible, and rejected asylum-seekers had a right of appeal within 24 hours, that was to be solved in two days. Manifestly unfounded claims or claims made by persons subject to a transfer under Council Regulation (EC) No 343/2003² could be deemed inadmissible. Under Law 1/1996 (10 January), asylum-seekers became entitled to free legal assistance if they lacked financial resources.

¹ Reforms in 1994 were a result of amendments contained in Law 9/1994.

² Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (Dublin II Regulation).

Figure 3:

Evolution of Applications* from Top Three Countries of Origin for 2008



* First applications only

Between 2003 and 2007, further reforms to the asylum procedure were introduced and included the following:

- The transposition into national law of Council Directive 2001/55/EC on temporary protection³ and Council Directive 2003/9/EC on reception conditions⁴
- The introduction of grounds for granting complementary protection to persons who do not meet the criteria for Convention refugee status but who run a serious risk to life or physical integrity if returned to the country of origin
- The granting of a work permit to asylum-seekers who are awaiting a decision on their claim at the first instance six months after having made the application for asylum
- Organic law 3/2007, introduced to regulate gender equality, such that persons claiming gender-based persecution could be recognised as Convention refugees.

Reforms to the existing Asylum Law are currently being drafted for consideration by the national Parliament. Any changes to asylum procedures flowing from these reforms would therefore be introduced in the second half of 2009, at the earliest.

3 Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (Temporary Protection Directive).

4 Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum-seekers (Reception Directive).

2 National Legal Framework

2.1 Legal Basis for Granting Protection

The granting of asylum and refugee status in Spain is governed by Law 5/1984 regulating the Right to Asylum and Refugee Status (Asylum Law), amended by Law 9/1994. A series of regulations, such as those concerning temporary protection, the rights and freedoms of foreign nationals and the social integration of foreign nationals in Spain, also have a bearing on the asylum procedure.

The European Convention on Human Rights (ECHR) and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) have been included in national law governing asylum.

2.2 Pending Reforms

As noted above, proposals for reforms to the asylum procedure are currently being drafted and will be presented to Parliament. The proposals for reforms include, *inter alia*, the transposition into Spanish law of Council Directive 2004/83/EC⁵ and Council Directive 2005/85/EC⁶. It is expected that, upon the approval of Parliament, the reforms will be introduced later in 2009.

5 Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (Qualification Directive).

6 Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (Asylum Procedures Directive).

3 Institutional Framework

3.1 Principal Institutions

The Asylum and Refuge Office (Oficina de Asilo y Refugio, OAR), which falls under the responsibility of the General Direction for Internal Policy (Ministry of Interior), receives asylum applications and examines all asylum claims made with the Spanish authorities.

The Interministerial Commission on Asylum and Refuge (Comisión Interministerial de Asilo y Refugio, CIAR) comprises one representative from each of the Ministry of Interior, the Ministry of Foreign Affairs, the Ministry of Justice and the Ministry of Labour and Immigration. In addition, the United Nations High Commissioner for Refugees (UNHCR) has a representative who acts in a consultative capacity. The CIAR has the task of drawing up proposals for first instance decisions on asylum claims, and submitting them to the Ministry of Interior for a formal decision.

The Ministry of Interior makes formal decisions on asylum applications at the first instance and is responsible for undertaking administrative review of negative decisions on asylum claims upon request.

The General Commissariat of Aliens and Borders (Police) is responsible for issuing documents to asylum-seekers for the duration of the asylum procedure and for carrying out transfers under the Dublin II Regulation and returns of rejected asylum-seekers to their countries of origin.

The Ministry of Labour and Immigration is responsible for the reception of asylum-seekers and the integration of immigrants in Spain.

For information on the institutions responsible for hearing requests for review of negative decisions on asylum, please see sections below on Review/Appeal.

3.2 Cooperation between Government Authorities

The various ministries cooperate at a practical level throughout the asylum procedure. For example, the OAR in Madrid houses officials from the Ministry of Interior, the Police, and the Ministry of Labour and Immigration, all of whom carry out distinct but interrelated tasks during the asylum procedure.

4 Pre-entry Measures

4.1 Visa Requirements

To enter Spain, foreign nationals must be in possession of a valid travel document such as a passport and/or a visa issued by Spain or one of the other States parties to the Schengen Agreement.

4.2 Carrier Sanctions

According to the Aliens Law, carrier sanctions are applicable to sea and air carriers that are found to have transported onto Spanish territory foreign nationals who are not in possession of valid travel documents. Fines range from 3,000€ to 6,000€ for each unauthorised arrival, and up to a maximum of 500,000€ per person.

4.3 Interception

In accordance with the Law of the Sea, the Spanish Civil Guard, an organ of the Ministry of Interior, undertakes rescue operations at sea for migrants attempting to access Spanish territory without proper authorisation. The purpose of the Integrated System for Patrolling in the Channels and at Sea (Sistema Integrado de Vigilancia Exterior, SIVE), which is implemented around the southern coast of Spain and the Canary Islands, is to detect activities relating to both unauthorised migration and drug trafficking.

5 Asylum Procedures

5.1 Application Possibilities and Requirements, Procedures and Legal Remedies

Applications for asylum may be made at border posts (airports and seaports), in-country and at Spanish diplomatic missions abroad. In-country applications may be made as follows:

- At the Asylum and Refuge Office (OAR) in Madrid
- At any Immigration office
- At police stations.

An application for asylum may be made at any time during a person's authorised stay in Spain. Persons who enter Spain without proper authorisation of stay may apply for asylum within one month of their arrival. However, persons who wish to make a claim for asylum on the basis of facts that arose after their leaving the country of origin may apply for asylum within one month of the time that these facts arose.

Access to Information on Procedures

Information on the asylum procedure is made available in the form of a leaflet published in eleven different languages. The leaflet provides an overview of the application and determination process, as well as the types of status and benefits conferred on persons in need of protection. Upon making an asylum claim, such as at the OAR in Madrid, asylum-seekers have access to the assistance of a social worker of the Ministry of Labour and Immigration, who will provide information on reception benefits.

5.1.1. Outside the Country

Applications at Diplomatic Missions

A person may make a claim for asylum at any Spanish diplomatic mission in a third country. The asylum-seeker fills out an application form and participates in an initial interview with an embassy official. The information gathered is then forwarded through the Ministry of Foreign Affairs to the OAR in Madrid, which examines the claim according to the normal procedure, which is described below. The decision of the Ministry of Interior (based on the recommendation of the CIAR) is sent to the mission, which will communicate it to the asylum-seeker.

If the decision is to grant asylum, a visa is issued so the person may travel to Spain, where he or she will obtain a residence permit. A decision to not grant asylum may be appealed in the same manner as are in-country asylum claims.⁷

Resettlement/Quota Refugees

Spain does not currently have a regular resettlement programme in place but has in the past engaged in ad hoc resettlement of refugees. For example in 1999, following a UNHCR appeal, Spain resettled 1,426 Kosovar Albanians under UNHCR's Humanitarian Evacuation Programme. In February 2000, Spain resettled 17 Afghans from Uzbekistan.

According to Law 5/1984 regulating the Right to Asylum and Refugee Status (Royal Decree 203/1995), the UNHCR representative in Spain may approach the Spanish authorities with an urgent request for admission of a refugee. Arrangements are made by the Ministry of Foreign Affairs to consider the application for asylum and issue the travel documents necessary for the refugee to enter Spain.

5.1.2. At Ports of Entry

The Border Procedure

The same procedure is applied at both airports and seaports.

Persons arriving at ports of entry (in particular at airports) without the required documentation to enter Spain may approach the National Police and express their wish to apply for asylum. Upon doing so, the persons are informed of their rights as asylum-seekers, including access to free legal assistance and the services of an interpreter to facilitate their application.

Asylum-seekers are required to complete and sign an asylum application form which is then forwarded to the OAR. The application is shared with the UNHCR, which can provide its opinion on the claim. The OAR must make a recommendation, on the basis of an examination of the content of the application, whether or not to admit the applicant to the normal (protection) procedure, which is described below. This recommendation is sent to the Ministry of interior, which will make a formal decision on the admissibility of the claim.

A decision by the Ministry of Interior to either allow the application to proceed or to deny the application must be sent to the port of entry where the application was made within four days of the time of application.

A negative decision on admissibility at the border may arise, *inter alia*, when the claim is considered manifestly unfounded or when the Dublin II Regulation is applicable to the claim. An applicant may, within 24 hours of notification of the decision, make a request for a re-examination (administrative appeal). The request will be examined by the Minister of Interior, which is required to make a decision on the appeal within two days of the request. The request for a re-examination has suspensive effect.

During the border procedure, the applicant remains at the port of entry. To this end, adequate accommodation at the port of entry is provided.

If the decision of the administrative appeal is negative, the asylum-seeker is required to leave Spain, although he or she may make a further appeal to the Tribunal. Any appeals further to the re-examination do not have suspensive effect.

⁷ The review and appeal procedures are described below in the section Review/Appeal.

5.1.3. Inside the Territory

Responsibility for Processing the Claim

The Dublin System

Application and Procedure

During the admissibility phase of the asylum procedure, the Dublin Unit of the OAR will determine which European Union (EU) Member State is responsible for the claim, according to the terms of the Dublin II Regulation. If it is found that the asylum-seeker travelled through another State party to the Regulation before arriving in Spain, a request for readmission will be made. Otherwise, the asylum claim proceeds to the normal procedure.

Freedom of Movement/Detention

Asylum-seekers are not detained while awaiting a transfer under the Dublin procedure.

Conduct of Transfers

Once a request for readmission has been granted, the Police are responsible for ensuring the transfer of the asylum-seeker.

Review/Appeal

A decision to transfer an asylum-seeker under the Dublin II Regulation is a negative decision on the admissibility of the claim. It can therefore be appealed in the same manner as other negative decisions on admissibility made in-country. The Tribunal may suspend the transfer upon the request of the asylum-seeker, on a case-by-case basis.⁸

Application and Admissibility

In-Country Asylum Claims

Similar to applications made at the border, asylum applications made in-country are subject to a two-phase procedure: the admissibility procedure (administrative go-ahead) and the normal procedure (determining the eligibility for protection). Applications for asylum must be made in person and consist of the following:

- A completed application form containing all required information
- All relevant identity documents
- Any piece of evidence relevant to the claim.

The fingerprints of the asylum-seeker are taken and the asylum-seeker is issued with an initial document (“white document”) which identifies the person as having applied for asylum in Spain.

On the day the application is made, the asylum-seeker is interviewed. The OAR must make a decision on the admissibility of the claim – the so-called administrative go-ahead – for the next phase of the procedure within 60 days of the application.

If the go-ahead is given, the asylum-seeker is issued a six-month stay permit, which is renewable until a final decision on the claim is made. If a negative decision on admissibility is issued, the asylum-seeker has an obligation to leave Spain.

If the OAR does not meet the 60-day timeframe for a decision on admissibility, the asylum-seeker’s claim is automatically granted the administrative go-ahead.

All proposals for a negative decision on admissibility are communicated to the UNHCR office in Spain which has 10 days to deliver an opinion on the case to the OAR. The formal decision on admissibility is then taken by the Ministry of Interior.

Administrative Go-Ahead

If the application is declared admissible by the OAR or the Ministry of Interior (the latter in the case of a re-examination of a claim made at a port of entry), the application proceeds to the normal (protection) procedure, which is described below.

Review/Appeal

Any decision on admissibility may be the subject of an administrative appeal before the Ministry of Interior. The appeal must be made within one month of the decision. The Ministry may either confirm the decision taken or declare the application admissible.

The Ministry must make its decision within one month of the request for review. If the Ministry of Interior does not make a decision within this timeframe, the asylum-seeker may seek a review before the Central Judges of the Contencioso Administrativo (Administrative-Contentious Courts).

The asylum-seeker may also make an appeal of the decision on inadmissibility or a negative decision following the administrative appeal, before the Central Judges of the Contencioso Administrativo within two months of the negative decision.

The decisions of the Central Judges may be appealed before the National High Court.

⁸ See the section below on Application and Admissibility for more information on review of negative admissibility decisions.

All appeals, with the exception of the so-called re-examination (administrative appeal) during the border procedure, do not have suspensive effect. However, the asylum-seeker may include in the appeal a request to remain in Spain until a final decision on the claim is made. This request is examined on a case-by-case basis by the relevant appeal body.

Accelerated Procedures

Spain does not have any specific accelerated procedures in place. That said, the admissibility procedure at the border must be completed within seven days of the application. This timeframe includes any decision on a re-examination (administrative appeal) request. By contrast, the admissibility procedure in-country must be completed within a 60-day timeframe.

If a decision on admissibility is not made within these timeframes, the asylum-seeker proceeds automatically to the normal procedure.

Normal Procedure: The Protection Procedure

In-country and border asylum applications that are deemed admissible, along with applications made at Spanish diplomatic missions, are subject to a protection (normal) procedure for determining eligibility for protection.

The claims are examined by a caseworker of the Protection Procedure Unit of the OAR. The case workers are divided into geographical desks. Caseworkers may call asylum-seekers for an interview if doing so is deemed necessary. Following an examination of all the information provided and conditions in the country of origin, the OAR makes a recommendation for a decision on the claim.

The OAR's recommendation is forwarded to the CIAR for its consideration. The CIAR will then send its own recommendation to the Ministry of Interior for a final decision.

If the Ministry of Interior disagrees with the recommendation of the CIAR, the final decision is taken by the Council of Ministers.⁹

Review/Appeal of Asylum Decisions

Administrative Review

Any decision taken by the Ministry of Interior on an asylum claim at the first instance may be appealed

to the Ministry of Interior. This administrative appeal may be made within one month of the decision. The Ministry can either confirm the decision taken or annul the decision and grant the asylum-seeker Convention refugee status or subsidiary protection. The Ministry must make its decision within one month of the request for review. If the Ministry does not make a decision on the appeal within this timeframe, the asylum-seeker may appeal directly to the Courts.

If the Ministry of Interior rejects the appeal, the applicant may pursue a request for judicial review before the Courts.

Judicial Review

A rejected asylum-seeker may request judicial review before the National High Court (Audiencia Nacional). Upon receiving the request, the High Court must notify the OAR. The OAR will then provide the Court with the asylum-seeker's file. The National High Court may take the following decisions:

- Annul the decision and grant asylum (refugee status) or subsidiary protection
- Uphold the decision
- Return the case to the OAR when there has been a procedural error.

A negative decision by the High Court may be appealed in "cassation" before the Supreme Court (Tribunal Supremo), which examines the legality of the High Court's decision but not the facts of the case. The Court may uphold or overrule the judgement of the National High Court in part or in whole.

Reviews and appeals do not have suspensive effect. However, at each stage of the review or appeal process, the asylum-seeker may make a request to remain in Spain until a final decision is made. A decision to allow an asylum-seeker to remain in Spain during an appeal is made on a case-by-case basis.

A person may appeal the decision to grant subsidiary protection in order to obtain Convention refugee status. Appellants maintain subsidiary protection status during the judicial procedure. A rejection of the appeal has no consequences on the appellant's status.

Freedom of Movement during the Asylum Procedure

Detention

Asylum-seekers are not detained for the fact of having applied for asylum.

⁹ It should be noted, however, that as at this writing, this procedure has not been exercised.

Reporting

During the asylum procedure, asylum-seekers have an obligation to communicate their exact place of residence and any changes of address to the OAR.

Repeat/Subsequent Applications

Repeat applications are not entered into the admissibility phase of the asylum procedure, unless new information pertaining to changed circumstances in the country of origin is being put forward, and this new information represents a significant change from the original application.

An asylum-seeker who has obtained a negative decision on his or her original claim may also make a request for a reconsideration of his or her original application if there is new evidence presented supporting the original claim.

5.2 Safe Country Concepts

5.2.1. Safe Country of Origin

Spain does not have a list of safe countries of origin. All asylum applications are examined on their individual merits on a case by case basis, taking into account conditions in the country of origin.

Asylum claims Made by a Citizen of an EU Member State

Spain applies the Protocol on Asylum for Nationals of Member States of the European Union annexed to the Treaty of Amsterdam. Thus, asylum applications made by nationals of Member States of the European Union have been deemed unfounded and have not been processed.

5.2.2. First Country of Asylum

According to the Asylum Law, if an asylum-seeker has already obtained asylum or has the right to reside or to obtain asylum, in a third country, and no danger to the person's life or a threat of torture or degrading treatment exists in that country (that is, there is no risk of *refoulement*), the Ministry of Interior may issue a negative decision on the asylum claim or find the claim to be inadmissible. In such cases, the person is required to leave Spain.

5.2.3. Safe Third Country

Spain does not have a list of safe third countries for use in the asylum procedure. However, the Asylum Law foresees the possibility of declaring a claim inadmissible to the normal procedure if the asylum-seeker comes

from a country where he or she can seek protection and no danger to the person's life or a threat of torture or degrading treatment exists in that country (that is, there is no risk of *refoulement*.)

5.3 Special Procedures

5.3.1. Unaccompanied Minors

The OAR will prioritise asylum claims made by unaccompanied minor asylum-seekers (UAMs). In addition, specific procedural standards apply to the examination of minors' claims. For example, UAMs are usually interviewed a second time and are assigned a legal guardian who is always invited to attend the interview. Psychologists, social workers and relatives may also be present at the interview(s). In addition, the OAR may request that the minors undergo a medical test to assist in the determination of the person's age.

5.3.2. Stateless Persons

Stateless persons may apply for asylum and have their claims processed in the same manner as are other asylum claims.

6 Decision-Making and Status

6.1 Inclusion Criteria

When considering the merits of a claim, the OAR must first consider whether the criteria for granting refugee status are met. If this is not the case, the OAR will then consider whether the asylum-seeker meets the criteria for subsidiary protection.

6.1.1. Convention Refugee

Persons with a well-founded fear of persecution as set out in the Convention relating to the Status of Refugees 1951 (1951 Convention) and its 1967 Protocol are granted refugee status.

6.1.2. Subsidiary Protection

According to Article 17(2) of the Law regulating the Right to Asylum and Refugee Status, a residence permit may be granted to asylum-seekers who do not meet the criteria for Convention refugee status but for whom return to the country of origin may pose a serious risk to life or a risk to physical integrity.

6.2 The Decision

Following a thorough examination of the asylum claim, the caseworker at the Asylum and Refuge Office (OAR) is responsible for making a recommendation for a decision on the claim. The dossier is submitted to the Interministerial Commission on Asylum and Refuge (CIAR). The CIAR meets on a regular basis to consider the proposals of the OAR.

The CIAR is made up of one representative each from the Ministries of Interior (President and Secretary), Foreign Affairs and Cooperation, Labour and Immigration, and Justice. A representative from the UNHCR sits on the Commission and while he or she does not have a right of vote, the representative may provide his or her opinion on the claim.

Following its deliberation, the CIAR forwards its proposal on a decision to the Ministry of Interior. The Minister of Interior signs the final decision. If the Minister of Interior disagrees with the CIAR's proposal, the Ministry will submit the claim to the Council of Ministers for a decision.

Decisions on asylum claims are provided in writing, and negative decisions are reasoned. Negative decisions contain information on options for review or appeal as well as a notification that the asylum-seeker must leave Spanish territory.

6.3 Types of Decisions, Status and Benefits Granted

Upon the recommendation of the CIAR, the Ministry of Interior may make one of the following decisions on an asylum claim:

- Grant Convention refugee status
- Grant subsidiary protection
- Grant humanitarian protection¹⁰
- Reject the application for asylum.

Status and Benefits

Convention refugees are eligible for the following benefits:

- Authorisation of residence, with possibility of applying for citizenship after five years
- Authorisation to take part in professional and commercial activities

¹⁰ This form of protection is granted by the Ministry of Interior to persons who do not meet the criteria for Convention refugee status or subsidiary protection but who present certain humanitarian grounds for remaining in Spain. See the section below on Status and Permits Granted outside the Asylum Procedure for more information.

- The necessary travel and identity documents
- Family reunification
- Social assistance benefits.

Beneficiaries of complementary protection are eligible for the following benefits:

- A temporary residence permit, valid for one year and renewable each year
- Work permit
- The necessary travel and identity documents
- Family reunification as set out in the Aliens Law
- Social assistance benefits.

6.4 Exclusion

The caseworkers at the OAR must consider Article 1F of the 1951 Convention when examining asylum claims under the normal procedure. Article 1F is applicable to both Convention refugee status and complementary protection. If the exclusion clauses are found to apply to a claim, the OAR will recommend to the CIAR that the claim for asylum be denied.

Persons excluded from protection have an obligation to leave Spanish territory. They may appeal the decision in the same manner that all other final negative decisions on asylum claims would be appealed.¹¹

Excluded persons who cannot be returned to their country of origin may remain in Spain. However, no official status is granted.

6.5 Cessation

According to the Asylum Law, refugee status ceases automatically in one of the following circumstances:

- The refugee has obtained Spanish citizenship
- The refugee voluntarily accepts the protection of his or her country of origin
- The refugee has settled voluntarily in another country.

When there has been a significant change in circumstances in the country of origin, cessation may be applied by the asylum authorities, in consultation with the UNHCR office in Spain.

The OAR may start a procedure for cessation of status after a final decision on an asylum claim has been

¹¹ See the section above on Review/Appeal of Asylum Decisions.

taken at the first instance. The refugee or beneficiary of subsidiary protection is informed of the decision to pursue cessation and will be given an opportunity to provide evidence or reasons for which his or her status should not be cancelled. The OAR takes into account any evidence provided by the person before making a recommendation to the CIAR on whether or not to cancel status. The UNHCR is informed of that recommendation and the CIAR will make the decision.

Under the terms of the Aliens Law, a person whose status has been ceased may remain in Spain. He or she may appeal the decision of the CIAR by following the same procedure followed for negative decisions on asylum claims at the first instance, as described above.

6.6 Revocation

According to Law 5/1984, refugee status or subsidiary protection, along with all attendant benefits, may be cancelled if it emerges that the asylum application was based on falsified information that had a bearing on the granting of asylum. Cases of serious criminality may also lead to cancellation of status in accordance with Articles 1F and 33(2) of the 1951 Convention.

The same procedure is applied for cancellation of status as for cessation of status, which is described above. The UNHCR is always informed of decisions to cancel status.

The decision to revoke status is taken by the Council of Ministers.

6.7 Support and Tools for Decision-Makers

6.7.1. Country of Origin Information

The Documentation Unit at the OAR provides information on countries of origin of asylum-seekers to caseworkers. The main products offered include profiles of the top countries of origin and reports focusing on areas and countries affected by armed conflict.

The Documentation Unit also maintains a database that stores links to the most important Internet resources on country information.

In addition to gathering country of origin information (COI), the Documentation Unit is responsible for organising all training activities – both on COI and on other practical asylum-related matters – for caseworkers and other staff of the OAR involved in the asylum procedure. The Documentation Unit takes active part in international training activities.

6.7.2. Language Analysis

The OAR does not use language analysis for the purposes of examining asylum claims.

6.7.3. Other Support Tools

In addition to the country information provided by the COI Unit, decision-makers also have access to reports produced by Spanish diplomatic missions on specific countries of origin or in response to a request for information on a specific asylum case.

Caseworkers have the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status as well as guidelines on gender-based claims at their disposal.

7 Efficiency and Integrity Measures

7.1 Technological Tools

7.1.1. Fingerprinting

Fingerprints of asylum-seekers aged 14 years and older are taken by the Police at the time the asylum application is made. One of the purposes of taking fingerprints is to assist the OAR in determining the State responsible for examining the asylum claim, in accordance with the Dublin II Regulation and Council Regulation (EC) No 2725/2000.¹²

7.1.2. DNA Tests

DNA tests are rarely required and may be requested in cases in which a family member was not initially included on an asylum application, and alleged family links need to be verified.

7.1.3. Forensic Testing of Documents

The OAR may make a request to the Police for authentication of identity documents, in such cases when there are doubts about the authenticity of these documents.

7.1.4. Database of Asylum Applications/Applicants

The Police authorities involved in the asylum procedure have access to the Central Aliens Registry, which

¹² Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of EURODAC for the comparison of fingerprints for the effective application of the Dublin Convention (Eurodac Regulation).

contains data on all foreign nationals who have come into contact with government authorities.

7.2 Length of Procedures

An application for asylum may be made at any time during a person's authorised stay in Spain. Persons who enter Spain without proper authorisation of stay may apply for asylum within one month of their arrival in the country.

As stated above, decisions on admissibility at the border – including decisions on a request for a re-examination to the Ministry of Interior – must be taken within seven days of the application. Admissibility decisions on asylum claims made in-country must be taken within 60 days. The normal procedure occurs within a six-month timeframe.

7.3 Pending Cases

At the end of 2008, the number of pending cases before the OAR stood at 4,270.

7.4 Information Sharing

Under Spanish law, the OAR is required to share information on individual asylum claims with the UNHCR office in Spain. This procedure is described in the section below on cooperation with the UNHCR.

Within the government, information on asylum matters may be shared by the OAR with other Ministries and administrative units that deal with asylum matters.

The only information-sharing agreements to which Spain is party are the Dublin II Regulation and the agreements with Denmark, Norway, Iceland and Switzerland that extend the application of the Dublin II Regulation to those States. Specific information on asylum-seekers may be released to other EU Member States, in accordance with Article 21 of the Dublin II Regulation.

7.5 Single Procedure

A single procedure for considering whether an asylum-seeker meets the criteria for Convention refugee status or subsidiary protection is in place. The OAR must consider both sets of criteria when making a proposal for a decision to the CIAR.

Box 1: Cooperation with UNHCR

The UNHCR plays a key role in various aspects of the asylum procedure.

Asylum applications are forwarded to the UNHCR upon request and the UNHCR can be present at the interviews and share its reports on individual claims with the OAR.

As described above, the UNHCR office in Spain is involved in providing an opinion on the admissibility of asylum claims made at the border. With regard to in-country asylum claims, the UNHCR must be informed of all negative proposals on admissibility and is given 10 days to provide an opinion on the matter.

A representative of the UNHCR takes part in the Interministerial Commission on Asylum and Refuge (CIAR), which makes proposals for decisions on asylum claims at the first instance. In this context, while the UNHCR does not have a right of vote, it analyses all cases sent to the Commission and makes recommendations and provides its opinion as appropriate.

8 Assistance and Reception Benefits for Asylum-Seekers

8.1 Procedural Support and Safeguards

8.1.1. Legal Assistance and Interpretation

Article 4 of the Asylum Law and Article 8.4 of the regulation adopted by Royal Decree 203/1995 (10 February) state that asylum-seekers are entitled to interpretation services and legal assistance during the asylum procedure.

The OAR has full-time interpreters for certain languages at the disposal of asylum-seekers at the time of application. Asylum-seekers may have legal counsel present during the interviews and may continue to benefit from legal aid during the appeal procedure. If they lack the financial means to afford legal counsel, this is provided free of charge.

Asylum-seekers also have access to social workers, who will advise them on their rights as well as any social assistance available to them.

8.1.2. UNHCR

Asylum-seekers are free to contact the UNHCR for assistance during the procedure.

8.1.3. NGOs

There are a number of non-governmental organisations (NGOs) in Spain that are involved in the provision of support and assistance to asylum-seekers and refugees. When a person makes a claim for asylum in Spain, he or she is advised on where to obtain information, such as the contact information of relevant NGOs which may be able to assist them during the procedure. The NGOs provide assistance in a variety of areas, including social support, training programmes and legal advice.

8.2 Reception Benefits

The Ministry of Labour and Immigration is responsible for the reception of asylum-seekers in Spain. Upon making an asylum claim, asylum-seekers have access to a social worker, who may provide advice and information on reception and benefits during the asylum procedure.

8.2.1. Accommodation

Persons who make asylum claims at the airport are required to remain at airport accommodation facilities, where their basic needs are met. Asylum-seekers are accommodated in this facility for a maximum of seven days, during which time a decision on the admissibility of their claim must be made.

If their claims obtain the administrative go-ahead, the asylum-seekers may seek accommodation at one of the Refugee Reception Centres (Centros de Acogida a Refugiados, CAR) if they lack the means to provide their own accommodation. Asylum-seekers may also choose to reside in private accommodation.

There are four Refugee Reception Centres (CARs) run by the Ministry of Labour and Immigration. Two are located in Madrid, one in Valencia and one in Sevilla. There are additional CARs across the country, run by the Spanish Red Cross and the NGOs, the Catholic Commission's Association for Migration (ACCEM) and the Spanish Commission for Refugee Assistance (CEAR). All reception centres are co-funded by the Ministry and the European Commission European Refugee Fund (ERF).

There is a temporary reception centre (Centro de Estancia Temporal de Inmigrantes, CETI) run by the Ministry of Labour and Immigration in each of the Spanish enclaves of Ceuta and Melilla.

Asylum-seekers who are being held at a foreign nationals detention centre (Centro de Internamiento de Extranjeros, CIE) on the Canary Islands are transferred to a CAR in Spain if their claims obtain the administrative go-ahead.

Unaccompanied minor asylum-seekers are placed in regular children's homes or residential units until the age of 18, depending on the Regional Governments. They have access to free schooling, medical care and any other assistance they may need.

8.2.2. Social Assistance

Asylum-seekers who are not being accommodated in a refugee reception centre may be eligible for financial assistance if they are in an exceptionally difficult financial situation.

8.2.3. Health Care

Before being accommodated at one of the CARs, asylum-seekers must undergo a medical exam performed by the Spanish Red Cross.

Asylum-seekers are entitled to the same health care benefits available to citizens.

8.2.4. Education

Asylum-seekers have access to a range of courses, including Spanish language classes and professional training in the reception centres. Some municipalities also provide additional training programmes in partnership with NGOs and with funding from the Ministry of Labour and Immigration. The reception centres also organise various leisure activities.

Children under the age of 16 have access to the regular school system.

8.2.5. Access to Labour Market

Asylum-seekers are entitled to a work permit six months after making their asylum application, if their asylum claims have been given the administrative go-ahead. The permit is valid until a decision on their claim has been made at the first instance. Asylum-seekers do not have access to the labour market during an appeal that does not have suspensive effect or following a final negative decision on their claim.

8.2.6. Access to Integration Programmes

The reception centres are mandated to engage in activities that help local communities to better understand their role. In addition, some municipalities

and NGOs have set up programmes and activities that allow local communities to welcome and integrate asylum-seekers.

8.2.7. Access to Benefits by Rejected Asylum-Seekers

Rejected asylum-seekers may seek primary and emergency health care assistance and shelter by making a request to the municipality in which they are residing. Rejected asylum-seekers are not entitled to a work permit.

9 Status and Permits Granted outside the Asylum Procedure

9.1 Humanitarian Grounds

A temporary residence permit may be granted on the basis of exceptional circumstances. These circumstances may include humanitarian grounds as follows:

- The person is the victim of certain crimes defined in the Spanish Penal Code
- The person suffers from a serious medical condition requiring care that cannot be provided in the country of origin
- The person would be placed in danger if he or she were to return to the country of origin. These grounds apply if other requirements for obtaining a temporary residence permit are met.

Persons who meet these humanitarian grounds are granted a one-year renewable residence permit, under the Aliens Law.

9.2 Withholding of Removal/Risk Assessment

The Police may decide to withhold removal on a case-by-case basis in order for an assessment to be made regarding Spain's *non-refoulement* obligations.

9.3 Temporary Protection

The Regulation adopted by the Royal Decree 1325/2003 of 24 October 2003 incorporates the Temporary Protection Directive for situations of mass influx.

In each case of mass influx, the Council of Ministers deliberates on which specific groups of persons may be accepted under the temporary protection scheme and sets the date from which temporary protection

becomes valid. Beneficiaries of temporary protection are granted a residence permit valid for one year, which is automatically renewable for an additional year. Thereafter, the Council of Ministers may decide to renew temporary protection for a maximum of one additional year.

9.4 Regularisation of Status over Time

As noted above, a temporary residence permit may be granted in exceptional circumstances. In addition to the humanitarian grounds described earlier, there are other grounds that may lead to the granting of temporary residence under the Aliens Law.

9.5 Regularisation of Status of Stateless Persons

Spain is a State party to the 1954 Convention on the Status of Stateless Persons. According to the Organic Law 4/2000 (11 January), and the Regulation adopted by the Royal Decree 865/2001 (20 July), the Ministry of Interior is the competent authority for determining whether a person meets the criteria for recognition of statelessness as set out in the Convention. The OAR undertakes an examination of person's situation, after which the General Director of Internal Policy makes a recommendation for a decision to the Ministry of Interior.

Recognition of statelessness entitles the person to a residence permit, family reunification benefits and work rights in Spain. The person is issued a Statelessness Status card as well as travel documents.

10 Return

10.1 Pre-departure Considerations

The Police are the competent authority for implementing returns. Asylum-seekers who receive a negative decision on their claim have an obligation to leave Spanish territory within 15 days of the decision, although they may be given up to 90 days for the implementation of return. However, the Ministry of Interior may decide, for reasons of national security, that the person has less than 15 days to leave Spain. Likewise, the Ministry may decide that a person whose removal is pending meets criteria set out in the Aliens Law to obtain a permit to remain in Spain.

10.2 Procedure

Expulsion orders are usually implemented by the Police.

The Ministry of Labour and Immigration provides funds for a voluntary return assistance programme to persons - including rejected asylum-seekers, refugees and other persons who have obtained protection - who wish to return to their country of origin. The funds are disbursed yearly to NGOs such as ACCEM and the Spanish Red Cross and to the International Organization for Migration (IOM) to implement the programme.

10.3 Freedom of Movement/ Detention

Persons who do not have authorisation to remain in Spain are not detained pending their return to the country of origin. They may, however, be required to report to the Police on a regular basis.

10.4 Readmission Agreements

Spain has signed bilateral readmission agreements with EU Member States for the return of third-country nationals. Spain has also concluded readmission agreements with Morocco, Mauritania, Guinea, Algeria and Nigeria.

11 Integration

The Ministry of Labour and Immigration oversees the implementation of integration programmes offered to refugees and beneficiaries of complementary protection in Spain. The Ministry provides funds to a number of NGOs that offer a variety of integration assistance activities. For example, they receive funds in order to offer financial assistance with rental accommodation for a three-month period, run a programme to assist those who wish to become self-employed through financial assistance, provide guidance and legal advice and run a family reunification programme that offers advice and information on the procedure for reuniting refugees and other protected persons with family members in the country of origin. Assistance with the journey to Spain and basic needs is also provided upon arrival.

The European Refugee Fund (ERF) also provides funding on a yearly basis to NGOs running integration programmes.

More broadly, persons who have obtained protection in Spain have access to training courses, Spanish-language classes, and advice on gaining employment.

12 Annexe

12.1 Selections from Law 5/1984¹³

TITLE 1. CONCERNING ASYLUM. (THE DIVISION IN TITLES WAS ELIMINATED BY LAW 9/1994, DATED 19TH OF MAY)

CHAPTER I: GENERAL PROVISIONS

Article 1. Right to apply for asylum. (This article has been modified by Law 9/1994, dated 19th of May)

Spanish territory will be an inviolable refuge for every person to whom the asylum will be granted under this Law. The right to apply for asylum is acknowledged to aliens.

Article 2. Asylum contents

1. The Right to Asylum acknowledged under the article 13.4 of the Spanish Constitution means the protection provided to aliens to whom the Refugee Status is acknowledged. It consists on the principle of non devolution and non expulsion based on the article 33 of the Convention relating to the Status of Refugees, signed in Geneva on the 28th of July, 1951, and on the application of the following measures during the period in which the circumstances that were the reason for application for the right of asylum subsist:

a) Authorisation of residence in Spain.

b) Issuing of the necessary travel and identity documents.

c) Authorisation to develop working, professional and commercial activities.

d) Whatsoever is exposed in the International Conventions, and related to the refugees subscribed by Spain (This paragraph has been modified by Law 9/1994, dated 19th of May).

2. Likewise, the refugees may be granted, in the case that corresponds, social and economic benefits that are determined by the legislation.

Article 3. Reasons which justify the asylum grant or refusal. (This article has been modified by Law 9/1994, dated 19th of May)

1. The Refugee Status shall be recognised and, therefore, granted to every alien who fulfils the requirements established in the International Instruments ratified by Spain, especially those established in the Convention relating to the Status of Refugees, signed in Geneva on the 28th July, 1951, and in the Protocol relating to the Status of Refugees, signed in New York on the 31st of January 1967.

2. Asylum shall not be granted to those whose situation is described in any of the cases from articles 1.F and 33.2 of the aforementioned Geneva Convention.

CHAPTER II: CONCERNING THE ASYLUM GRANT (THIS PART HAS BEEN MODIFIED BY LAW 9/1994)

Article 9. Refusal re-examination

The alien to whom the asylum has been refused shall be able to urge the Ministry of Interior to re-examine the file, at any time, if the person possesses new evidence elements of his statements or deems that the circumstances that justified the refusal have disappeared.

Article 17. Effects of refusal resolution. (This article has been modified by Law 9/1994, dated 19th of May)

¹³ Law 5/1984 (dated 26 March) regulating the Right to Asylum and Refugee Status, amended by Law 9/1994 (dated 19 May). Selections from Law 5/1984 and the other laws cited in the annexe can be found in Ministry of Interior, *Normativa de Asilo y Apátridas*, 3rd edition (unofficial translation).

(...)

2. Nevertheless, despite the case contemplated in the previous number, for humanitarian or public interest reasons, the stay in Spain of the interested person whose application has not been admitted to a regular procedure or refused, may be authorised, in the general immigration framework, particularly if the aliens are persons who, as a consequence of conflicts or serious political, ethnical or religious riots, have been obliged to abandon their country and do not fulfil the requirements exposed in article 3, number 1 of the Law.

Article 20. Asylum cancellation. (This article has been modified by Law 9/1994, dated 19th of May)

1. The Government may agree upon a cancellation of asylum or of any or all benefits contemplated in article 2 of this Law in the following cases:

a) When the asylum has been granted through data, documents or declarations which are false and at the same time determinant in the grant received.

b) When any of the cases contemplated in the International Conventions ratified by Spain occur concerning the cessation of refugee's status or their non-enforcement.

2. However, without prejudice to what is contemplated in the previous number, for humanitarian reasons or for public interest, the stay of the interested person in Spain may be authorised, within the framework of the general Aliens Law.

12.2 Selection from Organic Law 4/2000¹⁴

CHAPTER II: SITUATION OF ALIENS

(...)

Article 34. Residence of stateless persons, persons without identity documents and refugees (Drafted in accordance with Organic Laws 8/2000 and 14/2003)

1. The Minister of the Interior may acknowledge the status of stateless persons to aliens, who having manifested their lack of nationality, fulfill the requirements established by the Convention relating to the Status of the Stateless Persons, made in New York, dated 28th of September 1954. The Minister may as well issue the documents mentioned in article 27 of the aforesaid Convention. The status of the stateless persons will be governed by specific regulations.

2. In any case, aliens who address themselves to the premises of the Ministry of the Interior who may show proof that no authority from any country has issued their identity documents and that they wish their documents to be issued in Spain. Once the pertinent information has been verified and if there are exceptional reasons of humanitarian nature, public interest or fulfillment of requirements specified in the commitments undertaken by Spain, the alien may obtain an identity document in accordance with the established regulations, which acknowledges his inscription in the Ministry. Nevertheless, the request will be dismissed if the petitioner falls in any of the categories listed in article 26, or expulsion order has been issued against him.

3. Favorable resolution to the request of asylum in Spain is to be interpreted as the acknowledgement of Refugee Status for the applicant, who is granted the right to reside in Spain and to develop labour, professional or mercantile activities in accordance with Law 5/1984, dated 26th of March, regulating the Right to Asylum and the Refugee Status amended by Law 9/1994, dated 19th of May, and its developing regulations. The aforementioned status ensures that the interested person will be neither expelled nor deported as stated in article 33 of the Convention relating to the Status of Refugees, made in Geneva on the 28th of July 1951.

(...)

¹⁴ Organic Law 4/2000 dated 11 January, concerning the rights and freedoms of aliens in Spain and their social integration. Articles 22, 25.3, 34, 54.3, 58.3, 64.4 and 64.5.

12.3 Selection from Regulation for enforcement of Law 5/1984¹⁵

CHAPTER I: ASYLUM APPLICATION AND ITS EFFECTS

SECTION I: ASYLUM APPLICATION FILING

Article 8. Form of asylum application filing

(...)

4. Asylum seekers who are already on the national territory will have the right to an interpreter and legal assistance in order to file their application and during all the proceedings.

12.4 Selection from Regulation on the temporary protection provision in case of massive influx of displaced persons¹⁶

CHAPTER III: PROCEDURE OF INDIVIDUAL ACKNOWLEDGEMENT

Article 11. Order of the Minister of the Interior

1. Once the general declaration of temporary protection has been approved by the Council of the European Union or by the Spanish Government, the Minister of the Interior, upon request of the interested persons, that will be carried out by the Asylum and Refuge Office, at the suggestion of the Interministerial Commission of Asylum and Refuge, will decide upon the concession of the benefits of the set of rules of temporary protection stating the reasons on which the decision is based within the terms and delays established by Organic Law 4/2000, dated 11th of January, amended by Organic Law 8/2000, dated 22nd of December.

2. The Minister of the Interior may broaden the application of this set of rules of temporary protection to other persons who are displaced for the same reasons or who come from the same country or region covered by the general declaration of protection in accordance with the previous paragraph.

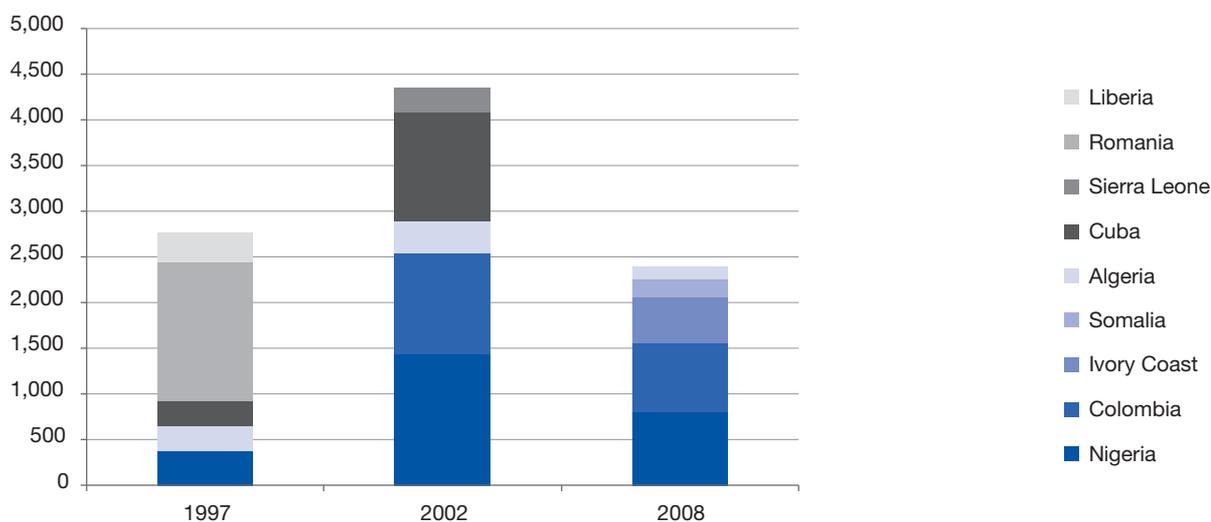
¹⁵ Regulation for enforcement of Law 5/1984 dated 26 March, regulating the Right to Asylum and the Refugee Status, passed by Royal Decree 203/1995, dated 10 February.

¹⁶ Regulation on the temporary protection provision in case of massive influx of displaced persons, passed by Royal Decree 1325/2003, dated 24 October.

12.5 Additional Statistical Information

Figure 4:

Asylum Applications* from Top Five Countries of Origin for Spain in 1997, 2002 and 2008



* First applications only

Figure 5:

Decisions Made at the First Instance, 1992-2008

Year	Convention Status		Complementary Protection and Other Authorisations to Remain		Rejections		Other Decisions		Total Decisions
	Count	% of total	Count	% of total	Count	% of total	Count	% of total	
1992	549	6%	0	0%	7,991	94%	0	0%	8,540
1993	1,287	7%	0	0%	16,250	93%	0	0%	17,537
1994	627	5%	0	0%	12,291	95%	0	0%	12,918
1995	464	7%	241	4%	5,830	89%	0	0%	6,535
1996	258	6%	193	4%	3,970	90%	0	0%	4,421
1997	176	3%	241	5%	4,815	92%	0	0%	5,232
1998	224	4%	1,206	20%	4,680	77%	0	0%	6,110
1999	310	4%	738	10%	6,023	85%	0	0%	7,071
2000	381	5%	501	7%	6,781	88%	0	0%	7,663
2001	314	3%	432	5%	8,524	92%	0	0%	9,270
2002	185	3%	226	4%	5,962	94%	0	0%	6,373
2003	247	3%	243	3%	6,579	93%	0	0%	7,069
2004	192	3%	204	3%	6,301	94%	0	0%	6,697
2005	242	5%	148	3%	4,531	92%	0	0%	4,921
2006	212	5%	204	5%	3,892	90%	0	0%	4,308
2007	233	3%	357	5%	6,070	91%	0	0%	6,660
2008	139	3%	107	2%	4,856	95%	0	0%	5,102

Sweden



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1 Background: Major Asylum Trends and Developments

Asylum Applications

The number of annual asylum applications in Sweden increased significantly in the late 1980's, reaching a peak of 84,000 in 1992. However, the number of applications decreased considerably over the rest of the decade, then started to increase again in 2000-2001, reaching a peak in 2007 at 36,000 applications. That year, Sweden was the top country of destination for asylum-seekers among IGC Participating States and in the European Union.

Top Nationalities

In the 1990's, Sweden received asylum claims mainly from the former Yugoslavia, Iraq, Somalia and Iran. Since 2000, there has been only a minor shift in the top countries of origin, with asylum-seekers originating mostly from Iraq, Serbia, Russia and Somalia.

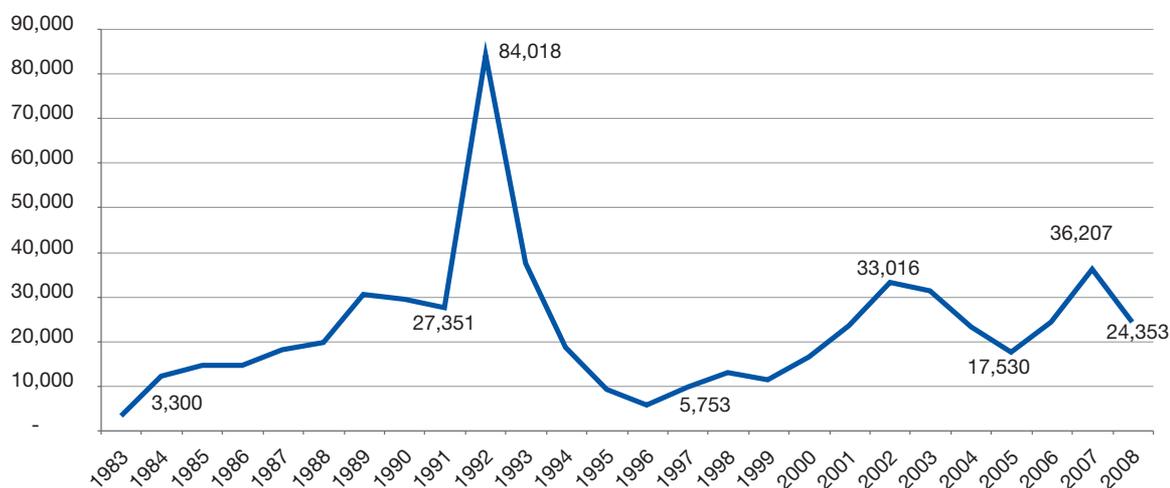
In 1997, the Aliens Act was the subject of important amendments, including the following:

- The concepts of *de facto* refugee and war resister were replaced by specific rules regarding which categories of persons, in addition to Convention refugees, might receive protection. These categories included persons who faced a risk of being subjected to the death penalty, corporal punishment or torture, persons fleeing armed conflicts and persons who risk being subjected to persecution on gender-related grounds or on the ground of sexual orientation.
- The possibility for family reunification for persons granted protection was restricted to the nuclear family (spouse, children).

A new Aliens Act was introduced in 2006 with the objective of improving the transparency and efficiency of the asylum procedure. The Act established a new appeal procedure designed to extend possibilities that an asylum-seeker would obtain an oral hearing on his or her case. The Aliens Appeals Board was abolished

Figure 1:

Evolution of Asylum Applications* in Sweden, 1983-2008



* First applications only

Important Reforms

Up until major legislative reforms in 2006, asylum procedures were governed by the Aliens Act (1989:529). In 1992, the Aliens Appeals Board was created to replace the government as the second instance decision-making authority. However, the Aliens Appeals Board and the Swedish Migration Board (the first instance decision-making body) could refer individual cases to the government for a guiding decision taken collectively by the ministers.

and replaced by three Migration Courts and a Migration Court of Appeal. The Government lost the ability to make precedent-setting decisions. Precedent-setting decisions are now made by the Migration Court of Appeal.

Moreover, the 2006 reforms made a clear distinction between grounds for international protection and all other, non-protection-related grounds for granting a residence permit. The article regarding humanitarian grounds in the previous Aliens Act was not transferred to the new Act. If a residence permit cannot be awarded

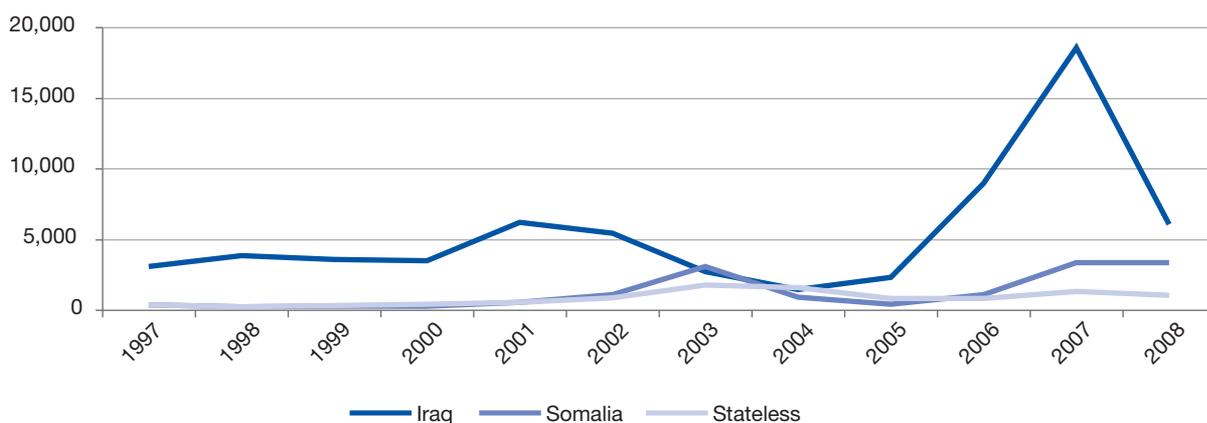
on other grounds, a permit may now be granted on the basis of exceptionally distressing circumstances. The grounds for obtaining refugee status were broadened to include gender-related persecution, including persecution based on sexual orientation¹.

An independent inquiry was set up by the government to study and evaluate the results of the 2006 reforms on asylum procedures, with a final report expected in June 2009.

Others Ordinance (1994:361). The 1951 Convention Relating to the Status of Refugees (along with Council Directive 2004/83/EC²) is included in Chapter 4, Section 1 and Chapter 12, Section 2 in the Aliens Act. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the European Convention on Human Rights (ECHR) and Council Directive 2004/83/EC are included in Chapter 4, Section 2 and Chapter 12, Section 1 of the Aliens Act.

Figure 2:

Evolution of Applications* from Top 3 Countries of Origin for 2008



* First applications only

Figure 3:

Top Five Countries of Origin* in 2008

1	Iraq	6,083
2	Somalia	3,361
3	Stateless	1,051
4	Kosovo	1,031
5	Serbia	958

* First applications only

2 National Legal Framework

2.1 Legal Basis for Granting Protection

The asylum procedure is governed by the Aliens Act (2005:716), the Aliens Ordinance (2006:97), the Reception of Asylum-Seekers and Others Act (1994:137) and the Reception of Asylum-Seekers and

On the basis of this legal framework, Sweden grants Convention refugee status to persons meeting the criteria set out in the 1951 Convention and subsidiary protection to persons otherwise in need of protection.

2.2 Pending Reforms

In December 2007, the Government established an inquiry to examine the reception of asylum-seekers. The inquiry was guided by a set of starting points, namely, that the reception of asylum-seekers should be designed to support an efficient asylum procedure and to facilitate the efficient return of rejected asylum-seekers.

The inquiry was requested to examine the following reception conditions:

- Accommodation facilities at reception centres run by the Migration Board
- The financial benefits available to asylum-seekers during the procedure

¹ In the previous Act, persons claiming gender-related persecution were determined to be persons "otherwise in need of protection."

² Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (Qualification Directive).

- The integration of persons who are granted permits
- The return of rejected asylum-seekers
- Services provided to asylum-seekers with special needs
- Possibilities for improving cooperation between the Migration Board and local councils, municipalities, government agencies, non-governmental organisations and other stakeholders involved in reception in order to improve asylum-seekers' possibilities to support themselves.

The inquiry presented its report in February 2009. As at this writing, the report is being circulated for formal consultation. The government plans to present a bill to parliament in 2010.

3 Institutional Framework

3.1 Principal Institutions

The Swedish Migration Board is an independent body responsible for examining all asylum applications made in Sweden and for the reception of asylum-seekers. The Migration Board assesses questions concerning refugee protection and complementary forms of protection within a single asylum procedure. The Board also provides return assistance to persons returning to the country of origin and is involved in the resettlement of refugees to Sweden.

The Migration Courts hear appeals of the Migration Board's decisions on asylum claims. There are three Migration Courts, located within the County Administrative Courts in Stockholm, Göteborg and Malmö.

The Migration Court of Appeal, which is situated at the Administrative Court of Appeal in Stockholm, processes appeals of the Migration Courts' decisions when a leave to appeal has been granted.

The Ministry of Justice hears appeals in security cases where issues of national security or public security are at stake. Such cases reach the Ministry when the Swedish Security Service recommends that a person be refused entry or removed, that a person's application for a residence permit be rejected or that a person's residence permit be withdrawn.

The Migration Board can hand over to the Police cases concerning the enforcement of returns.

3.2 Cooperation between Government Authorities

The Migration Courts and the Migration Court of Appeal work independently. When it comes to decision-making, in order to uphold the independence of the Migration Board, there is no consultation between the Migration Board and the Ministry of Justice.

4 Pre-entry Measures

4.1 Visa Requirements

To enter Sweden, foreign nationals must be in possession of a valid passport and a visa valid for the Schengen area. The Migration Board in Sweden and diplomatic missions abroad are responsible for receiving applications for visas.

4.2 Carrier Sanctions

Carrier sanctions are applicable to airplanes and ships. According to the Aliens Act, a carrier must check that passengers travelling to Sweden directly from a state that is not covered by the Schengen acquis are in possession of a passport and the permits required to enter the country. A carrier in breach of these provisions is subject to a maximum fine of SEK 46,000 (4,300€). The carrier is exempted from the sanction if it is reasonable to assume that the foreign national is entitled to enter Sweden or it appears clearly unreasonable to levy the charge.

Furthermore, according to the Aliens Act, a carrier transporting passengers by air to Sweden from a state that is not covered by the Schengen acquis is obliged, at the request of a Swedish Police official, to transmit data on passengers, such as travel documents and nationality, by the end of check-in. A carrier in breach of this provision is subject to a maximum fine of SEK 46,000 (4,300€). The carrier is exempted from the sanction if it can show that the breach was not the result of an error or omission or it appears clearly unreasonable to levy the charge.

4.3 Interception

Sweden does not carry out pre-departure clearance in countries of origin or transit. However, Immigration Liaison Officers or Liaison Officers posted abroad may assist local border authorities or airline staff in verifying documents and may upon request organise training on detecting fraudulent documents.

5 Asylum Procedures

5.1 Application Possibilities and Requirements, Procedures and Legal Remedies

Asylum applications can be made at the border and in-country at Migration Board application units in Malmö, Göteborg and Stockholm. There is no time limit for applying. Information leaflets on asylum rules in Sweden, on the Dublin II Regulation³ and on detention and reporting requirements are available in various languages.

5.1.1. Outside the Country

Applications at Diplomatic Missions

Application for asylum cannot be made at diplomatic missions.

Resettlement/Quota Refugees

Sweden has a longstanding tradition of accepting quota refugees and has had a regular, yearly resettlement program in place since the 1950's. The programme is carried out in close cooperation with the UNHCR. In recent years, the annual resettlement quota has been between 1,200 and 1,900 persons. A part of the quota is allocated for so-called emergency cases, which are referred to Sweden by the UNHCR. The annual quota is determined by the government, while the Migration Board examines cases and grants residence permits to persons in need of protection within the programme.

Decisions are made on the basis of interviews conducted by the Migration Board abroad or on a dossier basis, in the case of refugees referred by the UNHCR. The persons in greatest need of protection are accepted as quota refugees. Those who are granted residence permits within the resettlement programme receive status either as refugees or as persons otherwise in need of protection according to the Aliens Act. All those selected receive permanent residence permits. The permit allows a person to live, work and travel freely in Sweden.

5.1.2. At Ports of Entry

The Police are responsible for regulating the entry of persons at airports, seaports and border posts. A foreign national arriving in Sweden may make an asylum

application with the Police either at border control or upon being refused entry. The application is transferred to the Migration Board. From there, the same determination and review procedure (described below) applies to applications made at the border as to applications made at the Migration Board application units.

5.1.3. Inside the Territory

Responsibility for Processing the Claim

The Dublin System

Application and Procedure

Before an asylum claim can be examined on its merits, the Migration Board must first determine whether Sweden is responsible for processing the claim under the Dublin II Regulation. If another State party to the Regulation is responsible for processing the application, the Migration Board issues a decision for transferring the asylum-seeker to that country. In this instance, the applicant does not have a right to public counsel. However, the Migration Board must conduct an oral interview with the applicant.

Freedom of Movement/Detention

The Migration Board may decide to detain asylum-seekers subject to the Dublin procedure, in accordance with provisions in the Aliens Act that are applicable to all stages of the asylum procedure⁴.

Suspension of Dublin Transfers

If the asylum-seeker has appealed a transfer decision, the Migration Courts or the Migration Court of Appeal may order that the transfer be suspended.

Review/Appeal

The asylum-seeker can appeal the Migration Board's decision to transfer the application for processing in another State party to the Dublin II Regulation. The appeal must be made within three weeks of notification of the decision. The grounds for asylum are not examined during the appeal and the asylum-seeker must leave Sweden during the appeal procedure, unless a suspension of transfer has been ordered by the Court.

Application and Admissibility

When filing an asylum application, asylum-seekers must meet the following requirements:

³ Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (Dublin II Regulation).

⁴ These provisions are outlined in the section below on freedom of movement during the asylum procedure.

- Provide relevant information, such as identity documents and date of arrival
- Have their photographs and fingerprints taken
- Appear at an interview with the Migration Board, if possible on the same day as the asylum claim is filed or else as early as possible thereafter.

In addition to determining whether the person is subject to the Dublin II Regulation, as described above, the Migration Board must also determine whether the application is subject to the principle of first country of asylum⁵. In both cases, the asylum-seeker may be transferred to the applicable State for an examination of his or her claim.

The Migration Board undertakes an initial examination of the claim. At this stage, the Migration Board may decide that the claim falls under one of the following categories:

- The claim meets criteria for an accelerated procedure
- The claim is likely to meet criteria for protection; no public counsel is appointed
- The claim does not appear to meet criteria for protection; public counsel is appointed in order to assist the asylum-seeker with the procedure.

Accelerated Procedures

According to the Aliens Act⁶, an asylum claim may be assessed under an accelerated procedure if it is deemed by the Migration Board to be manifestly unfounded. Under the accelerated procedure, the Board aims to reach a decision on the claim within three months. The Board may also remove the person from Sweden regardless of whether the decision has gained force of law if no grounds – protection- or non-protection-related – exist for granting the person a residence permit.

The asylum-seeker may appeal the decision before one of the Migration Courts and further to the Migration Court of Appeal, if leave to appeal is granted. If refugee or protection reasons are put forward as an impediment to the implementation of removal, the Migration Board or the Migration Courts can suspend the removal and re-examine the case. The appeal has suspensive effect if it is highly likely that the appeal will be granted, for example, if the asylum-seeker demonstrates that removal would lead to a risk of the death penalty, torture or other cruel treatment.

⁵ See the section on Safe Country Concepts below for information on the application of the first country of asylum principle.

⁶ Chapter 8, Section 6 – see the annexe for further information on the content of this provision.

Normal Procedure

If, during the initial examination, the Migration Board determines that an asylum-seeker will be granted a permit, the case is examined without the appointment of public counsel. For the other asylum-seekers, public counsel is appointed to assist applicants with their claim. Every asylum-seeker can contact the Migration Board case officer handling his or her case whenever necessary.

One or several interviews with the applicant and counsel are conducted by the case officer, who after thoroughly examining the application and the situation in the country of origin, makes a recommendation to the decision-making officer for a decision.

Review/Appeal of Asylum Decisions

Asylum-seekers who receive a negative decision on their claim may lodge an appeal at one of three Migration Courts. Before an appeal is sent to the Court, the Migration Board reviews the case. If the Migration Board stands by its decision, the appeal moves forward to the Migration Court.

The appeal before the Migration Court is a two-party process in which the Migration Board is represented by Litigation Officers and the asylum-seeker by a legal representative. An oral hearing can be conducted when deemed necessary.

There is a possibility of appealing the decision of the Migration Court before the Migration Court of Appeal after leave (permission) has been granted. A leave to appeal will be granted if the case is determined to contain elements that may benefit from court guidance on the application of the law or if there are other compelling grounds on which to grant the appeal. However, detention cases do not require leave to proceed to appeal before the Migration Court of Appeal.

Freedom of Movement during the Asylum Procedure

Detention

At any stage of the asylum procedure and in accordance with the Aliens Act, the authority handling an asylum case – that is, the Police, the Migration Board, the Ministry of Justice, or the Courts – may decide to detain a person or place a person under supervision.

Adults (persons aged 18 and over) can be detained in the following circumstances:

- If detention is necessary in order for the responsible authority to fully consider an asylum application. In that case, the person may not

be detained for more than 48 hours without the possibility of an extension

- If the person's identity is unclear, either upon arrival in Sweden or when he or she subsequently applies for a residence permit. If the person cannot provide probable proof of his or her identity, the person may be taken into detention for up to two weeks
- If it is likely that the person will not be granted a residence permit and/or will be required to leave Sweden, and there is reason to believe that he or she will go into hiding or pursue illegal activities in Sweden. If it is likely that the person will not be allowed to stay in Sweden, the detention period may not exceed two weeks. If a decision has already been issued that the person must leave Sweden, he or she may be detained for up to two months.

Detention periods in the last two cases described above can be extended if there are exceptional grounds for doing so. A decision on detention may be appealed to a Migration Court at any time. The responsible authorities are further obliged to re-examine at regular intervals the decision to detain.

Minors and Families

Neither children nor their parents or guardians may be taken into detention if this would result in family separation. However, children and their parents or guardians can be detained together only if legal provisions for detention are met. The maximum detention period of 72 hours can be extended by an additional 72 hours if exceptional grounds exist.

An unaccompanied minor can be taken into detention only in exceptional circumstances, if he or she has been served a removal decision or a negative decision on an application for a residence permit.

Conditions in Detention

Detention facilities run by the Migration Board have been designed to provide surroundings and services similar to those provided in regular reception centres. For example, activities, outdoor exercise and visiting privileges are available at detention facilities. The Migration Board cooperates with volunteer organisations, churches and community groups to offer support to detained asylum-seekers.

Reporting

Instead of detaining a foreign national, the case-handling authority may decide that placing the person under supervision is sufficient. Children can also

be placed under supervision in certain cases. If the person is under supervision, he or she must report to the responsible authority at specified times and at a specified location. The authorities may impose other reporting conditions as required.

Repeat/Subsequent Applications

There is no possibility to file repeat applications for a review of the grounds for asylum. However, in a case concerning the enforcement of a refusal-of-entry or expulsion order that has become final and non-appealable, the Migration Board can decide to examine whether new circumstances that have arisen would result in an impediment to the implementation of removal.

If the foreign national invokes new circumstances that can be assumed to constitute a lasting impediment to enforcement and these circumstances could not previously have been invoked by the person, or the person shows a valid reason for not having invoked these circumstances previously, the Migration Board may, if a residence permit cannot be granted without an examination, re-examine the matter of a residence permit and issue an order staying the enforcement case. If the conditions described have not been fulfilled, the Migration Board may decide not to grant a re-examination.

The Migration Board's decision not to grant a re-examination, or not to grant a permanent residence permit after a re-examination, may be appealed to a Migration Court.

If the Migration Board decides to issue a stay of enforcement order, public counsel may be appointed if the need is identified.

5.2 Safe Country Concepts

5.2.1. Safe Country of Origin

Sweden does not apply the principle of safe country of origin.

Asylum Claims Made by EU Nationals

Sweden considers that the Spanish Protocol, which is annexed to the Treaty of Amsterdam, does not limit European Union (EU) Member States' obligations under the 1951 Convention. When an EU national applies for asylum, the Migration Board must immediately inform the Ministry for Foreign Affairs, which will then immediately inform the Council of the European Union. When examining an asylum claim made by an EU national, the Migration Board starts with the assumption that there are no grounds for asylum. The Board may issue a decision to refuse entry and request that the decision be implemented before the decision becomes final and non-appealable.

5.2.2. First Country of Asylum

According to Chapter 5, Section 1 of the Aliens Act, a residence permit may be refused to an asylum-seeker who, before coming to Sweden, remained in a country other than the country of origin and has in that country protection from *refoulement*. In practice, for this provision to apply, the Migration Board must determine that the asylum-seeker resided in a safe country before arriving in Sweden. The question of whether the person has been granted or requested asylum in that country is irrelevant. In practice, that the asylum-seeker travelled through a safe country on his or her journey to Sweden (the *en route* rule) is not sufficient to establish a first country of asylum.

Exception to the principle of first country of asylum can be made in cases of sudden illness or other circumstances outside the asylum-seeker's control. In the Aliens Ordinance (2006:97), the Government has provided that the principle of first country of asylum does not apply if the alien has certain family ties to Sweden, or if he or she, under certain conditions, has acquired special ties to Sweden.

Following a decision to refuse a residence permit on the principle of first country of asylum, the asylum-seeker receives a special document stating that his or her grounds for asylum have not been examined in substance in Sweden. A refusal to grant a residence permit on this ground can be appealed to a Migration Court in the same manner as are applications for asylum in general.

5.2.3. Safe Third Country

Sweden does not apply any safe third country policies.

5.3 Special Procedures

5.3.1. Unaccompanied Minors

Procedures

Applications made by unaccompanied minors (UAMs) are prioritised by the Migration Board. Special procedural arrangements are made as follows:

- The application is processed within a three-month period at most, compared to a six-month period for adults
- A trustee is appointed by the municipality's chief guardian's office to represent the UAM and protect his or her interests
- Asylum interviews are conducted by specially trained staff, who use a special interview guide

and adjust the questions to the UAM's age and maturity level

- If a residence permit cannot be awarded on other grounds, a permit may be granted if there are "exceptionally distressing circumstances." Such circumstances may include health, integration in Sweden and the person's circumstances in the country of origin. Children may be granted residence permits under this section even if the circumstances that come to light do not have the same seriousness and weight that are required for a permit to be granted to adults under the same provision.

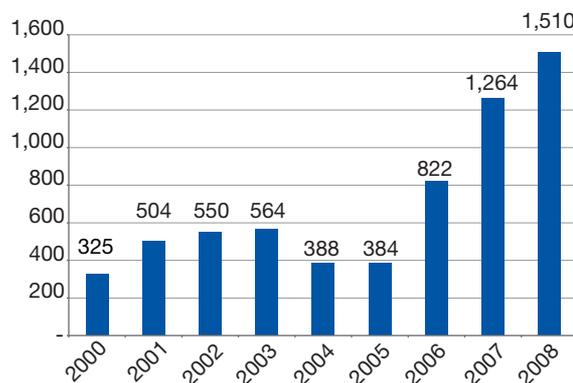
A minor is not returned to the country of origin if no suitable guardian has been located to receive the child.

Age Assessment

The Migration Board makes an initial assessment of the minor's age based on an interview, travel documents and supplementary information (such as information obtained from the municipality where the minor lives.) The minor may request that a complementary medical examination be used when assessing his or her age.

Figure 4:

Unaccompanied Minors: Total Applications per Year, 2000-2008



5.3.2. Temporary Protection

Chapter 21 in the Aliens Act⁷ provides protection according to Council Directive 2001/55/EC regarding minimum standards for granting protection in the case of a mass influx of displaced persons (Temporary Protection Directive). The Swedish Migration Board is responsible for making decisions under this provision. The granting of a temporary residence permit does not exempt a person from the examination of his or her asylum application or an application for declaration of refugee status or travel document for refugees. Asylum-seekers already in the asylum procedure may

⁷ See the annexe for the content of the provision.

Box 1: Case law: Internal Armed Conflict in Iraq

In a February 2007 ruling in the case of an Iraqi asylum-seeker, the Migration Court of Appeal provided guidance on the application of Chapter 4, Section 2 (subsidiary protection provisions) of the Aliens Act¹. An internal armed conflict was defined by the Court as a conflict that takes place inside the territory of a state between its armed forces and other organised armed groups that exercise such control over a part of its territory as to enable them to carry out military operations. The Court ruled that there was no internal armed conflict ongoing in Iraq at the time.

As a result of the judgment, subsidiary protection was granted to Iraqi asylum-seekers on the basis of a well-founded fear of being subjected to serious abuses because of other severe conflicts in Iraq. According to the Court, an internal flight alternative in northern Iraq for Iraqis with connections to this part of the country was reasonable.

The provision of protection owing to a well-founded fear of being subjected to serious abuses because of other severe conflicts contained in the Act stipulates that there should be a causal connection between the risk of abuse and the severe conflicts in the country of origin. In the *travaux préparatoires*² of this provision, it is stated that the term “well-founded fear” should be interpreted in the same way as is the parallel provision for refugees. Against this background, the assessment of whether the causal connection is satisfied is individual and aimed at establishing whether the applicant is personally at risk of abuse because of the severe conflicts. The general situation in the country or city of origin and the general risk conditions there alone are not sufficient for the causal connection to be deemed to have been established.

¹ See the decision from 26 February 2007 in Swedish: <http://www.migrationsverket.se/include/lifos/dokument/www/070227202.pdf>. The provision contained in Chapter 4, Section 2 of the Act can be found in the annexe to this chapter.

² *Travaux préparatoires* are considered a legal source in Swedish legislation.

be granted temporary protection according to this provision if a residence permit is not granted on other grounds.

5.3.3. Stateless Persons

Under the Aliens Act, stateless persons are treated the same as persons with citizenship, and stateless persons may apply for asylum in the same manner as do other asylum-seekers. The definition of a refugee in the Aliens Act explains that a stateless person shall be considered a refugee if he or she is outside the country where he or she had a previous habitual place of residence. The same applies for the granting of subsidiary protection. Thus, the application is assessed according to conditions prevalent in the last country of habitual residence.

After a refusal-of-entry or expulsion order has been served, difficulties in returning a stateless person to the country of former habitual residence may eventually result in a temporary or permanent residence permit being granted (under impediment to enforcement provisions).

6 Decision-Making and Status

6.1 Inclusion Criteria

When making a determination on an asylum claim, the Migration Board must first consider whether the person meets criteria for refugee status and, failing that, whether grounds for subsidiary protection are met. The Migration Board is also competent to grant permits, where no protection-related grounds for a residence permit exist, that is, in cases of exceptionally distressing circumstances or as a result of impediments to the implementation of a removal order.

6.1.1. Convention Refugee

The definition of a refugee is laid down in Chapter 4, Section 1 of the Aliens Act. The definition follows the criteria in the 1951 Convention relating to the Status of Refugees. Gender or sexual orientation may determine membership in a particular social group. The application for a declaration of refugee status can be made at the same time as the application for asylum.

6.1.2. Subsidiary Protection

Persons who do not qualify for Convention refugee status but meet the criteria for subsidiary protection are granted protection as “persons in need of protection.”

Subsidiary protection, as covered in Chapter 4, Section 2 of the Aliens Act, is granted in the following circumstances:

- The asylum-seeker has a well-founded fear of being subjected to the death penalty or corporal punishment, torture or other inhuman or degrading treatment or punishment
- The asylum-seeker has a well-founded fear of being subjected to serious abuses because of external or internal armed conflict or other severe conflicts in the country of origin
- The asylum-seeker is unable to return to his or her country of origin because of an environmental disaster.

6.1.3. Non-Protection Related Status

Exceptionally Distressing Circumstances

According to the Aliens Act, a residence permit may be granted in the case of exceptionally distressing circumstances. Under this provision, the state of health, the level of integration, and the situation in the country of origin of the asylum-seeker are taken into consideration.

Impediment to Implementation of a Refusal-of-Entry or Expulsion Order

A temporary residence permit may be granted if there is a temporary impediment to the implementation of a refusal-of-entry or expulsion order. Such a determination may be made following a re-examination of the asylum application after the asylum-seeker has raised issues regarding impediments to removal.⁸

If the impediment is permanent in nature, a residence permit may be granted on Convention grounds, on subsidiary protection grounds or because of exceptionally distressing circumstances.

6.2 The Decision

Decisions are made by the decision-making officers of the Migration Board who examine the merits of the claim. The Legal Affairs unit within the Migration Board supervises the decision-making process in the first instance.

The applicants are notified of the decision in writing only. A decision on a residence permit or long-term residence status in Sweden for a third-country national must contain the reasons on which the decision is based.

⁸ See the section on Repeat/Subsequent Applications above for more information on re-examination of asylum claims.

6.3 Types of Decisions, Status and Benefits Granted

Benefits

Recognised refugees and persons in need of protection are entitled to the same rights and obligations as are all inhabitants of Sweden. Refugees and persons in need of protection obtain the following benefits:

- Permanent residence (PUT)
- The right to work
- Support to find housing in a municipality.

Furthermore, refugees can apply for a travel document valid for all countries except the country of origin, and for a maximum and non-renewable period of five years.⁹ Persons benefiting from subsidiary protection may apply for an alien's passport according to Chapter 2, Sections 12-16 of the Aliens Ordinance (2006:97).

Convention refugees and persons in need of protection may apply for citizenship after having resided in Sweden for four years.

6.4 Exclusion

Article 1F of the 1951 Convention is applicable to refugees and to persons in need of protection. However, persons – including those who have been excluded from protection – who have a well-founded fear of being subjected to the death penalty or other cruel punishment if returned to the country of origin, will not be removed from Sweden.

6.4.1. Refugee Protection

According to the Aliens Act, a residence permit may be refused to a person who meets the criteria for Convention refugee status but who is found to have previously engaged in terrorist-related activities, genocide and war-crimes, or to raise concerns of national security. If the person excluded from refugee status has a well-founded fear of being subjected to the death penalty or other cruel punishment if returned to the country of origin, then he or she may be granted a temporary residence permit. Provisions in the Aliens Act on impediments to enforcement of removal (Chapter 12, Section 1) are also applicable in this instance.

⁹ Refugees may apply to the Migration Board for a travel document that satisfies EU passport requirements: a computer chip includes the holder's personal details and photograph. A person under 18 must have the consent of his or her parents or legal guardian in order to acquire this document.

6.4.2. Complementary Protection

A person in need of protection as outlined in Chapter 4, Section 2 of the Aliens Act may be subject to exclusion if he or she is found to have engaged in criminal activities, terrorist-related activities, genocide and war crimes, or to raise concerns of national security. However, if the person has a well-founded fear of being subjected to the death penalty or other cruel punishment if returned to the country of origin, then he or she may be granted a temporary residence permit. Return would not be implemented if provisions relating to impediments to implementation of removal were applicable.

The Migration Board is responsible for making a decision on exclusion at the first instance. The decision may be appealed to the Migration Courts and to the Migration Court of Appeal.

6.5 Cessation

The Migration Board may make a decision to apply cessation clauses of the 1951 Convention if one of the conditions set out in Chapter 4, Section 5 of the Aliens Act¹⁰ is met. Only clear, profound and lasting changes in the country of origin or former residence may be taken into consideration. Cessation may arise when a refugee is applying for travel documents or has committed a criminal offence that has resulted in a removal order.

6.6 Revocation

The rules for withdrawal of permits are laid out in Chapter 7 of the Aliens Act. Decisions on withdrawals of residence permits are made by the Migration Board.

Residence permits may be withdrawn from a person who has knowingly supplied incorrect information or knowingly suppressed information when such information was key to obtaining a permit. If the permit holder has resided in Sweden for more than four years when the question of withdrawal is examined, the residence permit may be withdrawn only if there are exceptional grounds for such an action as outlined in Chapter 7, Section 1 of the Aliens Act.

A permanent residence permit may be withdrawn from a person who is no longer resident in Sweden. In the case of a refugee or a person otherwise in need of protection in this country, however, the residence permit may be withdrawn at the earliest two years following the person's departure from Sweden for a country in which he or she previously resided and in which political conditions have changed.

¹⁰ See the annexe for the cessation terms set out in the Aliens Act.

6.7 Support and Tools for Decision-Makers

6.7.1. Country of Origin Information

The COI unit of the Swedish Migration Board is made up of 12 persons providing research and information support to caseworkers. The COI unit consists of different geographical teams staffed by information and country specialists.

The COI unit primarily receives information on countries of origin, which is scrutinised and analysed. The COI unit also seeks open information actively in cooperation with asylum decision-makers, among others. One of the elements of the legal reform introduced by the new Aliens Act in 2006 was increased transparency of the asylum process. In order to achieve this, it was decided that the country information gathered by the Swedish Migration Board should, to the greatest possible extent, be publicly accessible. Thus, information from LIFOS, the COI database, is publicly available through the Migration Board's website (www.migrationsverket.se).

6.7.2. Language Analysis

The Swedish Migration Board may use language analysis as an investigation tool in cases in which the asylum-seeker cannot prove his or her identity. A language analysis is not the sole instrument for determining the origin of an asylum-seeker: questions regarding personal circumstances and tests of knowledge about the region of origin are used together with language analysis.

The asylum-seeker's speech is recorded anonymously by an official at the Migration Board. The recording is sent to an independent analyst. The analyst includes in his or her report of the outcomes of the analysis a summary of his or her knowledge of the language or dialect in question. The use of language analysis is not regularised by the Aliens Act or Aliens Ordinance.

7 Efficiency and Integrity Measures

7.1 Technological Tools

7.1.1. Fingerprinting

The Swedish Migration Board or the police authority may, if the person has attained the age of 14, take his or her fingerprints under the following circumstances:

- The person cannot prove his or her identity upon arrival in Sweden

- The person has applied for a residence permit as a refugee
- There are grounds for ordering detention of the person.

7.1.2. DNA Tests

In cases concerning residence permits on grounds of family ties, the Migration Board may grant the applicant and the person to whom ties are cited an opportunity to have a DNA analysis performed to confirm the biological relationship cited in their application. A DNA analysis may be performed only if the person to be examined has been informed of the purpose of the DNA analysis and has given his or her written consent. While DNA tests are used rarely in the asylum procedure, they are considered very useful as they are accurate.

7.1.3. Forensic Testing of Documents

The Migration Board may make a request to the Swedish National Laboratory of Forensic Science (SKL) to verify identity documents when there are doubts about their authenticity. The SKL specialises in fraudulent documents. Forensic testing of documents is rarely undertaken, as the majority of asylum-seekers do not present any identity documents.

7.1.4. Database of Asylum Applications/Applicants

All asylum applications and decisions are registered in a database, a registry in which all foreign nationals in Sweden are registered. The Migration Board also maintains a specific statistical database.

7.2 Length of Procedures

Generally, asylum claims must be processed within a six-month period (three months for unaccompanied minors), although the length of the procedure depends on factors such as the number of asylum-seekers who have arrived in Sweden in the months preceding the application and the complexity of the claims.

7.3 Pending Cases

At the end of 2008, there were 13,977 pending cases. The Migration Courts have accumulated a backlog of 4,690 new cases since they were established in 2006. Expectations are that the backlogs will be eliminated by next year if the influx of asylum-seekers to Sweden remains at current levels.

7.4 Information Sharing

Sweden is party to the Dublin II Regulation and agreements with Denmark, Norway, Iceland and Switzerland, extending the application of the Dublin Regulation to those states. Specific information on asylum-seekers can be released to other EU Member States, in accordance with Article 21 of the Dublin Regulation. No information on an asylum-seeker may be released to a third country unless the asylum-seeker consents to it.

7.5 Single Procedure

Sweden has a single asylum procedure. Consequently, an asylum-seeker need only make one application for international protection in order to obtain either Convention refugee status or subsidiary protection. The Migration Board first determines whether the applicant meets the criteria for refugee status and, if this is not the case, it will then determine whether grounds exist for granting subsidiary protection.

Box 2: Cooperation with UNHCR

The UNHCR Regional Office for the Baltic-Nordic Region, located in Stockholm, has no formal role in the asylum procedure. However, upon the request of a party in the procedure, UNHCR may provide updated country of origin information (COI), legal advice or UNHCR's recommendations and guidelines. In exceptional precedent-setting cases, the UNHCR may submit *amicus curiae* to the last instance body.

Due to provisions in the Swedish Secrecy Act, which aim to protect sensitive information regarding asylum-seekers, the UNHCR and NGOs must have a power of attorney in order to have access to information regarding a specific asylum-seeker and his or her case.

8 Assistance and Reception Benefits for Asylum-Seekers

8.1 Procedural Support and Safeguards

8.1.1. Legal Assistance

At the first instance, legal assistance is provided in all cases except when it is obvious to the Migration Board after a preliminary review of the case that the

applicant will be allowed to remain in Sweden or when the applicant may be sent to a third country for an examination of the alleged grounds for asylum.

Legal assistance is available during an appeal only if the decision that is being appealed has been combined with a removal order. A public counsel will then be appointed unless it is assumed that legal counsel is not needed.

8.1.2. Interpreters

If necessary, asylum-seekers are provided with the services of an interpreter during the asylum procedure.

8.1.3. UNHCR

The UNHCR, along with non-governmental organisations, is entitled to provide legal counsel with specific country expertise to intervene on behalf of an asylum-seeker during the asylum procedure. The Regional Office of the UNHCR for the Baltic-Nordic Region provides training, advice and information to NGOs and lawyers who have direct contact with asylum-seekers.

8.1.4. NGOs

The Swedish Refugee Advice Centre is an NGO that aims to provide refugees and asylum-seekers with professional legal assistance. Advisors at the Centre can act as legal counsel in asylum cases. Current members supporting the Centre include Amnesty International (Swedish section), Caritas, the Swedish Trade Union Confederation, Save the Children, the Swedish Free Church Council, and the Church of Sweden.

8.2 Reception Benefits

The Swedish Migration Board is responsible for overseeing the reception of asylum-seekers. During the asylum procedure, applicants receive a document – the so-called LMA¹¹ card – identifying them as asylum-seekers.

8.2.1. Accommodation

Asylum-seekers awaiting a decision on their claim may choose whether they wish to arrange their own private accommodation or stay at one of the Migration Board's reception centres. Over half of the asylum-seekers choose to arrange their own accommodation. The Migration Board rents apartments to asylum-seekers. These apartments are found throughout Sweden.

¹¹ The acronym LMA stands for the Swedish name of the Act governing the reception of asylum-seekers: Lagen om mottagning av asylsökande.

Unaccompanied minors (UAMs) are accommodated in group housing with specially-trained staff.

8.2.2. Social Assistance

The Migration Board provides asylum-seekers in need of financial assistance with a daily cash allowance to cover expenses such as food, clothing and personal hygiene. The rate of the daily cash allowance is as follows:

- SEK 71 (ca. 7€) for adults; this is reduced to SEK 24 if the asylum-seeker is provided with food by the Migration Board, and to SEK 61 / SEK 19 for adults who co-habitate
- Between SEK 37 and 50 for children, adjusted according to age.

Financial assistance is also provided for some separate expenses, such as prescription eyeglasses or provisions for infant care.

Persons who fail to cooperate with authorities during the asylum procedure, such as by missing appointments for scheduled interviews, may have their daily allowance cut as a result.

8.2.3. Health Care

The municipal administrative board, with funding from the Migration Board, is responsible for covering most of the health care costs of asylum-seekers. For health care services that cost a greater amount than what is provided by the Board's funds, the municipal administrative board may apply to the Migration Board for payment of this cost.

Asylum-seekers are entitled to a voluntary medical examination¹² free of charge. They are charged a fee for emergency medical care, dental treatment, and medication. Minors are entitled to medical and dental care on the same terms and conditions as are other children in Sweden.

8.2.4. Education

The municipality is responsible for offering education. While education is not mandatory, asylum-seeking children up to the age of 18 who wish to attend school may do so according to the same rules governing Swedish citizens.

All asylum-seekers aged between 16 and 65 years – regardless of their accommodation arrangements – have an obligation to take part in activities organised

¹² The medical examination is not mandatory for the completion of the asylum application.

by the Migration Board. Examples of activities include Swedish language classes and maintenance tasks in the reception centres. The Migration Board may reduce the amount of the daily allowance if the asylum-seeker does not take part in these activities.

8.2.5. Access to Labour Market

If the Migration Board estimates that it will take more than four months to process a case, the asylum-seeker will be exempt from the requirement of a work permit and will be able to work without a work permit (the Migration Board issues a document that indicates that the asylum-seeker is exempt from the requirement). The asylum-seeker is entitled to work up to the time he or she leaves Sweden.

The exemption from the requirement of having a work permit is subject to the asylum-seeker cooperating in the establishment of his or her identity (in situations where an asylum-seeker cannot prove his or her identity with identity documents). Moreover, once a negative decision on the asylum case has gained legal force (that is, all appeal possibilities have been exhausted), the rejected asylum-seeker has an obligation to cooperate with the authorities for implementation of the removal order. If this requirement is not met, the exemption from the requirement of having a work permit may be revoked.

If the asylum-seeker obtains a job for a period of longer than three months in a town where the Migration Board does not provide accommodation, he or she will be provided with a housing allowance.

8.2.6. Access to Benefits by Rejected Asylum-Seekers

Asylum-seekers are entitled to social assistance, health care, accommodation and education benefits throughout the asylum procedure. Persons who receive a negative decision on their asylum claim continue to have access to these benefits (described above) until their departure from Sweden. Rejected asylum-seekers, however, have an obligation to cooperate with authorities on the implementation of their return to the country of origin, in order to have access to these reception benefits.

9 Status and Permits Granted outside the Asylum Procedure

9.1 Obstacles to Return

A removal order that is final and non-appealable may not be implemented if new information comes to light indicating there may be obstacles to return. Pursuant to

Chapter 12, Section 18 of the Aliens Act, the Migration Board may consider the following circumstances in that case:

- The asylum-seeker risks persecution in the country of origin, or he or she is not likely to be protected in that country from being sent to a country where there is a risk of persecution
- There is a fair reason to assume that he or she may face a danger of being subjected to the death penalty or corporal punishment, torture or inhuman or degrading treatment
- There is reason to assume that the intended country of return will not be willing to accept the person
- There are medical or other special grounds for the removal order not to be implemented.

If there are permanent obstacles to return, the person will be granted a residence permit. If the person risks being subjected to persecution in the country of origin, he or she will be granted asylum.

9.2 Regularisation of Status of Stateless Persons

While Sweden has ratified the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, there is no possibility of obtaining a legal recognition of stateless status. Travel documents may be issued to a stateless person, as well as to refugees.

9.3 Temporary Law on Granting a Residence Permit

In the period between 15 November 2005 and 30 March 2006, a temporary law was in force that introduced additional legal grounds for granting a residence permit to foreign nationals who had received a final expulsion order. The temporary law stipulated that if new circumstances came to light in a case concerning enforcement of a refusal-of-entry or expulsion order that had gained legal force, the Swedish Migration Board could grant a residence permit in the following circumstances:

- If there was reason to assume that the intended country of return would not be willing to accept the foreign national
- if there were medical obstacles to implementing the order, or
- if it was there was a compelling humanitarian reason for granting a permit.

In all, 17,000 residence permits were granted during this temporary arrangement.

10 Return

10.1 Pre-departure Considerations

The Migration Board provides assistance and information to facilitate voluntary returns. In addition to covering the cost of the return journey, the Migration Board may also provide a reintegration allowance to certain groups of returnees. In general, persons whose asylum applications have been rejected, who opt for voluntary return and who are returning to countries with very limited preconditions for reintegration, are generally eligible for the voluntary return allowance. The allowance amounts to SEK 30,000 (ca. 2,800€) per adult, SEK 15,000 per child, and a maximum of SEK 75,000 per family.

The police authorities are responsible for enforcing returns.

10.2 Procedure

An asylum-seeker who is refused entry into Sweden has an obligation to leave the country within two weeks of the decision of non-entry while a person who has been served a removal order must leave the country within four weeks of the date when the order becomes final and non-appealable, unless otherwise provided in the order.

10.3 Freedom of Movement/ Detention

Persons who have obtained a final negative decision on their asylum claim may be detained prior to removal, in accordance with the Aliens Act¹³. The detention period may not exceed two months. The period may however be extended if there are exceptional grounds for doing so.

The vast majority of rejected asylum-seekers are not detained prior to removal.

10.4 Readmission Agreements

As at October 2008, Sweden had 22 readmission agreements in force.¹⁴ A protocol agreement with Russia is in place regarding cooperation in order to establish identity and citizenship and for the issuing of travel documentation. An agreement on readmission with the United Nations Mission in Kosovo (UNMIK) is in force, as is a tripartite memorandum of understanding on readmission among Sweden, Afghanistan and UNHCR.

Furthermore, in February 2008, Sweden and Iraq concluded a memorandum of understanding regarding the return of Iraqi asylum-seekers. The Nordic passport exemption agreement for travel in the Nordic region (Denmark, Finland, Iceland, Norway and Sweden) regulates the readmission obligation in force among the Nordic countries.

Negotiations for new readmission agreements are ongoing with a small number of other countries.

11 Integration

The Swedish government provides funds to municipalities for the implementation of refugee reception and integration programs.

The refugee reception programs are financed through a system of one-time standard grants to the municipalities, calculated on a fixed amount per person settled in the municipality, with different sums for persons between the ages of 16 and 65, minors under 16, and adults over 65 years of age. The standard grant is meant to cover costs incurred by the municipality in providing such support services as living expenses, Swedish-language courses, and special schooling arrangements for children. The grant covers costs incurred in the first two-year period of settlement.

The municipality, in consultation with the refugee or other protected person, draws up individual plans for participating in integration activities, such as learning the Swedish language, attending school or university, finding employment and arranging private accommodation. These plans are tailored to the person's needs and may change according to the person's newly acquired experiences and insights. All work by the municipalities and the employment services aims at assisting each individual to find his or her own way to an independent life in Sweden in terms of housing, employment, education, social networks and participation in society.

Access to these benefits does not depend on whether the person has Convention refugee status or a form of complementary protection status or is a resettled refugee. It is also possible for the municipalities to offer integration programs to other persons with a residence permit who are not covered by the government grant.

¹³ See the section above on Freedom of Movement during the Asylum Procedure.

¹⁴ Sweden has signed bilateral readmission agreements with the following countries: Armenia, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Estonia, France, Germany, Latvia, Lithuania, Macedonia (FYROM), Montenegro, Poland, Romania, Serbia, Slovakia, Switzerland and Vietnam.

12 Annexe

12.1 Selections from the Swedish Aliens Act¹⁵

Chapter 4 - Refugees and persons otherwise in need of protection

Definitions

Section 1

In this Act 'refugee' means an alien who

- is outside the country of the alien's nationality, because he or she feels a well-founded 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.

This applies irrespective of whether it is the authorities of the country that are responsible for the alien being subjected to persecution or these authorities cannot be assumed to offer protection against persecution by private individuals.

A stateless alien shall also be considered a refugee if he or she

- is, for the same reasons that are specified in the first paragraph, outside the country in which he or she has previously had his or her usual place of residence and
- is unable or, because of fear, unwilling to return there.

Section 2

In this Act a 'person otherwise in need of protection' is an alien who in cases other than those referred to in Section 1 is outside the country of the alien's nationality, because he or she

1. feels a well-founded fear of suffering the death penalty or being subjected to corporal punishment, torture or other inhuman or degrading treatment or punishment,
2. needs 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
3. is unable to return to the country of origin because of an environmental disaster.

The corresponding applies to a stateless alien who is outside the country in which he or she has previously had his or her usual place of residence.

Declaration of refugee status

Section 3

If a refugee requests this, the alien shall be declared a refugee (declaration of refugee status) either in connection with the granting of a residence permit or subsequently.

A declaration of refugee status shall be withdrawn if it comes to light that the alien can no longer be regarded as a refugee.

(...)

Termination of refugee status

Section 5

¹⁵ Aliens Act (2005: 716) (with amendments up to and including Swedish Code of Statutes 2006: 220), entered into force 31 March 2006, available online at: <http://www.sweden.gov.se/content/1/c6/06/61/22/fd7b123d.pdf> [accessed 27 February 2009].

A refugee ceases to be a refugee if he or she

1. voluntarily re-avails himself or herself of the protection of the country of his or her nationality,
2. voluntarily reacquires the citizenship that he or she has previously lost,
3. acquires citizenship in a new country and obtains the protection of that country,
4. voluntarily returns to settle in the country of his or her nationality or the country where, if stateless, he or she previously had his or her usual place of residence or
5. is no longer in such a situation that he or she can be regarded as a refugee and therefore cannot continue to refuse to avail himself or herself of the protection of the country of his or her nationality or the country where, if stateless, he or she previously had his or her place of residence.

(...)

Chapter 5 - Residence permits

Persons who are entitled to a residence permit as being in need of protection

Section 1

Refugees and persons otherwise in need of protection who are in Sweden are entitled to a residence permit.

A residence permit may, however, be refused to

1. a refugee under Chapter 4, Section 1 if there are exceptional grounds for not granting a residence permit in view of what is known about the alien's previous activities or with regard to national security,
2. a person otherwise in need of protection under Chapter 4, Section 2, first paragraph, points 2 and 3, if in view of his or her criminal activities there are special grounds for not granting the alien a residence permit or if there are exceptional grounds for not granting such a permit in view of what is known about the alien's previous activities or with regard to national security,
3. an asylum seeker who has entered Sweden from Denmark, Finland, Iceland or Norway and can be returned to any of these countries in accordance with an agreement between Sweden and that country, unless it is obvious that the alien will not be granted a residence permit there,
4. an asylum seeker who has otherwise, before coming to Sweden, stayed in a country other than the country of origin and is protected there against persecution and against being sent to the country of origin or to another country where he or she does not have corresponding protection,
5. an asylum seeker who has special ties to another country and is protected there as specified in point 4 or
6. an asylum seeker who can be sent to Denmark under the Convention of 15 June 1990 determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities (the Dublin Convention) and is protected as specified in point 4.

The Dublin Regulation contains provisions that are applicable in relation to the Member States of the European Union and in relation to Iceland and Norway.

(...)

Residence permits on grounds of exceptionally distressing circumstances

Section 6

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.

Children may be granted residence permits under this Section even if the circumstances that come to light do not have the same seriousness and weight that is required for a permit to be granted to adults.

(...)

Section 11

A temporary residence permit may be granted if there is an impediment, which is not of a lasting nature, to enforcement of a refusal-of-entry or expulsion order.

Chapter 7 - Withdrawal of permits

Section 1

Visas, residence permits and work permits may be withdrawn from an alien who has knowingly supplied incorrect information or knowingly suppressed circumstances that have been important for obtaining the permit.

If the alien has been in this country for more than four years on a residence permit when the question of withdrawal is examined by the authority that makes the first decision in the matter, the residence permit may only be withdrawn under the first paragraph if there are exceptional grounds for this.

(...)

Section 7

A permanent residence permit shall be withdrawn from an alien who is no longer resident in Sweden.

In the case of an alien who has been a refugee or a person otherwise in need of protection in this country, however, the residence permit may be withdrawn at the earliest when two years have elapsed since residence in this country ended, if the alien has returned to a country where he or she was previously resident because political conditions in that country have changed.

Chapter 8 - Refusal of entry and expulsion

(...)

Section 6

The Swedish Migration Board may direct that the Board's order to refuse entry under Section 4, first paragraph may be enforced even if it has not become final and non-appealable (refusal of entry with immediate enforcement), if it is obvious that there are no grounds for asylum and that a residence permit is not to be granted on any other grounds.

Chapter 12, Section 7 contains more detailed provisions on the enforcement of refusal-of-entry orders with immediate enforcement.

(...)

**Chapter 12 - Enforcement of refusal-of-entry and expulsion orders
Impediments to the enforcement of refusal of entry and expulsion**

Section 1

The refusal of entry and expulsion of an alien may never be enforced to a country where there is fair reason to assume that

- the alien would be in danger there of suffering the death penalty or being subjected to corporal punishment, torture or other inhuman or degrading treatment or punishment or
- the alien is not protected in the country from being sent on to a country in which the alien would be in such danger.

Section 2

The refusal of entry and expulsion of an alien may not be enforced to a country

- if the alien risks being subjected to persecution in that country or
- if the alien is not protected in the country from being sent on to a country in which the alien would be at such risk.

An alien may, however, be sent to such a country, if it is not possible to enforce the refusal of entry or expulsion to any other country and the alien has shown by committing an exceptionally gross offence that public order and security would be seriously endangered by allowing him or her to remain in Sweden. This is, however, not applicable if the persecution threatening the alien in the other country entails danger for the life of the alien or is otherwise of a particularly severe nature.

An alien may also be sent to such a country if the alien has conducted activities that have endangered national security and there is reason to assume that the alien would continue to conduct these activities in the country and it is not possible to send the alien to any other country.

(...)

Section 18

If, in a case concerning the enforcement of a refusal-of-entry or expulsion order that has become final and non-appealable, new circumstances come to light that mean that

1. there is an impediment to enforcement under Section 1, 2 or 3,
 2. there is reason to assume that the intended country of return will not be willing to accept the alien or
 3. there are medical or other special grounds why the order should not be enforced,
- the Swedish Migration Board may grant a permanent residence permit if the impediment is of a lasting nature. If there is only a temporary impediment to enforcement, the Board may grant a temporary residence permit. The Swedish Migration Board may also order a stay of enforcement.

Section 19

If, in a case concerning the enforcement of a refusal-of-entry or expulsion order that has become final and non-appealable, an alien invokes new circumstances

1. that can be assumed to constitute a lasting impediment to enforcement referred to in Section 1, 2 or 3 and
2. these circumstances could not previously have been invoked by the alien or the alien shows a valid excuse for not previously having invoked these circumstances, the Swedish Migration Board shall, if a residence permit cannot be granted under Section 18, reexamine the matter of a residence permit and issue an order staying the enforcement case.

If the conditions set out in the first paragraph have not been fulfilled, the Swedish Migration Board shall decide not to grant a re-examination.

Chapter 21- Temporary protection

(...)

Section 2

An alien who is covered by a decision on temporary protection under Directive 2001/55/EC and who is transferred to or received in Sweden in accordance with the Directive shall be given a temporary residence permit, a residence permit with temporary protection.

An alien may only be refused a residence permit with temporary protection when there are circumstances under which a refugee can be refused a residence permit under Chapter 5, Section 1.

12.2 Processing Costs

The average cost of the Swedish Migration Board's processing of an asylum claim was SEK 19,267 (ca. 1,800€) in the year 2007. The average cost of the Migration Courts' processing of an appeal to the Migration Board's decision was SEK 31,881 (ca. 3,000€) in the year 2007.

12.3 Additional Statistical Information

Figure 5:

Asylum Applications from Top Five Countries of Origin for 1997, 2002 and 2008

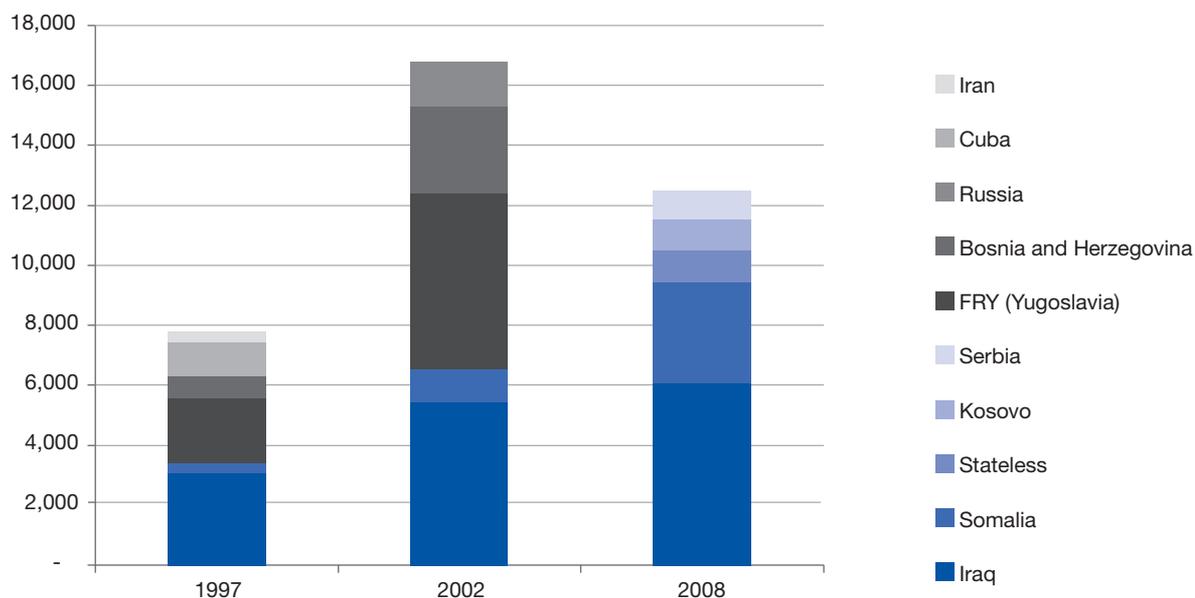


Figure 6:

Decisions Made at the First Instance, 1992-2008

Year	Convention Status		Complementary Protection and Other Authorisations to Remain		Rejections		Other Decisions*		Total Decisions
	Count	% of total	Count	% of total	Count	% of total	Count	% of total	
1992	275	1%	6,715	26%	14,670	57%	3,952	15%	25,612
1993	761	1%	33,237	40%	43,402	52%	6,122	7%	83,522
1994	538	1%	19,368	52%	14,920	40%	2,468	7%	37,294
1995	35	0%	2,098	24%	5,684	65%	869	10%	8,686
1996	102	2%	2,424	37%	2,933	45%	1,057	16%	6,516
1997	1,022	10%	3,658	35%	4,932	47%	805	8%	10,417
1998	801	7%	3,518	30%	6,503	56%	836	7%	11,658
1999	326	4%	2,610	30%	5,585	64%	260	3%	8,781
2000	321	2%	6,717	39%	8,970	52%	1,223	7%	17,231
2001	160	1%	4,495	27%	10,638	63%	1,562	9%	16,855
2002	261	1%	5,239	19%	18,479	68%	3,143	12%	27,122
2003	430	1%	3,889	13%	22,650	73%	4,036	13%	31,005
2004	372	1%	3,024	9%	27,870	79%	3,993	11%	35,259
2005	337	1%	5,021	21%	15,923	67%	2,638	11%	23,919
2006	682	2%	22,073	55%	12,675	32%	4,790	12%	40,220
2007	856	3%	14,784	46%	12,184	38%	4,648	14%	32,472
2008	1,696	5%	6,580	19%	21,742	64%	3,827	11%	33,845

*Other decisions may include withdrawn claims, abandoned claims or claims otherwise resolved.

Switzerland



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1 Background: Major Asylum Trends and Developments

Asylum Applications

In the mid-1980's, the number of asylum applications made in Switzerland stood at less than 10,000 each year. This began to change in the late 1980's, with significant increases in number reaching a peak of 41,600 applications in 1991. This was followed by a sharp drop in applications until 1998 and 1999, when numbers peaked again at 43,000 and 47,000, respectively. Asylum applications have been made in much smaller numbers since 2001, reaching the level of 10,800 in 2007 and 16,600 in 2008.

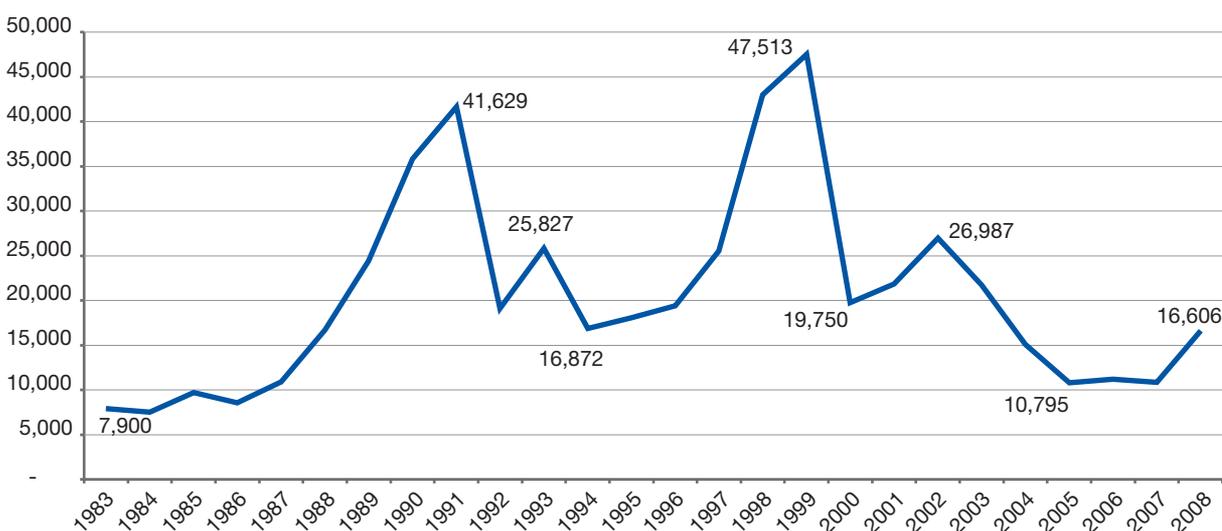
impose certain restrictions on asylum-seekers' access to the labour market.

By the end of the millennium, Swiss asylum legislation had been significantly reformed. The new law of 1999 allowed for the granting of temporary, group-based protection to persons affected by war, but the law also aimed at addressing claims that were clearly abusive of the system by, for example, expanding the criteria for applying the policy of DAWES to include applications made without the submission of required documents.

There were further developments to the DAWES policy in 2003 and 2004. Asylum-seekers whose applications were subject to a dismissal without entering into the substance of the claim were no longer entitled to state welfare benefits, although emergency assistance

Figure 1:

Evolution of Asylum Applications in Switzerland, 1983-2008



Top Nationalities

In the 1990's, Switzerland received asylum claims mainly from the former Yugoslavia, Sri Lanka, Turkey, and Somalia. Since 2000, the majority of asylum-seekers have continued to originate from the former Yugoslavia, Sri Lanka and Turkey, but also from Eritrea, Nigeria, Iraq, Somalia and China (Tibet).

remained available to them. Meanwhile, the time limit for making an appeal against a decision to not enter into the substance of the claim was reduced.

Important Reforms

A number of developments between the 1980's and 2005 have helped to shape the current framework for asylum procedures. In 1990, Switzerland introduced a policy of dismissing an application without entering into the substance (DAWES) of the case, based on a set of criteria that included the "safe country of origin" principle. The same year, the government began to

Further reforms to the asylum legislation came into force in 2007 and 2008 (see the section below on recent reforms). In January 2007, the new Federal Administrative Tribunal (FAT) replaced the Asylum Appeal Commission (AAC) as the second instance decision-making body.

Figure 2:

Evolution of Applications from Top Three Countries of Origin for 2008

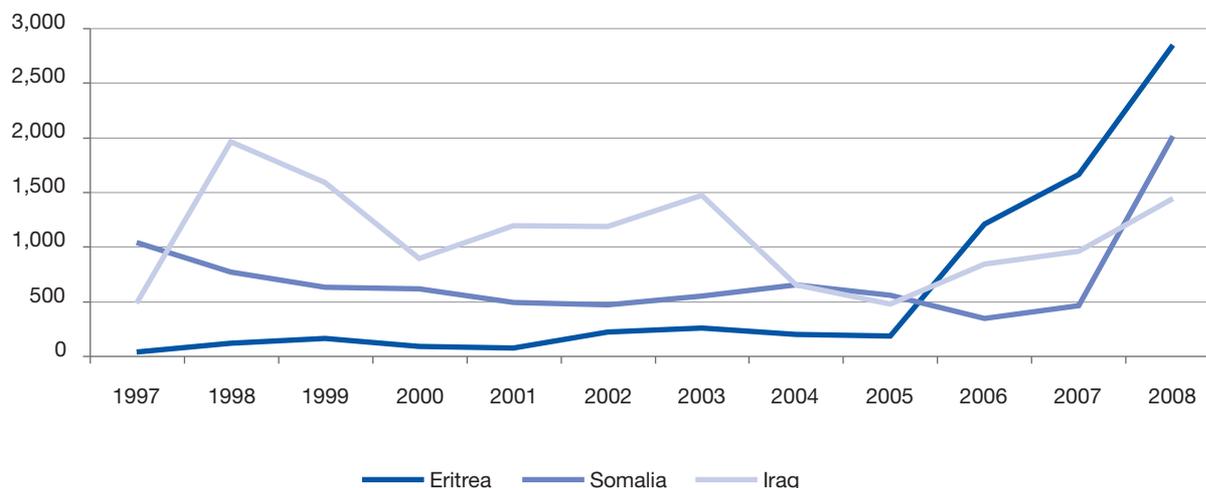


Figure 3:

Top Five Countries of Origin in 2008

1	Eritrea	2,848
2	Somalia	2,014
3	Iraq	1,440
4	Sri Lanka	1,262
5	Serbia	1,186

2 National Legal Framework

2.1 Legal Basis for Granting Protection

The asylum procedure and the granting of international protection are governed by the Asylum Act of 26 June 1998 and the Aliens Act of 16 December 2005. The Asylum Act¹ contains the inclusion, cessation and exclusion clauses of the 1951 Convention relating to the Status of Refugees (1951 Convention), and defines asylum procedures and procedural guarantees. The Aliens Act covers matters related to temporary admission and administrative detention measures.

Articles 3 and 8 of the European Convention on Human Rights (ECHR) are given effect in Swiss legislation.

2.2 Recent/Pending Reforms

Recent reforms to the Asylum Act and to the Aliens Act entered into force in 2007 and 2008. Some of the key changes were as follows:

- An expansion of the criteria for applying the DAWES policy to asylum-seekers who do not provide valid identity and travel documents to asylum authorities within 48 hours of application
- The interruption of state welfare benefits for asylum-seekers who have received a negative decision on their claim
- The granting of access to the labour market and to family reunification benefits to persons granted temporary admission
- The introduction of fees for making a second asylum application or for requesting a review of an initial asylum claim
- The introduction of the safe third country principle, including an agreement with the European Union (EU) to apply Council Regulation (EC) No 343/2003²
- The transfer of responsibility for all asylum interviews to the Federal Office for Migration (FOM) from the cantons
- The introduction of a residence permit in cases of hardship.

¹ The text of the Asylum Act of 26 June 1998 is available in French and German on the website of the Federal Office for Migration at the following links: <http://www.admin.ch/ch/f/rs/1/142.31.fr.pdf> (French) and <http://www.admin.ch/ch/d/sr/14.html> (German).

² Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (Dublin II Regulation).

Pending Reforms

A draft revision of the Asylum Act and Aliens Act was presented in January 2009 by the Federal Council, with a view to improving and accelerating the procedure. The key proposals for changes to the asylum procedure are as follows:

- The exclusion of military deserters from refugee status, unless they have a well-founded fear of persecution in the meaning of the 1951 Convention
- The removal of the asylum application process from Swiss diplomatic missions abroad
- The introduction of a new regulation on repeat applications and requests for review in order to simplify and accelerate these procedures.

As at this writing, the process of national consultation on these proposals has just begun. The proposals will then be presented to Parliament. If these proposals are accepted, the reforms envisaged will likely come into force in 2011, at the earliest.

Box 1: Swiss Asylum Case Law: Defining Grounds for Persecution

Two important rulings in 2006 by the former second-instance decision-making body, the Asylum Appeal Commission (AAC), defined further the grounds for persecution that may lead to Convention refugee status.

In the decision of the AAC of 8 June 2006 in the case of *I.L., Somalia*, the Commission ruled that victims of persecution perpetrated by non-state agents may be eligible for Convention refugee status. A ruling recognising gender-related persecution in the case of forced marriages as a ground for refugee status was also handed down by the AAC in 2006 (Decision of the AAC of 9 October 2006 in re: *W.H., Ethiopia*).

3 Institutional Framework

3.1 Principal Institutions

The Federal Office for Migration (FOM), which falls within the Department of Justice and Police, is responsible for examining and making determinations on asylum claims, and may issue removal orders or a grant of temporary admission if asylum is not granted. The FOM is also responsible for overseeing the reception of asylum-seekers. The FOM was created in 2005

to bring together the functions of the Federal Office for Refugees and the Federal Office for Immigration, Emigration and Integration.

The Federal Council (Swiss Government) determines the safe countries of origin and the safe third countries.

The Cantonal Migration Offices, often in consultation with the competent federal authority, are responsible for the removal of rejected asylum-seekers. In certain cases, they may also be responsible for receiving asylum applications. The Cantonal Migration Offices have responsibility for the Aliens Police.

The Federal Administrative Tribunal (FAT) hears appeals of decisions made by the Federal Office for Migration.

4 Pre-entry Measures

To enter Switzerland, foreign nationals must be in possession of a valid travel and/or an identity document and of financial means to support their stay. In addition, some foreign nationals may require an entry visa.

4.1 Visa Requirements

In 2004, Switzerland signed an agreement with the European Union to take part in the Schengen Agreement. Switzerland began to apply Schengen rules on 12 December 2008. Thus, foreign nationals who require an entry visa may enter Switzerland on a Schengen visa.

4.2 Carrier Sanctions

With the coming into force of the agreement to apply the Schengen Agreement, the Aliens Act has introduced requirements for carriers transporting passengers to Switzerland. Carriers must “take all reasonable measures to ensure that only persons possessing the required travel documents to travel through, enter or exit the country are transported.” Companies failing to respect these conditions are obliged to remove the inadmissible passenger and to take care of uncovered costs for maintenance and care. They may be subject to a maximum fine of one million CHF. The carrier may be exempted from sanctions if grounds for refusal of entry are not related to a travel document or if a travel document falsification was not detectable.

4.3 Interception

Border control authorities at land border posts and airports carry out interception activities. Interception measures include refusal of entry, removal or removal detention order, if removals cannot be carried out immediately. Entry

or access to the territory may be granted in connection with an asylum request at the border following the airport procedure. Referral to a reception centre may take place following an asylum request at the land border. Entry may also be granted as a consequence of a successful appeal against a refusal-of-entry decision.

The FOM does not currently have immigration liaison officers abroad.

5 Asylum Procedures

5.1 Application Possibilities and Requirements, Procedures and Legal Remedies

Asylum applications may be made at border posts, at the airport, and at Swiss diplomatic missions abroad. Inside the territory, asylum applications may be made at one of four reception and procedure centres of the FOM and, for some cases, at the Aliens Police offices. Asylum applications can be made either orally or in writing.

The majority of asylum claims in Switzerland are made at one of the reception centres.

An information leaflet on the asylum procedure is available in a number of different languages in the reception centres.

5.1.1. Outside the Country

Applications at Diplomatic Missions

An asylum-seeker may apply for asylum at a Swiss diplomatic mission in his or her country of origin or in a third country. When an asylum claim is made, the asylum-seeker provides all documents in support of his or her claim, and is interviewed by diplomatic mission officials on the motives of the claim.

The information collected, along with the mission's preliminary assessment, is forwarded to the Federal Office for Migration, which will then assess whether there are grounds for the asylum-seeker to enter Switzerland to pursue an asylum application. If the FOM finds that it would be unreasonable to expect the person to remain in his or her country of origin or to make an asylum claim in a third country, an entry visa will be issued. Once the person arrives in Switzerland, he or she is directed to the closest reception centre of the FOM to pursue his or her asylum claim further.

The issuing of an entry visa does not guarantee that the person's asylum claim will result in a positive decision.

Entry is authorised to allow the asylum-seeker to make his or her case fully before the FOM.

A decision by the FOM to not issue an entry visa may be appealed before the Federal Administrative Tribunal (FAT) within 30 days of the decision. The FAT can decide to confirm the FOM decision or to order the FOM to issue an entry visa.

As noted above, a proposal has been made to remove the possibility of making asylum applications at Swiss diplomatic missions. As at this writing, the proposal was before the Federal Council.

Resettlement/Quota Refugees

Switzerland does not have in place an annual resettlement program. However, Article 56 of the Asylum Act provides for an engagement in resettlement activities on an ad hoc basis. In recent years, the Department of Justice and Police coordinated the resettlement of two groups of refugees on the basis of United Nations High Commissioner for Refugees (UNHCR) appeals. In 2005, Switzerland resettled 10 Uzbeks from Romania, and in 2008 it resettled 24 Iraqis and Palestinians from Syria, Iran and Jordan.

5.1.2. At Ports of Entry

At the Land Border

Since the entry into force of the Dublin II Regulation in December 2008, asylum-seekers at land border posts are automatically authorised to enter the country to make an asylum claim in-country. They are given a *laissez-passer* to travel to the nearest reception centre, where they may make their application.³

At Airports

An asylum-seeker making a claim at an airport in Zurich or Geneva is initially refused entry into Switzerland. The person is held in the international zone of the airport for a maximum of 60 days, while the Federal Office for Migration examines the asylum claim. The Office must make a decision on the claim within 20 days of the application.

If the Office rejects the application within the 20-day period, the asylum-seeker may make an appeal to the Federal Administrative Tribunal within five days of the decision. The Tribunal must in principle make a decision on the appeal within five days. If the Court's decision is negative and a return to the country of origin or a third country is judged to be reasonable

³ See the section on Application and Admissibility below for information on the procedure at the reception centres.

and technically possible, the asylum-seeker then has to leave the international zone of the airport. The remaining time between the decision at second instance and the expiration of the 60-day timeframe is used for return measures.

If the claim cannot be processed within 20 days or if it is determined that the claim has a reasonable chance of success, the asylum-seeker will be admitted to Swiss territory for further examination of the application. Upon entry, the asylum-seeker is assigned to one of the cantons, where he or she will be accommodated.

Under the Dublin system, Switzerland may send a person who has made an asylum application at the airport to another state party to the Dublin II Regulation, if that person had first arrived in the Schengen area through that state before travelling to Switzerland.

5.1.3. Inside the Territory

Responsibility for Processing the Claim

The Dublin System

In 2004, Switzerland concluded an agreement with the European Union to take part in the Dublin system. The Dublin rules came into force on 12 December 2008.

Application and Procedure

The Federal Office for Migration is the competent authority for determining whether Switzerland is responsible for processing an asylum claim under the Dublin II Regulation. If the Federal Office for Migration determines that, based on the provisions of the Regulation, Switzerland is not responsible for examining the asylum claim, it will reject the application and issue the asylum-seeker an obligation to leave the country. The removal order is effective immediately. The asylum-seeker will be notified of the decision at the reception centre and from there will usually be escorted to the airport.

Freedom of Movement/Detention

Dublin-specific provisions concerning the detention of asylum-seekers whose claims are considered to be Dublin cases have yet to be enacted. For the time being, asylum-seekers whose claims are considered to be Dublin cases may be detained under the same provisions applicable to the normal asylum procedure. These provisions are covered later in the chapter.

However, arrangements for transfer to the competent Dublin state are usually made immediately once the asylum-seeker is notified that his or her claim is a confirmed Dublin case.

Conduct of Transfers

Switzerland plans to carry out transfers principally by air transportation. The person will be escorted to the airplane or at least over the border into the international area in order to be issued a certificate of departure. The transportation expenses are paid by the Federal Office for Migration.

Suspension of Dublin Transfers

Because appeals against Dublin transfer decisions do not have suspensive effect and Dublin decisions take immediate effect, appeals must be made from outside Switzerland. However, the transfer to a Dublin country may be suspended, for instance in cases where the person is unable to travel for medical reasons.

Review/Appeal

Since the asylum-seeker must leave the country immediately upon rejection under the Dublin procedure, he or she is not given leave to appeal before leaving the country. Appeal forms are to be submitted in writing, in one of the three official languages of Switzerland⁴ within five days of notification of the decision. Forms must be mailed from a Member State to the Federal Court of Administration.

Application and Admissibility

Application with the Aliens Police

Foreign nationals who are inside Switzerland on a valid permit may apply for asylum at an office of the Aliens Police in the canton where they are residing. Once their application has been made, they do not need to report to a FOM reception centre; rather, they can reside in their canton for the duration of the procedure.

The Aliens Police record the personal data and fingerprints of the asylum-seeker. The Police will then transfer the claim to the FOM, and thereafter the normal asylum procedure⁵ is applicable. The FOM will conduct an interview with the asylum-seeker at FOM headquarters in Bern and will be responsible for making a determination on the claim.

In case of rejection of the asylum claim, the FOM may not order the removal. The Aliens Police (cantons) are responsible for deciding whether the residence permit has to be revoked.

⁴ The official languages are French, German and Italian.

⁵ The normal procedure is described below.

Box 2: Obligations of the Asylum-Seeker

Asylum-seekers are required to abide by a set of obligations that are communicated to them upon making an application. The main obligations are as follows:

- Remain available to the authorities for any communication
- Notify the competent authorities of any change of address
- Submit all necessary travel and identity documents
- Prove or at least show probable cause that one is a refugee. Provide a complete and true statement of all facts supporting the application for asylum. Answer all questions submitted by the FOM
- Hand in all evidence and provide information on all necessary documents for the assessment of the application for asylum
- Have the documents translated into one of the official languages (German, French or Italian), if the FOM so requests
- Indicate one's correct personal data to the competent asylum authorities and disclose one's true identity.

Application at the Reception Centre

Applications by persons who do not hold a valid residence permit for Switzerland and by those who have been granted entry into the country in order to make an asylum claim may be made at a reception centre. At the reception centre, asylum-seekers are asked to fill out a written questionnaire and are invited to provide the authorities with valid travel and identity documents within 48 hours of making their application. Asylum-seekers are required to have their fingerprints taken and undergo a medical examination. The Federal Office for Migration (FOM) is responsible for examining claims made at reception centres. The maximum period of stay in a reception centre is 60 days.

An initial interview is conducted by the FOM to establish personal data such as identity and nationality as well as travel route. The asylum-seeker may also briefly explain his or her motives for the application. The asylum-seeker may be assisted by an interpreter and is provided with a copy of the minutes of the interview once the examination process is completed by the FOM.

Usually, the FOM will conduct a second, more in-depth interview with the applicant to gather additional information on the claim. A second interview takes place for the majority of asylum claims, including those that are subject to safe country of origin and safe third country policies. The second interview is held in the reception centre or at the FOM headquarters in Bern, if the asylum-seeker has been assigned to a canton.

The second interview is conducted with the asylum-seeker in the presence of a non-governmental organisation (NGO) representative whose role is to

monitor the proceedings. The asylum-seeker may request that an official interpreter be present as well. Minutes of the hearing are recorded. The report is translated for the asylum-seeker who has to sign it to confirm that all of his or her statements have been recorded completely and correctly.

With the information gathered, the FOM must determine whether to proceed according to an accelerated procedure (DAWES) or the normal procedure. The claim will be streamed through one of these two procedures if the claim is not subject to a Dublin transfer.⁶

Applicants whose claims cannot be heard and/or decided within 60 days in the reception centre are assigned to a canton. In these cases, most claims continue to be processed by the FOM headquarters.

Accelerated Procedures

Dismissal of a Claim without Entering into the Substance (DAWES)

Following the initial interview and often, the second interview, the authorities may decide to dismiss the claim without entering into the substance of the claim (DAWES). In such cases, the application is examined on a priority basis under an accelerated procedure.

⁶ A decision to dismiss the claim without entering into the substance of the application (DAWES) and stream the application into an accelerated procedure may be taken either by the FOM reception centre or the FOM headquarters, after either the initial interview or the second interview. In the majority of cases, a DAWES decision is made after the second interview.

A dismissal without entering into the substance of the claim is applicable in the following cases:

- The asylum-seeker fails to indicate that he or she has come to Switzerland in search of protection against persecution (after in-depth interview)
- The asylum-seeker fails to provide the necessary identity and travel documents within 48 hours (after in-depth interview)
- The asylum-seeker has made misrepresentations about his or her identity (right to be heard without in-depth interview)
- The asylum-seeker has committed a serious breach of his or her duty to cooperate with authorities on the asylum claim (right to be heard without in-depth interview)
- The asylum-seeker is able to travel to a safe third country where he or she can find protection (after in-depth interview)
- The asylum-seeker has obtained a negative decision on a previous asylum claim in Switzerland or in one of the Member States of the European Union or the European Economic Area, and no new information has emerged since about the risk of persecution (usually after in-depth interview)
- The asylum-seeker is residing illegally in Switzerland and is making an asylum claim in order to defer his or her removal (after in-depth interview)
- The asylum-seeker is from a country designated by the Federal Council to be a safe country of origin (after in-depth interview)
- The temporary protection status granted to the asylum-seeker has been withdrawn and no evidence of risk of persecution has been presented.

With regard to the requirement to provide identity and travel documents within 48 hours, the authorities will not issue a DAWES if the asylum-seeker provides a credible explanation for not producing the required documents or if, based on the interview, refugee status under the provisions of Articles 3 and 7 of the Asylum Act is established. Applicants can also avoid a DAWES if they submit the required documents after the 48-hour deadline but before the Federal Office for Migration has reached a decision on their case. Furthermore, a DAWES is not issued if further clarifications are needed regarding the examination of the asylum claim or regarding any obstacle to the removal.

According to the Aliens Act and Asylum Act, once a decision has been reached to dismiss the claim without

entering into the substance, the FOM must examine whether there are any obstacles to the removal of the asylum-seekers to their country of origin or to a third country. If there is an obstacle to return, an asylum-seeker who is the subject of a DAWES decision may be granted temporary admission.⁷

A decision to dismiss the claim without entering into the substance is usually made while the asylum-seekers are at the reception centres (that is, within the 60-day period of stay), but may in certain cases be made by the FOM headquarters. As a rule, decision-making under the accelerated procedure is made within a shorter timeframe than the normal procedure. In addition, the timeframe for making an appeal on a DAWES decision is shorter.⁸

Normal Procedure

Following the second interview, asylum claims may be streamed through the normal procedure at the Federal Office for Migration headquarters (and sometimes at the reception centres). The claims are examined on their merits.

There are three main distinctions between the normal procedure and the accelerated procedure: the type of decision that can be made on the application; the way in which information is taken into consideration; and the timeframe for making an appeal.

If after the second (in-depth) interview, it is obvious to the FOM decision-maker (*collaborateur scientifique*) that the asylum-seeker has not provided credible evidence that he or she meets criteria for refugee status, the FOM may reject the claim without further investigation (Article 40 of the Asylum Act).

However, if the facts presented are incomplete, the FOM must carry out a further examination as far as is relevant, possible and reasonable, including conducting an additional (third) interview with the asylum-seeker or seeking expert opinion on the claim (Article 41 Asylum Act).

If the decision-maker determines that the person does not meet the criteria for asylum, the FOM must proceed to an examination of whether the asylum-seeker can be removed from Switzerland. This stage of the normal procedure of an examination has three steps:

⁷ In other words, an examination of obstacles to return is always undertaken during the asylum procedure, following a negative decision on the claim. The criteria for granting temporary admission are described under the section entitled Decision-Making, below.

⁸ See the section on Appeal of Asylum Decisions below.

- First, whether the removal of a person is admissible (that is, whether it is in accordance with Switzerland's international obligations)
- Second, whether it is reasonable to remove a person to his or her country of origin or a third country considering the general situation in the country in question
- Third, whether removal of the person is practicable.

If any one of these three conditions is not fulfilled, the Federal Office for Migration may grant that person temporary admission to Switzerland.⁹

Appeal of Asylum Decisions

An appeal before the Federal Administrative Tribunal may be made against any negative decision or decision to not enter into the substance of a claim (DAWES) made by the FOM.

Appeals may be made within 30 days of a negative decision made by the FOM under the normal procedure, while decisions made to not enter into the substance of the claim (DAWES) may be appealed within five working days.

The appeal is a paper process and will take account of errors of both law and fact. New evidence may be presented. Appeals of decisions made under the accelerated procedure, the normal procedure and at airports have suspensive effect.¹⁰

Freedom of Movement during the Procedure

Detention

As a rule, asylum-seekers whose claims are being examined under the accelerated procedure or the normal procedure will not be detained. The Aliens Police have the authority to detain persons who have entered Switzerland without proper authorisation. Such persons may make an application for asylum while in detention.

Reporting

The competent authorities must be notified of any change of address.

Repeat Applications and Requests for Review of Applications

Under Swiss law, there is a distinction made between repeat applications and requests for review of initial asylum applications.

Repeat Applications

A foreign national whose original asylum application was rejected may make a subsequent application for asylum. If the person provides credible information that new facts that may lead to refugee protection have emerged since the original asylum application procedure was completed, the application will be examined on its merits. If no new facts are presented in a credible manner, the application may be dismissed without entering into the substance of the claim (DAWES).

Requests for Review of Applications

A request for review of original asylum applications may be made in the following instances:

- New information concerning the content of the original claim has come to light after the completion of the original asylum procedure
- New information concerning obstacles to return has come to light.

To be accepted for review, such requests must meet certain additional criteria related to timeframes, the presentation of sufficiently substantiated information, and the presentation of new information (rather than a new appreciation of already-known facts).

According to the revised Asylum Act, the Federal Office for Migration may impose a fee in the form of an advance payment for repeat applications and all requests for review. If the fee is not paid, the application or request for review may be rejected. Exceptions for payment of the fee may be made if the applicant does not have the financial means to pay the fee and if it is clear at the outset that the application or request for review will be successful.

Persons whose repeat applications and request for review have been rejected by the FOM may make an appeal before the Federal Administrative Tribunal. Appeals of decisions to reject a request for review do not have suspensive effect while appeals of negative decisions on repeat applications do.

⁹ See the section on Decision-Making below for further information on criteria for obtaining refugee status and temporary admission.

¹⁰ The only appeals that do not have suspensive effect are those appeals made against decisions to apply the Dublin II Regulation and transfer a person to another State party for the examination of the asylum claim, and appeals against negative decisions on a request for review.

5.2 Safe Country Concepts

5.2.1. Safe Country of Origin

According to Article 34(1) of the Asylum Act, the Federal Office for Migration may dismiss a claim without entering into the substance (DAWES) if the applicant is from a safe country of origin and there are no indications that the claim is not manifestly unfounded. The Federal Council establishes a list of safe countries according to a specific set of criteria.¹¹ The Federal Council must, when considering whether or not to include a country on the safe country list, take the following criteria into account:

- The political and human rights situation in the country
- The application of human rights standards according to the International Covenant on Civil and Political Rights of 16 December 1966
- The stability of the political situation
- Progress with regard to the human rights situation and admission of monitoring by independent organisations
- Assessment of other States and the UNHCR
- A large number of asylum claims from applicants of this country being manifestly unfounded.

5.2.2. First Country of Asylum

Swiss asylum law does not define or use the term “first country of asylum”. The safe third country policy, as described below, incorporates the principle of first country of asylum.

5.2.3. Safe Third Country

Switzerland has in place a safe third country policy in relation to asylum claims. The Federal Council is responsible for issuing an official list of safe third countries and did so most recently in 2008. The list is limited to Member States of the European Union, Norway, Iceland and Liechtenstein. These countries are subject to a general presumption of safety. As a rule, once Switzerland has completed a formal readmission agreement with another country, asylum-seekers may be returned to that country if they had taken up residence there before entering Switzerland. Usually, the application of the safe third country policy results in a decision to dismiss the claim without entering into the substance (DAWES).

The safe third country policy may also be applied to countries that are not included on the Federal Council list. The determination of whether a third country can be considered safe is done on a case-by-case basis. In order for the policy to take effect, the following criteria must be met:

- Either the third country must agree to receive the asylum-seeker if he or she is returned or the asylum-seeker must be in possession of a valid visa to enter the third country
- The third country respects the *non-refoulement* principle and the asylum-seeker is able to find protection there.

If these prerequisites are met, a DAWES decision may be issued, unless the asylum claim is manifestly founded or members of the applicant’s family live in Switzerland (Article 34(3) of the Asylum Act).

5.3 Special Procedures

5.3.1. Unaccompanied Minors

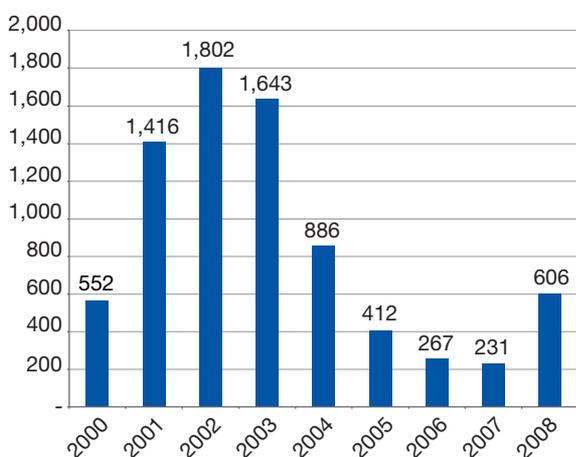
The FOM makes special arrangements for unaccompanied minors seeking asylum in relation to the asylum procedure, reception, and final decisions.

An unaccompanied minor asylum-seeker (UAM) is assigned a representative who will be responsible for looking after the minor’s interests during the asylum procedure. When interviewing the minor, the FOM takes account of the child’s age and mental development and may adjust the interview method accordingly. The officers conducting the interview may request the assistance of staff within the FOM, such as psychologists and lawyers, who have been specially trained to cater to the needs of minors.

If an UAM does not meet the criteria for refugee status, the FOM assesses whether it is reasonably justified for the UAM to return to the country of origin. In deciding whether to return minors, the authorities must take into account the situation in the country of origin, the minor’s age, and what solution will be in the child’s best interests. This includes an assessment of the minor’s level of maturity and independence; the extent of his or her relationships in both the country of origin and in Switzerland; the degree of integration in Switzerland; and the possibilities for a full reintegration in the country of origin.

¹¹ The list of safe countries (dated 1 March 2007) can be found in the annexe.

Figure 4:

Total Applications Made by Unaccompanied Minors, 2000-2008**5.3.2. Stateless Persons**

Applications for asylum made by stateless persons are examined by the FOM in the same manner as are all other asylum applications.

6 Decision-Making and Status

The asylum procedure at the first instance is a single procedure. Thus, the Federal Office for Migration considers whether the asylum-seeker meets criteria for refugee status or for temporary admission (a complementary form of protection) and whether it is admissible, reasonable and practicable for persons not in need of protection to be removed from Switzerland (that is, that a removal order may be issued with a negative decision).

6.1 Inclusion Criteria**6.1.1. Convention Refugee**

An asylum-seeker is granted refugee status if the FOM determines that he or she meets the criteria set out in Article 3 of the Asylum Act, which reproduces the definition set out in Article 1A (2) of the 1951 Convention. The asylum-seeker's claim must be found to be credible and must not meet criteria for exclusion contained in Articles 53 and 54 of the Asylum Act.

6.1.2. Temporary Admission

An asylum-seeker may be granted temporary admission (a complementary form of protection) if he or she does not meet criteria for refugee status and return

to the country of origin or to a third country cannot be implemented for one of the following reasons:

- Return is inadmissible as it would be in breach of Switzerland's obligations under international law, including Article 3 of the ECHR
- Return is not reasonable because it poses a real risk to the person (including risks associated with civil war or international conflict)
- Return is not practicable (e.g., the country of origin refuses to take back its national). As a rule, at the earliest opportunity 12 months after a final decision on the claim was taken, temporary admission is granted.

The grounds for the impossibility of the execution of removal do not, however, include the uncooperative behaviour of the person subject to a return order.

6.2 The Decision

The decision of the Federal Office for Migration on an asylum claim is made in writing and provided to the applicant or to his or her legal representative via registered mail, except for decisions issued in the reception centres, which may be given directly to the applicant when he or she has no legal representative. If negative (either with a removal order or with a temporary admission), the decision includes reasons for the rejection.

6.3 Types of Decisions, Status and Benefits Granted

The FOM may take one of the following decisions on an asylum claim:

- Grant refugee status with asylum status
- Grant temporary admission with refugee status (usually, in cases where the asylum-seeker meets criteria for refugee status but is subject to exclusion as per Articles 53 and 54 of the Asylum Act)
- Grant temporary admission without refugee status (usually, in cases where the asylum-seeker does not meet criteria for refugee status but cannot be removed for one of the reasons outlined above)
- Reject the claim for asylum
- Dismiss the claim without entering into the substance (DAWES)
- Close the asylum claim (such as after the asylum-seeker has withdrawn his or her claim).

As described above, the Federal Office for Migration must also consider whether removal is admissible, reasonable and practicable if a claim for asylum has

been rejected. Thus, the FOM may make decisions at the end of the asylum procedure to either issue a removal order or grant temporary admission, if removal is not possible or practicable.

The Federal Office for Migration is also the competent authority for making decisions on exclusion, termination and revocation of refugee status and temporary admission, as described below.

Benefits for Refugees with Asylum Status

Persons who are granted asylum are entitled to a one-year residence permit, which is renewed yearly. After five years, refugees are eligible for a permanent residence permit. Refugees also have access to the labour market and to social benefits equivalent to benefits available to Swiss citizens. There is a legal right to family reunification.

Temporary Admission

Benefits offered to persons granted temporary admission are determined by the cantonal authorities. Generally, all persons granted temporary admission are eligible for the same benefits to which asylum-seekers have access during the asylum procedure.¹² The cantonal authorities may decide which additional benefits to offer. These include the right to obtain a work permit and issue one-year renewable residence permits. After five years, an annual residence permit can be granted by the canton in accordance with the provisions of Article 84 (5) of the Aliens Act.

In accordance with the 1951 Convention, persons granted temporary admission with refugee status are entitled to a travel document. However, other beneficiaries of temporary admission cannot travel outside of Switzerland. Family reunification is possible after three years on certain conditions.

Asylum-seekers who are not eligible for refugee status and whose removal from Switzerland is admissible, reasonable and practicable, are set a deadline by which they must leave Switzerland.

6.4 Exclusion

6.4.1. Refugee Protection

Switzerland applies the exclusion clauses of Article 1F of the 1951 Convention. Persons who meet the criteria for refugee status but who are subject to the exclusion clauses will not be granted asylum. Such decisions may

be appealed before the Federal Administrative Tribunal within 30 days of the decision.

When Article 1F of the 1951 Convention is applicable to a refugee, the Federal Office for Migration will consider whether Article 3 of the ECHR would prevent the implementation of removal.

In addition to Article 1F of the 1951 Convention, persons who meet the criteria for refugee status may be excluded under one of the following conditions:

- They constitute a risk to the security of the country or a danger to the community as a result of a criminal offence committed in Switzerland (Article 53 of the Asylum Act)
- They became refugees in the sense of Article 3 of the Asylum Act after having left the country of origin (Article 54 of the Asylum Act).

In these cases, the person may be granted temporary admission (application of the *non-refoulement* principle of the 1951 Convention).

6.4.2. Temporary Admission

Persons who meet the criteria for temporary admission may be excluded from this type of complementary protection if there are grounds to believe the person constitutes a threat to, or has committed a serious violation of, national security and public order. However, the Federal Office for Migration must consider Switzerland's obligations under Article 3 of the ECHR before deciding whether or not to issue a removal order to persons excluded from temporary protection.

6.5 Cessation

Asylum in Switzerland expires if a refugee has lived abroad longer than three years, if he or she has been granted asylum or permission to stay permanently in another country, if the refugee renounces asylum, or if an expulsion or a judicial banishment has been executed (Article 64 of the Asylum Act). Furthermore, the refugee status expires, as a rule, if the person concerned has obtained Swiss citizenship.

6.6 Revocation

According to Article 63 of the Asylum Act refugee status granted in accordance with the 1951 Convention can be revoked under one of the following circumstances:

- If the alien has surreptitiously obtained asylum or refugee status by false information or by the concealment of essential facts

¹² These benefits are outlined below, under the section Assistance and Benefits to Asylum-Seekers.

Box 3: **The Evolution of the Provision of Country of Origin Information**

With the fusion of the former Federal Office for Refugees (FOR) and the Federal Office of Immigration, Integration and Emigration (IMES) in 2005, both the type of COI customers and the range of COI products changed. In addition to requests for information on asylum cases, COI specialists at the Country and Migration Analysis Section (MILA) began working on other migration-specific subjects such as questions on visa demands and illegal immigration. MILA also began to receive research requests from cantonal migration authorities, mainly regarding medical issues.

With the further development of the internal database Artis, the accessibility and user-friendliness of COI services for decision-makers was improved.

In recent years, MILA has intensified information-exchange partnerships with a large number of European states. These partnerships will be strengthened in the near future with the development of the Common European Asylum System, the introduction of common guidelines concerning the collection and handling of country of origin information, as well as the development of the European Asylum Curriculum and the common electronic European Portal on COI.

- For reasons falling under section 1C subparagraphs 1-6 of the 1951 Convention.

However, revocation does not automatically mean that the person concerned is forced to leave Switzerland since the right to stay in Switzerland is regulated in the Swiss Aliens Act. It is the responsibility of the cantonal authorities to decide whether the residence permit must also be revoked.

6.7 Support and Tools for Decision-Makers

6.7.1. Country of Origin Information

The Country Desk of the Country and Migration Analysis section (MILA) of the Federal Office for Migration (FOM) collects, analyses, prepares and circulates information on the situation in countries of origin. MILA produces COI products, such as reports on human rights conditions in countries of origin, depending on the specific needs of the organisation and its decision-makers.

Any FOM official, including asylum decision-makers, may make an information request to the Country Desk. Decision-makers may also search for COI and migration-related documents on the internal database, Artis. COI specialists carry out fact-finding missions in order to improve their knowledge of countries of origin as well as of countries of transit. In case of incompleteness of information MILA reverts to the services of Swiss embassies in countries of origin.

6.7.2. Language Analysis

The LINGUA section of the FOM provides language analysis services to asylum authorities at all stages of the procedure, including the pre-entry (airport procedure) and appeal stages. The aim of the service is to help decision-makers to establish the primary socio-cultural background of the asylum-seeker, where

this is otherwise difficult to determine. By employing independent experts, the linguistic features in the asylum-seeker's speech, as well as his or her knowledge of the region or country of origin are analysed. The findings of LINGUA are presented in a report and may be used as evidence in the decision-making process.

7 Efficiency and Integrity Measures

7.1 Technological Tools

7.1.1. Fingerprinting

When a person makes a claim for asylum, he or she must provide fingerprints, which are then submitted to the Automated Fingerprint Identification System (AFIS). The AFIS allows the FOM to compare the data against other fingerprints gathered by the FOM, the federal police and the Border Guard Corps.

7.1.2. DNA Tests

DNA tests may be conducted in the case of family reunification and only with the consent of the applicants who qualify for family reunification. Otherwise, DNA tests are not utilised during the asylum procedure.

7.1.3. Forensic Testing of Documents

The Country and Migration Analysis section (MILA) of the Federal Office for Migration conducts testing of identification documents and to a lesser extent juridical and civil status documents of countries of origin as well as countries of transit, as far as knowledge and infrastructure allow. MILA specialists have been given a basic technical training comparable to the one taught to the border control agents. In order to adequately fulfil

its tasks, MILA resorts to basic professional instruments at its disposal (e.g. Docutest) and a broad specimen database for comparison of checked documents.

The analysis of juridical and police documents presupposes the knowledge and evaluation of a COI specialist. Nevertheless if the genuineness of any document is in doubt due to the lack of proof, the document in question is analysed in a special forensic cantonal laboratory for criminal investigation.

7.1.4. Database of Asylum Applications/Applicants

Following the initial interview at the registration centre, the FOM verifies whether the asylum-seeker is registered in the Central Aliens Register or the RIPOL (the automated central police search system). The asylum-seeker's personal data is also entered and stored in the Central Information System on Migration (SYMIC).

7.2 Length of Procedures

There is no time limit for making an asylum application in Switzerland. The length of the procedure at the first instance varies from a few days for DAWES to about three months on average for cases in the normal procedure.

7.3 Pending Cases

At the end of October 2008, there were 10,663 pending cases at first instance. Following the increase in the number of asylum claims (a rise of 30%) in 2008, the FOM has decided to handle the cases according to the order of priority, with a focus on decisions without entering into the substance and on other decisions accompanied by a removal order, and according to the rule "last in, first out."

In addition, asylum claims made at Swiss diplomatic missions are also being managed according to a sequence of priority, based on the degree of urgency of the claim.

7.4 Information Sharing

Switzerland does not currently have any information-sharing agreement in place with third countries outside of the Dublin system. With the coming into force of the Dublin II Regulation in December 2008, Switzerland now shares relevant data with other States parties.

Article 98 of the Asylum Act provides for the disclosure of specific personal data on asylum-seekers only to third countries and international organisations guaranteeing data protection equivalent to that provided for in Swiss law.

Box 4: Cooperation with UNHCR, NGOs

The UNHCR Liaison Service for Switzerland has no direct role in the determination procedure. However, upon the request of the FOM or another party involved in the procedure, the UNHCR may provide up-to-date country of origin information or UNHCR recommendations and positions. The Liaison Service meets with representatives of the FOM on a regular basis and may issue its opinion on legislative or policy changes. UNHCR also visits reception facilities and shares its findings and recommendations with the relevant government agency.

NGOs which form part of the umbrella organisation, the Swiss Refugee Council, may obtain authorisation from the Federal Department of Justice and Police, to access asylum-seekers and to be present at the in-depth asylum interviews, although they do not have a role in the decision-making process.

8 Assistance and Reception Benefits for Asylum-Seekers

8.1 Procedural Support and Safeguards

8.1.1. Legal Assistance

In principle, there is no free legal aid *ex officio*.

The applicant has the right to retain a legal representative during the entire procedure. The legal representative's role is to act on behalf of the asylum-seeker when necessary. This includes accompanying the person to an interview. However, only the asylum-seeker is entitled to answer questions on his or her claim before the FOM. The applicant will have to issue a written power of attorney to a representative, in order to enable him or her to represent the applicant. If a legal representative demands money for his or her work, the applicant will have to pay it himself or herself.

The legal representative may not be an asylum-seeker who has made a claim in Switzerland.

8.1.2. Interpreters

The FOM uses interpreters for German, French and Italian when necessary for interviews. As a rule, the appeal procedure is paper-based and the appeal must

be made in one of the three official languages of the Swiss Confederation.

8.1.3. UNHCR

If approached by asylum-seekers directly, which happens on a daily basis, the UNHCR Liaison Service assesses their situation and takes action according to their individual protection needs.

The Liaison Service responds to written and telephone inquiries by providing asylum-seekers and refugees with general information about the asylum procedure and the contact addresses of legal counsellors and social institutions.

8.1.4. NGOs

When a person has made a claim for asylum at an airport or a reception centre, the Federal Office for Migration provides information on, and facilitates contact with, non-governmental organisations that may act as advisors and consultants to the asylum-seeker. NGO representatives acting as advisors have access to reception centres during visiting hours.

As noted above, an NGO representative is usually present at the second, in-depth interview to monitor the proceedings. However, the representative may not act as an advisor or a consultant during the interview.

Some NGOs in Switzerland offer integration activities to asylum-seekers.

8.2 Reception Benefits

According to Article 115 of the Swiss Federal Constitution, the cantons have responsibility for providing social welfare, which must be accorded to any person in need. The legal basis for providing social assistance to asylum-seekers in particular is contained in the following texts:

- Articles 80 - 95 of the Asylum Act
- The laws on social welfare of the cantons
- The recommendations of the Swiss Conference on Social Welfare (SKOS).

The provision of social assistance granted to asylum-seekers is overseen by the cantons and may be delegated to communities, welfare organisations and private businesses. The cantons are reimbursed for social assistance payments to asylum-seekers by the Confederation (central government).

Article 12 of the Swiss Federal Constitution guarantees that a minimum level of social assistance be

provided to any person in need. This minimum level of assistance must cover necessities such as food, shelter, clothing and basic medical care. Any reduction in social assistance granted to a person must be made according to the law, and must be justified as being in the public interest and as meeting principles of reasonableness.

8.2.1. Accommodation

The majority of asylum-seekers who make an asylum claim at a registration centre will also be accommodated there. If an asylum claim cannot be decided at the centre within a reasonable time, the asylum-seeker will be attributed to one of the cantons according to a distribution key and will be accommodated there. Most cantons initially accommodate asylum-seekers in reception centres. Further on in the procedure, the asylum-seekers may be moved to private accommodation. The members of the same family are attributed to the same canton whenever possible.

8.2.2. Social Assistance

As noted above, asylum-seekers are entitled to social assistance benefits to cover basic needs. These benefits, however, are provided at a level lower than that accorded to Swiss citizens, refugees, or persons with a residence permit. Asylum-seekers may also be entitled to specific types of social insurance (such as old age pension, disability pension, unemployment pension, and health insurance) if they meet certain criteria. Social assistance may be provided in cash or in kind.

8.2.3. Health Care

According to Article 3 paragraph 3 of the Swiss law on health insurance, every person residing in Switzerland must be covered by health insurance. The basic health care insurance is the same for every person living in Switzerland. No difference is made between asylum-seekers, refugees and Swiss residents.

The compulsory basic health insurance scheme covers illness, accidents and maternity, although it covers accidents only when the insured person has no other compulsory or optional coverage. It also covers certain preventive measures. All insurers offering compulsory health insurance must provide the same benefits, which are defined by law.

8.2.4. Education

According to Article 19 of the Swiss federal Constitution, every child living in Switzerland is, regardless of his or her status according to the law concerning foreign nationals, entitled to free primary education. Thus, children up to

the age of 16 claiming asylum in Switzerland have the right to be enrolled in school.¹³

According to Article 62 of the Swiss federal Constitution, the cantons are responsible for the school system and for education. They provide primary education that is open to all children. The education is compulsory and is under public direction and control. Each canton has laws and regulations concerning the details of education.

8.2.5. Access to Labour Market

Asylum-seekers do not have permission to work in the first three months after an asylum application is made. If the claim is not rejected within those first three months, the responsible cantonal authorities may issue a work permit. The future employer must apply for the permit which is valid only for this specific position. It is issued only if the conditions of the labour market do not impose limitations on the hiring and if no Swiss citizen or person with a residence permit applies for the same position.

Asylum-seekers who take up paid employment will have part of their wages (10%) deducted, either to cover the cost of any previous allocation of social assistance, or for any eventual return journey to the country of origin.

8.2.6. Family Reunification

Asylum-seekers are not entitled to family reunification for the duration of the asylum procedure.

8.2.7. Access to Integration Programmes

According to Swiss law, asylum-seekers are not entitled to integration programmes offered or paid for by the cantons or the Confederation. As noted above, some Swiss NGOs provide integration activities to asylum-seekers.

8.2.8. Access to Benefits by Rejected Asylum-Seekers

Since April 2004, asylum-seekers whose applications are dismissed without entering into the substance of the claim (DAWES) are no longer entitled to welfare benefits. Based on reforms that came into effect in 2008, asylum-seekers who have received a negative decision on their claim are also no longer entitled to welfare benefits accorded to asylum-seekers who are not subject to a DAWES decision during the procedure. However, according to Article 12 of the Swiss Constitution, rejected asylum-seekers remain

entitled to a minimum level of support to cover basic needs as required, including medical assistance in the case of an emergency.

9 Status and Permits Granted outside the Asylum Procedure

As explained above, Switzerland applies a single asylum procedure that includes the examination of a claim for the granting of Convention refugee status and a complementary form of protection known as temporary admission if there are obstacles to return. The following types of status and permits may be granted outside the asylum procedure.

9.1 Temporary Protection

Switzerland may grant temporary protection to groups of persons whose country of origin is in a state of armed conflict resulting in a mass influx of persons arriving in Switzerland. The Federal Council may designate groups of persons who may benefit from temporary protection and may determine which criteria will be used to determine eligibility. The provision for temporary protection was inserted into the Asylum Act in 1999, but has not been applied to date.

9.2 Regularisation of Status of Stateless Persons

According to Swiss law,¹⁴ a person is considered to be stateless if he or she meets the definition of a stateless person as laid out in the 1954 Convention on Stateless Persons¹⁵ or if ties to his or her country of origin are weakened to such an extent as to render the person *de facto* stateless. While the Convention on Stateless Persons does not entitle stateless persons to admission to a country or to a residence permit, Swiss law takes precedence on this matter. Article 31 paragraph 1 of the Aliens' Law stipulates that a person qualifying for the status of statelessness under Swiss law is entitled to an annual residence permit in the canton of his or her legal residence.

A stateless person whose application for asylum has been rejected may make an application for recognition of status as a stateless person to the Federal Office for Migration (FOM).

Between 1 January and 31 October 2008, the Federal Office for Migration (FOM) processed 16 applications

¹³ Education is compulsory for nine years, typically from the ages of seven to 16.

¹⁴ Art. 24 of the Federal Law on the International Private Law.

¹⁵ New York Convention Relating to the Status of Stateless Persons of 28 September 1954.

for the status of stateless person. Three applications were approved, while 13 were rejected.

9.3 Hardship Cases

In 2007, three categories of cases of hardship were introduced in the Asylum Law and the Aliens Law. The criteria for determining the presence of grave hardship are defined in Article 31 of the Decree on Admission, Sojourn and Employment (VZAE) and are applicable to all three categories of hardship. The criteria are based on an assessment of the following:

- The integration of the applicant in Switzerland
- The person's record of respect for law and order
- The person's family situation, with an emphasis on the beginning and the length of the children's schooling
- The person's financial situation and willingness to participate in economic life and education
- The duration of stay in Switzerland
- The person's health situation
- The possibility of reintegration into the society of the native country.

As per Article 31 (2) of the VZAE, persons being considered for a residence permit based on serious hardship criteria are required to disclose their identity to the authorities.

The three categories of hardship are as follows:

- Article 14 paragraph 2 of the Asylum Law stipulates that foreign nationals may be granted an annual residence permit upon application to the competent cantonal authority provided that the applicants have been in Switzerland for a minimum of five years and that the repatriation would cause grave hardship. This regulation is applicable, inter alia, to persons whose applications for asylum have been rejected. In 2007, 800 persons were granted an annual residence permit on these grounds. Between 1 January 2008 and 31 October 2008, 775 persons were granted the same.
- Article 84 paragraph 5 of the Aliens' Law stipulates that persons benefiting from temporary admission for at least five years must have their cases examined. This examination aims at establishing whether return to the country of origin would cause the person grave hardship. If return would cause grave hardship, the competent cantonal authorities may grant an annual residence permit with the approval of the Federal Office for Migration. In 2007, 3,395

persons benefited from this legal provision. Likewise, 2,642 persons had been granted a permit as at October 2008.

- Article 30 paragraph 1 lit. b of the Aliens Law provides that persons who have resided in Switzerland without proper authorisation for a prolonged period of time (so-called "sans-papiers") and whose repatriation would cause grave hardship may be granted an annual residence permit. Between September 2001 and October 2008, 1,132 persons obtained such a permit.

10 Return

The Federal Office for Migration (FOM) is the competent authority for the formulation and implementation of return policies. However the cantons are in charge of and responsible for the execution of the return, while the FOM (Returns Operations Division) provides assistance to them.

10.1 Pre-departure Considerations

When a rejected asylum-seeker with an order to leave the country is prepared to voluntarily leave the country within a given timeframe, he or she may apply for return assistance at cantonal advisory agencies, reception centres, and airport transit.

10.2 Procedure

Voluntary Return

The purpose of return assistance is to encourage voluntary and mandatory return of rejected asylum-seekers by means of a system of benefits. FOM implements these programmes in cooperation with the Swiss Agency for Development and Cooperation (SDC), the International Organization for Migration (IOM) and competent cantonal agencies and relief organisations. Partner cooperation is coordinated by the Interdepartmental Steering Group on Return Assistance (ILR), which is co-led by FOM and SDC.

Any asylum-seeker may apply for return assistance at cantonal advisory agencies, reception centres and the airport during transit. In addition, recognised refugees may apply for return assistance if they wish to return to their country of origin.

However, return assistance is not granted to convicted offenders or to persons who have been found to have misused the asylum system at any stage of the application process or thereafter.

Certain categories of persons designated as “foreign nationals” also have access to return assistance. These include victims and witnesses of human trafficking, and cabaret dancers who are being exploited in Switzerland.

With the help of the SDC, the Return Assistance Section of the FOM implements structural aid programmes in the countries of origin. Both the local population in the country of origin and returnees benefit from structural aid. This aid includes projects to prevent irregular migration (PiM) with the aim of making a short-term contribution to limiting irregular migration.

The return assistance program is made up of the following components:

- Individual return assistance
- Country-specific programmes
- Return assistance for “foreign nationals”
- Cantonal return counselling centres
- Return assistance communication
- Social insurance and return
- Structural aid
- Prevention of irregular migration.

Forced Return

Undocumented foreign nationals, including rejected asylum-seekers, must leave the country. If they refuse to return voluntarily, they may be escorted home. Cantonal authorities are responsible for enforcing such measures while the FOM assists as required. If a foreign national cannot be returned on a regular flight, FOM organises a special flight at the request of the cantonal authority.

10.3 Freedom of Movement/ Detention

The cantonal authorities are responsible for the implementation of return and removal of persons without proper authorisation of stay in Switzerland. Unless other sufficient but less coercive measures can be applied effectively, the cantonal authorities may decide to keep an illegal alien who is subject to return procedures in detention in order to prepare the return and/or carry out the removal process, particularly when there is a risk of absconding or if the illegal alien avoids or hampers the preparation of the return or the removal process.

As such, the cantonal judicial authorities can impose up to 24 months of administrative detention on foreign nationals without proper authorisation of stay, whose return cannot be implemented due to a lack of

cooperation on their part. Detention is terminated under one of the following conditions:

- Despite the cooperation of the concerned person, an autonomous and mandatory departure is not possible
- The person leaves Switzerland
- An application to the judicial authorities for release is approved.

The administrative detention may be appealed to the Supreme Court (federal tribunal).

10.4 Readmission Agreements

Switzerland has signed a total of 43 readmission agreements or arrangements.

11 Integration

The Aliens Act which was passed in January 2008 defines the policy on integration, its aims, the division of responsibilities, and related measures. A federal action plan on integration policy was developed in August 2007, presenting more than 40 concrete measures focusing on, *inter alia*, language, vocational training, the labour market and urban development. The federal government defines a programme for integration as a programme that aims to support language training and education, professional institutions for integration issues, and pilot projects of national importance.

All migrants who have a legal and long-term stay permit, including persons granted refugee status, are entitled to these integration measures, which are implemented at the cantonal level. The government financially supports the social, professional and cultural integration of refugees or persons with protection status who have a residence permit or a temporary residence permit (Article 94 of the Asylum Act). The cantons, communities and third-party organisations have to financially participate in the integration programmes. Also people with provisional admission have, through the new law, better access to the labour market.

12 Annexe

12.1 Safe Countries of Origin List (1 March 2007)

Legal Basis

In accordance with Article 6(a) paragraph 2 letter A of the Asylum Act, the Federal Council establishes a list of 'Safe countries', which is examined periodically.

Current List

In the following list, the States considered to fall within the meaning of Article 34 paragraph 1 of the Asylum Act are specified in **bold** and *italics*.

Countries	By Decision of the Federal Council Designation as 'Safe Countries'	Designation as 'Safe Countries' Revoked
Albania	06.10.93	
Algeria	18.03.91	19.02.92
Angola	25.11.91	25.11.92
Belgium	01.08.03	
Benin	01.01.07	
Bosnia and Herzegovina	01.08.03	
Bulgaria	18.03.91	
Denmark	01.08.03	
Germany	01.08.03	
Estonia	01.08.03	
Finland	06.10.93	
France	01.08.03	
Gambia	06.10.93	
Ghana	06.10.93	
Greece	01.08.03	
United Kingdom	01.08.03	
India	18.03.91	
Ireland	01.08.03	
Iceland	01.08.03	
Italy	01.08.03	
Croatia	01.01.07	
Latvia	01.08.03	
Lichtenstein	01.08.03	
Lithuania	15.06.98	
Luxembourg	01.08.03	
Mali	01.01.07	
Malta	01.08.03	
Macedonia (FYROM)	01.08.03	
Moldova	01.01.07	
Mongolia	28.06.00	
Montenegro	01.01.07	
Netherlands	01.08.03	
Norway	01.08.03	
Austria	01.08.03	
Poland	01.08.03	
Portugal	01.08.03	
Romania	25.11.91	
Sweden	01.08.03	
Senegal	06.10.93	
Slovakia	01.08.03	
Slovenia	01.08.03	
Spain	01.08.03	
Czech Republic	01.08.03	
Ukraine	01.01.07	
Cyprus	01.08.03	
Hungary	01.08.03	

12.2 Additional Statistical Information

Figure 5:

Asylum Applications from Top Five Countries of Origin for Switzerland in 1997, 2002 and 2008

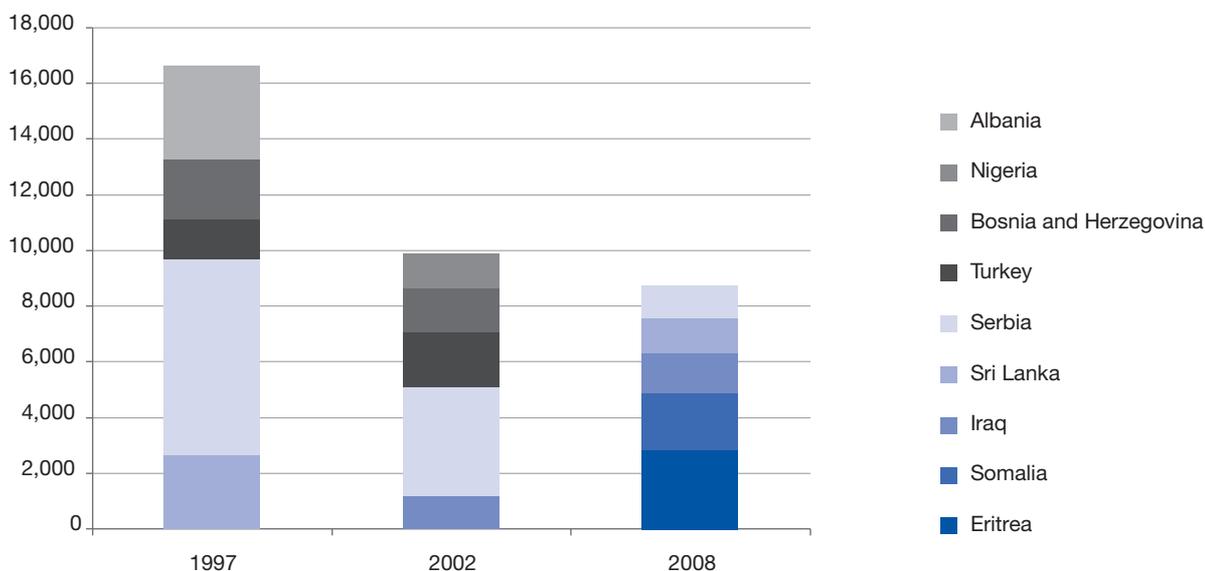


Figure 6:

Decisions Made at the First Instance, 1992-2008

Year	Convention Status		Other Authorisations to Remain		Rejections*		Other Decisions**		Total Decisions
	Count	% of total	Count	% of total	Count	% of total	Count	% of total	
1992	1,395	4%	0	0%	23,188	64%	11,828	32%	36,411
1993	3,916	13%	0	0%	19,132	63%	7,087	24%	30,135
1994	2,951	11%	0	0%	19,339	75%	3,434	13%	25,724
1995	2,595	13%	0	0%	14,290	71%	3,145	16%	20,030
1996	2,232	10%	0	0%	15,446	70%	4,245	19%	21,923
1997	2,572	10%	0	0%	14,803	59%	7,584	30%	24,959
1998	2,039	8%	0	0%	13,280	51%	10,967	42%	26,286
1999	2,060	4%	0	0%	28,339	58%	18,108	37%	48,507
2000	2,080	5%	0	0%	26,359	66%	11,597	29%	40,036
2001	2,227	10%	0	0%	13,572	59%	7,290	32%	23,089
2002	1,720	7%	0	0%	14,306	55%	10,003	38%	26,029
2003	1,610	6%	0	0%	15,493	55%	10,917	39%	28,020
2004	1,529	8%	0	0%	10,898	54%	7,610	38%	20,037
2005	1,467	11%	0	0%	7,735	57%	4,276	32%	13,478
2006	1,827	15%	0	0%	6,536	55%	3,518	30%	11,881
2007	1,537	15%	0	0%	3,800	38%	4,733	47%	10,070
2008	2,261	20%	0	0%	4,483	41%	4,318	39%	11,062

*Rejections data include Temporary Admission grants.

**Other decisions may include withdrawn claims, abandoned claims or claims otherwise resolved (including DAWES.)

United Kingdom



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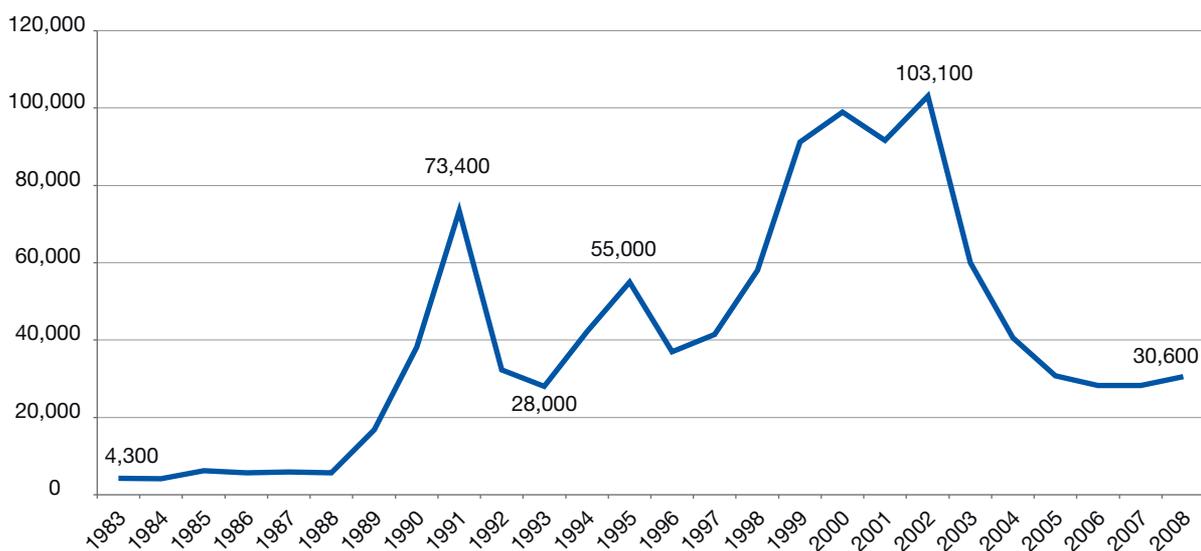
1 Background: Major Asylum Trends and Developments

Asylum Applications

In the early 1980's, the United Kingdom (UK) was receiving fewer than 10,000 asylum applications per year. The numbers started to increase in 1990, however, when annual claims reached over 38,000. Numbers peaked in 1991 with 73,400 applications, then fluctuated and reached new peaks from 2000 to 2002, when annual applications ranged between 90,000 and 103,000. Since 2003, numbers have decreased significantly, and in 2008 the UK received 30,600 claims.¹

Figure 1:

Evolution of Asylum Applications* in the UK, 1983-2008



* First applications only; beginning in 2003, data includes exact number of dependants, whereas prior to 2003, data reflects estimates for dependants

Top Nationalities

In the 1990's, the majority of asylum-seekers arriving in the UK originated from Somalia, the former Yugoslavia, Sri Lanka, Turkey, Pakistan and Nigeria. Since 2000, most claims have tended to originate from Iraq, Afghanistan, Zimbabwe, China, Iran, Eritrea and Somalia.

Figure 2:

Top Five Countries of Origin in 2008*

1	Zimbabwe	4,330
2	Afghanistan	3,730
3	Iran	2,585
4	Eritrea	2,345
5	Iraq	2,030

* First applications only

Important Reforms

Beginning in the late 1980's, large numbers of migrants without protection needs were making asylum applications in order to gain entry into the UK. At the time, the asylum procedure was characterised by a slow, bureaucratic system of decision-making and appeals. The UK was also facing practical problems in returning failed applicants to their countries of origin.

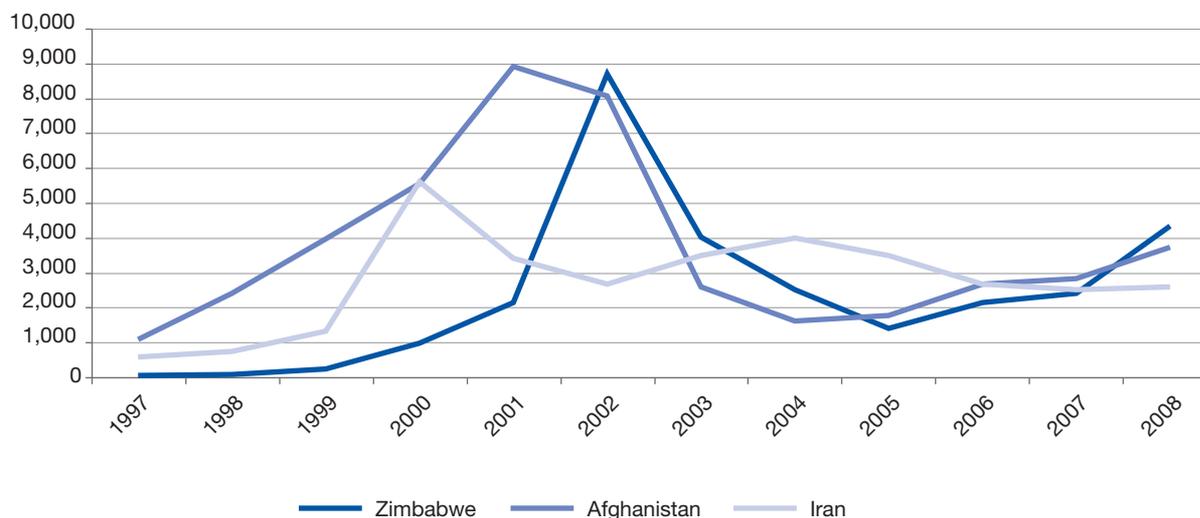
Over the years, a number of measures have been taken to address these shortcomings and strengthen the integrity and efficiency of asylum procedures.

At the case-management level, the Home Office introduced changes for a more rigorous examination of each asylum application based on up-to-date country

¹ All figures cited include dependants. Between 2000 and 2002, the UK was the top destination country for asylum-seekers among all IGC Participating States.

Figure 3:

Evolution of Applications* from Top Three Countries of Origin for 2008



* First applications only

of origin information. Emphasis was also placed on speeding up processing times.

Reforms also addressed fraud within the legal aid system and the immigration advisor profession.

A number of safe country concepts were introduced. Applications from countries of origin designated as safe were certified unfounded and were subject to a fast-track procedure with no right of appeal. In addition, certain countries were designated as safe third countries, and the UK began to apply Council Regulation (EC) No 343/2003,² as supported by the Eurodac fingerprint database.

New rules were introduced to allow asylum authorities to reject applications made by persons who have committed serious crimes. Meanwhile, rules governing the return of rejected asylum-seekers were amended. For example, those who do not cooperate with authorities on return arrangements lose their entitlement to support. All asylum-seekers are required to present valid travel documents upon arrival in the UK or they may face criminal charges if they do not have a reasonable reason for lack of documentation.

Beginning in March 2007, each new asylum application is dealt with by the same person (a UK Border Agency case owner) throughout the process (that is, from application to resolution of the claim).

² Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (Dublin II Regulation).

2 National Legal Framework

2.1 Legal Basis for Granting Protection

The 1951 Convention is given effect in British law by references in the Nationality, Immigration and Asylum Act 2002, the Asylum and Immigration Appeals Act 1993, the Refugee and Person in Need of Humanitarian Protection (Qualification) Regulations 2006, and the Immigration Rules.

The concept of subsidiary protection as laid down in Council Directive 2004/83/EC³ is mandated in the Immigration Rules as Humanitarian Protection. The UK has added “unlawful killing” as an explicit category of serious harm when granting Humanitarian Protection.

Council Directive 2005/85/EC⁴ has been implemented by the Asylum (Procedures) Regulations 2007 (SI 3187/2007) and changes to the Immigration Rules.

The European Convention on Human Rights (ECHR) takes effect in British law under the Human Rights Act 1998.

³ Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (Qualification Directive).

⁴ Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (Asylum Procedures Directive).

2.2 Pending Reforms

The UK government is committed to comprehensive reform of the legal framework for immigration. It published a partial draft Immigration and Citizenship Bill in July 2008 for further scrutiny and debate. The aim now is to publish a full draft simplification bill in the autumn of 2009, for introduction when the Parliamentary timetable allows. The partial draft bill included little that was specific to asylum but the package of documents made available with it included an initial draft of new immigration rules on protection, bringing together a range of provisions currently contained in the rules and in different sets of regulations. An explanatory document, “Making change stick”, published in this package in July made the government’s intentions clear:

We want to do a better job of honouring our international obligations to refugees. A new unified and straightforward set of protection rules will replace a complicated array of rules and regulations. This will be clearer for applicants and help ensure we make the right decision for refugees first time.

While the simplification work continues, the government has introduced the Borders, Citizenship and Immigration Bill to address more immediate legislative priorities. It does not include provisions specific to asylum, but changes to the wider system – including the introduction of “earned citizenship” – will have an impact on refugees and asylum-seekers as they will on other migrants.

3 Institutional Framework

3.1 Principal Institutions

The UK Border Agency (UKBA), an agency of the Home Office, is responsible for processing asylum claims. The UKBA is responsible for handling all aspects of an asylum claim, from screening to decision-making. The UKBA also has responsibility for overseeing the reception of asylum-seekers. The UKBA implements the return of rejected asylum-seekers and facilitates the integration of recognised refugees and beneficiaries of complementary forms of protection.

Appeals of negative decisions on asylum claims are heard by the independent Asylum and Immigration Tribunal (AIT).

3.2 Cooperation between Government Authorities

The UK Border Agency and UK Police Service⁵ have signed a Strategic Partnership Agreement whereby police officers work within the UKBA alongside immigration officers. This partnership arrangement recognises the need to “ensure and enforce compliance with (UK) immigration laws, removing the most harmful people first and denying the privileges of Britain to those here illegally.”

Local, multi-agency immigration crime teams (ICT) have been successfully piloted, bringing together the skills and powers of police and immigration staff. The crime teams have targeted those who facilitate human trafficking, who produce and distribute counterfeit documents, who cause economic harm, or who commit various criminal offences. Those who commit these offences possibly face both criminal justice and immigration consequences.

Further future creation of ICTs across the UK is being considered and planned. The ICTs will increasingly seize cash and assets of those committing crime. Team makeup will be widened to include other key strategic partners.

4 Pre-entry Measures

4.1 Visa Requirements

Nationals of certain countries, including European Union (EU) Member States, the European Economic Area and Switzerland, do not need a visa to enter the United Kingdom. A visa is required for entry if the person is a national of one of the countries or territories listed in Appendix 1 of the Immigration Rules. The UK Border Agency is the competent authority for dealing with visa applications.

4.2 Carrier Sanctions

Under the Carrier’s Liability legislation air and sea carriers may be liable for a charge of £2,000 for each person they carry to the UK who is subject to immigration control and who fails to produce either a valid immigration document satisfactorily establishing his or her identity and nationality or a valid visa, if required.

⁵ The UK Police Service, in partnership with the UK Border Agency, has also run a series of national operations, Operation Pentameter, targeting those who facilitate human trafficking for the purpose of sexual exploitation. The operation has resulted in substantial prison sentences and subsequent removal for those responsible and the rescue of numerous victims.

4.3 Interception

The UK Border Agency's strategic aims are to protect UK borders and national interests, tackle border tax fraud, smuggling and immigration crime and to implement fast and fair decisions. Juxtaposed Controls have existed at the Channel Tunnel sites in Coquelles and Cheriton since the opening of the Tunnel System in 1994. Currently, the UK Border Agency operates juxtaposed controls in Northern France and Belgium at the seaports of Calais, Boulogne, Coquelles and Dunkerque, as well as the Eurostar ports at Paris Gare du Nord and Brussels Gare du Midi. The treaty signed with the French and Belgian Governments allows for reciprocal arrangements in the control zones in St. Pancras, Ashford, Ebbsfleet, Cheriton and Dover.

The use of juxtaposed controls has dramatically strengthened the cross-channel border and in 2007, the UK Border Agency, together with other agencies and authorities, prevented over 17,500 individual attempts by people to cross the channel illegally.

4.4 Immigration Liaison Managers

The UK Border Agency has an overseas network of Immigration Liaison Managers (ILMs) (previously called Airline Liaison Officers). ILMs have no legal enforcement powers and do not operate pre-clearance but act as document advisors to airlines. Their role is to provide information and training on UK passport and visa requirements and forgery awareness, with a view to preventing the carriage of inadequately documented passengers to the UK and assisting airlines to comply with carrier liability legislation. ILMs are posted with the agreement of the host country and work to the Code of Conduct for Immigration Liaison Officers issued under the auspices of the International Air Transport Association/Control Authorities Working Group (IATA/CAWG).

UK Immigration Liaison Managers based overseas offer training and advice to carriers on documentary requirements for travel to the UK and on basic forgery detection. This training includes assisting carrier personnel to detect passengers who do not have the required travel documents to enter the UK, those who may be trafficked or smuggled, and those who may pose a security threat.

5 Asylum Procedures

5.1 Application Possibilities and Requirements, Procedures and Legal Remedies

Applications for asylum can be made at a point of entry – a sea port or airport – and inside the UK at the asylum application units of the UK Border Agency in Croydon and Liverpool. Applications must be made in person. In addition, the UK manages a formal resettlement program.

Information on the UK's asylum procedures is publicly available on the UK Border Agency's website.⁶ In addition, when an asylum application is made in the UK, the UKBA case owner (decision-maker) is responsible for guiding the asylum-seeker through the various stages of the procedure, such as by providing information on legal aid, reception benefits and asylum-seeker rights and obligations.

5.1.1. Outside the Country

Applications at Diplomatic Missions

There is no obligation on the UK to consider an asylum application made abroad by a person outside their country of nationality. Neither is there a basis in the Immigration Rules upon which an individual may be given prior entry clearance to enter the UK to claim asylum.

Resettlement/Quota Refugees

The UK's formal resettlement plan is known as the Gateway Protection Programme and is managed by the UK Border Agency in cooperation with the UNHCR. It has been operational since 2003. Through this programme, the UK currently accepts an annual quota of 750 refugees for resettlement (increased from 500 last financial year), on the basis of applications submitted by the UNHCR. Applications cannot be made to British Diplomatic Posts abroad or to the UK Border Agency directly. Applicants are interviewed by the UK Border Agency officials during organised missions, and the final decision is made by the UK Border Agency. In addition to the resettlement criteria set out in the UNHCR Handbook, the UK requires that applicants cooperate with Agency officials and other organisations involved in the Programme, that they not be in a polygamous marriage, and that they not have an application lodged under the Mandate Scheme. There are no official sub-quotas within the programme although the UK Border Agency aims to accept at least 10% of cases falling under the category of Women at Risk and resettles Medical Needs cases from each caseload.

⁶ The website is accessible at the following URL: <http://www.ukba.homeoffice.gov.uk>.

The Mandate Scheme allows the UK Border Agency to resettle refugees who have close ties to the UK. This normally means immediate family members. These family members in the UK must have settlement or immigration status leading to settlement in order to be eligible (but do not themselves have to be refugees). The applicant must have been granted Mandate refugee status by UNHCR and also demonstrate a resettlement need in accordance with the UNHCR Criteria on Resettlement. Referrals are made by the UNHCR (in cooperation with the British Red Cross). Only where there is no UNHCR presence is a referral permitted directly to a British diplomatic mission. Decisions are made by the UK Border Agency on a dossier basis without an interview. Around 150 refugees from around the world are resettled annually through the Mandate Scheme.

The Ten or More Plan, which was established by the UNHCR in 1973, has been used to resettle refugees with disabilities who are in need of medical attention unavailable in the country of refuge. The Ten or More Plan has been suspended and there are no plans to reintroduce a separate medical programme. The UK Border Agency now accepts a number of medical needs refugees within the Gateway Protection Programme quota.

5.1.2. At Ports of Entry

At a point of entry – a seaport or airport – the asylum-seeker may communicate to the immigration official at passport control that he or she wishes to apply for asylum. A screening process similar to the one at the asylum screening units takes place.⁷

Upon completion of the screening process, the applicant may be routed into the Detained Fast Track procedure or to a regional asylum team at the UK Border Agency for substantive consideration of the asylum claim. He or she may also be routed through Third Country (Dublin) procedures.

5.1.3. Inside the Territory

Responsibility for Processing the Claim

The Dublin System

The Third Country Unit (TCU) of the UK Border Agency is responsible for considering asylum claims that come under the Dublin system.

Application and Procedure

Once an applicant claims asylum in the UK, his or her fingerprints are taken and transmitted to the Eurodac

databases in accordance with the Eurodac Regulation (EC) No. 2725/2000. If Eurodac returns a match (“hit”), TCU will examine this evidence to determine if another State party to the Dublin Regulation is responsible for considering the applicant’s claim under the terms of the Dublin Regulation. Alternatively if other evidence is available suggesting that another State is responsible for examining the applicant’s claim then this evidence is also considered. Such evidence includes any of the following: visa, residence permit, other reliable documentary evidence (e.g. wage slips or utility bills), information establishing family relationships (to determine whether family unity or humanitarian provisions apply) and/or credible statements from the applicant.

If TCU considers that another Member State is responsible for examining the asylum claim under the terms of the Dublin Regulation, TCU will decide whether to detain the applicant or enforce reporting restrictions whilst a Formal Request is made to the Member State concerned.

Freedom of Movement/Detention

Each third country case is considered for detention and is considered on its individual merits. For detention to be justified, there must be strong grounds for believing that a person will not comply with conditions of temporary admission (TA) or temporary release (TR) and there must also be a realistic prospect of removal within a reasonable period. If a third country case is released on TA or TR the person will be expected to report to a UKBA Local Enforcement Office or reporting centre weekly unless the applicant has exceptional reasons for not being able to comply, in which case a less frequent reporting regime may be considered. If an applicant meets the criteria he or she may also be considered for electronic monitoring.

An immigration officer has the authority to temporarily admit a person to the United Kingdom who is detained or liable to be detained under Immigration Powers. Temporary admission may be given pending the completion of examination, pending the implementation of removal directions or pending the resolution of an outstanding appeal. The immigration officer may at any time decide to resume detention, (e.g., if the person fails to observe place of residence, employment or reporting restrictions.)

Conduct of Transfers

Once another State has accepted responsibility for an applicant, the UK respects the provisions of the Dublin system that govern the making of transfers, namely Articles 19 and 20 of the Dublin Regulation and Chapter III of the Dublin Implementing Regulation (EC) No. 1560/2003. TCU will also ensure that when an applicant is transferred to the Member State, he or she will arrive

⁷ The screening process at application units is described in the section below on Application and Admissibility.

in their territory (as far as is practicable) before 2:00 p.m. and not on one of their public holidays or over a weekend.

Suspension of Dublin Transfers

The UK does not have a policy whereby transfers under Dublin to a particular State or States are suspended in general.

If the applicant has absconded or been imprisoned, TCU will contact the Member State and request a twelve-month extension (to the original six-month deadline) for the applicant's transfer in accordance with Articles 19(4) or 20(2) of the Dublin Regulation.

If the applicant has a Human Rights (HR) or legal application pending, TCU will request a suspension until the application has been concluded.

TCU will also contact the responsible State to advise it of the delayed transfer.

Review/Appeal

Once another State party to the Dublin Regulation has accepted responsibility for an applicant's asylum claim, TCU will certify the asylum claim in the UK under Schedule 3 of the Asylum and Immigration (Treatment of Claimants etc.) 2004 Act. The relevant Immigration Rule applicable in third country cases is paragraph 345 of the Immigration Rules (HC 395).⁸

The statutory right of appeal provided for transfers under the Dublin Regulation in Part 2 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 is non-suspensive unless a human rights challenge to removal (not based on onward removal in breach of Article 3 of the ECHR) is not certified as "clearly unfounded". Such appeals must be lodged with the Asylum and Immigration Tribunal (AIT) within 28 days of the person's departure from the United Kingdom.

If the human rights challenge to removal is not certified as "clearly unfounded," there is an in-country right of appeal and the appeal must be lodged with the Tribunal no later than 10 days after the person is served with the notice of decision (five days if the person is in detention). The Asylum and Immigration Tribunal has discretion to accept appeals outside of this time frame. Furthermore, an applicant may seek to challenge the transfer decision by judicial review before the civil administrative courts. Judicial review has suspensive effect.

⁸ Para. 345 of the Immigration Rules (HC 395), as set out in HC1112 and amended by HC82, can be found in the annex.

Application and Screening

Upon making known his or her intention to claim asylum, the applicant is registered by the UK Border Agency. The applicant and any dependants are then "screened." This screening process is used in an attempt to establish both identity and immigration status. The interview is conducted in a language that the applicant can reasonably be expected to understand. Basic bio-data is recorded and the applicant's fingerprints and photographs are taken. Applicants are requested to produce any travel documentation or national identity documents at this stage. Security and system checks are also completed during the screening process. These measures assist in establishing identity, the identification of Third Country Cases, fraudulent applications, and those who may have committed a criminal or immigration offence.

The asylum-seeker and any dependants are issued with an application registration card (ARC), which shows that he or she has applied for asylum in the UK. This is not an official identity document but does contain basic bio-data and is used for contact management purposes and to issue any asylum support.

Upon completion of this process, the applicant may be routed into the Detained Fast-Track procedure, to a regional asylum team at the UK Border Agency for substantive consideration of the asylum claim, or through Third Country procedures.

Accelerated Procedures

An asylum claim may be put through the Detained Fast-Track procedure if, after the screening process, it appears to be one that may be decided quickly.

There is a general presumption that the majority of asylum applications are ones on which a quick decision may be made, unless there is evidence to suggest otherwise.

Case owners in the UK Border Agency are responsible for processing claims under the fast-track procedure. Applicants are interviewed and served with a decision within five days of their arrival.⁹

All asylum-seekers in the fast-track procedure have access to legal advice and an interpreter. There is also a safeguard mechanism in place to ensure that if new or additional information comes to light suggesting that the fast-track procedure is not suitable, the asylum-seeker may be transferred to the normal procedure.

⁹ The quality of decision-making in the Detained Fast-Track process is high, with 98% of initial refusals being upheld by the courts.

If the claim results in a negative decision, the applicant has two days to appeal the decision before the Asylum and Immigration Tribunal (AIT). The appeal is expedited and the hearing takes place before an Immigration Judge within another two days. The Immigration Judge is then required to provide his or her determination within two days of that appeal hearing.

The Immigration Judge who hears a fast-track appeal has the power to remove the asylum-seeker's claim from the fast-track procedure and place it in the normal appellate system.

Asylum applicants can also apply for reconsideration of the determination via a "High Court Opt-in." But in virtually all cases where the appeal was dismissed, the applicant is Appeal Rights Exhausted within 28 days of the decision being served.

If there has been an error of law, one may apply for an appeal of a Tribunal decision. In exceptional cases, the appeal may reach the Court of Appeal.

Cases Where It is Not Likely There May Be a Quick Decision

Cases where a quick decision may not be possible may include (but are not limited) to the following situations:

- Cases where it is foreseeable that further enquiries (either by the UK Border Agency or by the applicant) will be necessary to obtain clarification or corroborative evidence, without which a fair and sustainable decision could not be made, or in cases where it is apparent that those enquiries will not be concluded in time to have a decision within normal expected timescales
- Cases where it is foreseeable that translations are required for documents presented by an applicant without which a fair and sustainable decision could not be made, or where it is apparent that the necessary translations cannot be obtained in time to allow a decision to take place within the normal expected timescales.

There are exceptions to the application of the fast-track procedure that apply to groups deemed unsuitable for the procedure, as follows:

- Women who are 24 or more weeks pregnant
- Those who are unaccompanied asylum-seeking children, whose claimed date of birth is accepted by the UKBA (see Age Dispute Cases, below)
- Those about whom there is independent evidence from a reputable organisation (e.g. the Poppy Project) showing that they have been a victim of trafficking

- Those in respect of whom there is independent evidence of torture
- Those with a medical condition requiring 24-hour nursing or medical intervention
- Those presenting with physical and/or learning disabilities requiring 24-hour nursing care
- Those with a disability, except the most easily manageable
- Those presenting with acute psychosis, e.g. schizophrenia, who require hospitalisation
- Those with an infectious/contagious disease that cannot be effectively and appropriately managed within a detention environment.

For the last five groups listed above, the extent of a medical condition, disability, psychosis or disease is determined based upon the information available regarding the nature of the medical issue, and – in cases of doubt at the time of assessment – on reference to the Detention Escort and Population Management Unit (DEPMU), who will be able to ascertain capacity of the appropriate Immigration Removal Centre (IRC) to manage the specific issue.

Normal Procedure

The case owner has overall responsibility for dealing with every aspect of the claim, including the substantive examination, and acts as the point of contact for the asylum-seeker and his or her legal representative on the progress of the application.

During the asylum interview, the asylum-seeker may be assisted by a legal representative who is not claiming legal aid. The services of an interpreter will be provided if needed. At the end of the interview, the asylum-seeker receives a record of the interview. Failure by the asylum-seeker to appear at the interview may result in the claim being categorised as unsubstantiated.

The case owner, when reviewing the merits of a claim, must consider whether the asylum-seeker meets the criteria for Convention refugee status, for Humanitarian Protection or for Discretionary Leave, in that order.

Review/Appeal of the Decision

There is no automatic right of appeal against a decision to refuse an asylum claim. Instead, appeal rights relate to the relevant immigration decision that may accompany the decision to refuse asylum. For instance, an asylum-seeker who has been refused asylum but given Humanitarian Protection or Discretionary Leave may appeal against the decision if the status granted provides for a residence permit of 12 months or more.

Rejected asylum-seekers may have rights to appeal on the following grounds:

- Discrimination based on race
- The UK Border Agency's decision constitutes a breach of rights enshrined in the ECHR, or return to the country of origin would be a breach of the person's rights.

In addition, rejected asylum-seekers may appeal in one of the following cases:

- The UK Border Agency's decision was not in line with Immigration Rules
- The UK Border Agency's decision was not in line with the law
- If the Immigration Rules provide for the case owner to exercise his or her judgment, and if he or she should have exercised that judgment differently given the circumstances of the case.

The Asylum and Immigration Tribunal (AIT) hears and decides appeals against decisions made by the UK Border Agency. Usually an Immigration Judge will make a determination on the appeal, although some cases may be heard by a panel of judges. There is a right to appeal to the Administrative Court and to the Court of Appeal a decision made by the AIT. However, appeals against AIT decisions are possible only when there has been an error in law.

Appeals before the AIT are given suspensive effect unless the application is considered to be clearly unfounded. The 2005 Procedure Rules set out the following timeframes to appeal:

- If detained, the applicant has five days to lodge the appeal with the AIT from the time the applicant is served with the refusal notice
- If not detained, the applicant has 10 days to lodge the appeal with the AIT from the time the applicant is served the refusal notice.

Freedom of Movement during the Procedure

Although some asylum-seekers may be detained, a person is not detained simply for having claimed asylum.

Detention

Asylum-seekers who are considered suitable for the Detained Fast-Track Procedure (DFT) will be detained at processing centres operating the DFT procedure (Harmondsworth or Yarl's Wood).

Other asylum-seekers may be detained. The power to detain (other than in criminal cases) may be appropriate in the following cases:

- To implement removal (including deportation)
- While establishing a person's identity and claim
- Where there is reason to believe that a person will fail to comply with conditions attached to a grant of temporary admission or release
- As part of a fast-track process in which it is considered that an application can be decided quickly.

Reporting

There are provisions in the law for the UK Border Agency to maintain contact with asylum-seekers throughout the asylum procedure. Reporting centres are located throughout the country to facilitate asylum-seekers' reporting to Agency staff. Immigration officials are also posted at some police stations to facilitate reporting.

The frequency with which an asylum-seeker is required to report to authorities depends on the circumstances of his or her case. Persons with special needs, such as pregnant women, the elderly, minors under the age of 17, and persons with serious medical conditions may be required to report less frequently.

The UK Border Agency also employs other forms of contact management for asylum-seekers (such as tagging and voice recognition technology).

Repeat/Subsequent Applications

Anybody who makes a further application to remain in the UK, citing asylum or human rights grounds and having had an earlier claim withdrawn or refused with no appeal pending on that claim, will normally have the latest application treated as further submissions under the procedures in paragraph 353 of the Immigration Rules regulating "fresh claims".¹⁰

These procedures require the UK Border Agency to first decide whether to grant leave and, if they decide that leave is not appropriate, to decide whether the submissions merit consideration as a fresh asylum or human rights claim. A fresh asylum or human rights claim will be generated if the most recently submitted material on the case is "significantly different" from that which has been previously considered.

If a fresh asylum or human rights claim is generated and then refused, the applicant has the right to appeal the

¹⁰ Para. 353 of the Immigration Rules can be found in the annexe to the chapter.

decision before removal takes effect, unless the claim is certified under section 96 of the Nationality, Immigration and Asylum Act 2002.¹¹ However, the applicant will have no right to appeal where leave is rejected and a fresh asylum or human rights claim is not generated on the strength of the further submissions.

Applicants will have access to legal advice and representation throughout the process and will also be able to apply for asylum support under section 95 of the Immigration and Asylum Act 1999, once a fresh asylum or human rights claim has been generated. While the further submissions are being considered, before it is decided whether or not to grant leave, and whether or not the submissions constitute a fresh claim, the person may be eligible for support under section 4 of the 1999 Act.¹²

5.2 Safe Country Concepts

5.2.1. Safe Country of Origin

Section 94(4) of the Nationality, Immigration and Asylum Act 2002 makes provision for a list of countries from which asylum or human rights claims must be certified as clearly unfounded unless the Secretary of State is satisfied that they are not.

A list of those states is set out in the following Orders:

- Asylum (Designated States) Order 2003
- Asylum (Designated States) (No.2) Order 2003
- Asylum (Designated States) Order 2005
- Asylum (Designated States) (No 2) Order 2005
- Asylum (Designated States) Order 2007.

Asylum Applications Made by Nationals of the European Union

An EU national may apply for asylum in the UK. As the UK does not have a general procedure in place by which to declare an asylum claim inadmissible, an asylum claim made by an EU national must be considered within the substantive asylum procedure, albeit against the presumption that it is manifestly unfounded.

A national from the European Economic Area (EEA) is not excluded from applying for asylum. However, EEA Regulations (2006) applying to such nationals

contain a provision for claims to be certified as “clearly unfounded” in certain circumstances, and there is a general assumption that this is how such cases will be dealt with.

5.3 Special Procedures

5.3.1. Unaccompanied Minors

Support for Unaccompanied Asylum-Seeking Children (UASCs)

Unaccompanied asylum-seeking children (UASCs) are entitled to support from the Local Authority Children’s Services Departments that have a legal duty to safeguard the welfare of children in need in their area. This support, which may include accommodation, is based on a needs assessment. The British Refugee Council’s Panel of Advisers plays a role in advising and assisting the UASC with his or her asylum application. The advisor does not offer any legal advice.

Interview

UASCs aged 12 or over will normally be interviewed about the substance of their asylum application. Children invited to attend an asylum interview are interviewed by a specially trained case owner. The child must be accompanied by a responsible adult, that is, someone whom the child trusts. A responsible adult could be a legal representative, social worker, guardian/relative, foster care parent, doctor, priest, vicar, teacher, charity worker or Refugee Council representative. However, other persons may also assume this role. The interview is conducted using child-sensitive techniques.

In January 2009, the UK Border Agency introduced a Code of Practice that applies to UK Border Agency staff and contractors. It requires all of them to be responsive to the needs of children they encounter and to be vigilant to indications that a child might be at risk of harm. The UK Border Agency has taken positive steps to keep children safe from harm by incorporating key principles into the practice. The key principles are as follows:

- Ensuring the immigration procedures and situations are responsive to the needs of children
- Identifying children whose circumstances mean they may be at risk of harm when they come into contact with the immigration system
- Referring the children to the appropriate agency or agencies, and working together effectively with the referred agency or agencies.

The Code of Practice also requires UKBA staff to be trained in specific children’s issues, including

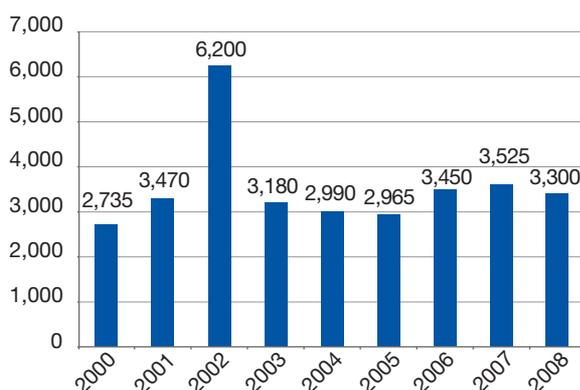
¹¹ Section 96 of the Act can be found in the annexe to the chapter.
¹² Section 4 support is a short-term form of support provided to failed asylum-seekers who are destitute and unable to leave the UK immediately due to circumstances beyond their control. Support is provided in the form of accommodation which may be full board accommodation, or where full board accommodation cannot be provided, supported persons are provided with self-catering accommodation and will receive vouchers each week to purchase food and essential toiletries.

communication with children, the safeguarding of children, issues surrounding trafficking, smuggling and exploitation of children, and working effectively with other agencies.

UASCs are entitled to legal aid. However, funding has been excluded for the 'first reporting event' or other 'reporting event'. The Panel of Advisers usually assists in finding a legal representative for the child.

Figure 4:

Total Applications Made by Unaccompanied Minors, 2000-2008*



* First applications only

6 Decision-Making and Status

6.1 Inclusion Criteria

6.1.1. Convention Refugee

The Immigration Rules state that an asylum-seeker will be granted asylum in the UK if he or she is a refugee as defined in regulation 2 of the Qualification Regulations.

6.1.2. Complementary Forms of Protection

Humanitarian Protection

Humanitarian Protection (HP) is granted in cases where the asylum-seeker runs a real risk of serious harm, that is:

- The death penalty or execution
- Unlawful killing
- Torture or inhuman or degrading treatment or punishment

- Serious and individual threat to life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

Discretionary Leave

Discretionary Leave (DL) may be granted to persons who do not meet the criteria for refugee status but fall under one of the following categories:

- They are excluded from the benefit of refugee status by virtue of Article 1F of the 1951 Convention
- They can be returned by virtue of Article 33(2) of the 1951 Convention but it would be contrary to ECHR obligations to enforce removal to the country of origin.

Similar principles apply to persons excluded for humanitarian protection (HP) but the rules derive from Council Directive 2004/83 (Qualification Directive) rather than the 1951 Convention. Where a person would qualify for refugee status or HP, but for exclusion for criminality, the applicant can normally claim that their Article 3 ECHR rights would be infringed upon if he or she was returned to the country of origin. In such cases, DL is usually granted for a six-month period only and is subject to active review at the time an application is made for further leave.

Applicants who cannot claim refugee status or HP since they do not fulfil the criteria for protection-based leave, but whose return would breach obligations under the ECHR (usually Articles 3 or 8) may also be granted Discretionary Leave. Such people, who are usually granted leave for a period of three years, may be subdivided into four categories:

- Article 3: There are some cases where the Article 3 breach does not arise from a need for protection as such (e.g., where a person's medical condition or severe humanitarian conditions in the country would make return contrary to Article 3.) Persons falling into this category are granted DL rather than Humanitarian Protection
- Article 8: Where return would involve a breach of Article 8 of the ECHR (right to respect for private and family life) on the basis of family life established in the UK. For example, in the context of a marriage or civil partnership application where, although the requirements of the Immigration Rules are not met, there are genuine Article 8 reasons that would make return inappropriate
- Other Articles: These may be engaged if return to the country of origin would amount to a

Box 1: British Case Law: Clarifying Grounds for Protection

Defining Particular Social Group

“Membership of a particular social group” (PSG) is one of the more complex of the Convention grounds. But the term is now well established through case law and the Qualification Directive at Regulation 6(1)(d). The most important UK case on PSG is the House of Lords judgment in *Shah and Islam* [1999] INLR 144 (and as later interpreted in the lower UK Courts). As a result it is established that the independent defining characteristic of a PSG must be an innate, immutable or unchangeable characteristic of some kind, and a characteristic or association that members of the group should not be forced to forsake because it is so fundamental to their human dignity.

The case of *Shah & Islam* also demonstrated that the Courts were willing to define certain sections of a population, in this case Pakistani women, as constituting a PSG. Crucial to this decision was the legal and societal discrimination against women in Pakistan.

Defining Article 15(c) of the Qualification Directive

There has been litigation around Article 15(c) of the Qualification Directive related to the definition of a “serious and individual threat to a civilian’s life or safety by reason of indiscriminate violence in situations of international or internal armed conflict”. Domestic case law, such as *KH* (Article 15(c) Qualification Directive) *Iraq CG* (UKAIT 00023), has upheld the Government’s view that the protection granted under Article 15(c) is no wider than that granted by Article 3 of the European Convention on Human Rights.

However, the Advocate General’s opinion in the case of *Elgafaji* (*Elgafaji v. Staatssecretaris van Justitie*) before the European Court of Justice indicates that the level of protection is in fact wider. The Court’s judgment, handed down on 17 February 2009, also states that the harm outlined in Article 15(c) covers a more general risk of harm than does Article 3 of the ECHR (which is identical to Articles 15(a) and (b) of the Qualification Directive)¹. As at this writing, any action in response to this ruling in the UK is pending further interpretation of the decision.

¹ The Advocate General’s opinion on the case (Case C-465/07) and the Court’s judgment can be found on the European Court of Justice (ECJ) website (<http://curia.europa.eu/en/transitpage.htm>).

“flagrant breach or denial” of a right covered in other articles of the ECHR. For example, an applicant may argue that conditions in the country of origin are such that he or she would be completely denied his or her right to freedom of religion under Article 9

- Any other exceptionally compelling case falling outside the rules in which it is decided that a person should be granted discretionary leave – this could be for any number of reasons.¹³

6.2 The Decision

The UK Border Agency case owners make decisions on asylum applications. The decision is based on an assessment of the merits of the claim, which includes consideration of the oral and documentary evidence provided by the claimant as well as country of origin information.

Decisions are provided in writing, with full reasons included for grant or refusal of a particular status or leave to remain. If no protection or leave to remain is

granted, the Reasons for Refusal letter must explain why return would not breach the UK’s obligations under the ECHR, or why the applicant can reasonably be expected to return voluntarily.

6.3 Types of Decisions, Status and Benefits Granted

Upon reviewing the merits of an asylum claim, the case owner can take one of the following decisions:

- Grant Convention refugee status
- Refuse refugee status but grant Humanitarian Protection
- Refuse refugee status but grant discretionary leave to remain
- Refuse refugee status and decline grant of leave to enter or leave to remain.

Convention Refugee Status and Humanitarian Protection

Persons who are granted Convention refugee status or humanitarian protection are given a residence permit valid for five years which entitles them to the same

¹³ The relevant Articles of the ECHR can be found in the general annexe to this publication.

Box 2: Family Reunification Benefits

The UK Border Agency recognises that families become fragmented because of the speed and manner in which a person seeking asylum has fled to the UK. Family reunion is intended to allow dependent family members (that is, those who formed part of the family unit prior to the time that the person fled to seek protection) to reunite with their family members who are recognised refugees or who have five years' humanitarian protection leave in the UK. Dependants of those with Discretionary Leave or Exceptional Leave to Remain may also apply for family reunion in certain circumstances.

Only pre-existing families are eligible for family reunion (that is, the spouse, civil partner, unmarried/same-sex partner and minor children who formed part of the family unit at the time the sponsor fled to seek asylum.) However, if there are compassionate and compelling circumstances that warrant consideration outside the Immigration Rules, then the UK Border Agency may allow family reunion for other family members.

rights as permanent residents of the UK. Refugees have access to the labour market and various benefits, including social assistance and an integration loan. After five years, they may apply for a renewal of their permit or for permanent residence.

The five-year leave to remain can be reviewed in certain circumstances:

- If grounds for revocation of status come to light
- If there has been a significant and non-temporary change in conditions in the country of persecution
- When the refugee applies for indefinite leave to remain (ILR) or reaches the five-year mark of his or her residence permit.

Discretionary Leave

Persons who are granted Discretionary Leave are given a residence permit valid for a period of up to three years, depending on the basis for the grant. This period of stay may be renewed. Following six years or more of Discretionary Leave (ten years or more for excluded cases), beneficiaries become eligible for ILR. Discretionary Leave, when granted, may be subject to periodic review. Beneficiaries are entitled to work and to receive social benefits and assistance.

Where Discretionary Leave is granted to an unaccompanied minor on the basis of inadequate reception arrangements in his or her country of origin, the length of stay is three years or until the minor reaches the age of 17.5 years, whichever is the shorter period of time.

Rejection of an Asylum Claim

Asylum-seekers whose claims are rejected may have the right to appeal the decision, depending on the circumstances of their case (see the section above on Review/Appeal). Otherwise, if they have not been granted

leave to remain on another basis, they are expected to leave the UK immediately. If they fail to return voluntarily, the UK Border Agency will enforce their return.

6.4 Exclusion

6.4.1. Refugee Protection

The grounds for exclusion are those set out in Articles 1D, 1E and 1F of the 1951 Convention, as replicated by Article 12 of Council Directive 2004/83/EC.

The UK Border Agency applies the exclusion clauses on a mandatory basis. Where applicable, the normal procedure is to consider the asylum claim in its totality, that is, the well-founded fear of persecution as well as the asylum-seeker's position with regard to Articles 1F and 33(2).

Where asylum is refused on the basis that Article 1F applies,¹⁴ the person is entitled to appeal. During the appeal, the person is entitled to challenge the applicability of exclusion. However, the grounds for exclusion must be considered first when an applicant makes an appeal. Should those hearing the appeal agree to do so, the asylum element of the appeal will be dismissed.

¹⁴ In respect of Article 1F(a), the UK generally uses the Rome Statute of the International Criminal Court as its guide to the 'international instruments drawn up to make provision in respect of such crimes'.

In respect of Article 1F(b), the UK adopts the position that any serious, non-political crime is one for which a period of imprisonment of at least two years either (i) has been imposed or (ii) would be imposed if the equivalent crime were to be committed in the UK. Other crimes could also fall within this definition (provided they were non-political). Article 1F(b) is applicable in the UK at any point prior to the issuing of a residence permit following the granting of asylum.

In respect of Article 1F(c), the UK uses the Preamble as well as Articles 1 and 2 of the Charter of the United Nations as its guide to what would constitute a crime or act "contrary to the purposes and principles of the UN." Membership in a group that is proscribed within the United Kingdom (46 presently) could also be sufficient to bring an individual within the scope of Article 1F(c). Although its primary application in recent times has been terrorism-related, it is not exclusively used in this context within the UK.

6.4.2. Complementary Protection

The 1951 Convention exclusion clauses are applicable to Humanitarian Protection and to the full provision of Discretionary Leave. However, where removal would place the UK in breach of Article 3 of the ECHR, the UK would grant that person a period of six months' Discretionary Leave which would be subject to review at the end of the six-month period.

6.5 Cessation

With regard to clauses (1) to (4) of Article 1C of the 1951 Convention, the UK will apply the cessation clauses where it feels appropriate. The act that brings the person within the scope of these four provisions must be voluntary by that person.

With regard to clauses (5) and (6), the UK Border Agency assesses changes in circumstances on the basis of objective country information and case law. Any changes in the country of origin must be significant / fundamental and non-temporary / non-transitory. For applications made since 21 October 2004, the UK also requires a Ministerial Statement to be issued in the Houses of Parliament announcing that the requisite changes have occurred. This would be done after consultation with the UNHCR. Cases would still be looked at on an individual, case-by-case basis.

In practice, the UK Border Agency would only consider the cessation of status for persons who obtained protection less than five years prior to the change in circumstances. Only in exceptional cases would cessation be considered for persons who obtained status more than five years earlier.

The UK first presents the person with an opportunity to comment on the intention of the UK Border Agency to cease their refugee status, to provide grounds as to why their status should not be ceased, and to provide any other reasons they have for wishing to remain in the UK. Such an opportunity is generally provided for in writing, although an interview may be applicable in certain circumstances. Once the person has responded, the UK Border Agency looks at those grounds and makes a decision on whether to proceed with cessation. If so, the UK contacts the UNHCR with its proposal and allows them the opportunity to respond. A consideration of the grounds advanced by the UNHCR is considered before a final decision is taken. Even after such a decision is taken, the person will generally be provided an opportunity to appeal the decision.

Decisions to cease refugee status may not be appealed on their own but such decisions are almost always taken in conjunction with decisions to revoke, vary or

curtail leave. These are immigration decisions, which lead to a right of appeal, and the appellant may raise issues relating to cessation in the appeal.

6.6 Revocation

Revocation of status can occur when the person comes within the scope of Article 1F(a) or 1F(c) exclusion provisions after they have been granted refugee status. Refugee status may also be revoked if a person comes within the "danger to the security of the country" element of Article 33(2) of the 1951 Convention. A process similar to that described above for cessation is adopted.

The UK also has provision to cancel refugee status when, after one has been recognised as a refugee, evidence comes to light that such status should never have been granted in the first place (usually this is when it has been gained through deception). Again, a similar process to that above for cessation is adopted.

6.7 Support and Tools for Decision-Makers

6.7.1. Country of Origin Information

The Country of Origin Information Service (COIS), which is located within the UK Border Agency, gathers, compiles and produces country of origin information for use by case owners involved in the asylum determination process. COIS publishes COI reports focusing on the main asylum and human rights issues in the 20 countries that generate the greatest number of asylum-seekers to the UK. These reports are updated regularly and posted on the public website of the Home Office.

Other products include COI Key Documents, which bring together the main source documents on countries that generate fewer asylum claims, and COI Bulletins, issued periodically, usually in response to emerging events. COIS also undertakes fact-finding missions to gather information directly from sources in the country of origin when required information is not available from available sources. COIS also operates a rapid COI request service to research information not available in existing products.

6.7.2. Language Analysis

Intelligence and data indicate that there may be a percentage of asylum applicants claiming to be a nationality which is different from their real nationality in order to further their asylum claim and/or frustrate removal action in the event that the asylum claim is refused. In order to address this issue, the Asylum Screening Units (ASUs) in Croydon and Liverpool, as the first point of contact for in-country asylum seekers are involved in the use of direct language analysis.

Box 3: Institutional and Quality Developments in COI

Until 1997, there was no dedicated COI resource in the Home Office. In 1997, the Country Information and Policy Unit (CIPU) was set up to provide COI and country-specific policy advice to Home Office asylum decision-makers on conditions in countries of origin. In 2003, the independent Advisory Panel on Country Information (APCI) was established to provide expert, external scrutiny of the Home Office's COI material, to help ensure that it met the highest standards (see the APCI website: <http://www.apci.org.uk>). The APCI recommended in 2004 that the information and policy functions of CIPU be separated into two distinct units within the organisation. The Country of Origin Information Service (COIS) was established in June 2005 as a discrete unit, concentrating solely on providing objective country information to asylum decision-makers. The COIS has functioned in this capacity ever since.

By working closely with APCI, quality standards, consistency and methodologies for Home Office / UKBA delivery of country information have improved significantly in recent years. In addition, new products and services such as the COI Key Documents and COI Request Service for internal users have been developed to better meet the information needs of decision-makers.

The APCI's function was taken over by the Chief Inspector of UKBA in October 2008.

Language analysis assists in identifying whether an asylum applicant is actually from the claimed country of nationality and in deterring fraudulent claims.

A language analysis pilot project has been in operation since February 2008 with funding allocated until March 2010. This project involves having asylum-seekers undergo a telephone interview with a linguistic expert. Initial verbal results are followed by a written report and transcription of the interview which are available for appeal. In cases where applicants are most likely to be from a country other than the one claimed, they may be subjected to biometric testing in order to determine their identity.

6.7.3. Operational Guidance Notes (OGNs) and Country Policy Bulletins

OGNs contain an evaluation of the relevant country information applied to general asylum policy and case law. The OGNs are designed to provide clear guidance on how to deal with general asylum policy and with the main categories of asylum and human rights claims received from applicants from the country concerned.

Country policy bulletins are issued on an ad hoc basis to provide guidance on how to deal with particular country-specific issues arising in asylum applications.

The purpose of OGNs is not to replace other information or guidance but to supplement it and ensure the consistent application of policies and information contributing to the quality and consistency of asylum decision-making. All asylum claims are considered on their individual merits according to criteria set out in the 1951 Convention, against the background of the latest available country information which UK Border Agency case owners are obliged to follow.

7 Efficiency and Integrity Measures

7.1 Technological Tools

7.1.1. Fingerprinting

All asylum claimants may be required to have their fingerprints taken for identification purposes (sections 141 and 142 of the Immigration and Asylum Act 1999). All fingerprints taken from asylum-seekers are entered into the Immigration and Asylum Fingerprint System (IAFS). The purpose of fingerprinting asylum claimants is to positively identify them and also to identify and deter multiple asylum claims at the national and international level. The fingerprints of all applicants from the age of 14 are recorded on, and checked against, the Eurodac database for Dublin Regulation purposes.

7.1.2. DNA Tests

A new project began in January 2009 based on isotope recognition. Isotopes, which exist in soil, water and rock, remain the same as they pass through the food chain. They are subsequently stored in the body and a person's country of origin or route of travel can be deduced by examination of small quantities of hair and/or nail samples. As part of this work mitochondrial DNA testing may also take place as a secondary tool in the identification process.

7.1.3. Forensic Testing of Documents

Forensic examination of suspect travel and identity documents in the UK to look for evidence of fraud, forgery or counterfeiting is led by the UK Border Agency's National Document Fraud Unit (NDFU). The NDFU is responsible for training in and development of document-examination

skills of forgery detection teams throughout UKBA as well as for being the centre of excellence for document examination and information on document fraud. NDFU document examiners are accepted as expert witnesses by UK courts. The UK Border Agency is looking to take this remit further in the future to develop information and examination of supporting documentation that is non-travel or identity related.

7.1.4. Database of Asylum Applications/Applicants

The Casework Information Database (CID) is used to record details of all asylum applications received. All management information extracted from the system adheres to a strict methodology to ensure accurate measurement of the Public Service Agreement (PSA) Targets.¹⁵

The UK Border Agency is developing a new, user-friendly and flexible casework and IT system through the Immigration Case Work (ICW) programme. One of the key functions of the IT system will be to draw together all casework interactions between UKBA and an asylum-seeker, enabling the caseworker to gain a single accurate view of the customer. It will gradually remove the need for paper files across the business, and rely instead on electronic case files containing scanned images of documents where necessary.

7.1.5. Reporting Technology

To facilitate reporting by asylum-seekers, the UK has in place RepARC, an IT reporting system that uses the Application Registration Card (ARC). The ARC is linked to the automatic payment of asylum support. The UKBA is responsible for the reporting of asylum-seekers. Paragraph 21(2) of Schedule 2 to the Immigration Act 1971 gives UKBA the power to require any asylum-seeker to report to an Immigration Reporting Centre or a Police Station. Frequency of reporting is agreed on a case-by-case basis between the case owner and the reporting centre responsible.

7.2 Length of Procedures

There are no specific time limits for making an asylum application, but an unexplained delay in making an application for asylum following arrival in the UK is likely to damage an applicant's general credibility, unless the claimant is a refugee *sur place*.

The UK Border Agency has a target to conclude 90% of new asylum applications within six months of the date of application by the end of 2011. Cases dealt with in

the Detained Fast Track are subject to an accelerated procedure as outlined above. The timeframes for turnaround of decisions by the UKBA and the appeal judge in the case of Detained Fast-Track applications are strictly adhered to.

7.3 Backlog Cases

The UK Border Agency is tackling the backlog of older unresolved asylum applications and is on track to conclude all these cases by summer 2011. This is not an amnesty.

7.4 Information Sharing

The UK has the following agreements and trials in place for sharing information on asylum claims with other States:

- The Dublin II Regulation between member states of the EU, Iceland, Norway and Switzerland (by separate agreement with the Community) concerning asylum applicants' details and fingerprints. The Dublin system is supported by information provided by the database of fingerprints established by the Eurodac Regulation
- We have conducted trials and are developing an agreement among the countries of the Four Country Conference (4CC) (UK, US, Canada and Australia) for the purpose of identifying persons who have made immigration applications in more than one 4CC state, verifying identity, and assisting with the decision-making process throughout the immigration process
- Trilateral Memorandum of Understanding (MOU) for intelligence-sharing with France and Belgium around Juxtaposed controls
- Memorandum of Understanding (MOU) on information exchange on war criminals, signed in April 2007 by the countries of the Four Country Conference. This is intended to identify persons who are convicted or suspected of committing war crimes, crimes against humanity or genocide, for the purpose of making casework decisions and complying with international law
- Various individual agreements with different countries for specific purposes.

¹⁵ The methodology for the calculation of the asylum conclusion rate is documented on page 19 of the Public Service Agreement (PSA) 3: Delivery Agreement as published by HM Treasury: http://www.hm-treasury.gov.uk/d/pbr_csr07_psa17.pdf.

Box 4: Cooperation with UNHCR

The UK Border Agency has developed a relationship with UNHCR over a number of years through the Quality Initiative Project and through consultation on subject areas concerning EU Directives, access to protection and resettlement. It is a member of our main Stakeholder Forum, the National Asylum Stakeholder Forum, which meets quarterly.

The Quality Initiative Project (QI) is based on the supervisory role of the UNHCR under the 1951 Convention. Its aim is to assist the Home Office in the refugee status determination process through the monitoring of procedures and application of the refugee criteria.

The QI seeks to improve the quality of refugee status determinations, or asylum decisions, through collaborative working.

The project went through its first phase of implementation during 2004. Following a needs assessment whereby UNHCR reviewed the Home Office's first instance decision-making systems, training programmes, and the interpretation and application of the Convention, a working document was produced to serve as a reference point to track progress of the Project. After a series of fact-finding missions and meetings with UKBA staff, an internal audit of the first decisions commenced.

A UNHCR QI team is co-located with the UK Border Agency in Lunar House in Croydon. It recommends improvements to asylum decisions, recruitment, and training and accreditation through informal assessments. The findings have been presented to the Minister in a series of reports. The first report was presented to the Minister in February 2005.

The UK Border Agency has taken forward a number of recommendations made in these reports, including the establishment of an independent Quality Audit team, the piloting of a decision-making template and a review of Detained Fast-Track procedures.

From September 2003 to October 2008, material produced by the UK Border Agency's Country of Origin Information Service was subject to expert external scrutiny and review by the Advisory Panel on Country Information. The UNHCR took part in the Panel's work. This monitoring function is now being taken forward by the Chief Inspector of the UK Border Agency (see Box 3).

8 Assistance and Reception Benefits for Asylum-Seekers

8.1 Procedural Support and Safeguards

8.1.1. Legal Assistance

The case owner will often provide the asylum-seeker with information on finding a legal representative. It is strongly recommended that asylum-seekers seek advice only from a solicitor¹⁶ or an adviser who is registered with the Office of the Immigration Services Commissioner. The Community Legal Service Direct manages a directory of legal advisers whom asylum-seekers can access. Destitute asylum-seekers may qualify for legal aid.

Access to Legal Aid

Legal Aid on a question of English law is available to anyone who satisfies the means and merits test. The Legal Services Commission (LSC) administers the legal

aid system in England and Wales through a provision of contracting with solicitors firms and not-for-profit agencies. The enabling legislation is the Access to Justice Act 1999.

Before funding is granted for representation by the LSC, each application is considered on an individual basis by the legal representative and is subject to a statutory means test. At the appeal stage, in addition to qualifying financially, an appellant must also show that the merits of the case justify granting public funding.

The application is considered against criteria specific to the type of case. Generally this means the prospects of success at appeal have to be moderate or better (that is, clearly over 50%). If the prospects of success are borderline or unclear, funding can be granted if the case has wider public interest or is of overwhelming importance to the applicant. The initial decision to grant public funding or apply for public funding is made by the solicitor or an experienced adviser having regard to any relevant convention, statute and case law, including "country guidance" and "starred" cases from the Asylum and Immigration Tribunal. The legal representative is required to exercise his or her professional judgment regarding the granting of funding.

¹⁶ A solicitor may be a qualified lawyer who is a member of the Law Society and regulated by the Solicitors Regulation Authority.

Box 5: Solicitor Fee Schemes

The Legal Services Commission (LSC) introduced new solicitor fee schemes on 1 October 2007. These set out what the solicitor will be paid to represent an asylum-seeker in his or her application and subsequent appeal. The Immigration and Asylum Graduated Fee Scheme (the graduated fee) covers the majority of asylum cases lodged with the Home Office after 1 October 2007.

There is a single fee for work that is undertaken at the initial asylum application stage and two fees for the asylum appeal stage.

Additional payments of fixed values are made for representation at the UKBA asylum interview, in certain cases (namely for minors and those with mental health issues), and for representation at hearings before the Asylum and Immigration Tribunal.

An "escape mechanism" has been included within the scheme for cases where the actual solicitor profit costs, based on current hourly rates, are significantly higher than the value of the graduated fees. If the actual costs reach the threshold for the escape mechanism, then the total profit costs incurred by the solicitor will be paid in full.

All disbursements, including interpreter costs and experts reports, are paid on top of the graduated fees. Extensions for further work can be sought from the LSC, and these will be granted where the requests are reasonable and necessary.

8.1.2. Interpreters

The UK Border Agency will provide an interpreter at public expense whenever it is considered to be necessary and the service is needed in connection with the submission of the applicant's case. Interpreters are offered by the AIT for all Immigration Judge appeals. The application form contains a section in which an interpreter can be requested and a language and dialect specified.

8.1.3. NGOs

Non-governmental organisations (NGOs), such as Asylum Aid and Oxfam, which represent the interests of asylum-seekers also offer advice.

8.2 Reception Benefits

The UKBA has overall responsibility for the reception of asylum-seekers. The case owner responsible for the examination of an asylum claim is competent for facilitating the provision of reception benefits to the asylum-seeker, such as by providing information on access to benefits and the steps necessary to access these benefits.

8.2.1. Accommodation

Asylum-seekers who are destitute¹⁷ are provided with support by the UK Border Agency in the form of

subsistence or accommodation or both. Those asylum-seekers provided with accommodation are dispersed around the UK, generally outside London, to areas of the country where there is a steady supply of housing. Exceptions can be made, for example, where a person needs to remain in London or the South East of England for specialist health care reasons.

Those asylum-seekers who are not provided with supported accommodation by the UK Border Agency are free to live where they wish, although since 2007 all applicants are subject to contact management arrangements which can include reporting at reporting centres, a police station or another location, electronic monitoring (tagging or voice recognition), telephone contact, and Outreach visits.

8.2.2. Social Assistance

Under the terms of the Immigration and Asylum Act 1999, the Secretary of State may provide, or arrange for the provision of, support for asylum-seekers or dependants of asylum-seekers, who appear to be destitute or who are likely to become destitute within a 14-day period.

As noted above, asylum support is provided in the form of subsistence, accommodation or both as applicable. An application must be made and if it is granted, cash support is issued once a week and housing is allocated. The asylum-seeker must sign an agreement indicating that he or she will follow a set of conditions, including living in the designated housing, and report any changes in circumstances. Pregnant women and mothers with children under the age of three are entitled to supplementary financial assistance.

¹⁷ An applicant is deemed to appear destitute if he or she and any dependants do not have adequate accommodation or any means of obtaining it (irrespective of whether other essential living needs are met); or they have adequate accommodation or the means of obtaining it, but cannot meet their other essential living needs.

8.2.3. Health Care

Asylum-seekers and their dependants are eligible to receive health care from the National Health Service (NHS), which entitles them to free medical treatment by a general practitioner (GP) or at a hospital. Asylum-seekers who are receiving housing and social assistance from the UK Border Agency may obtain supplementary free health care services, such as NHS prescriptions and dental care. Other asylum-seekers may apply to receive these services free of charge on the grounds of low income.

8.2.4. Education

Minor asylum-seekers between the ages of five and sixteen have the same rights as all other children in the UK during the period of compulsory education. All 16- to 18-year-old asylum-seekers are eligible for the Learning and Skills Council (LSC) funding in respect of their attendance in a further education (FE) course as are UK students.

Asylum-seekers aged 19 or over are treated as UK students for the purpose of fees for further education if they have been legally in the UK for longer than six months pending consideration of their application for asylum or if they have failed in their claim but have been granted support under the Immigration and Asylum Act 1999. This follows the granting of concessions to enable asylum-seekers to access LSC funding in certain circumstances, for example for courses teaching English for Speakers of Other Languages. Otherwise they are treated as international students and may be required to cover the full cost of their course. However an FE college or provider has discretion over the level of fee that they actually charge.

Asylum-seekers have access to higher education courses as international students and can expect to be charged the full cost of their course by the university concerned.

8.2.5. Access to Labour Market

Asylum-seekers do not have permission to work while awaiting a decision on their claim by the UK Border Agency. There is an exception for asylum-seekers who have been awaiting a first-instance decision for more than 12 months, if the delay is through no fault of their own. In such cases, an asylum-seeker can request permission to work while awaiting a final decision on the claim. This is in line with the Council Directive on the reception of asylum-seekers. Any permission granted is withdrawn once the asylum claim has been rejected and all appeal rights are exhausted.

8.2.6. Access to Benefits and Services by Rejected Asylum-Seekers

Rejected asylum-seekers are entitled to receive free medical treatment in Accident and Emergency

departments and for specified infectious diseases such as tuberculosis. They may also receive immediately necessary treatment regardless of their ability to pay for it. Other treatment may be given at the discretion of the hospital concerned. Rejected asylum-seekers may continue, free of charge, treatment started prior to a final decision on the claim until they leave the UK.

Rejected asylum-seekers who had been receiving asylum support during the procedure will continue to receive this support during any appeal that is made. If no appeal is made, free accommodation and financial assistance will cease 21 days after the decision of the UK Border Agency. However, asylum-seekers with dependants under the age of 18 will continue to receive asylum support until the date of departure from the UK. Similarly support continues for children and vulnerable adults who qualify for local authority care provision.

Rejected asylum-seekers are expected to leave the UK voluntarily. However, if they are destitute, they can continue to receive support if they are taking reasonable steps to return or are able to point to a legitimate barrier to their return. To receive support, an application must be made and, if granted, accommodation is allocated and voucher support is issued once a week.

Minor asylum-seekers are entitled to receive an education following a rejection on an asylum claim and before return takes place.

9 Status and Permits Granted Outside the Asylum Procedure

9.1 Discretionary Leave

Applications for Discretionary Leave may be made outside the asylum procedure on human rights grounds, and decisions are made in accordance with ECHR obligations.¹⁸

9.2 Temporary Protection

There is provision for the grant of Temporary Protection (TP) provided the applicant is a person entitled to temporary protection as defined by, and in accordance with, Council Directive 2001/55/EC.¹⁹ The Directive provided for Member States to grant TP to additional

¹⁸ See the section above on Decisions and Status for the criteria for granting Discretionary Leave.

¹⁹ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (Temporary Protection Directive).

categories of persons, but there has first to be a Council Decision in respect of some persons – a Member State cannot trigger the Directive unilaterally.

9.3 Withholding of Removal/Risk Assessment

The UK Border Agency does not enforce return of unsuccessful asylum-seekers until it is satisfied it is safe to do so.

9.4 Obstacles to Return

There is no generally applicable rule on the granting of status or residence permits to persons who cannot be returned, as long as they can return voluntarily. As indicated above, the UK enforces the return of unsuccessful asylum-seekers only if it is satisfied that it is safe to do so.

9.5 Regularisation of Status over Time

The UK Immigration Rules recognise the ties a person may form with the UK over a lengthy period of residence. Settlement may therefore be granted after a period of 10 years' continuous lawful residence or 14 years' continuous residence of any legality.

9.6 Regularisation of Status of Stateless Persons

Although the UK is a signatory to the 1954 Convention Relating to the Status of Stateless Persons, there are no provisions in the UK's Immigration Rules upon which a stateless person would be granted leave. A stateless person may be granted leave to enter or remain in the UK, but only on grounds covered in the Immigration Rules.

10 Return

The UK Border Agency case owner who examines an asylum claim is responsible for arranging the return of a refused asylum-seeker to his or her country of origin, whether it is voluntary or enforced.

10.1 Pre-departure Considerations

Prior to setting directions for removal from the United Kingdom, individual circumstances are reviewed to ensure that all outstanding appeals have been dealt with and that there are no compelling compassionate circumstances that have not previously been taken into account.

10.2 Procedure

Persons are notified in advance of the date of their removal. This notification is usually served in person at an Immigration Reporting Centre, Police Station or Detention Centre. A 72-hour minimum timeframe applies between the notification of the removal directions and the actual time of removal, to enable those being removed to seek legal advice either to make further representations or to apply for judicial review. Where persons provide new information, this will be considered and a decision as to whether removal can proceed will be made. It is normal practice to postpone removal instructions where an application for judicial review (JR) is made or an injunction staying removal is granted.

However, the UKBA no longer automatically suspends removal instructions in detained cases where a further JR claim is lodged on the same or virtually identical grounds to those raised before within three months of a judge refusing permission. This may be the case particularly in instances where the first claim was found to be clearly without merit or where the claim was withdrawn or otherwise concluded.

Voluntary Return

Voluntary return is offered as the preferred means to return to the country of origin, for those who no longer have a legal basis to remain in the UK.

The current package of reintegration assistance for asylum-seekers under the Voluntary Assisted Return and Reintegration Programme (VARRP) is designed to be flexible enough to meet the different needs of returnees and their families. Reintegration assistance is about ensuring detailed and informed discussions alongside a range of practical options and services available, in order to meet the varying reintegration needs of returnees.

There are four main strands of reintegration assistance:

- Business set-up
- Education
- Vocational training
- Job placements.

In addition to the above, reintegration assistance can also be used for the following:

- Accommodation – Assistance can be used to pay for building materials and labour to either build new accommodation or improve existing accommodation. It can also be used to pay for rent on housing or business premises, for up to a maximum of three months

- Personal belongings – Returnees are also able to avail themselves of extra baggage allowance, as returnees will often have a large amount of personal belongings to take before returning permanently to their country of origin
- Medical assistance – Requests for medical assistance are considered on a case-by-case basis, and reintegration assistance can assist in paying for a limited period of medication. It does not pay for elective surgery, such as cosmetic surgery.

Assisted Voluntary Return of Irregular Migrants (AVRIM) assists those people who are in the UK illegally and would like help in returning to their country of origin. The programme offers support in acquiring travel documentation, a flight to the country of origin and onward domestic travel.

Reintegration assistance is not generally available to those who return under AVRIM. However, exceptions can be made for particularly vulnerable groups on a case-by-case basis, such as unaccompanied minors and victims of trafficking. In these cases £1,000 reintegration assistance is made available, which can be used for business start-up, education and vocational training. Furthermore, this group can also use their assistance for counselling, which is particularly important for unaccompanied minors and those who have been victims of trafficking.

10.3 Freedom of Movement/ Detention

Where it is believed that a person will not voluntarily comply with the removal instructions, then he or she will be detained. The decision as to whether detention is necessary is made on a case-by-case basis, taking account of all the circumstances of each individual case.

Detention is subject to regular review, and every detained person is provided with written reasons for his or her detention at the time of initial detention and every month thereafter. There is no fixed time limit for detention, but a person cannot be detained for longer than necessary. If it becomes apparent that removal cannot be effected within a reasonable timeframe, the person will be released.

All detainees arriving at an immigration removal centre are advised of their right to legal representation within 24 hours of arrival, and they are able to apply for bail as often as they wish. A copy of the Bail for Immigration Detainees (BID) notebook, which sets out how they can apply for bail, is made available in the centre library for detainees' use.

There are no rights of appeal against a decision to detain but the lawfulness of detention can be challenged in court through the processes of *habeas corpus* or judicial review.

10.4 Readmission Agreements

Readmission agreements are a means whereby member states of the European Union and other countries party to the Schengen agreement can seek to enforce the return of both nationals of the country concerned and third country nationals, where there is good evidence that they transited or resided in that country. The purpose of a readmission agreement is to set out the reciprocal obligations, as well as administrative and operational procedures, to facilitate the return and transit of people who no longer have a legal basis to stay in the participating states.

The UK supports the European Community's policy on readmission agreements and has opted into all 16 European Commission negotiating mandates agreed so far.²⁰ European Community readmission agreements can support the UK when conducting enforced returns and by underpinning and reinforcing a good enforcement policy. This can make voluntary return more attractive. Voluntary return, even when supported by an Assisted Voluntary Return (AVR) package, is considered a more cost-effective way to return an unsuccessful asylum-seeker to his or her country of origin.

11 Integration

Since 1 October 2008 the Refugee Integration and Employment Service (RIES) has been available to those granted either refugee status or humanitarian protection as a result of their asylum application. RIES is a national service that ensures that these persons can benefit from a standard level of integration support wherever they live. It completes the end-to-end case ownership model by providing a practical route to integration.

RIES has three elements that are provided over a 12-month period:

- Advice and support – offering assistance to new refugees in addressing critical needs

²⁰ To date, the European Commission has concluded 11 agreements with the following countries: Hong Kong, Macau, Sri Lanka, Russia, Ukraine, Bosnia and Herzegovina, Montenegro, Serbia and Former Yugoslav Republic of Macedonia (FYROM), Moldova and Albania. There are mandates to negotiate readmission agreements with Turkey, China, Morocco and Algeria. The next European Community Readmission Agreements (ECRA) to be concluded will be with Pakistan. The European Commission is seeking two new mandates for Georgia and Cape Verde. Some of the ECRA's are with priority countries for asylum, which either have citizens seeking asylum or are transit countries for irregular migrants.



- An employment advice service helping refugees enter sustained employment at the earliest opportunity
- A mentoring service offering the opportunity to be matched with a mentor from the receiving community. The service focuses primarily on employment as a key driver to a successful integration outcome.

The RIES is not available to resettled refugees, as integration support is included within the wider package of support that is available to them. Resettled refugees are supported fully for their first 12 months in the UK. They are offered an integration package that deals with any urgent needs on arrival and continues through assigning each resettled refugee a caseworker who will assist them in accessing local services, learning about their rights and responsibilities in the UK, and enrolling in English language courses. The casework support also focuses on re-accreditation and re-training where applicable as well as building up the skills necessary to apply for a job.

In addition to RIES, those granted refugee status or humanitarian protection (and their respective dependants) have the opportunity to apply for an integration loan. The loan allows persons to purchase goods and services that will assist their integration into the UK. Only those whose claims have been decided after 12 June 2007 are eligible to apply.

12 Annexe

12.1 United Kingdom Statutes Relating to Asylum²¹

UK statutes affecting immigration are as follows:

- Immigration Act 1971
- Race Relations Act 1976
- Immigration Act 1988
- Asylum and Immigration Appeals Act 1993
- Special Immigration Appeals Commission Act 1997
- Human Rights Act 1998
- Immigration and Asylum Act 1999
- British Overseas Territories Act 2002
- Nationality, Immigration and Asylum Act 2002
- Asylum and Immigration (Treatment of Claimants etc.) Act 2004
- Immigration, Asylum and Nationality Act 2006
- The UK Borders Act 2007.

12.1.1. UK Nationality, Immigration and Asylum Act (2002)

Part 2 – Accommodation Centres

(...)

18 Asylum-seeker: definition

(1) For the purposes of this Part a person is an “asylum-seeker” if—

- (a) he is at least 18 years old,
- (b) he is in the United Kingdom,
- (c) a claim for asylum has been made by him at a place designated by the Secretary of State,
- (d) the Secretary of State has recorded the claim, and
- (e) the claim has not been determined.

(2) A person shall continue to be treated as an asylum-seeker despite subsection (1)(e) while—

- (a) his household includes a dependent child who is under 18, and
- (b) he does not have leave to enter or remain in the United Kingdom.

(3) A claim for asylum is a claim by a person that to remove him from or require him to leave the United Kingdom would be contrary to the United Kingdom’s obligations under—

- (a) the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol, or
- (b) Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4th November 1950.

(...)

43 Asylum-seeker: form of support

(1) The Secretary of State may make an order restricting the application of section 96(1)(b) of the Immigration and Asylum Act 1999 (c. 33) (support for asylum-seeker: essential living needs)—

²¹ The texts of the various statutes are available on the Office of Public Sector Information website: <http://www.opsi.gov.uk/>.

- (a) in all circumstances, to cases in which support is being provided under section 96(1)(a) (accommodation), or
- (b) in specified circumstances only, to cases in which support is being provided under section 96(1)(a).

(2) An order under subsection (1)(b) may, in particular, make provision by reference to—

- (a) location;
- (b) the date of an application.

(3) An order under subsection (1) may include transitional provision.

(4) An order under subsection (1)—

- (a) must be made by statutory instrument, and
- (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

(...)

Part 5: Immigration and Asylum Appeals

96 Earlier right of appeal

(1) An appeal under section 82(1) against an immigration decision (“the new decision”) in respect of a person may not be brought or continued if the Secretary of State or an immigration officer certifies—

- (a) that the person was notified of a right to appeal under that section against another immigration decision (whether or not an appeal was brought and whether or not any appeal brought has been determined),
- (b) that in the opinion of the Secretary of State or the immigration officer the new decision responds to a claim or application which the person made in order to delay his removal from the United Kingdom or the removal of a member of his family, and
- (c) that in the opinion of the Secretary of State or the immigration officer the person had no other legitimate purpose for making the claim or application.

(2) An appeal under section 82(1) against an immigration decision in respect of a person may not be brought or continued if the Secretary of State or an immigration officer certifies that the immigration decision relates to an application or claim which relies on a ground which the person—

- (a) raised on an appeal under that section against another immigration decision,
- (b) should have included in a statement which he was required to make under section 120 in relation to another immigration decision or application, or
- (c) would have been permitted or required to raise on an appeal against another immigration decision in respect of which he chose not to exercise a right of appeal.

(3) A person may not rely on any ground in an appeal under section 82(1) if the Secretary of State or an immigration officer certifies that the ground was considered in another appeal under that section brought by that person.

(4) In subsection (1) “notified” means notified in accordance with regulations under section 105.

(5) Subsections (1) to (3) apply to prevent or restrict a person’s right of appeal whether or not he has been outside the United Kingdom since an earlier right of appeal arose or since a requirement under section 120 was imposed.

(6) In this section a reference to an appeal under section 82(1) includes a reference to an appeal under section 2 of the Special Immigration Appeals Commission Act 1997 (c. 68) which is or could be brought by reference to an appeal under section 82(1).



12.1.2. Immigration and Asylum Act (1999)

Part I: Immigration – General

(...)

4 Accommodation for those temporarily admitted or released from detention

The Secretary of State may provide, or arrange for the provision of, facilities for the accommodation of persons—

- (a) temporarily admitted to the United Kingdom under paragraph 21 of Schedule 2 to the 1971 Act;
- (b) released from detention under that paragraph; or
- (c) released on bail from detention under any provision of the Immigration Acts.

Part IV: Appeals

(...)

69 Claims for asylum

(1) A person who is refused leave to enter the United Kingdom under the 1971 Act may appeal against the refusal to an adjudicator on the ground that his removal in consequence of the refusal would be contrary to the Convention.

(2) If, as a result of a decision to vary, or to refuse to vary, a person's limited leave to enter or remain in the United Kingdom, he may be required to leave the United Kingdom within 28 days of being notified of the decision, he may appeal against the decision to an adjudicator on the ground that such a requirement would be contrary to the Convention.

(3) A person who—

- (a) has been refused leave to enter or remain in the United Kingdom on the basis of a claim for asylum made by him, but
- (b) has been granted (whether before or after the decision to refuse leave) limited leave to enter or remain, may, if that limited leave will not expire within 28 days of his being notified of the decision, appeal to an adjudicator against the refusal on the ground that requiring him to leave the United Kingdom after the time limited by that leave would be contrary to the Convention.

(4) If the Secretary of State—

- (a) has decided to make a deportation order against a person under section 5(1) of the 1971 Act, or
- (b) has refused to revoke such an order, that person may appeal to an adjudicator against the decision or refusal on the ground that his removal in pursuance of the order would be contrary to the Convention.

(5) If directions are given as mentioned in section 66(1) for the removal of a person from the United Kingdom, he may appeal to an adjudicator on the ground that his removal in pursuance of the directions would be contrary to the Convention.

(6) "Contrary to the Convention" means contrary to the United Kingdom's obligations under the Refugee Convention.

70 Limitations on rights of appeal under section 69

(1) Section 69(1) does not entitle a person to appeal against a refusal of leave to enter if—

- (a) the Secretary of State certifies that directions have been given by the Secretary of State (and not by a person acting under his authority) for the appellant not to be given entry to the United Kingdom on the ground that his exclusion is in the interests of national security; or
- (b) the leave to enter was refused in compliance with any such directions.

(2) Section 69(2) does not entitle a person to appeal against—

- (a) a variation of his leave which reduces its duration, or
- (b) a refusal to enlarge or remove the limit on its duration, if either of the following conditions is satisfied.



- (3) The conditions are—
- (a) that the Secretary of State has certified that the appellant's departure from the United Kingdom would be in the interests of national security; or
 - (b) that the decision questioned by the appeal was taken on that ground by the Secretary of State (and not by a person acting under his authority).
- (4) Section 69(3) does not entitle a person to appeal against a refusal mentioned in paragraph (a) of that subsection if—
- (a) the reason for the refusal was that he was a person to whom the Refugee Convention did not apply by reason of Article 1(F) of that Convention; and
 - (b) the Secretary of State has certified that the disclosure of material on which the refusal was based is not in the interests of national security.
- (5) Section 69(4)(a) does not entitle a person to appeal against a decision to make a deportation order against him if the ground of the decision was that his deportation is in the interests of national security.
- (6) Section 69(4)(b) does not entitle a person to appeal against a refusal to revoke a deportation order, if—
- (a) the Secretary of State has certified that the appellant's exclusion from the United Kingdom would be in the interests of national security; or
 - (b) if revocation was refused on that ground by the Secretary of State (and not by a person acting under his authority).
- (7) A person may not bring an appeal on any of the grounds mentioned in subsections (1) to (5) of section 69—
- (a) if, before the time of the refusal, variation, decision or directions (as the case may be) he has not made a claim for asylum;
 - (b) otherwise than under that section.
- (8) A person may not appeal under section 69(4)(b) if he has had the right to appeal under section 69(4)(a) (whether or not he has exercised it).

95 Persons for whom support may be provided

- (1) The Secretary of State may provide, or arrange for the provision of, support for—
- (a) asylum-seekers, or
 - (b) dependants of asylum-seekers, who appear to the Secretary of State to be destitute or to be likely to become destitute within such period as may be prescribed.
- (2) In prescribed circumstances, a person who would otherwise fall within subsection (1) is excluded.
- (3) For the purposes of this section, a person is destitute if—
- (a) he does not have adequate accommodation or any means of obtaining it (whether or not his other essential living needs are met); or
 - (b) he has adequate accommodation or the means of obtaining it, but cannot meet his other essential living needs.
- (4) If a person has dependants, subsection (3) is to be read as if the references to him were references to him and his dependants taken together.
- (5) In determining, for the purposes of this section, whether a person's accommodation is adequate, the Secretary of State—
- (a) must have regard to such matters as may be prescribed for the purposes of this paragraph; but
 - (b) may not have regard to such matters as may be prescribed for the purposes of this paragraph or to any of the matters mentioned in subsection (6).
- (6) Those matters are—
- (a) the fact that the person concerned has no enforceable right to occupy the accommodation;
 - (b) the fact that he shares the accommodation, or any part of the accommodation, with one or more other persons;
 - (c) the fact that the accommodation is temporary;

(d) the location of the accommodation.

(7) In determining, for the purposes of this section, whether a person's other essential living needs are met, the Secretary of State—

- (a) must have regard to such matters as may be prescribed for the purposes of this paragraph; but
- (b) may not have regard to such matters as may be prescribed for the purposes of this paragraph.

(8) The Secretary of State may by regulations provide that items or expenses of such a description as may be prescribed are, or are not, to be treated as being an essential living need of a person for the purposes of this Part.

(9) Support may be provided subject to conditions.

(10) The conditions must be set out in writing.

(11) A copy of the conditions must be given to the supported person.

(12) Schedule 8 gives the Secretary of State power to make regulations supplementing this section.

(13) Schedule 9 makes temporary provision for support in the period before the coming into force of this section.

12.1.3. Immigration Rules²²

Part 11: Asylum

Grant of asylum

334. An asylum applicant will be granted asylum in the United Kingdom if the Secretary of State is satisfied that:

- (i) he is in the United Kingdom or has arrived at a port of entry in the United Kingdom;
- (ii) he is a refugee, as defined in regulation 2 of The Refugee or Person in Need of International Protection (Qualification) Regulations 2006;
- (iii) there are no reasonable grounds for regarding him as a danger to the security of the United Kingdom;
- (iv) he does not, having been convicted by a final judgment of a particularly serious crime, he does not constitute danger to the community of the United Kingdom; and
- (v) refusing his application would result in him being required to go (whether immediately or after the time limited by any existing leave to enter or remain) in breach of the Geneva Convention, to a country in which his life or freedom would be threatened on account of his race, religion, nationality, political opinion or membership of a particular social group.

335. If the Secretary of State decides to grant asylum to a person who has been given leave to enter (whether or not the leave has expired) or to a person who has entered without leave, the Secretary of State will vary the existing leave or grant limited leave to remain.

Refusal of asylum

336. An application which does not meet the criteria set out in paragraph 334 will be refused. Where an application for asylum is refused, the reasons in fact and law shall be stated in the decision and information provided in writing on how to challenge the decision.

(...)

Grant of humanitarian protection

339C. A person will be granted humanitarian protection in the United Kingdom if the Secretary of State is satisfied that:

- (i) he is in the United Kingdom or has arrived at a port of entry in the United Kingdom;

²² The Immigration Rules were last updated in March 2009 and the full text is available on the UKBA website: <http://www.ind.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/>.

- (ii) he does not qualify as a refugee as defined in regulation 2 of The Refugee or Person in Need of International Protection (Qualification) Regulations 2006;
- (iii) substantial grounds have been shown for believing that the person concerned, if he returned to the country of return, would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail himself of the protection of that country; and
- (iv) he is not excluded from a grant of humanitarian protection.

Serious harm consists of:

- (i) the death penalty or execution;
- (ii) unlawful killing;
- (iii) torture or inhuman or degrading treatment or punishment of a person in the country of return; or
- (iv) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

(...)

Third country cases

345. (1) In a case where the Secretary of State is satisfied that the conditions set out in Paragraphs 4 and 5(1), 9 and 10(1), 14 and 15(1) or 17 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 are fulfilled, he will normally decline to examine the asylum application substantively and issue a certificate under Part 2, 3, 4 or 5 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 as appropriate.

(2) The Secretary of State shall not issue a certificate under Part 2, 3, 4 or 5 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 unless:

- (i) the asylum applicant has not arrived in the United Kingdom directly from the country in which he claims to fear persecution and has had an opportunity at the border or within the third country or territory to make contact with the authorities of that third country or territory in order to seek their protection; or
- (ii) there is other clear evidence of his admissibility to a third country or territory.

Provided that he is satisfied that a case meets these criteria, the Secretary of State is under no obligation to consult the authorities of the third country or territory before the removal of an asylum applicant to that country or territory.

345(2A) Where a certificate is issued under Part 2, 3, 4 or 5 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 the asylum applicant shall:

- (i) be informed in a language that he may reasonably be expected to understand regarding his removal to a safe third country;
- (ii) be provided with a document informing the authorities of the safe third country, in the language of that country, that the asylum application has not been examined in substance by the authorities in the United Kingdom;
- (iii) sub-paragraph 345(2A)(ii) shall not apply if removal takes place with reference to the arrangements set out in Regulation (EC) No. 343/2003 (the Dublin Regulation); and
- iv) if an asylum applicant removed under this paragraph is not admitted to the safe third country (not being a country to which the Dublin Regulation applies as specified in paragraph 345(2A)(iii)), subject to determining and resolving the reasons for his nonadmission, the asylum applicant shall be admitted to the asylum procedure in the United Kingdom.

(3) Where a certificate is issued under Part 2, 3, 4 or 5 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 in relation to the asylum claim and the person is seeking leave to enter the Immigration Officer will consider whether or not he is in a position to decide to give or refuse leave to enter without interviewing the person further. If the Immigration Officer decides that a further interview is not required he may serve the notice giving or refusing leave to enter by post. If the Immigration Officer decides that a further interview is required, he will then resume his examination to determine whether or not to grant the person leave to enter under any other provision of these Rules. If the person fails at any time to comply with a requirement to report to an Immigration Officer for examination, the Immigration Officer may direct that the person's examination shall be treated as concluded at that time. The Immigration Officer will then consider any outstanding applications for entry on the basis of any evidence before him.

(4) Where a certificate is issued under Part 2, 3, 4 or 5 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 the person may, if liable to removal as an illegal entrant, or removal under section 10 of

the Immigration and Asylum Act 1999 or to deportation, at the same time be notified of removal directions, served with a notice of intention to make a deportation order, or served with a deportation order, as appropriate.

Part 12 - Procedure and rights of appeal

Fresh Claims

353. When a human rights or asylum claim has been refused or withdrawn or treated as withdrawn under paragraph 333C of these Rules and any appeal relating to that claim is no longer pending, the decision maker will consider any further submissions and, if rejected, will then determine whether they amount to a fresh claim. The submissions will amount to a fresh claim if they are significantly different from the material that has previously been considered. The submissions will only be significantly different if the content:

- (i) had not already been considered; and
- (ii) taken together with the previously considered material, created a realistic prospect of success, notwithstanding its rejection.

This paragraph does not apply to claims made overseas.

353A. Consideration of further submissions shall be subject to the procedures set out in these Rules. An applicant who has made further submissions shall not be removed before the Secretary of State has considered the submissions under paragraph 353 or otherwise.

This paragraph does not apply to submissions made overseas.

12.2 Processing Costs

It is not possible to provide a meaningful single cost of an asylum case because there are many different possible combinations of outcome, numbers and location, each with different cost implications. Therefore, the UK Border Agency is unable to offer a single figure, either per capita or per case.

The National Audit Office (NAO), however, gives a breakdown of the cost of typical asylum cases in 2007-2008 in its report, *The Home Office Management of Asylum Applications* by the UK Border Agency, which was published on 23 January 2009. The report sets out 12 typical profiles and the lower- to upper-end estimate of costs, either excluding or including accommodation and support costs.

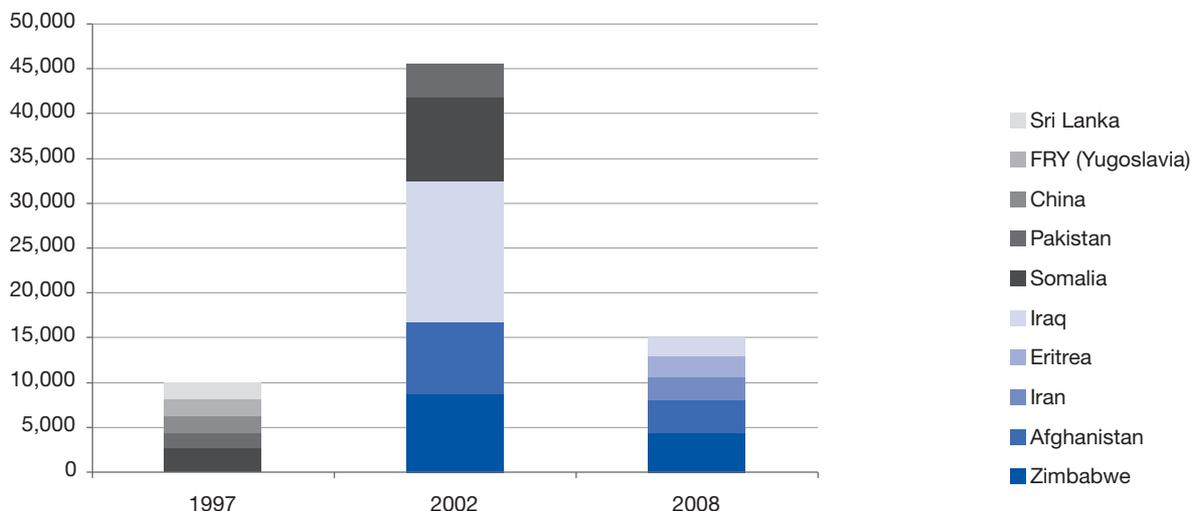
For example, Profile 4 estimates the cost of an enforced removal of a single, non-detained adult after appeal rights have been exhausted, as being between £7,900-17,000, excluding accommodation and support, or £12,000-25,600 including accommodation and support.²³

²³ This full report is available on the National Audit Office website: http://www.nao.org.uk/publications/0809/management_of_asylum_appl.aspx.

12.3 Additional Statistical Information

Figure 5:

Asylum Applications* from Top Five Countries of Origin for the UK in 1997, 2002 and 2008



* First applications only

Figure 6:

Decisions Made at the First Instance, 1992-2008

Year	Convention Status		Humanitarian Status and Other Authorisations to Remain		Rejections		Other Decisions*		Total Decisions
	Count	% of total	Count	% of total	Count	% of total	Count	% of total	
1992	1,900	3%	21,680	36%	35,480	58%	1,795	3%	60,855
1993	2,860	7%	15,480	39%	18,550	47%	2,325	6%	39,215
1994	1,395	5%	5,445	18%	20,915	68%	2,875	9%	30,630
1995	2,200	6%	6,780	18%	26,220	69%	3,060	8%	38,260
1996	3,660	7%	7,510	14%	38,180	72%	3,865	7%	53,220
1997	6,210	12%	4,740	9%	37,585	73%	3,105	6%	51,635
1998	8,245	18%	6,455	14%	28,205	63%	1,785	4%	44,690
1999	10,405	22%	4,640	10%	13,915	30%	17,790	38%	46,755
2000	12,135	9%	12,645	9%	92,330	68%	17,900	13%	135,010
2001	14,755	9%	26,025	16%	115,120	72%	3,090	2%	158,995
2002	10,990	10%	22,470	21%	69,990	66%	1,825	2%	105,280
2003	5,380	7%	7,805	9%	67,185	81%	2,205	3%	82,575
2004	2,160	4%	4,195	7%	49,040	83%	3,520	6%	58,915
2005	2,470	7%	2,955	8%	27,780	76%	3,440	9%	36,650
2006	2,630	10%	2,410	9%	20,430	74%	2,050	7%	27,520
2007	4,495	16%	2,315	8%	19,850	71%	1,400	5%	28,065
2008	3,725	19%	2,180	11%	13,510	70%	0	0%	19,415

*Other decisions may include withdrawn claims, abandoned claims or claims otherwise resolved.

United States of America



USA

395 - BACKGROUND: MAJOR ASYLUM TRENDS AND DEVELOPMENTS

397 - NATIONAL LEGAL FRAMEWORK

399 - INSTITUTIONAL FRAMEWORK

400 - PRE-ENTRY MEASURES

400 - ASYLUM PROCEDURES

407 - DECISION-MAKING AND STATUSES

413 - EFFICIENCY AND INTEGRITY MEASURES

415 - ASSISTANCE AND RECEPTION BENEFITS FOR ASYLUM-SEEKERS

416 - STATUS AND PERMITS GRANTED OUTSIDE THE ASYLUM PROCEDURE

417 - RETURN

417 - INTEGRATION

418 - ANNEXE

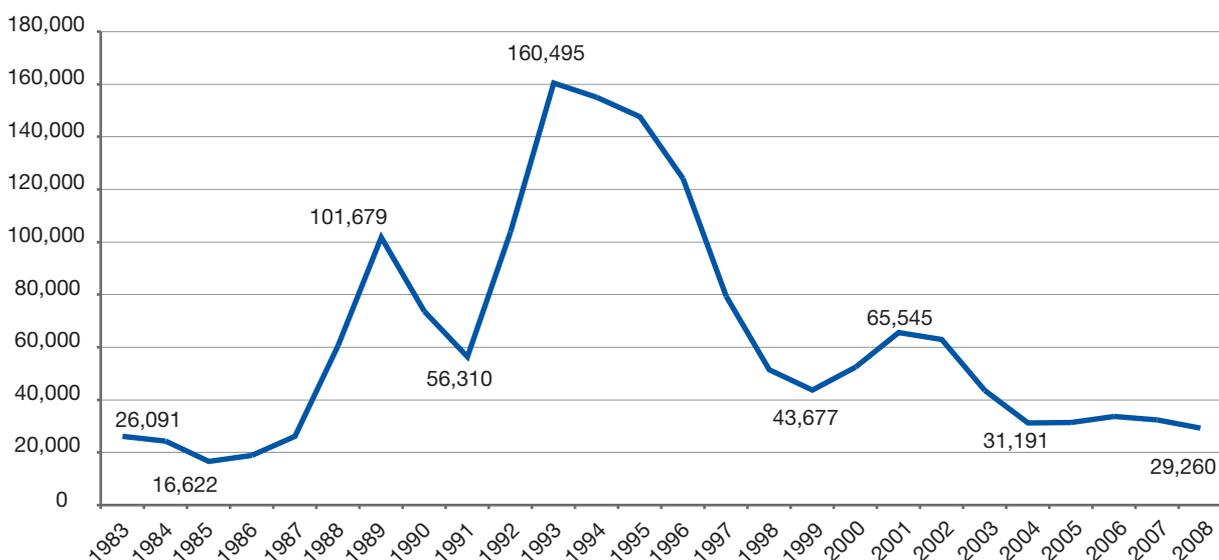
1 Background: Major Asylum Trends and Developments

Asylum Applications

In the mid-1980's, the United States (U.S.) was receiving between 16,000 and 26,000 asylum claims per year. The number of annual claims started to increase significantly from 1988, reaching a peak of over 160,000 in fiscal year 1993 (1 October to 30 September). Annual claims started to decrease significantly from 1993 onward, and since fiscal year 2004, around 30,000 claims have been received annually.¹

Figure 1:

Evolution of Asylum Applications in the United States, 1983-2008*



*New applications received and reopened with USCIS (affirmative only); principal applicants only (Source: USCIS Workload Data).

Top Nationalities

In the 1990's, the majority of asylum claims came from El Salvador, Guatemala, Mexico, China, and Haiti. Since 2000, most claimants originate from China, Haiti, Mexico, and Colombia.

Figure 2:

Top Five Countries of Origin in 2008*

1	China	8,382
2	Mexico	2,213
3	El Salvador	1,908
4	Guatemala	1,752
5	Haiti	1,379

* New applications received and reopened with USCIS (affirmative only); principal applicants only (Source: USCIS Nationality Data).

Important Reforms

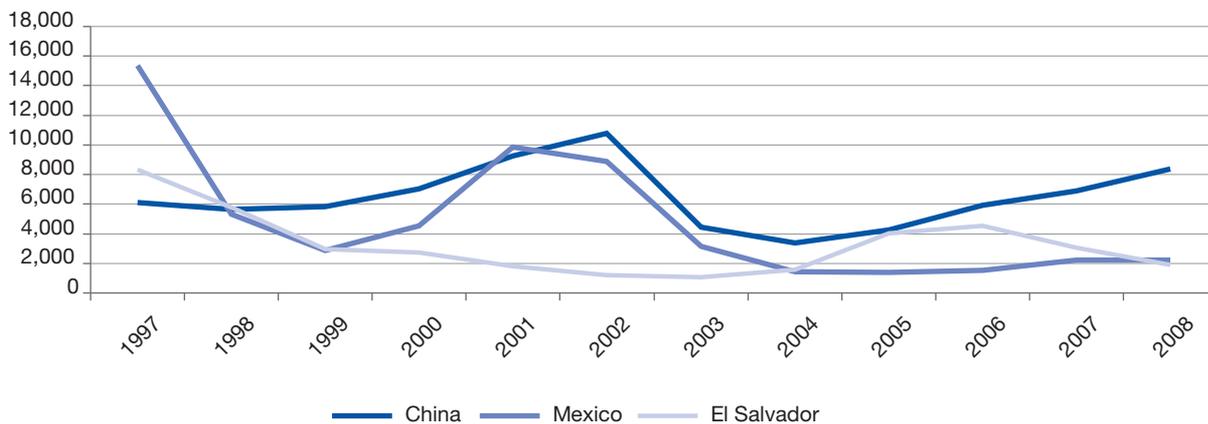
The Refugee Act of 1980 was passed with the primary purpose of bringing U.S. refugee law in line with U.S. obligations under the 1967 Protocol Relating to the Status of Refugees, which entered into force for the U.S. on 1 November 1968. Under interim regulations published in June 1980, Immigration and Naturalization Service (INS) District Directors were given the authority to adjudicate asylum requests of those foreign nationals not in exclusion or deportation proceedings.

Due to immigration events, such as the arrival of large influxes of Haitian and Cuban migrants, and the ensuing debate over the proper role of asylum in U.S. immigration decision-making, a final rule on the asylum

¹ These numbers include both newly filed asylum applications as well as previously received asylum applications that were reopened during the fiscal year. These numbers also reflect "affirmative" filings before U.S. Citizenship and Immigration Services and "defensive" filings by persons in removal hearings before an immigration judge of the Department of Justice Executive Office for Immigration Review.

Figure 3:

Top Five Countries of Origin in 2008*



* New applications received and reopened with USCIS (affirmative only); principal applicants only (Source: USCIS Nationality Data).

system was not published until 27 July 1990. The final rule became effective on 1 October 1990 and provided for the following:

- A corps of professional asylum officers, trained in international human rights law and non-adversarial interview techniques, was created solely to adjudicate affirmative asylum claims
- Those applicants not eligible for asylum who were not in legal immigration status were allowed to renew their applications for asylum when in deportation or exclusion proceedings before an Immigration Judge
- Country conditions information would be compiled from multiple sources and be maintained in a human rights documentation centre managed by the INS Office of International Affairs.

The rule also made asylum applicants eligible for employment authorisation so long as their applications were deemed “non-frivolous.”

In July 1993, President Clinton directed the Department of Justice to develop an administrative plan to reform asylum due to mounting backlogs and a lack of timely asylum adjudications. The resulting asylum reforms became effective on 4 January 1995. The comprehensive package of reforms was the product of collaboration between government representatives and members of the non-governmental organisation (NGO) community and had been the subject of extensive public consultation. There were five main components to the 1995 asylum reforms.

Applicants who applied for asylum on or after 4 January 1995 are not automatically eligible for a work permit as

they previously were, as long as the asylum request was not deemed “frivolous.” Under the 1995 reforms, work permits are granted only if applicants are approved for asylum or if the government takes longer than 180 days to reach a final decision, whichever comes first.

The 1995 reforms streamlined the review process for cases not granted by the asylum officer corps. Prior to reform, asylum officers issued final decisions on all applications for asylum and withholding of deportation. An applicant who was found ineligible was denied, and the applicant had the right to file an asylum application *de novo* with the Office of the Chief Immigration Judge, if exclusion or deportation proceedings were initiated. Pursuant to the 1995 revised regulations, and current regulations, requests filed by applicants who are deportable or removable and who are found ineligible for asylum must be referred directly to an Immigration Judge for adjudication in immigration proceedings. The immigration judge adjudicates the same asylum application that was filed with the Asylum Office. As a matter of discretion, the immigration judge may allow the applicant to supplement or amend the application. Asylum officers continue to have the authority to grant asylum to qualified applicants in the exercise of discretion.

Prior to reform, asylum applicants who were found ineligible for asylum were sent written explanations for the decision and provided an opportunity to rebut the preliminary decision before a final decision was made. Under the reform regulations, only applicants who are in the United States legally are provided a Notice of Intent to Deny (NOID) explaining the negative determination and an opportunity to rebut the decision. All other applicants who are not granted asylum are referred directly to an immigration judge.

Prior to reform, asylum decisions and any documents initiating deportation or exclusion proceedings were mailed to the applicant's last known address. Since reform, all applicants are required to pick up decisions in person, insuring that, if they are placed in removal proceedings, they are served with the charging documents, informing them of the date and place of hearing. An exception is made for asylum applicants who are interviewed at a location other than one of the eight asylum offices (see below).

Prior to 1995, asylum officers adjudicated requests for withholding of deportation (now withholding of removal) with each asylum request. Currently, asylum officers adjudicate only requests for asylum despite the fact that the application for asylum is at the same time an application for withholding of removal. Applicants may present to an immigration judge a request for withholding of removal based on the original asylum application if referred by the asylum office.

- Withholding of removal under Article 33 of the 1951 Convention (INA § 241(b)(3), 8 CFR § 208.16, and 8 CFR § 1208.16)
- Protection under Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture, CAT), as implemented in United States law (8 CFR §§ 208.16 – 208.18 and 8 CFR §§ 1208.16 – 1208.18)
- Temporary Protected Status (TPS), codified at INA § 244, 8 CFR § 244, and 8 CFR § 1244
- Deferred Enforced Departure (DED), an authority that is held by the President not to initiate or enforce removal orders against a person or group of persons if he or she deems it in the foreign policy interest of the U.S. to do so.

The various types of protection are described later in the chapter.²

2 National Legal Framework

2.1 Legal Basis for Granting Protection

The main instrument of domestic immigration legislation in force in the United States is the Immigration and Nationality Act (INA), passed by Congress in 1952. In 1968, the U.S. acceded to the 1967 United Nations (UN) Protocol, thus undertaking obligations under the 1951 Convention relating to the Status of Refugees (1951 Convention). On 17 March 1980, the Refugee Act of 1980 was signed into law, a far-reaching piece of legislation that amended the INA and brought U.S. domestic law into conformity with the 1951 Convention. The U.S. counterpart to the refugee definition in Article 1 of the 1951 Convention is section 101(a)(42) of the INA. The INA also provides for the granting of asylum status, covering issues such as who is eligible to apply for asylum, conditions for granting asylum, and the asylum procedure.

Additionally, the federal agencies responsible for asylum adjudications have expanded upon the INA's asylum sections by providing federal regulations, incorporated in the Code of Federal Regulations (CFR) at 8 CFR § 208, which further explain asylum eligibility requirements and procedures.

The U.S. offers four other forms of protection which are granted either inside or outside the asylum procedure. These are as follows:

2.2 Recent Reforms

Terrorist-Related Inadmissibility Grounds

Since 2000, the U.S. Congress has passed three major pieces of legislation concerning terrorist-related inadmissibility grounds that serve as a bar (exclusion) to asylum. The U.S.A PATRIOT Act of 2001 ("Patriot Act") expanded grounds of inadmissibility based on terrorism, broadened the definition of "terrorist activity," added two definitions of "terrorist organisation," and added a separate ground of inadmissibility for those who have been associated with a terrorist organisation. The Patriot Act also added a subsection on membership in an undesignated terrorist organisation to those grounds on which a person would not be eligible for asylum.³ The INA, as amended by the Patriot Act, allows those persons who fall under subsection (IV) of 212(a)(3)(B)(i) (representative of a terrorist organisation) to be eligible for an exception to the bar if it is determined that there are not reasonable grounds to believe that they are a danger to the security of the United States.

The REAL ID Act of 2005 further broadened the categories of persons who are inadmissible for terrorist activities by including those who have received military-type training from or on behalf of a terrorist organisation. It also broadened the inadmissibility ground regarding espousing terrorist activity to no longer require that the individual hold a "position of prominence." The statute also limited the affirmative defense to the inadmissibility ground for "engaging in terrorist activity" through soliciting things of value,

² See in particular the section below on Status and Permits Granted outside the Asylum Procedure.

³ Subsection (VI) was added to INA section 212(a)(3)(B)(i) by the Patriot Act.

soliciting persons for membership in, or for providing material support to an undesignated terrorist organisation to require the person to “demonstrate by clear and convincing evidence that he did not know, and reasonably should not have known, that the organisation was a terrorist organisation.” REAL ID Act of 2005 § 103(a). The statute also amended INA § 212(d) to create an inapplicability provision for the material support ground, as well as for persons and representatives of groups who endorse or espouse terrorist activity. The inapplicability ground allows the Secretary of Homeland Security, after consultation with the Secretary of State and the Attorney General, to not apply the provisions of sections 212(a)(3)(B)(i)(IV)(bb) (related to representatives of organisations that endorse or espouse terrorist activity), 212(a)(3)(B)(i)(VII) (relating to those who endorse or espouse terrorist activity), or 212(a)(3)(B)(iv)(VI) (related to material support to a terrorist or terrorist organisation) to a person in the Secretary’s sole unreviewable discretion.

On 26 December 2007, the Consolidated Appropriations Act (CAA) of 2008 was signed into law. Through this legislation, Congress amended the discretionary authority of the Secretary of Homeland Security and the Secretary of State, under section 212(d)(3)(B)(i) of the INA, to exempt, in certain cases, the effect of a person’s terrorist activities on his or her inadmissibility or removability from the United States. There are limits to the Secretaries’ authority under this provision as amended; in particular, the provision cannot be used to exempt foreign nationals who *knowingly and voluntarily* engaged in terrorist activity on behalf of a designated terrorist organisation. The CAA requires that the Taliban be considered a designated terrorist organisation for immigration purposes.

The CAA also identified ten groups that are not to be considered terrorist organisations under the INA based on actions taken before the statute’s enactment.⁴ On 3 June 2008, Secretary of Homeland Security Michael Chertoff and Secretary of State Condoleezza Rice, in consultation with each other and the Attorney General, exercised their discretionary authority under INA section 212(d)(3)(B)(i) not to apply most of the terrorist-related grounds of inadmissibility to persons for activities or associations related to any of the ten groups named in the CAA.

⁴ The ten groups are: Karen National Union/Karen Liberation Army (KNU/KNLA); Chin National Front/Chin National Army (CNF/CNA); Chin National League for Democracy (CNLD); Kayan New Land Party (KNLP); Arakan Liberation Party (ALP); Mustangs; Alzados; Karenni National Progressive Party; appropriate groups affiliated with the Hmong; and appropriate groups affiliated with the Montagnards.

Evidentiary and Credibility Standards

The REAL ID Act of 2005 also modified the evidentiary and credibility standards used in asylum proceedings. It modified the requirements concerning an asylum applicant’s burden of proof to require that the asylum applicant have the burden of proof to establish that race, religion, nationality, membership in a particular social group, or political opinion was or would be at least *one central reason* for the persecutor’s motivation.⁵

Additionally, the REAL ID Act amended the INA’s section on sustaining the burden of proof in asylum adjudications to the following: “The testimony of the applicant may be sufficient to sustain the applicant’s burden without corroboration, but only if the applicant satisfies the trier of fact that the applicant’s testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee.”⁶ If the adjudicator “determines that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence.”⁷ Congress amended the statute in this way in order to resolve conflicts between administrative and judicial tribunals with respect to, among other issues, the sufficiency of testimonial evidence to satisfy the applicant’s burden of proof. Finally, in making a credibility determination, the REAL ID Act modified INA § 208(b)(1)(B)(iii) to require that adjudicators consider “the totality of the circumstances, and all relevant factors.”

Serious Non-Political Crime Bar to Asylum

The Child Soldiers Accountability Act of 2008 (CSAA), which came into force on 3 October 2008, creates both criminal and immigration prohibitions on the recruitment or use of child soldiers. Specifically, the CSAA establishes a ground of inadmissibility at section 212(a)(3)(G) of the INA and a ground of removability at section 237(a)(4)(F) of the INA. These parallel grounds set forth that “[a]ny foreign national who has engaged in the recruitment or use of child soldiers in violation of section 2442 of title 18, United States Code” is inadmissible and is removable.

The statute also requires that DHS and DOJ promulgate regulations establishing that a person who is subject to these grounds of inadmissibility or removability “shall be considered a person with respect to whom there are serious reasons to believe that the person committed a serious nonpolitical crime,” and is therefore ineligible for asylum pursuant to INA section 208(b)(2)(A)(iii). The

⁵ INA § 208(b)(1)(B)(i).

⁶ INA § 208(b)(1)(B)(ii).

⁷ *Ibid.*

regulations are in the process of being promulgated. In the interim, the Congressional intent in enacting the CSAA, as well as the nature of the serious crime of the use of child soldiers, is considered in determining whether an applicant is subject to the serious non-political crime bar.

Consideration of Asylum Applications Made by Unaccompanied Minors

On 23 December 2008, the William Wilberforce Trafficking Victims Protection Reauthorisation Act (TVPRA) of 2008⁸ was signed into law. The TVPRA makes a number of changes to the INA that affect unaccompanied minors (UAMs) who have filed for asylum. First, TVPRA amended the INA so that the one-year filing deadline and Safe Third Country Agreement bars to applying for asylum no longer apply to UAMs.

Second, the TVPRA provides USCIS asylum officers with initial jurisdiction over any asylum application filed by an unaccompanied child, regardless of whether the application was filed in accordance with INA sections 208 or 235(b). As a result, unaccompanied minors filing for asylum who previously would have had their case heard by an immigration judge in the first instance will now receive an affirmative interview with an asylum officer.

Third, the TVPRA requires the U.S. government to develop regulations for principal applicants for asylum and other forms of relief “which take into account the specialised needs of [UAMs] and which address both procedural and substantive aspects of handling [UAMs]’ cases.”

Fourth, the TVPRA authorises the Secretary of Health and Human Services (HHS) to appoint independent child advocates, who advocate for the child’s best interests, for child trafficking victims and other vulnerable UAMs.

3 Institutional Framework

3.1 Principal Institutions

Asylum and refugee protection are governed by the provisions outlined in the Immigration and Nationality Act (INA), with a number of different bodies responsible for its implementation.

Department of Homeland Security

Several offices within the Department have a role in the asylum procedure.

U.S. Citizenship and Immigration Services (USCIS) is responsible for adjudicating applications for immigration benefits, including asylum applications and refugee resettlement determinations, and for conducting protection screening interviews of persons who would otherwise be returned without a hearing.

U.S. Customs and Border Protection (CBP) enforces U.S. immigration and customs laws at the U.S. border.

U.S. Immigration and Customs Enforcement (ICE) enforces customs and immigration laws in the interior, manages the detention and removal of certain foreign nationals, and investigates immigration fraud and abuse for appropriate action in administrative, civil, or criminal courts.

Department of Health and Human Services

The Department is responsible for funding programmes administered by individual states and non-profit organisations to provide cash and medical assistance, training programmes, employment, and other support services to asylees and refugees. It is also responsible for the care and custody of unaccompanied minors in U.S. custody.

Department of Justice

The Executive Office for Immigration Review within the Department of Justice houses the immigration courts (administrative tribunals that adjudicate asylum applications filed in removal proceedings), the decisions of which may be appealed to EOIR’s Board of Immigration Appeals.

Department of State

The Department of State is responsible for issuing non-immigrant and immigrant visas to persons overseas, formulating policies on population, refugees and migration, and administering U.S. refugee assistance and admissions (resettlement) programmes. DOS also provides opinions on certain individual asylum cases, facilitates completion of the adjudication process for asylees’ immediate family members overseas, and conducts overseas document and information verification in some asylum cases as part of fraud prevention efforts.

8 Public Law 110-457.

4 Pre-entry Measures

4.1 Visa Requirements

A citizen of a foreign country who seeks to enter the U.S. generally must first obtain a U.S. visa. Certain international travellers may be eligible to travel to the U.S. without a visa if they meet the requirements for visa-free travel.

The Visa Waiver Program (VWP) enables nationals of certain countries to travel to the United States for tourism or business for stays of 90 days or less without obtaining a visa. The program was established in 1986 with the objective of eliminating unnecessary barriers to travel, stimulating the tourism industry, and permitting the Department of State to focus consular resources in other areas. Not all countries participate in the VWP,⁹ and not all travellers from VWP countries are eligible to use the program. VWP travellers are required to apply for authorisation through the Electronic System for Travel Authorization (ESTA), are screened at their port of entry into the United States, and are enrolled in the Department of Homeland Security's US-VISIT program.¹⁰

4.2 Interception

Neither U.S. immigration law nor international refugee law instruments are applicable to the interdiction and repatriation of undocumented migrants encountered on the high seas.¹¹ Notwithstanding, for over twenty years, the handling of migrants intercepted at sea has been guided by successive Executive Orders.

Currently, Executive Order 12,807 (May 24, 1992) instructs the U.S. Coast Guard to interdict and repatriate undocumented migrants at sea. However, the Secretary of Homeland Security may decide that a person who is a refugee will not be returned without that person's consent. Since 1981, Attorneys General and now the Secretary of DHS have exercised their authority to make such determinations by providing interdicted migrants who express a fear of return with an opportunity to speak to a USCIS Officer before repatriation is considered. Generally, USCIS Officers

⁹ To be admitted to the VWP, a country must meet various security and other requirements, such as enhanced law enforcement and security-related data sharing with the United States and timely reporting of both blank and issued lost and stolen passports. VWP members are also required to maintain high counterterrorism, law enforcement, border control, and document security standards. Designation as a VWP country is at the discretion of the U.S. Government. Meeting the objective requirements of the VWP does not guarantee a successful candidacy for VWP membership. See U.S. Department of State. "Visa Waiver Program," http://travel.state.gov/visa/temp/without/without_1990.html.

¹⁰ U.S. Department of State. "Visa Waiver Program," http://travel.state.gov/visa/temp/without/without_1990.html

¹¹ *Sale v. Haitian Centers Council*, 509 U.S. 155 (1993).

interview migrants interdicted at sea on board a Coast Guard vessel to determine whether any individuals have a credible fear of persecution or torture in their home country.

The U.S. does not generally allow interdicted migrants who require protection to settle in the U.S.; rather, the U.S. will seek resettlement in a third country. Third-country resettlement promotes two complementary goals: to save lives by discouraging dangerous sea travel, and to provide protection screening to those who do attempt the passage.

5 Asylum Procedures

5.1 Application Possibilities and Requirements, Procedures and Legal Remedies

Application Possibilities

Individuals may make asylum claims at ports-of-entry (airports, seaports, and border crossings) through the credible/reasonable fear process and, once inside the country, by filing an asylum application by mail submitted to a USCIS Service Center. An asylum-seeker may file an asylum application regardless of his or her immigration status.

Outside the country, certain individuals may access the U.S. Refugee Admissions Program (USRAP) for consideration for resettlement in the U.S. The USRAP, including how individuals access the programme, is described later in the chapter.¹²

Access to Information

The USCIS website provides information to asylum applicants regarding the overall process and specific procedures. The USCIS Asylum Division also recently published an information pamphlet on the asylum process for applicants that is available on the Internet and in each of the eight asylum field offices. The pamphlet has been translated into the ten languages most frequently encountered by the Asylum Program nationwide.

Individuals who are detained pending a credible fear determination are given an orientation regarding the credible fear process as well as a list of pro bono legal service providers.

¹² See in particular the section below on Resettlement.

Processes for Granting Asylum

The U.S. Government conducts asylum adjudications through two separate processes. The Asylum Division of U.S. Citizenship and Immigration Services (USCIS) adjudicates the asylum applications of persons who are not in removal proceedings and affirmatively file for asylum. Affirmative applicants may be persons who are in valid immigration status in the U.S. and those who are not. Asylum officers adjudicate these “affirmative” asylum applications by conducting non-adversarial interviews and writing and issuing decisions.

In addition, an asylum application can be adjudicated by an immigration judge with the Department of Justice’s Executive Office for Immigration Review (EOIR). This process is adversarial, with a DHS Immigration and Customs Enforcement trial attorney representing the government in a court proceeding. There are two main ways that an asylum applicant’s case will be before an immigration judge:

- A person is placed by DHS in removal proceedings, at which time he or she files an asylum application
- USCIS decides to not grant the case of a person without legal immigration status, and refers the case to the immigration court for a *de novo* asylum hearing.

5.1.1. Outside the Country

During annual refugee consultations with Congress, the nationalities and categories of persons deemed to be of “special humanitarian concern” to the U.S. are designated under a worldwide priority system. Only persons who qualify under this priority system are permitted to “apply” for refugee resettlement consideration through the U.S. Refugee Admissions Program (USRAP). The worldwide processing priority system (outlined in the Priorities section below) is the tool that the Department of State (DOS) uses to manage overall refugee admissions and helps ensure that those refugees who are of greatest concern to the United States have access to the refugee programme.

Currently applicants for refugee status must fall under the following categories:

- They must have been referred by the U.N. High Commissioner for Refugees (UNHCR), a designated non-governmental organisation (NGO) or a U.S. embassy
- They must be members of specified groups with special characteristics in certain countries as determined periodically by the United States government, or

- They must be a designated national with a close relative who was admitted as a refugee or granted asylum in the United States.

Humanitarian Parole

The Secretary of Homeland Security may, at his discretion, on the basis of urgent humanitarian grounds or significant public benefit, allow a foreign national to enter the U.S. in order to make a claim for asylum. This intervention – known as Humanitarian or Public Benefit Parole – can be requested by persons who are outside the U.S., by mailing an application form to DHS.

Applications at Diplomatic Missions

Applicants for refugee status may be referred by diplomatic missions through Priority 1 of the worldwide priority system (see below for further description of Priority 1). A person who approaches a U.S. diplomatic mission seeking refugee protection is generally referred to either the host government, if the host government is a signatory to the 1951 Convention, or the United Nations High Commissioner for Refugees (UNHCR). However, a U.S. diplomatic mission has the authority to refer individual cases to the USRAP under Priority 1. Embassies may identify a high-profile case or a person who is associated with the embassy in some way for whom compelling humanitarian or security circumstances exist such that he or she merits a referral to the USRAP.

Referrals made by a U.S. embassy are generally transmitted through the Department of State (DOS) cable system. While most refugee applicants, by statute, must be outside of their country of origin, the U.S. is authorised to process certain persons in-country including applicants from Iraq, Cuba, the Former Soviet Union and Vietnam as well as those of any nationality referred by a U.S. embassy, though such in-country referrals are presented only in exceptional circumstances.

Resettlement/Quota Refugees

Competent Authorities

The USRAP is an interagency partnership of several governmental agencies and NGOs, located both overseas and domestically, whose mission is to identify refugees for resettlement to the United States. The Bureau of Population, Refugees, and Migration (PRM) within DOS coordinates and manages the USRAP overall. Determining which persons or groups are of humanitarian concern is a PRM responsibility.

PRM works closely with its programme partners in administering the USRAP:

- U.S. Citizenship and Immigration Services (USCIS), the agency authorised to interview and adjudicate refugee applications
- The United Nations High Commissioner for Refugees (UNHCR), the organisation that refers cases to the USRAP for resettlement consideration and provides important information with regard to the worldwide refugee situation
- Overseas Processing Entities (OPE), international or non-governmental organisations under cooperative agreement with DOS that carry out administrative functions, assist in preparing cases for interview, including form filing and data collection, and perform a variety of post-DHS out-processing steps to prepare approved refugees to travel to the U.S.
- The International Organization for Migration (IOM), the organisation that arranges travel for all U.S.-bound refugees, and serves as the panel physician and/or the OPE in certain locations
- The Department of Health and Human Services' Office of Refugee Resettlement (DHHS/ORR), which provides resettlement assistance to arriving refugees.

Eligibility and Criteria for Resettlement as a Refugee

To be eligible for refugee status applicants must:

- Be among the refugees determined by the President to be of special humanitarian concern to the U.S.
- Meet the definition of a refugee contained in Section 101(a)(42) of the Immigration and Nationality Act (INA)
- Not be firmly resettled in a third country
- Be otherwise admissible under U.S. law.

Quota

An annual refugee admissions ceiling is established each fiscal year by the President, in consultation with Congress.¹³ In fiscal year 2009, total refugee admissions are designated at 80,000, of which 75,000 refugee admissions are allocated to various regions of the world.¹⁴

¹³ The process leading to that annual determination was established by the Refugee Act of 1980, incorporated into section 207 of the INA. Following the consultation process, and after receipt of congressional concurrence with the President's proposal, the DOS drafts a Presidential Determination for signature by the President, which formally authorises overall admissions levels and regional allocations for the fiscal year.

¹⁴ Unallocated slots typically go unused but are available should there be a shortfall in a particular region during the course of a year.

Priorities

During the consultation process on the annual quota, processing priorities are established in order to outline the groups of refugee applicants that will be eligible for consideration for resettlement. There are currently three priorities or categories of cases eligible for resettlement consideration through the USRAP:

- Priority 1 – Individual cases referred to the programme by reason of their circumstances and apparent need for resettlement. UNHCR, a U.S. embassy, or a designated NGO may identify and refer cases to the programme
- Priority 2 – Groups of cases within certain nationalities designated as having access to the programme by reason of their circumstances and apparent need for resettlement
- Priority 3 – Individual cases from eligible nationalities granted access for purposes of reunification with anchor family members already in the United States.

Procedures

OPEs are international organisations or non-governmental organisations under cooperative agreement with DOS which carry out administrative and processing functions for the refugee programme. OPEs conduct an initial screening of refugee applicants to collect biographic information and an account of the applicant's claim of persecution or fear of future harm. After the initial pre-screening is completed, all forms are prepared, and required name checks are requested by the OPE and USCIS conducts refugee eligibility interviews with the applicants.

Decisions

Eligibility for refugee status is decided on an individual, case-by-case basis. A USCIS officer conducts a personal interview with the applicant that is non-adversarial and designed to elicit information on the applicant's claim for refugee status, to verify family relationships, and to identify possible activities that might render the applicant ineligible for refugee status. During a refugee interview, an officer confirms the basic biographic data of the applicant and his or her relatives and, *inter alia*, determines whether the applicant has suffered past persecution or has a well-founded fear of future persecution on the basis of one of the five grounds of the 1951 Convention, and assesses the credibility of the applicant. USCIS officers also confirm that required security checks have been completed for every applicant and the results of these checks are analysed and reviewed prior to approval.

If found by USCIS to be eligible for refugee status, the applicant's case is returned to the OPE for continuation of processing, including medical screening, sponsorship assurances, cultural orientation and scheduling for onward travel to the United States.

There is no appeal for a denial of an application for refugee status. USCIS may exercise its discretion to review a case upon timely receipt of a request for review from the principal applicant. The request must include one or both of the following:

- A detailed account explaining how a significant error was made by the adjudicating officer
- New information that would merit a change in the determination.

USCIS will only accept one request that is postmarked or received by USCIS within 90 days from the date of the denial.

5.1.2. At Ports of Entry

Persons who make an application for asylum at a port of entry may be paroled into the U.S. to file an application under the normal in-country asylum procedure, or they may be subject to an accelerated procedure (credible fear process). Each process is described below.

5.1.3. Inside the Territory

Responsibility for Processing the Claim

The Safe Third Country Agreement (STCA)

Application and Procedure

The Safe Third Country Agreement between Canada and the United States came into effect on 29 December 2004.

The Agreement affirms the commitment of Canada and the U.S. to share responsibility with respect to refugee claims. Under the Agreement, a refugee claimant must seek protection in the country (Canada or the U.S.) where he or she first has the opportunity to do so, unless he or she qualifies for an exception. The agreement applies to individuals making asylum claims at a land border port of entry on the U.S.-Canadian border or persons in transit through one country while being removed from the other.

There are five exceptions to the Agreement:

- Canadian citizenship or habitual residency in Canada if stateless
- Unaccompanied minor

- Family members with lawful status other than non-immigrant or asylum applicant age 18 or older
- Validly issued visa or no visa if none required
- Public interest or discretionary.

If asylum-seekers qualify for one of these exceptions they are placed in the credible fear asylum process, described below.

Freedom of Movement/Detention

Persons subject to the agreement may be detained while USCIS determines which country is responsible for the claim. Persons may also be detained after a decision has been made to return the person to the country responsible for the asylum application.

Conduct of Transfers

U.S. Immigration and Customs Enforcement (ICE) is generally responsible for the transfer of persons to Canada where their entry has been barred by the STCA.

Review/Appeal

Supervisory Asylum Officers and USCIS Asylum Division Headquarters review all cases subject to the STCA. Persons subject to the Agreement may not appeal the decisions and decisions are not reviewed by immigration judges.

Application and Admissibility

Admissibility

To be eligible for asylum in the United States, an applicant must ask for asylum at a port of entry or file an asylum application within one year of his or her last arrival in the United States, unless there are changed circumstances that materially affect his or her eligibility for asylum or extraordinary circumstances relating to the delay in filing.

Bars to Applying for Asylum

An asylum-seeker is barred from applying for asylum under section 208(a)(2) of the INA under the following circumstances:

- The person failed to file an asylum claim within one year of his or her last arrival in the U.S., unless he or she demonstrates either the existence of changed circumstances which materially affect his or her eligibility for asylum or extraordinary circumstances relating to the delay in filing (8 CFR § 208.4)

- The person previously applied for asylum and was refused by an immigration judge or the Board of Immigration Appeals, unless he or she establishes the existence of changed circumstances materially affecting asylum eligibility
- The person can be removed to a safe third country pursuant to a bilateral or multilateral agreement (currently only Canada).

Changed circumstances (8 CFR § 208.4(a)(4)) may include the following:

- Changes in conditions in the applicant's country of origin
- Changes in the applicant's circumstances that materially affect his or her eligibility for asylum, including changes in U.S. law and activities he or she becomes involved in outside the country of origin
- Loss of the spousal or parent-child relationship to the principal applicant through marriage, divorce, death, or attainment of age 21.

Extraordinary circumstances (8 CFR § 208.4(a)(5)) as they relate to a delay in filing the asylum claim may include the following:

- Serious illness or mental or physical disability
- Legal disability during the first year after arrival
- Ineffective assistance of counsel
- The applicant has maintained Temporary Protected Status (TPS) or lawful immigrant or non-immigrant status, or was given parole until a reasonable period before the filing of the application
- A timely filing that was rejected for being incomplete and that was refiled within a reasonable period of time after being returned for correction
- Death, serious illness, or incapacity of the applicant's legal representative or a member of the applicant's immediate family.

Accelerated Procedures

Undocumented Asylum-Seekers at Ports-of-Entry

When asylum-seekers arrive at ports-of-entry without valid travel documents, they are subject to expedited removal without a hearing before an Immigration Judge. If they express a fear of return or an intention to apply for asylum, they are referred by a CBP or ICE official to a USCIS asylum officer for a screening interview. The aim of the screening interview is to determine if

the asylum-seeker has a credible fear of persecution or torture.¹⁵ At this stage of the process, the Asylum Officer does not consider any "bars" (i.e., grounds for exclusion) to asylum.

If USCIS determines that a credible fear of persecution or torture exists, the asylum-seeker is referred to an immigration judge for a full hearing on the merits during the course of removal proceedings. If USCIS does not find a credible fear and the immigration judge sustains the negative determination, the asylum-seeker is ordered removed.

Normal Procedure

Asylum-seekers making claims at the border or inside the U.S. can follow one of two types of procedures: affirmative or defensive.

Affirmative Procedure

Persons who are physically present in the United States, regardless of how they arrived and regardless of their current immigration status, may apply for asylum through the affirmative procedure. They make an asylum claim "affirmatively" by submitting an application to USCIS.

Application

When an asylum-seeker is eligible to apply for asylum under INA §208(a), he or she then files an application form, Form I-589, "Application for Asylum and for Withholding of Removal," at the USCIS Service Center with jurisdiction over his or her place of residence.

Applicants 12 years and eight months of age and older must have their fingerprints taken at a USCIS Application Support Center. At that time, the applicant's photograph and signature is captured. The fingerprints are automatically submitted for checks against U.S. criminal and immigration databases.

Interview

An affirmative asylum applicant is interviewed by USCIS within 43 days of filing the application. The applicant is interviewed by an asylum officer at one of eight asylum offices or at another USCIS field office if the applicant lives a far distance from the asylum office with jurisdiction. The interview is non-adversarial. The asylum officer verifies the asylum-seeker's identity, records basic biographical information, and elicits detailed information regarding the applicant's claim for asylum.

¹⁵ An asylum-seeker has a credible fear where there is a significant possibility, taking into account the credibility of the statements made by the person and other facts known to the officer, that the asylum-seeker can establish eligibility for asylum or withholding of removal (based either on a persecution or a torture claim).

If the asylum-seeker fails to appear for the interview, and does not provide USCIS with a written explanation within 15 days of the date of the scheduled interview, the case will be either referred to the Immigration Court (for those without legal status) or will be administratively closed. The Asylum Office Director has discretion to reschedule the interview if the asylum-seeker provides a reasonable explanation for his or her failure to appear.

The applicant's spouse and children under the age of 21 who are included in the application must also appear for the interview.

The asylum-seeker must bring the following documents to the interview:

- Identity documents, including any passport(s), other travel or identification documents, or an Arrival-Departure Record (Form I-94)
- The originals of any birth certificates, marriage certificates, or other documents the asylum-seeker previously submitted with Form I-589
- A copy of his or her Form I-589 and other supplementary material that he or she previously submitted
- Any additional available items documenting the asylum claim.

Defensive Procedure

Asylum-seekers enter the defensive asylum procedure – in other words, they make a claim for asylum as a defence against removal from the United States – in one of the following circumstances:

- Through referral by an Asylum Officer of USCIS when the asylum claim is refused following an affirmative procedure
- After being placed in removal proceedings for immigration violations, or
- By trying to enter the U.S. at a port-of-entry without proper documents and having been found to have a credible fear of persecution or torture.

The asylum-seeker appears before an immigration judge (IJ) with the Executive Office for Immigration Review (EOIR) in formal adversarial hearings. The IJ hears the applicant's claim along with any concerns about the validity of the claim raised by the Government, which is represented by an attorney.

Review/Appeal of the Normal Procedure

The immigration judge's decision may be appealed to the Board of Immigration Appeals (BIA), an agency

within the Department of Justice. The BIA's decision may then be appealed to the U.S. federal court system.

Freedom of Movement during the Normal Procedure

Asylum-seekers subject to the affirmative procedure and those referred to an immigration judge by USCIS are generally free to live in a place of their choosing in the U.S. pending the completion of the asylum procedure.

If an asylum-seeker wishes to travel outside the country during the procedure, he or she must receive advance permission (Advance Parole) from USCIS before leaving the United States.

Detention

Some asylum-seekers may be detained at certain points during the asylum procedure. Asylum-seekers without proper documentation who are apprehended by immigration officials at a U.S. port-of-entry and are not found to have a credible fear of persecution are kept in detention until their removal from the United States. Asylum-seekers who are found to have a credible fear and are placed in the defensive procedure may be considered for discretionary release by ICE Detention and Removal Officers pursuant to standardised parole guidelines.

Reporting

The asylum-seeker has an obligation to inform USCIS or the Immigration Court within 10 days of a change of address. The applicant should separately notify the Asylum Office of a change of address at any time during the affirmative procedure.

Repeat/Subsequent Applications

Affirmative Procedure

An asylum-seeker can reapply after the issuance of a final denial by an asylum office, the dismissal of a motion to reopen and reconsider (MTR) or the withdrawal of a previous application, provided that he or she is not under the jurisdiction of the Immigration Court. The asylum-seeker will still be subject to the one-year filing deadline for applications. In addition, the previous adjudication by the asylum officer will be considered in the adjudication of any repeat application.

Defensive Procedure

An asylum-seeker who was previously denied asylum by EOIR is prohibited from filing a new application for asylum, unless there are changed circumstances which materially affect the applicant's asylum eligibility. In

addition, a new application can be filed with USCIS only where EOIR no longer has jurisdiction over the case.

5.2 Safe Country Concepts

5.2.1. Safe Country of Origin

There is no safe country of origin provision in the U.S. process.

5.2.2. First Country of Asylum

Asylum applicants who are found to have been “firmly resettled” in another country prior to their arrival in the U.S. are ineligible for asylum. An applicant is considered to be firmly resettled if, prior to his or her arrival in the United States, he or she entered another country with, or while in that country received, an offer of permanent resident status, citizenship, or some other type of permanent settlement. An individual will not be considered “firmly resettled” if:

- The applicant establishes that his or her entry into that nation was a necessary consequence of his or her flight from persecution, that he or she remained in that nation only as long as was necessary to arrange onward travel, and that he or she did not establish significant ties in that country, or
- The applicant establishes that the conditions of his or her residence in that nation were so substantially and consciously restricted by the authority of the country of refuge that he or she was not in fact resettled. In making his or her determination, the asylum officer or immigration judge considers the conditions under which other residents of the country live, the type of housing made available to the refugee, whether permanent or temporary, the types and extent of employment available to the refugee, and the extent to which the refugee received permission to hold property and to enjoy other rights and privileges.

5.2.3. Safe Third Country

The U.S. applies the Safe Third Country Agreement with Canada, as described above.

5.3 Special Procedures

5.3.1. Unaccompanied Minors

Asylum Procedure

The USCIS Asylum Division has put in place a number of procedures in recent years in order to address the special concerns that arise with minor principal applicants for asylum.

The predecessor to USCIS, the Immigration and Naturalization Service, in 1998 issued Guidelines for Children’s Asylum Claims, which provided guidance particularly with regard to child-sensitive interview procedures and analysis of common issues arising in children’s asylum claims. Among other things, the Guidelines suggest that a trusted adult may be present at the interview to provide moral support to the minor and that Asylum Officers should put the minor at ease and explain the procedures and conduct the interview in a way in which a young child can understand and participate. Additionally, when an Asylum Officer weighs the testimony of a minor, he or she is required to take into account the child’s age, education, awareness of past events, as well as the effect of past trauma when evaluating whether the child’s testimony is credible or whether the child has met his or her burden of proof.

In order to ensure that issues related to minors receive proper attention, the Asylum Division provides training on child-specific procedures and law to new asylum officers, and also requires that all cases filed by minor principal applicants undergo quality assurance review at the headquarters level. Additionally, in August 2007, the Asylum Division issued a memorandum with updated procedures for minor principal applicant claims. This memorandum described a new mechanism to track unaccompanied minors and provided guidance concerning information to elicit in an asylum interview with regard to the applicant’s care and custody and parental awareness of the asylum application. The Asylum Division also conducted a pilot project to facilitate access to pro bono representation for unrepresented unaccompanied minors.

The Department of Justice’s EOIR also has in place a number of child-sensitive procedures. For the past 10 years, EOIR has trained immigration judges on children’s issues with the help of experts from other federal agencies and non-governmental organisations. In addition, EOIR has issued guidelines for immigration judges to create a child-friendly environment in the immigration court, including special court dockets for children, child-friendly courtroom modifications, pre-hearing courtroom orientations, and child-sensitive questioning. Moreover, representatives of the EOIR Legal Orientation & Pro Bono Program together with immigration judges and other court staff have worked closely with others inside and outside the U.S. government to identify children in need of legal assistance and to facilitate pro bono legal services.

Thanks to these partnership efforts, the large majority of unaccompanied minors in government custody have access to basic legal immigration programmes.

Care and Custody

The Office of Refugee Resettlement (ORR) at the Department of Health and Human Services has statutory authority over the custody and care of unaccompanied minors (UAMs). ORR is responsible for case management and provides accommodation, health care, and education to UAMs.

5.3.2. Group-based Protection

There are no grounds in U.S. law upon which a group may be granted asylum. However, under U.S. regulations, an applicant may establish individual eligibility for asylum if the applicant establishes that there is a pattern or practice of persecution against persons similarly situated to the applicant (i.e., a group) and the applicant establishes his or her inclusion in, and identification with, this group of persons.¹⁶

Within the U.S. Refugee Admissions Program, Priority Two (P-2) designations are used for specific groups who are of special humanitarian concern to the United States. P-2 groups are designated by the Department of State in consultation with USCIS, NGOs, UNHCR, and other experts. Only those members of the specifically identified groups are eligible for processing under Priority Two. Individuals within P-2 designations must still individually establish eligibility for resettlement by meeting the definition of a refugee under INA section 101(a)(42).¹⁷

5.3.3. Stateless Persons

Stateless persons are required to establish past persecution and a well-founded fear in the country determined to be their place of last habitual residence.

6 Decision-Making and Statuses

Asylum-seekers under the affirmative and defensive procedures are referred to as “asylees” once they are granted protection according to the criteria set out in the INA.

6.1 Inclusion Criteria

6.1.1. Convention Refugee

An asylum-seeker must fit the definition of a refugee in INA §101(a)(42)(A) in order to qualify for asylum.

Resistance to Coercive Population Control (CPC) Program

The definition of a refugee in INA § 101(a)(42) provides that an asylum-seeker is deemed to have been persecuted on account of political opinion if he or she has been subject to the following:

- Forced abortion of a pregnancy
- Involuntary sterilisation
- Persecution for failure or refusal to undergo one of the procedures above or for other resistance to a coercive population control programme.

Applicants who express a well-founded fear that they will be forced to undergo the procedures described above or be subject to persecution for such failure, refusal, or resistance may also be eligible for asylum.

Withholding of Removal under the 1951 Convention

Withholding of removal implements Article 33 of the 1951 Convention. To receive withholding of removal, the person must demonstrate that his or her “life or freedom” would be threatened on account of one of the following grounds:

- Race
- Religion
- Nationality
- Membership in a particular social group
- Political opinion.

Withholding of removal is specific to the country of removal and allows removal to a third country where the individual would not be persecuted.

¹⁶ 8 CFR 208.13(b)(2)(c)(iii).

¹⁷ See the annexe to this chapter for examples of groups designated P-2 under the Refugee Admissions Program.

Box 1:**U.S. Case Law: Eligibility Standards for Asylum**

Two Supreme Court cases have had a substantial impact on eligibility standards for asylum. A third case with a bearing on eligibility, *INS v. Stevic*, is described later in the chapter, under Withholding of Removal.

In *INS v. Cardoza-Fonseca*, 480 U.S. 421, 431 (1987), the Supreme Court held that the well-founded fear standard used in the asylum context is more generous than the “more likely than not” standard used for withholding of removal. The well-founded standard is satisfied if the applicant shows that there is a “reasonable possibility” of persecution, noting that “[o]ne can certainly have a well-founded fear of an event happening when there is less than a 50% chance [the withholding of removal standard] of the occurrence taking place.”

In *INS v. Elias-Zacarias*, 502 U.S. 478 (1992), the Supreme Court clarified that to qualify as persecution on account of one of the five protected grounds, the persecution must be on account of the victim’s protected characteristic, or one attributed to the applicant, rather than the persecutor’s. Additionally, the Supreme Court held that forced recruitment by guerrillas and harm for refusing to join or cooperate with guerrilla forces do not, per se, constitute persecution on account of a protected ground. Guerrilla forces may recruit for reasons unrelated to a protected ground, such as the need to increase their ranks.

The BIA, the administrative adjudicatory appeals body responsible for immigration matters, has also played a key role in determining legal standards relating to asylum and withholding of removal. In *Matter of Acosta*, 19 I&N Dec. 211 (1985), for instance, it held that persecution means harm or suffering inflicted upon a person in order to punish him for possessing a belief or characteristic a persecutor seeks to overcome, and does not encompass the harm that arises out of civil or military strife in a country. It also concluded that “persecution on account of membership in a particular social group” refers to persecution that is directed toward a person who is a member of a group of persons, all of whom share a common, immutable characteristic, that is, a characteristic that either is beyond the power of the individual members of the group to change or is so fundamental to their identities or consciences that it ought not to be required to be changed.

In *Matter of Mogharrabi*, 19 I&N Dec. 439 (1987), the Board held that an asylum applicant has established a well-founded fear of persecution if a reasonable person in his or her circumstances would fear persecution.

The Board has recently published a number of decisions regarding the interpretation of the particular social group ground. In 2006, the BIA held that in order for a group to constitute a particular social group, in addition to the group’s characteristics being immutable or fundamental, the group must have social visibility in society. *Matter of C-A-*, 23 I&N Dec. 951 (BIA 2006). The following year, in *Matter of A-M-E- & J-G-U-*, 24 I&N Dec. 69 (BIA 2007), the BIA considered the application of the social visibility test, and also examined whether the group could be defined with sufficient particularity to delimit the membership.

The BIA recently examined proposed particular social groups based on current or past gang membership, imputed gang membership, and resistance to gang membership, finding that all three proposed groups were not particular social groups for asylum purposes.¹

¹ *Matter of S-E-G-*, 24 I&N Dec. 579 (BIA 2008); *Matter of E-A-G-*, 24 I&N Dec. 591 (BIA 2008).

Box 2:
U.S. Case Law: Eligibility for Withholding of Removal

In *INS v. Stevic*, 467 U.S. 407 (1984), the Supreme Court held that to establish eligibility for withholding of removal (i.e. *non-refoulement*), there must be evidence establishing that it is more likely than not that the applicant would be persecuted or tortured in the country of removal. The Supreme Court held that this “clear probability” standard was different from the “well-founded fear” standard used for asylum adjudications, but declined to interpret the latter. See discussion above on *INS v. Elias-Zacarias*, 502 U.S. 478 (1992), for the Court’s later interpretation of the well-founded fear standard.

6.1.2. Complementary Forms of Protection

Complementary protection is granted outside of the affirmative asylum procedure. However, an application for asylum in the defensive procedure, raised as a defence to removal, is simultaneously an application for withholding of removal and protection under both the Refugee Convention and the Convention against Torture (CAT).

Protection under Article 3 of the CAT may be granted in one of two forms: either withholding of removal, which allows the person to remain in the U.S. with work authorisation until such time as an immigration judge terminates the status, or, in cases where the applicant is ineligible for withholding of removal, deferral of removal, which does not lead to any lawful or permanent status in the U.S. or necessarily result in the person’s release from detention.

6.2 The Decision

Affirmative Procedure

At the completion of their asylum interviews, asylum applicants receive a notice¹⁸ informing them of the next steps in the asylum process and the date and time that the applicant is to return to the office to receive the decision. Asylum applicants then receive the decision in person within two weeks of the interview. In some circumstances, such as for persons in valid immigration status or following an applicant’s failure to appear at the pick-up appointment, the decision will be sent by mail. The decision letters are translated into ten languages, including Spanish, French, Chinese, Haitian

¹⁸ This notice has been translated into the ten languages most commonly spoken by asylum applicants.

Creole, Arabic, Russian, and Amharic. USCIS does not issue final decisions to grant asylum until background security checks are complete. If a case is not granted and referred to the immigration court, the security checks must have been initiated, at a minimum.

Under the affirmative procedure, asylum officers record asylum decisions in a written assessment that is supported by interview notes and information on country conditions as well as any documentation or other information provided by the asylum applicant. A Supervisory Asylum Officer (SAO) reviews the decision before it is issued. Certain cases require quality assurance review by the Asylum Division Headquarters.¹⁹

Defensive Procedure

Under the defensive procedure, immigration judges (IJs) of the Executive Office for Immigration Review (EOIR) are responsible for making decisions on asylum claims. Decisions by the Immigration Judge are recorded. The decision may be rendered orally accompanied by a written summary order or it may be issued in writing. If an oral decision is appealed to the BIA, the record of the hearing and oral decision are transcribed. Decisions of the BIA are provided to the parties in writing.

6.3 Types of Decisions, Status and Benefits Granted

Under the affirmative procedure, an Asylum Officer may make one of the following decisions:

- Grant of asylum: The applicant is provided with the date on which he or she is considered to be an “asylee” and information about eligibility for certain benefits
- Recommended approval: The applicant receives Recommended Approval when USCIS has made a preliminary determination to grant him or her asylum but USCIS has not yet received complete results of an investigation on the applicant’s identity and background. These decisions are rare under existing procedures
- Referral to an immigration court: If the USCIS determines that the applicant is not eligible for asylum and he or she has no legal status in the United States, the asylum-seeker is placed in removal proceedings before an immigration judge
- Notice of Intent to Deny (NOID): If the USCIS decides that the applicant is not eligible for asylum and he or she is in lawful status, he or

¹⁹ In addition, quality assurance/training officers in each asylum office will conduct random reviews of cases for quality.

she will receive a Notice of Intent to Deny (NOID) explaining the reasons he or she has been found ineligible for asylum. The applicant will be given 16 days to provide a response before the final decision is made

- Final denial: An applicant who receives a Notice of Intent to Deny (NOID) will be sent a Final Denial letter if he or she fails to submit a rebuttal to the NOID within the time limit, or the applicant submits a rebuttal but the evidence or argument offered fails to overcome the grounds for denial as stated in the NOID. The applicant cannot appeal the decision.

Under the defensive procedure, an Immigration Judge may make one of the following decisions:

- Grant asylum
- Deny asylum; because the immigration judge will also hear the applicant's claim for withholding of removal under the 1951 Convention or the Convention against Torture, the immigration judge may deny asylum but grant another form of protection (e.g., withholding of removal).

Benefits

An asylee is entitled to the following benefits:

- Authorisation to work, incident to status
- Employment assistance, including job search assistance, career counselling, and occupational skills training
- Needs-based public benefits, including medical care, cash assistance, housing assistance, and food stamps
- HHS-funded benefits, including refugee cash and medical assistance, employment preparation and job placement, and English language training
- Post-secondary educational loans and grants
- Ability to petition to have his or her spouse or unmarried child under 21 years of age join him or her in the United States
- An unrestricted Social security card
- Eligibility to apply for adjustment of status to lawful permanent residence after one year of residence in the United States following the grant of asylum.

Withholding of Removal

Withholding of removal allows the individual to remain in the U.S. with work authorisation until such time as an immigration judge terminates the status. This form

of protection cannot lead to permanent status within the U.S. and does not allow the individual to petition for relatives to join him or her in the U.S.

6.4 Exclusion

6.4.1. Refugee Protection

The Asylum Officer or immigration judge considers whether any mandatory bars to eligibility for asylum apply during the asylum procedure. An asylum seeker will be barred from a grant of asylum pursuant to INA § 208(b)(2) if it is determined that he or she is responsible for the following:

- Ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion (note that this exclusion is also part of the definition of a refugee at INA § 101(a)(42))
- Was convicted of a particularly serious crime such that he or she is a danger to the U.S. (including an "aggravated felony" as defined under INA § 101(a)(43))
- Committed a serious non-political crime outside the United States
- Poses a danger to the security of the United States, or
- Has been firmly resettled in another country prior to arriving in the United States (see 8 CFR § 208.15 for a definition of "firm resettlement").

An asylum-seeker will also be barred from a grant of asylum under INA § 208 if he or she is described in the terrorism- and national security-related grounds at INA §§ 212(a)(3)(B) or (F) or INA § 237(a)(4)(B) because of the following:

- The person has engaged in terrorist activity
- The person has engaged in or is likely to engage after entry in any terrorist activity (a consular officer or the Attorney General knows, or has reasonable grounds to believe, that this is the case)
- The person has, under any circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity
- The person is a representative of: (a) terrorist organisation, or (b) a political, social, or other similar group that endorses or espouses terrorist activity, unless the Secretary of Homeland Security or the Attorney General determines there are not reasonable grounds for regarding

the applicant a danger to the security of the United States

- The person is a member of a terrorist organisation designated under section 219 of the INA (Tier I) or otherwise designated through publication in the Federal Register under INA section 212(a)(3)(B)(vi)(II) (Tier II)
- The person is a member of an undesignated terrorist organisation described in INA section 212(a)(3)(B)(vi)(III) (Tier III), unless he or she can demonstrate by clear and convincing evidence that he or she did not know, and should not reasonably have known, that the organisation was a terrorist organisation
- The person endorses or espouses terrorist activity or to persuade others to endorse or espouse terrorist activity or support a terrorist organisation
- The person has received military-type training, which is defined at 18 U.S.C. § 2339D(c)(1) to include “training in means or methods that can cause death or serious bodily injury, destroy or damage property, or disrupt services to critical infrastructure, or training on the use, storage, production, or assembly of any explosive, firearm or other weapon, including any weapon of mass destruction...” from or on behalf of any organisation that, at the time the training was received, was a terrorist organisation
- The person is the spouse or child of a person who is inadmissible under this subparagraph, if the activity causing the person to be found inadmissible occurred within the last five years. To qualify as a “child,” the individual must be unmarried and under 21 years of age.

Under section 212(d)(3)(B)(i) of the INA, the Secretary of Homeland Security, in consultation with the Secretary of State and the Attorney General, or the Secretary of State, in consultation with the Secretary of Homeland Security and the Attorney General, may conclude in his or her sole unreviewable discretion to not apply certain of the terrorist-related grounds of inadmissibility at section 212(a)(3)(B) of the INA. The Secretary of State does not have jurisdiction to grant an exemption to a terrorist-related ground of inadmissibility once removal proceedings have commenced against the person.

Thus far, the Secretaries have exercised their authority to grant exemptions in four broad categories of cases:

- For those who voluntarily provided material support to ten specific named groups
- For those who provided material support under duress to terrorist organisations designated by

the U.S. government pursuant to section 212(a)(3)(B)(vi)(I) or (II) of the INA

- For those who provided material support under duress to an undesignated terrorist organisation pursuant to section 212(a)(3)(B)(vi)(III) of the INA
- For those persons who engaged in certain activities or associations with one of the ten named groups referenced above, but who did not benefit from the automatic relief provisions of the Consolidated Appropriations Act of 2009 (CAA), referenced below.

On 26 December 2007, Congress exempted the ten groups from the definition of “terrorist organisation” for activities occurring prior to the date of enactment of the CAA.

For those immigration benefits adjudicated by the Department of Homeland Security (such as asylum, refugee status, and permanent residence), the Secretary of Homeland Security has directed that USCIS, in consultation with ICE, will adjudicate all exemptions. No formal application is required of the person. The adjudicating officer makes an exemption determination during the regular processing of the case. The officer records his or her determination on a worksheet which is reviewed by at least one supervisor if involving voluntary activities such as activities or associations involving the ten named groups in CAA, or two levels of supervisors for those exemptions where the person claims to have provided material support to a terrorist organisation under duress. Additionally, for those foreign nationals in removal proceedings and subject to the jurisdiction of the EOIR, all exemption determinations will be made by USCIS, in consultation with ICE.

Each exemption determination is made based on the totality of the circumstances and subject to the person passing required security checks. Once a decision is made whether to apply the exemption with respect to a particular applicant that decision will continue to apply in other benefit adjudications involving that applicant, unless additional information comes to light or circumstances change so that a reconsideration of the applicability of the exemption is warranted.

Withholding of Removal (*Non-refoulement*)

An applicant is ineligible for withholding of removal if he or she falls in one of the following categories:

- The applicant has ordered, incited, assisted or otherwise participated in the persecution of others
- The applicant has been convicted of a particularly serious crime, and constitutes a danger to

Box 3:**U.S. Case Law: Exclusion from Asylum/Withholding of Removal**

In the recent case of *Negusie v. Holder*, 467 U. S. 837 (2009), the Court found that the BIA had incorrectly assumed the Court's earlier decision in *Fedorenko v. United States*, 449 U.S. 490 (1981), which interpreted a different statutory provision, to be controlling on the question of whether a person who, under duress, participates in persecution of any person on account of that person's race, religion, nationality, membership in a particular social group, or political opinion is nevertheless barred from asylum and withholding of removal. The Court remanded the case to the BIA to let the administrative agency determine, in the first instance, whether the persecutor bar in the refugee definition applies irrespective of the voluntariness of the person's participation in persecutory acts.

In *INS v. Aguirre-Aguirre*, 526 U.S. 415 (1999), the Court held that a lower court was incorrect in balancing the risk of potential harm to the applicant against the seriousness of a crime committed by the applicant prior to his or her arrival in the U.S. in determining whether that crime amounts to a serious, non-political crime and thereby precludes the applicant from eligibility for withholding of removal. The Court also held that even if the crime was committed out of genuine political motives, it should be considered a serious non-political crime if the act is disproportionate to the objective, or if it is of an atrocious or barbarous nature.

the community (any crime with a sentence of imprisonment of five years or more is deemed necessarily to constitute a particularly serious crime although crimes with lesser sentences may also qualify as such)

- There are serious reasons to believe the applicant committed a serious, non-political crime before entering the country
- There are reasonable grounds to believe the applicant is a danger to the community (this is defined to include anyone who meets the terrorist bars outlined above).

6.4.2. Complementary Protection

Protection under the Convention Against Torture

Consistent with Article 3 of the Convention Against Torture, there are no bars for those persons eligible for such relief. A person who is barred from receiving withholding of removal but has established that it is more likely than not that he or she would be tortured will receive "deferral of removal."

6.5 Termination of Asylum Status

Under U.S. law, asylum status may be terminated for the following reasons:

- There is evidence of fraud in the asylee's application such that he or she was not eligible for asylum at the time it was granted
- The asylee no longer meets the definition of a refugee due to a fundamental change in circumstances

- The asylee is a persecutor, a danger to the security of the United States, inadmissible under terrorist grounds, or firmly resettled in another country; or the asylee was convicted of a particularly serious crime or there are serious reasons to believe that the asylee committed a serious non-political crime outside the United States
- The asylee may be removed pursuant to a safe third country agreement
- The asylee voluntarily re-availed himself or herself of the protection of the country of feared persecution by returning to such country with the reasonable possibility of obtaining or having obtained permanent resident status with the same rights and obligations of other permanent residents of the country
- The asylee has acquired a new nationality and enjoys the protection of that country.

If USCIS granted the asylum status, the asylum office may terminate the status after providing the asylee an opportunity to rebut the grounds for termination during an interview with an asylum officer. USCIS must then establish by a preponderance of the evidence that one or more grounds for termination applies. If the asylum status is terminated and the individual is subject to a ground of inadmissibility or deportability, the individual will be placed in removal proceedings.

If an asylum-seeker was granted asylum by an Immigration Judge, ICE may seek termination of asylum status by filing a motion with the judge to reopen the case to terminate asylum. In that case, ICE must provide evidence that was previously unavailable.

6.6 Support and Tools for Decision-Makers

6.6.1. Country of Origin Information

The Country of Origin Information Research Section (COIRS), formerly known as the “Resource Information Center,” provides the USCIS Asylum Officer Corps with credible and objective information on human rights and country conditions in order that asylum applicants’ claims may be adjudicated in a timely manner. The team employs senior Asylum Officers who conduct research on the situation in countries of origin. In addition, as DHS’s primary research body on human rights related issues, the Asylum Division COI Research Section assists other components of USCIS and DHS with research needs in related areas.

The USCIS Asylum Division Staff have access to COI via the Resource Information Center (RIC) – a hard copy library of more than 100 serials and other publications and an electronic collection of COI on the Asylum Virtual Library (AVL). The AVL collection consists of material generated by governmental and non-governmental agencies, international organisations, human rights advocacy groups, academia, and general news media. The electronic COI collection within the AVL is a full text-searchable repository of asylum reference documents and other research databases accessible by asylum staff nationwide.

The COI research staff assists in training new asylum officers during the Asylum Officer Basic Training Course, as well as liaises with the Asylum Division’s eight field offices to train asylum staff on research of country conditions and human rights information. It serves as a resource to field office staff, providing technical assistance, information dissemination, and fielding asylum research related questions.

6.6.2. Procedures Manuals

The Asylum Division has procedures manuals for the affirmative asylum and credible fear adjudications. Additionally there are written procedures to guide asylum staff on how to conduct identity and security checks. These manuals are issued by Asylum Division Headquarters and frequent updates are issued to the field and posted to the Asylum Virtual Library. The procedures for the adjudication of affirmative asylum applications are publicly available on the USCIS Internet site.

6.6.3. Training Materials

The Asylum Division maintains a collection of 33 training modules, the basis for instruction at the six-week Asylum Officer Basic Training Course. These modules, or “lesson plans,” not only provide instruction to new officers on all aspects of the asylum adjudication, including legal analysis, decision writing, and interviewing skills. They also form the core of Asylum Division guidance to all officers on the adjudication of cases. The lesson plans are regularly updated and distributed to all Asylum Division personnel.

7 Efficiency and Integrity Measures

7.1 Technological Tools

7.1.1. Fingerprinting

Asylum-seekers aged 12 years and eight months and older have their fingerprints taken at an Application Support Center. The fingerprints are sent to the Federal Bureau of Investigation (FBI) for a background security check, and a cleared response is required for all applicants between 14 and 75 years of age. The results of this check, as well as checks against other DHS databases, are automatically reported back to the Asylum Division.

7.1.2. DNA Tests

USCIS Field Offices may suggest DNA testing as a means of establishing family relationship when other forms of evidence have proven inconclusive and blood parentage testing does not clearly establish the claimed parental relationship. The petitioner has the burden of proof when the evidence submitted has not satisfied the evidentiary threshold and USCIS would otherwise deny the petition without more conclusive evidence such as that which DNA testing could provide. These tests are rarely requested in the asylum programme.

7.1.3. Forensic Testing of Documents

For original documents voluntarily submitted by the applicant, forensic examination may take place either at the ICE Forensic Document Laboratory (FDL) or at another DHS facility, such as a fraudulent document unit or intelligence unit at a port-of-entry. Submission of a document for analysis is done only where analysis of such a document may affect the outcome of the decision.

Forensic testing of documents is frequently undertaken in the asylum process when the Asylum Officer believes the documents to be fraudulent or fraudulently obtained or when the applicant admits the document is fraudulent or has been fraudulently obtained.

7.1.4. Database of Asylum Applications/Applicants

Data, including that of accompanying family members, regarding affirmative asylum applicants and the subsequent decisions are tracked in an electronic case management system designed to assist the Asylum Division in the administration of the asylum adjudications programme.

7.1.5. Other Tools

A copy of the asylum application may be sent to the Department of State (DOS) for comment or other information. The asylum-seeker's biographical information is also sent to the FBI and other government agency data sets for a background check, and USCIS checks other law enforcement databases with the asylum-seeker's biographical information.

US-VISIT is a database that contains more than 80 million biometric indentifying records including DHS criminal and national-security related information, records of immigration-related encounters with USCIS, DOS, and other agencies and DHS entry and exit information. All asylum-seekers over the age of 14 are enrolled into this system at the time of interview.

7.2 Length of Procedures

Asylum applications must be filed within one year of the person's arrival in the United States, subject to exceptions, as described above. The USCIS Asylum Division aims to adjudicate asylum applications within 60 days from the date a complete application was filed with USCIS. The vast majority of asylum referrals are adjudicated within this 60-day timeframe. Applicants whose cases have been referred to the Immigration Court receive a decision on their application within 180 days of the filing date.

The Asylum Division has targeted a six-month cycle measured in real time by the end of fiscal year 2009, meaning that cases must be completed within six months of receipt or of being re-opened.

7.3 Pending Cases

At the end of fiscal year 2008, which covers October 2007 through September 2008, there were 11,296 pending affirmative asylum applications.

7.4 Information Sharing

U.S. law prohibits the disclosure of information contained in or pertaining to asylum applications, except in certain circumstances. However, the U.S. has entered into a formal agreement with Canada to share case-specific asylum information, including applicants' biometrics. The former U.S. Immigration and Naturalization Service, the Department of State, and the Department of Citizenship and Immigration Canada have signed agreements that permit the exchange of immigration-related information and records between the governments of the United States and Canada. The agreements permit both sides to share, systematically or on a case-by-case basis, information on asylum-seekers and asylees to the extent permitted by the domestic laws of the U.S. and Canada.

U.S. law further provides that asylum-related information may be disclosed to any element of the U.S. Intelligence Community, or any other Federal or state agency having counterterrorism functions, provided that the need to examine the information or the request is made in connection with its authorised intelligence or counterterrorism function or functions and the information received will be used for the authorised purpose for which it is requested.

Box 4: Cooperation with the UNHCR, NGOs

The UNHCR in the United States has a general monitoring function and does not have a direct role in the determination of individual cases. The UNHCR may file advisory opinions or amicus briefs in particular asylum cases, but these are non-binding on decision-makers.

With the cooperation of the United States government, the UNHCR monitors detention facilities and borders as resources allow. It shares its findings and recommendations with the relevant government agencies. The UNHCR Washington office also meets regularly with the leadership of the various agencies whose policies may have an impact on asylum-seekers and refugees.

Training from the UNHCR is a regular component of the introductory courses for new asylum officers.

NGOs are involved in domestic resettlement activities and, along with the International Organization for Migration (IOM), in resettlement activities overseas. IOM arranges travel to the United States for all refugees. NGO resettlement agencies provide refugees assistance with initial housing, furnishings, clothing, food, health screenings, medical care, and employment referral services.

8 Assistance and Reception Benefits for Asylum-Seekers

8.1 Procedural Support and Safeguards

8.1.1. Legal Assistance

The asylum-seeker may have an attorney or representative in proceedings before the asylum office or immigration court at his or her own expense.

8.1.2. Interpreters

USCIS does not provide interpreters during the affirmative asylum interview; the asylum-seeker must bring an interpreter if he or she does not speak English fluently. In a case before an immigration judge, the government provides an interpreter.

8.1.3. UNHCR

The address and telephone number of the UNHCR office in Washington, DC is on the instructions to the U.S. asylum application, and UNHCR responds to written and telephonic inquiries from asylum-seekers and refugees in the United States, particularly those in detention facilities. In response, UNHCR provides self-help materials on the asylum process as well as contact information for those NGOs who provide legal or social services to asylum-seekers in the United States.

8.1.4. NGOs

In the asylum context, NGOs may facilitate access to pro bono counsel for applicants, particularly those in detention, and train pro bono volunteers on asylum law and procedures. NGOs also provide legal assistance to asylum-seekers by helping them prepare their cases and representing them in affirmative asylum interviews or proceedings before an Immigration Judge or on appeal. In addition, NGOs coordinate with the Asylum Offices to provide pro bono legal consultation to applicants in the credible fear process.

8.2 Reception Benefits

While the range of benefits available to asylum-seekers is minimal, asylees are eligible for benefits and services funded through the Office of Refugee Resettlement. In addition, asylees are eligible for the full range of needs-based public benefits provided by the federal government.

8.2.1. Accommodation

Applicants for asylum may be eligible to live in federal or state housing, though none is specifically allotted for those persons.

8.2.2. Social Assistance

Eligible asylum applicants may be entitled to obtain certain forms of social assistance from federal, state, and local governments in limited circumstances. There is a wide variety of private relief programmes, some of which are partially funded by the U.S. government, available to asylum applicants that provide services ranging from language instruction to free legal representation. Generally, asylum applicants are not eligible for most federal benefit programmes. In contrast, persons granted asylum may be eligible.

8.2.3. Health Care

Asylum-seekers are eligible for emergency medical services. Some states offer medical assistance to all immigrants regardless of status.

8.2.4. Education

Public school education is free in the United States, and it is available to all children under age 17.

8.2.5. Access to Labour Market

Asylum-seekers may apply for work authorisation after their complete asylum application has been pending for 150 days and no decision has been made on their application. Applicants may also apply for work authorisation after they receive a recommended approval or final approval of asylum.

8.2.6. Family Reunification

Persons applying for asylum may include in their application their spouse and children who are single and under the age of 21, if those persons are in the U.S. This stipulation is in place to ensure that the family is permitted to stay together while the claim is being adjudicated. Applicants may not petition USCIS to bring their family members into the U.S. while their claims are pending. After asylum-seekers have been granted asylum they may file a petition for their spouse and unmarried children under 21 years old to join them in the U.S. If the application is approved, the family members may then travel to the U.S. as asylees and join the applicant.

8.2.7. Access to Benefits by Rejected Asylum-Seekers

Rejected asylum-seekers receive emergency health care, access to primary and secondary education, and work authorisation if they cannot be returned to all of the countries listed by the asylum-seeker or because the removal is otherwise impracticable or contrary to the public interest.²⁰

9 Status and Permits Granted Outside the Asylum Procedure

9.1 Withholding of Removal

An application for asylum in the defensive procedure, raised as a defence to removal, is simultaneously an application for withholding of removal. This is described in the section above on Decision-Making.

Deferred Enforced Departure (DED)

Deferred Enforced Departure (DED) is within the President's discretion to authorise and arises from his or her power to conduct foreign relations. Although DED is not a specific immigration status, persons covered by DED are not subject to enforcement actions to remove them from the United States, usually for a designated period of time.

When presidents have exercised discretion to provide DED to a certain group of persons, they have generally directed that Executive Branch agencies, such as the Department of Homeland Security (DHS), take steps to implement appropriate procedures to apply DED and related benefits, such as employment authorisation, to those persons.

9.2 Temporary Protected Status

The Secretary of Homeland Security, after consultation with the appropriate Government agencies, may designate a country (or part thereof, such as certain provinces or states) for Temporary Protected Status (TPS) under the following circumstances:

- Ongoing armed conflict
- An environmental disaster, if the country requests designation and is unable temporarily to adequately handle the return of nationals, or

- The Secretary finds that there are extraordinary and temporary conditions in the country that prevent return of nationals in safety.

An applicant for TPS must demonstrate the following:

- He or she is a national of a country designated for TPS (or a person of no nationality who last habitually resided in the country)
- He or she has continuously resided in the United States as of the date established by the Secretary and has been continuously physically present in the United States as of the effective date of designation
- He or she is admissible as an immigrant except as provided under 8 CFR § 244.3
- He or she is not subject to one of the criminal, security-related, or other bars to TPS, and
- He or she applies for TPS benefits within the initial registration period. 8 CFR § 244.2(f)(2) allows for late initial registration for TPS in certain circumstances.

During the period for which a country has been designated for TPS, TPS beneficiaries may remain in the United States and may obtain work authorisation. However, TPS does not lead to permanent resident status. When the Secretary determines that conditions in the country no longer warrant TPS designation, he or she terminates the designation. Once the termination of TPS becomes effective, TPS beneficiaries return to the immigration status that they held prior to obtaining TPS (unless that status has since expired or been terminated) or any status that they may have acquired while registered for TPS.

A person is ineligible for TPS in one of the following instances:

- He or she has been convicted of any felony or two or more misdemeanours committed in the U.S.
- He or she is a persecutor, or is otherwise subject to one of the bars to asylum
- He or she is subject to one or more bars based on criminal activity or terrorism.

9.3 Regularisation of Status over Time

A person in removal proceedings who has been in the U.S. continuously for at least ten years may be eligible for a form of relief called "cancellation of removal" in the following circumstances:

²⁰ See 8 C.F.R. §274a.12(c)(18).

- The person has been a person of good moral character during the ten-year period
- He or she has not been convicted of any crime that renders him or her inadmissible, and
- He or she can establish that his or her removal would result in exceptional and extremely unusual hardship to his or her spouse, parent or child who is a citizen or lawful permanent resident of the United States.

9.4 Regularisation of Status of Stateless Persons

There are no specific provisions in U.S. law to regularise the status of stateless persons.

10 Return

10.1 Pre-departure Considerations

The U.S. does not have any specific procedure for pre-departure review for protection concerns for persons ordered removed. A person may file a Motion to Reopen the case before the immigration court if there is new, previously unavailable information that merits consideration for protection.

10.2 Procedure

Returns of rejected asylum-seekers, as with all foreign nationals ordered removed, are administered by ICE.

10.3 Freedom of Movement/ Detention

After being ordered removed, persons may be detained until their removal from the United States. ICE generally cannot detain foreign nationals for longer than six months or if removal is no longer reasonably foreseeable.²¹

11 Integration

Asylees may be eligible to receive benefits and services through programmes funded by the U.S. Department of Health and Human Services' Office of Refugee Resettlement (ORR). ORR funds and administers various programmes that are run by states and by private or non-profit organisations, NGOs, and voluntary agencies throughout the U.S. ORR benefits and services include refugee cash and medical assistance

(for up to eight months from date of final grant of asylum), employment preparation and job placement, and English language training. Persons granted asylum under INA §208 either defensively or affirmatively are eligible for ORR benefits and services to the same extent as refugees admitted under INA § 207.

Asylees and refugees are not subject to the five year waiting period to apply for federal public benefits and may apply for Food Stamps (now called SNAP), TANF, Medicaid, and SSI upon admission to the U.S. or grant of status. Asylees who are ineligible for TANF are eligible for the Refugee Cash Assistance (RCA) programme. Asylees who are ineligible for Medicaid are eligible for the Refugee Medical Assistance (RMA) programme.

Persons granted withholding of removal under the INA or withholding or deferral of removal under the CAT are not eligible for ORR benefits and services by virtue of those statuses alone. However, persons whose deportation is being withheld under (1) §243(h) of the INA as in effect prior to April 1, 1997, or (2) § 241(b)(3) of the INA, as amended, may be eligible for other, non-ORR federal benefits. They might also qualify for ORR benefits and services, or other federal benefits and services, through a separate qualifying immigration status.

The USCIS Office of Citizenship was created by the Homeland Security Act of 2002 to foster immigrant integration and participation in American civic culture. The Office of Citizenship works to promote education and training on fundamental civic principles and the rights and responsibilities of citizenship. The work of the Office of Citizenship is not specific to refugees or asylees. Office of Citizenship initiatives include the following:

- Developing educational products and information resources to foster immigrant integration and participation in American civic culture
- Enhancing training initiatives to promote an understanding of and appreciation for U.S. civic principles and the rights and responsibilities of citizenship
- Providing federal leadership on immigrant civic integration issues.

²¹ See *Zadvydas v. Davis*, 533 U.S. 678 (2001).

12 Annexe

12.1 Selections from the Immigration and Nationality Act²²

INA: ACT 101 - DEFINITIONS

(...)

(42) The term “refugee” means:

(A) any person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or

(B) in such circumstances as the President after appropriate consultation (as defined in section 207(e) of this Act) may specify, any person who is within the country of such person’s nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The term “refugee” does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. For purposes of determinations under this Act, a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control programme, shall be deemed to have been persecuted on account of political opinion, and a person who has a well founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well founded fear of persecution on account of political opinion.

(...)

INA: ACT 208 – ASYLUM

(a) Authority to Apply for Asylum.-

(1) In general. - Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien’s status, may apply for asylum in accordance with this section or, where applicable, section 235(b).

(2) Exceptions. -

(A) Safe third country. - Paragraph (1) shall not apply to a person if the Attorney General determines that the person may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the person’s nationality or, in the case of a person having no nationality, the country of the person’s last habitual residence) in which the person’s life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the person would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection, unless the Attorney General finds that it is in the public interest for the person to receive asylum in the United States.

(B) Time limit. - Subject to subparagraph (D), paragraph (1) shall not apply to a person unless the person demonstrates by clear and convincing evidence that the application has been filed within 1 year after the date of alien’s arrival in the United States.

²² Immigration and Nationality Act, 27 June 1952, as through December 23, 2008 is available online at: <http://www.uscis.gov/propub/ProPubVAP.jsp?dockkey=c9fef57852dc066cfe16a4cb816838a4>.

(C) Previous asylum applications. - Subject to subparagraph (D), paragraph (1) shall not apply to a person if the person has previously applied for asylum and had such application denied.

(D) Changed conditions. - An application for asylum of a person may be considered, notwithstanding subparagraphs

(B) and (C), if the person demonstrates to the satisfaction of the Attorney General either the existence of changed circumstances which materially affect the applicant's eligibility for asylum or extraordinary circumstances relating to the delay in filing the application within the period specified in subparagraph (B).

(E) APPLICABILITY- Subparagraphs (A) and (B) shall not apply to an unaccompanied alien child (as defined in section 462(g) of the Homeland Security Act of 2002 (6 U.S.C. 279(g))).

(3) Limitation on judicial review. No court shall have jurisdiction to review any determination of the Attorney General under paragraph (2).

(b) Conditions for Granting Asylum. -

(1) In general. - (A) ELIGIBILITY- The Secretary of Homeland Security or the Attorney General may grant asylum to an alien who has applied for asylum in accordance with the requirements and procedures established by the Secretary of Homeland Security or the Attorney General under this section if the Secretary of Homeland Security or the Attorney General determines that such alien is a refugee within the meaning of section **101(a)(42)(A)**.

(B) BURDEN OF PROOF-

(i) IN GENERAL- The burden of proof is on the applicant to establish that the applicant is a refugee, within the meaning of section **101(a)(42)(A)**. To establish that the applicant is a refugee within the meaning of such section, the applicant must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for persecuting the applicant.

(ii) SUSTAINING BURDEN- The testimony of the applicant may be sufficient to sustain the applicant's burden without corroboration, but only if the applicant satisfies the trier of fact that the applicant's testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee. In determining whether the applicant has met the applicant's burden, the trier of fact may weigh the credible testimony along with other evidence of record. Where the trier of fact determines that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence.

(iii) CREDIBILITY DETERMINATION- Considering the totality of the circumstances, and all relevant factors, a trier of fact may base a credibility determination on the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant's or witness's account, the consistency between the applicant's or witness's written and oral statements (whenever made and whether or not under oath, and considering the circumstances under which the statements were made), the internal consistency of each such statement, the consistency of such statements with other evidence of record (including the reports of the Department of State on country conditions), and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim, or any other relevant factor. There is no presumption of credibility, however, if no adverse credibility determination is explicitly made, the applicant or witness shall have a rebuttable presumption of credibility on appeal.

(2) Exceptions. -

(A) In general. - Paragraph (1) shall not apply to an alien if the Attorney General determines that -

(i) the alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;

(ii) the alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States;

(iii) there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States;

(iv) there are reasonable grounds for regarding the alien as a danger to the security of the United States;

(v) the alien is described in subclause (I), (II), (III), (IV), or (VI) of section **212(a)(3)(B)(i)** or section **237(a)(4)(B)** (relating to terrorist activity), unless, in the case only of an alien described in subclause (IV) of section **212(a)(3)(B)(i)**, the Attorney General determines, in the Attorney General's discretion, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States; or

(vi) the alien was firmly resettled in another country prior to arriving in the United States

(...)

(D) No judicial review. - There shall be no judicial review of a determination of the Attorney General under subparagraph (A)(v).

(3) TREATMENT OF SPOUSE AND CHILDREN-

(A) IN GENERAL- A spouse or child (as defined in section **101(b)(1)(A), (B), (C), (D), or (E)**) of an alien who is granted asylum under this subsection may, if not otherwise eligible for asylum under this section, be granted the same status as the alien if accompanying, or following to join, such alien.

(B) CONTINUED CLASSIFICATION OF CERTAIN ALIENS AS CHILDREN- An unmarried alien who seeks to accompany, or follow to join, a parent granted asylum under this subsection, and who was under 21 years of age on the date on which such parent applied for asylum under this section, shall continue to be classified as a child for purposes of this paragraph and section **209(b)(3)**, if the alien attained 21 years of age after such application was filed but while it was pending.

(C) INITIAL JURISDICTION- An asylum officer (as defined in section **235(b)(1)(E)**) shall have initial jurisdiction over any asylum application filed by an unaccompanied alien child (as defined in section 462(g) of the Homeland Security Act of 2002 (6 U.S.C. 279(g))), regardless of whether filed in accordance with this section or section **235(b)**.

(c) Asylum Status.

(1) In general.- In the case of an alien granted asylum under subsection (b), the Attorney General

(A) shall not remove or return the alien to the alien's country of nationality or, in the case of a person having no nationality, the country of the alien's last habitual residence;

(B) shall authorize the alien to engage in employment in the United States and provide the alien with appropriate endorsement of that authorization; and

(C) may allow the alien to travel abroad with the prior consent of the Attorney General.

(2) Termination of asylum. - Asylum granted under subsection (b) does not convey a right to remain permanently in the United States, and may be terminated if the Attorney General determines that -

(A) the person no longer meets the conditions described in subsection (b)(1) owing to a fundamental change in circumstances;

(B) the person meets a condition described in subsection (b)(2);

(C) the person may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the person's nationality or, in the case of a person having no nationality, the country of the person's last habitual residence) in which the person's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the person is eligible to receive asylum or equivalent temporary protection;



(D) the person has voluntarily availed himself or herself of the protection of the person's country of nationality or, in the case of a person having no nationality, the person's country of last habitual residence, by returning to such country with permanent resident status or the reasonable possibility of obtaining such status with the same rights and obligations pertaining to other permanent residents of that country; or

(E) the person has acquired a new nationality and enjoys the protection of the country of his new nationality.

(...)

INA: ACT 241 - DETENTION AND REMOVAL OF ALIENS ORDERED REMOVED

(b) Countries to Which Aliens May Be Removed.

(...)

(3) Restriction on removal to a country where alien's life or freedom would be threatened.-

(A) In general.-Notwithstanding paragraphs (1) and (2), the Attorney General may not remove a person to a country if the Attorney General decides that the person's life or freedom would be threatened in that country because of the person's race, religion, nationality, membership in a particular social group, or political opinion.

(...)

12.2 Selections from Title 8 of the Code of Federal Regulations²³

8 CFR § 208.16 - Withholding of removal under section 241(b)(3)(B) of the Act and withholding of removal under the Convention Against Torture

(a) Consideration of application for withholding of removal. An asylum officer shall not decide whether the exclusion, deportation, or removal of an alien to a country where the alien's life or freedom would be threatened must be withheld, except in the case of an alien who is otherwise eligible for asylum but is precluded from being granted such status due solely to section **207(a)(5)** of the Act. In exclusion, deportation, or removal proceedings, an immigration judge may adjudicate both an asylum claim and a request for withholding of removal whether or not asylum is granted.

(b) Eligibility for withholding of removal under section 241(b)(3) of the Act; burden of proof. The burden of proof is on the applicant for withholding of removal under section **241(b)(3)** of the Act to establish that his or her life or freedom would be threatened in the proposed country of removal on account of race, religion, nationality, membership in a particular social group, or political opinion. The testimony of the applicant, if credible, may be sufficient to sustain the burden of proof without corroboration. ...

(...)

(c) Eligibility for withholding of removal under the Convention Against Torture.

(1) For purposes of regulations under Title II of the Act, "Convention Against Torture" shall refer to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, subject to any reservations, understandings, declarations, and provisos contained in the United States Senate resolution of ratification of the Convention, as implemented by section **2242** of the Foreign Affairs Reform and Restructuring Act of 1998 (**Pub. L. 105-277**, 112 Stat. 2681, 2681-821). The definition of torture contained in **§ 208.18(a)** of this part shall govern all decisions made under regulations under Title II of the Act about the applicability of Article 3 of the Convention Against Torture.

(2) The burden of proof is on the applicant for withholding of removal under this paragraph to establish that it is more likely than not that he or she would be tortured if removed to the proposed country of removal. The testimony of the applicant, if credible, may be sufficient to sustain the burden of proof without corroboration.

²³ Title 8 of the Code of Federal Regulations, updated through January 20, 2009, is available online at: <http://www.uscis.gov/propub/ProPubVAP.jsp?dockey=3a8e6c4c50924a64b8e046afc8800b72>.

(3) In assessing whether it is more likely than not that an applicant would be tortured in the proposed country of removal, all evidence relevant to the possibility of future torture shall be considered, including, but not limited to:

(i) Evidence of past torture inflicted upon the applicant;

(ii) Evidence that the applicant could relocate to a part of the country of removal where he or she is not likely to be tortured;

(iii) Evidence of gross, flagrant or mass violations of human rights within the country of removal, where applicable; and

(iv) Other relevant information regarding conditions in the country of removal.

(4) In considering an application for withholding of removal under the Convention Against Torture, the immigration judge shall first determine whether the alien is more likely than not to be tortured in the country of removal. If the immigration judge determines that the alien is more likely than not to be tortured in the country of removal, the alien is entitled to protection under the Convention Against Torture. Protection under the Convention Against Torture will be granted either in the form of withholding of removal or in the form of deferral of removal. An alien entitled to such protection shall be granted withholding of removal unless the alien is subject to mandatory denial of withholding of removal under paragraphs (d)(2) or (d)(3) of this section. If an alien entitled to such protection is subject to mandatory denial of withholding of removal under paragraphs (d)(2) or (d)(3) of this section, the alien's removal shall be deferred under **§ 208.17(a)**.

(d) Approval or denial of application. (1) General. Subject to paragraphs (d)(2) and (d)(3) of this section, an application for withholding of deportation or removal to a country of proposed removal shall be granted if the applicant's eligibility for withholding is established pursuant to paragraphs (b) or (c) of this section.

(...)

(f) Removal to third country. Nothing in this section or **§ 208.17** shall prevent the Service from removing an alien to a third country other than the country to which removal has been withheld or deferred.

8 CFR § 208.17 - DEFERRAL OF REMOVAL UNDER THE CONVENTION AGAINST TORTURE

(a) Grant of deferral of removal. An alien who: has been ordered removed; has been found under **§ 208.16(c)(3)** to be entitled to protection under the Convention Against Torture; and is subject to the provisions for mandatory denial of withholding of removal under **§ 208.16(d)(2)** or **(d)(3)**, shall be granted deferral of removal to the country where he or she is more likely than not to be tortured.

(b) Notice to Alien. (1) After an immigration judge orders an alien described in paragraph (a) of this section removed, the immigration judge shall inform the alien that his or her removal to the country where he or she is more likely than not to be tortured shall be deferred until such time as the deferral is terminated under this section. The immigration judge shall inform the alien that deferral of removal:

(i) Does not confer upon the alien any lawful or permanent immigration status in the United States;

(ii) Will not necessarily result in the alien being released from the custody of the Service if the alien is subject to such custody;

(iii) Is effective only until terminated; and

(iv) Is subject to review and termination if the immigration judge determines that it is not likely that the alien would be tortured in the country to which removal has been deferred, or if the alien requests that deferral be terminated.

(2) The immigration judge shall also inform the alien that removal has been deferred only to the country in which it has been determined that the alien is likely to be tortured, and that the alien may be removed at any time to another country where he or she is not likely to be tortured.

(c) Detention of an alien granted deferral of removal under this section. Nothing in this section shall alter the authority of the Service to detain an alien whose removal has been deferred under this section and who is otherwise subject

to detention. In the case of such an alien, decisions about the alien's release shall be made according to part 241 of this chapter.

(...)

8 CFR § 208.18 - IMPLEMENTATION OF THE CONVENTION AGAINST TORTURE

(a) Definitions. The definitions in this subsection incorporate the definition of torture contained in Article 1 of the Convention Against Torture, subject to the reservations, understandings, declarations, and provisos contained in the United States Senate resolution of ratification of the Convention.

(1) Torture is defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or her or a third person information or a confession, punishing him or her for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

(2) Torture is an extreme form of cruel and inhuman treatment and does not include lesser forms of cruel, inhuman or degrading treatment or punishment that do not amount to torture.

(3) Torture does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. Lawful sanctions include judicially imposed sanctions and other enforcement actions authorized by law, including the death penalty, but do not include sanctions that defeat the object and purpose of the Convention Against Torture to prohibit torture.

(4) In order to constitute torture, mental pain or suffering must be prolonged mental harm caused by or resulting from:

(i) The intentional infliction or threatened infliction of severe physical pain or suffering;

(ii) The administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality;

(iii) The threat of imminent death; or

(iv) The threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the sense or personality.

(5) In order to constitute torture, an act must be specifically intended to inflict severe physical or mental pain or suffering. An act that results in unanticipated or unintended severity of pain and suffering is not torture.

(6) In order to constitute torture an act must be directed against a person in the offender's custody or physical control.

(7) Acquiescence of a public official requires that the public official, prior to the activity constituting torture, have awareness of such activity and thereafter breach his or her legal responsibility to intervene to prevent such activity.

(8) Noncompliance with applicable legal procedural standards does not per se constitute torture.

(...)

(c) Diplomatic assurances against torture obtained by the Secretary of State.

(1) The Secretary of State may forward to the Attorney General assurances that the Secretary has obtained from the government of a specific country that an alien would not be tortured there if the alien were removed to that country.

(2) If the Secretary of State forwards assurances described in paragraph (c)(1) of this section to the Attorney General for consideration by the Attorney General or her delegates under this paragraph, the Attorney General shall determine, in consultation with the Secretary of State, whether the assurances are sufficiently reliable to allow the alien's

removal to that country consistent with Article 3 of the Convention Against Torture. The Attorney General's authority under this paragraph may be exercised by the Deputy Attorney General or by the Commissioner, Immigration and Naturalization Service, but may not be further delegated.

(3) Once assurances are provided under paragraph (c)(2) of this section, the alien's claim for protection under the Convention Against Torture shall not be considered further by an immigration judge, the Board of Immigration Appeals, or an asylum officer.

(...)

12.3 Priority Two Group Designations under the Refugee Admissions Program

Under the U.S. Refugee Admissions Program (resettlement programme), designations are used for specific groups of persons who are of special humanitarian concern to the U.S.. Priority Two (P-2) groups are designated by the Department of State in consultation with U.S.CIS, NGOs, UNHCR and other experts. Only those members of the specifically identified groups are eligible for processing under P-2. Individuals within P-2 designations must still individually establish eligibility for resettlement by meeting the definition of a refugee at INA section 101(a)(42).

P-2 designations for groups outside their country of origin in fiscal year 2009 include:

1. Ethnic minorities and others from Burma in Thailand and Malaysia
2. Certain Burundians in Tanzania
3. Bhutanese in Nepal
4. Iranian religious minorities, primarily in Austria and Turkey
5. Sudanese Darfurians in Iraq
6. Iraqis Associated with the U.S.
7. Eritreans in Shimelba camp in Ethiopia

Current P-2 groups processed in-country include the following:

1. Former Soviet Union
 - Jews, Evangelical Christians, and certain members of the Ukrainian Catholic or Orthodox churches who also have close family in the United States.
2. Cuba
 - Emphasis given to former political prisoners, members of persecuted religious minorities, human rights activists, forced-labor conscripts (1965-1968), persons deprived of their professional credentials or subjected to other disproportionately harsh or discriminatory treatment resulting from their perceived or actual political or religious beliefs or activities, and persons who have experienced or fear harm because of their relationship – family or social – to someone who falls under one of the preceding categories.
3. Vietnam
 - Persons eligible under the former Orderly Departure Program (ODP) and Resettlement Opportunity for Vietnamese Returnees (ROVR) programmes.
 - Expanded during FY 2006 to permit consideration of persons who, due to no fault of their own, were unable to access the ODP programme prior to its cut off date.
 - Amerasian immigrants.

4. Iraqis Associated with the U.S.

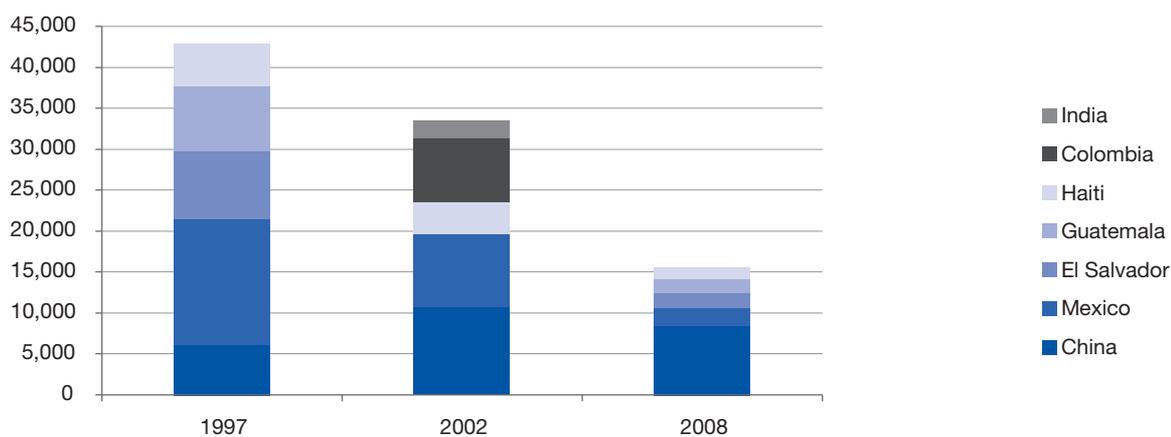
- Under various P-2 designations and/or the Refugee Crisis in Iraq Act, employees of the U.S. Government (USG) or a USG-funded contractor, U.S. media or NGO working in Iraq, as well as beneficiaries of approved I-130 (immigrant visa) petitions are eligible for refugee processing in Iraq.



12.4 Additional Statistical Information

Figure 4:

Asylum Applications* from Top Five Countries of Origin for the United States in 1997, 2002 and 2008



* New applications received and reopened with USCIS (affirmative only); principal applicants only (Source: USCIS Nationality Data).

Figure 5:

Decisions Made at the First Instance, 1992-2008

Year*	Convention Status**		Humanitarian Status and Other Authorisations to Remain		Rejections***		Other Decisions****		Total Decisions
	Count	% of total	Count	% of total	Count	% of total	Count	% of total	
1992	3,919	18%	0	0%	6,506	30%	11,571	53%	21,996
1993	5,037	15%	0	0%	17,949	53%	11,142	33%	34,128
1994	8,131	15%	0	0%	28,892	54%	16,376	31%	53,399
1995	8,648	12%	0	0%	35,217	49%	27,577	39%	71,442
1996	13,368	11%	0	0%	60,082	50%	47,271	39%	120,721
1997	10,129	8%	0	0%	56,730	44%	62,857	48%	129,716
1998	9,939	12%	0	0%	41,021	48%	34,597	40%	85,557
1999	14,757	27%	0	0%	24,333	44%	16,322	29%	55,412
2000	16,693	28%	0	0%	28,472	48%	14,717	25%	59,882
2001	19,456	28%	0	0%	33,635	48%	17,573	25%	70,664
2002	18,633	22%	0	0%	36,959	45%	27,408	33%	83,000
2003	11,339	13%	0	0%	29,698	34%	47,150	53%	88,187
2004	9,354	8%	0	0%	23,825	21%	81,180	71%	114,359
2005	9,569	9%	0	0%	23,556	23%	69,868	68%	102,993
2006	10,663	14%	0	0%	26,830	36%	37,973	50%	75,466
2007	10,111	17%	0	0%	32,153	53%	18,444	30%	60,708
2008	10,411	24%	0	0%	23,833	55%	9,075	21%	43,319

* Data represents outcome of affirmative asylum cases processed by USCIS; it does not include data on outcomes of cases handled by EOIR (Source: USCIS Workload Data)

** Percentage of cases granted asylum ("Convention Status") is based on the total number of cases decided, not the number of cases adjudicated on the merits of the claim.

*** Includes cases denied (i.e., persons with other legal status), cases referred to an immigration judge after a determination that the case was not filed in a timely manner and did not merit an exception to the one-year filing deadline and/or an adjudication on the merits of the asylum claim, as well as cases referred to an immigration judge without an adjudication on the merits of the asylum claim (generally because the applicant failed to appear for the scheduled interview).

**** Asylum claims that are administratively closed without an adjudication on the merits of the case and the applicant is not placed into removal hearings before an immigration judge.



ANNEXES

ANNEXE 1 : STATISTICAL INFORMATION ON ASYLUM APPLICATIONS MADE IN IGC
PARTICIPATING STATES

ANNEXE 2 : BASIC INSTRUMENTS OF INTERNATIONAL REFUGEE LAW
AND HUMAN RIGHTS LAW: RELEVANT EXTRACTS

ANNEXE 3 : SELECTED UNHCR EXECUTIVE COMMITTEE CONCLUSIONS
ON INTERNATIONAL PROTECTION

ANNEXE 4 : SELECTED REGIONAL INSTRUMENTS: EXTRACTS

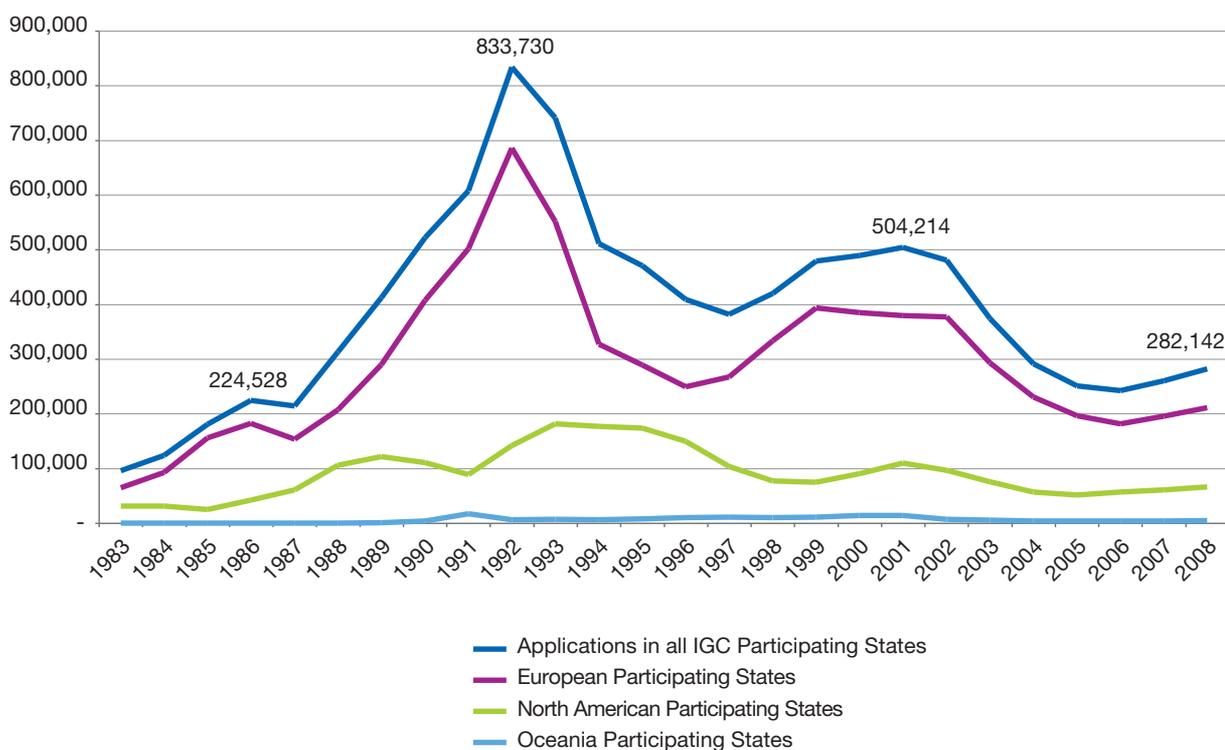
Annexe 1



STATISTICAL INFORMATION ON ASYLUM APPLICATIONS MADE IN IGC PARTICIPATING STATES

1. EVOLUTION OF APPLICATIONS IN IGC PARTICIPATING STATES, 1983-2008
2. SHARE OF ASYLUM APPLICATIONS IN IGC PARTICIPATING STATES, 1983-2008
3. SHARE OF APPLICATIONS IN IGC PARTICIPATING STATES, 1997
4. SHARE OF ASYLUM APPLICATIONS IN IGC PARTICIPATING STATES, 2002
5. SHARE OF APPLICATIONS IN IGC PARTICIPATING STATES, 2008
6. TOTAL ASYLUM APPLICATIONS RECEIVED PER 1,000 INHABITANTS IN 2008
7. ASYLUM-SEEKERS IN IGC PARTICIPATING STATES BY COUNTRY OF ORIGIN, 1997
8. TOP TEN COUNTRIES OF ORIGIN, 1997
9. ASYLUM-SEEKERS IN IGC PARTICIPATING STATES BY COUNTRY OF ORIGIN, 2002
10. TOP TEN COUNTRIES OF ORIGIN, 2002
11. ASYLUM-SEEKERS IN IGC PARTICIPATING STATES BY COUNTRY OF ORIGIN, 2008
12. TOP TEN COUNTRIES OF ORIGIN, 2008
13. NUMBER OF PENDING CASES AT FIRST INSTANCE ON 31 DECEMBER 2008

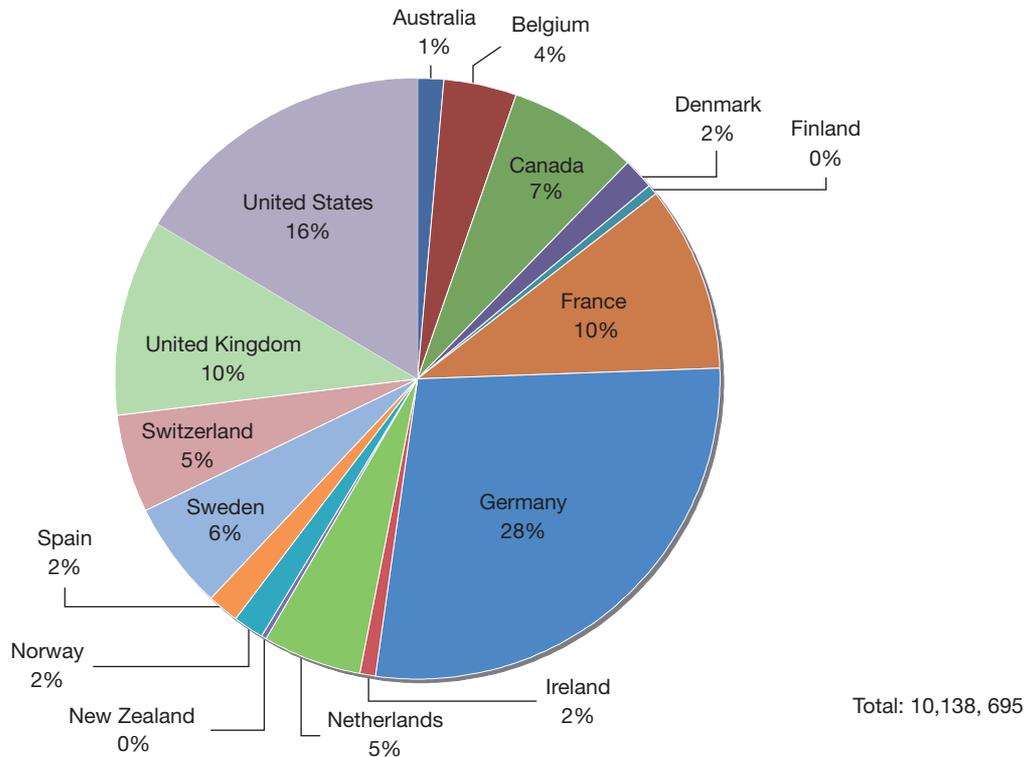
1. Evolution of Applications in IGC Participating States¹, 1983-2008*



* Data for Australia covers applications made in 1989-2008 only.
 Data for New Zealand covers applications made in 1997-2008 only.
 Data for Greece covers 2006-2008 only.

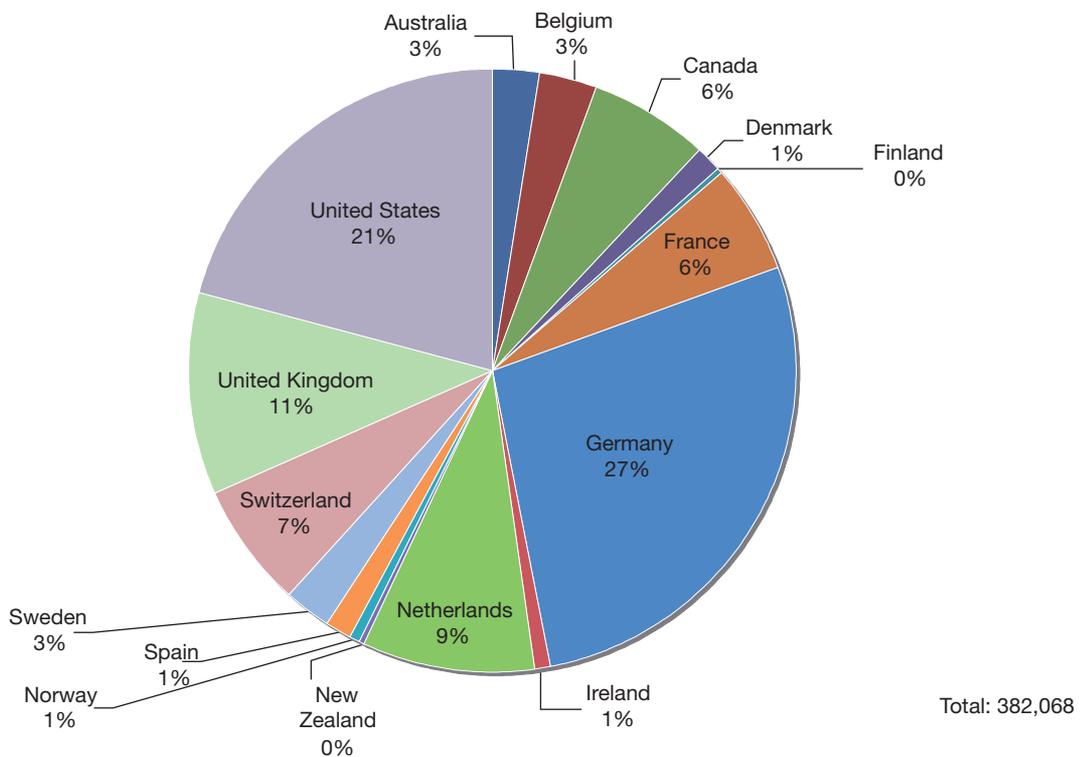
¹ The statistical information contained in this annexe is, as is all the other data contained in this report, collected by the IGC directly from each government. Data on asylum applications in Greece is available only for 2004-2008, and is therefore not included in the information presented in the annexe, with the exception of Figure 1 (Evolution of Asylum Applications in 1983-2008) and Figure 5 (Share of Asylum Applications in 2008). Data for France, Germany (1993-2008), Ireland, the Netherlands (2007-2008), Spain, Sweden and the United Kingdom covers first applications only. Data for Denmark from 1983 to 1997 reflects applications under active consideration; data for 1998-2008 reflects the gross number of applications received. Data for the United States refers only to principal applicants making an affirmative application or requesting a reopening of their affirmative application with USCIS.

2. Share of Asylum Applications in IGC Participating States, 1983-2008*

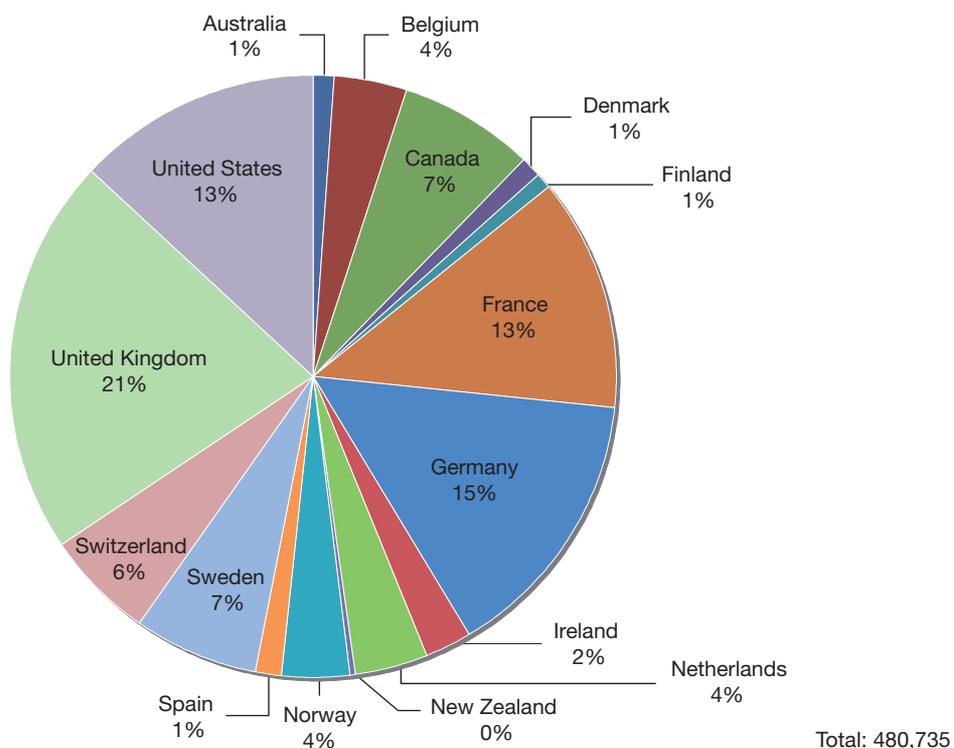


* Data for Australia covers applications made in 1989-2008 only.
Data for New Zealand covers applications made in 1997-2008 only.

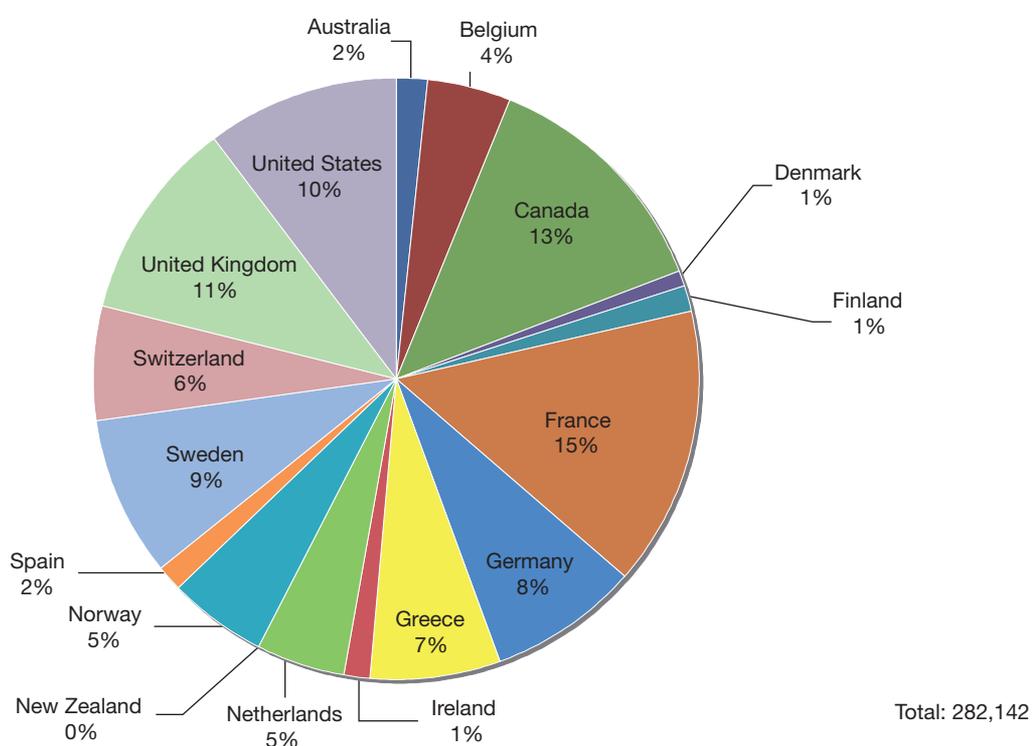
3. Share of Applications in IGC Participating States, 1997



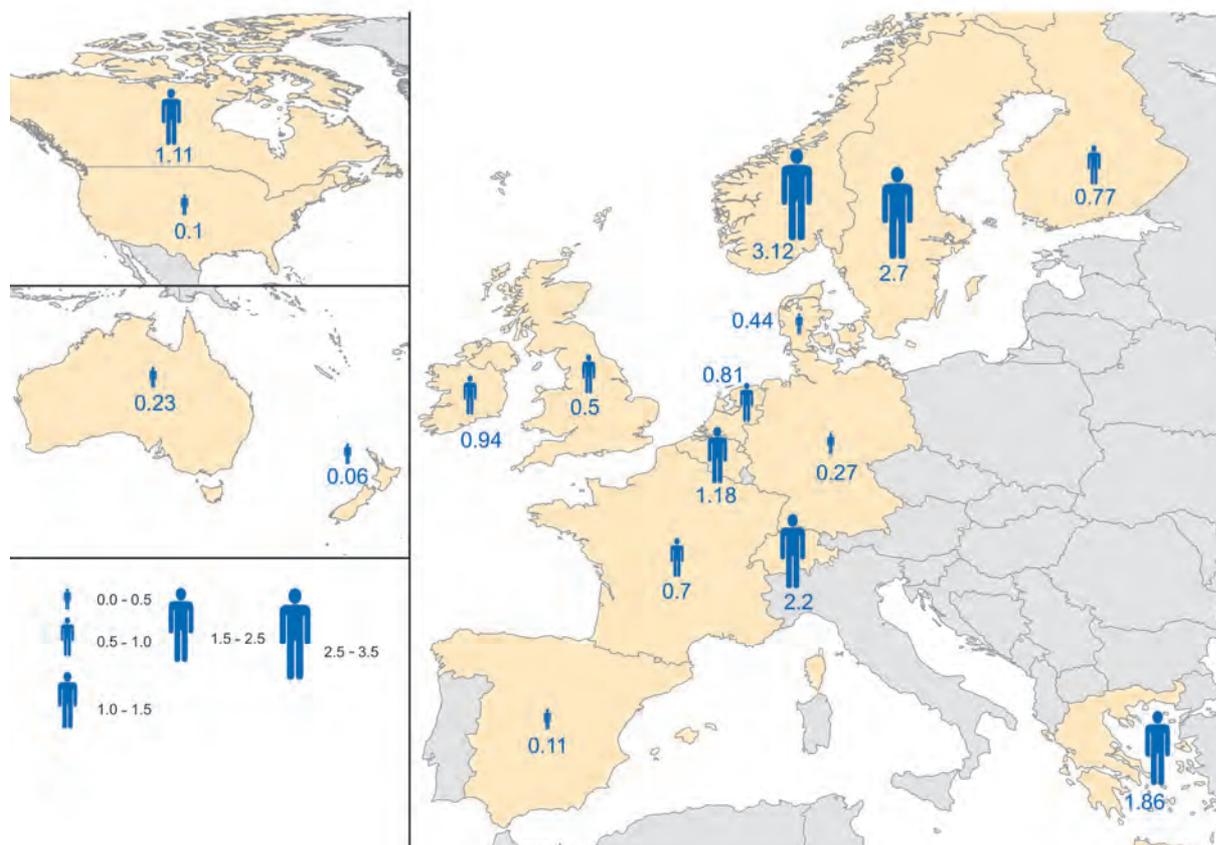
4. Share of Asylum Applications in IGC Participating States, 2002



5. Share of Applications in IGC Participating States, 2008

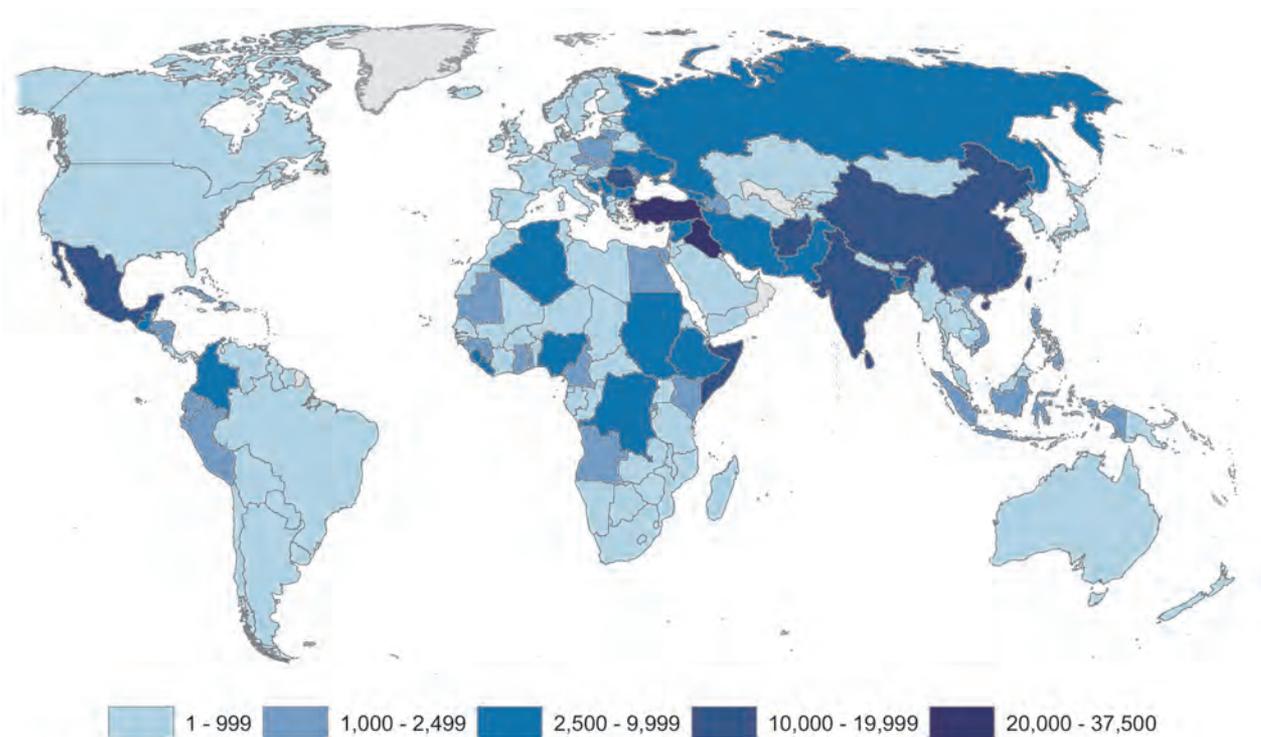


6. Total Asylum Applications Received per 1,000 Inhabitants in 2008*



* Based on 2007 population data

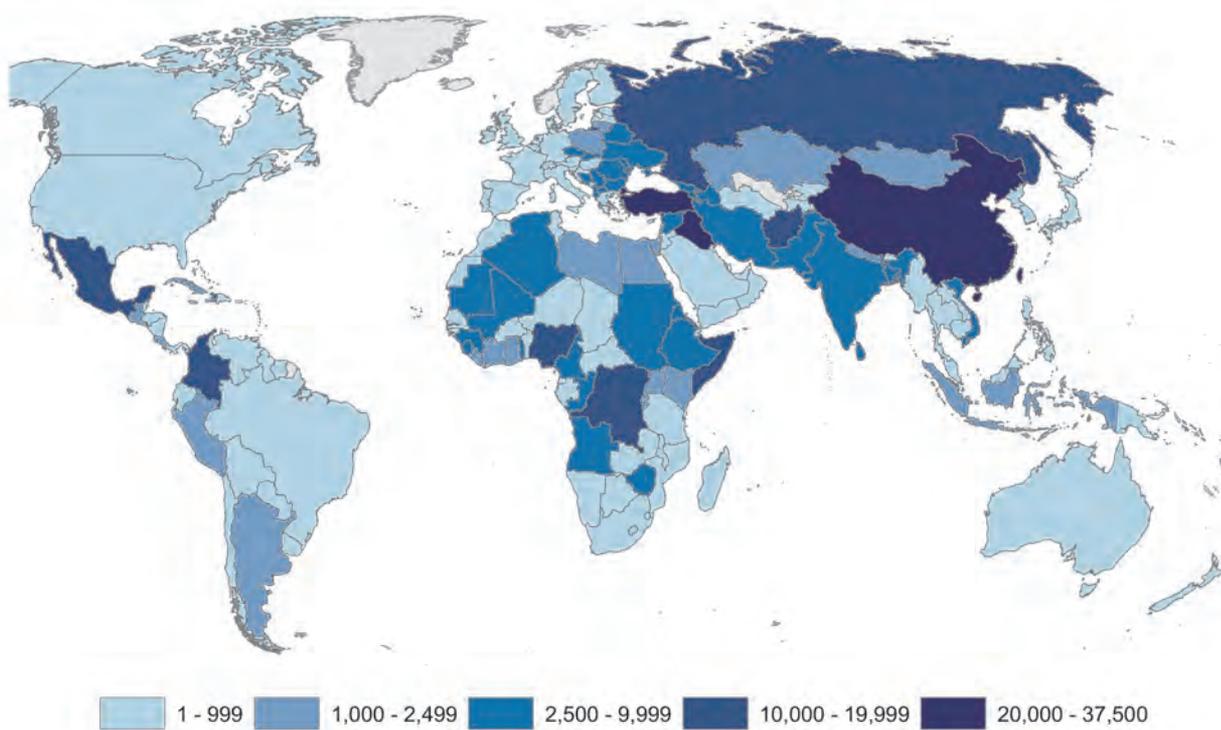
7. Asylum-Seekers in IGC Participating States by Country of Origin, 1997



8. Top Ten Countries of Origin, 1997

1	Iraq
2	FRY (Yugoslavia)
3	Turkey
4	Mexico
5	Sri Lanka
6	China
7	Afghanistan
8	Somalia
9	India
10	Romania

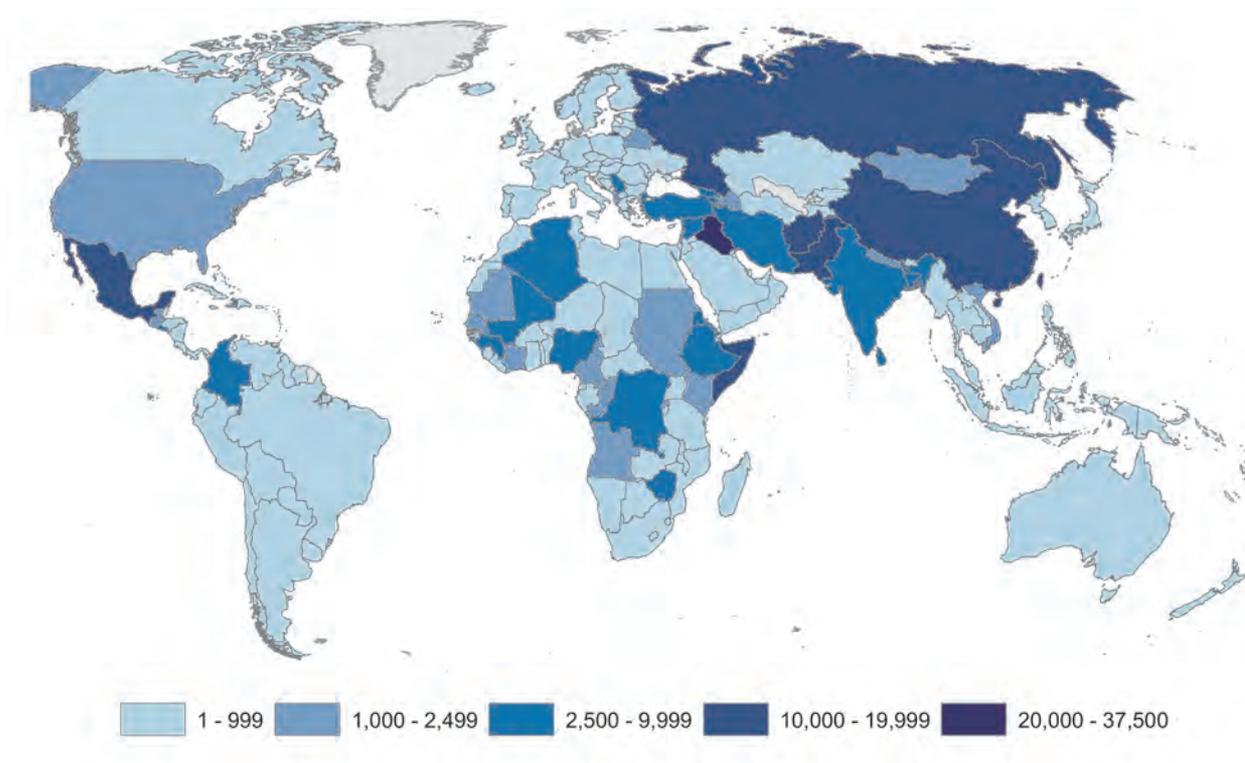
9. Asylum-Seekers in IGC Participating States by Country of Origin, 2002



10. Top Ten Countries of Origin, 2002

1	Iraq
2	Turkey
3	China
4	FRY (Yugoslavia)
5	Afghanistan
6	Russia
7	Democratic Republic of the Congo
8	Colombia
9	Somalia
10	Nigeria

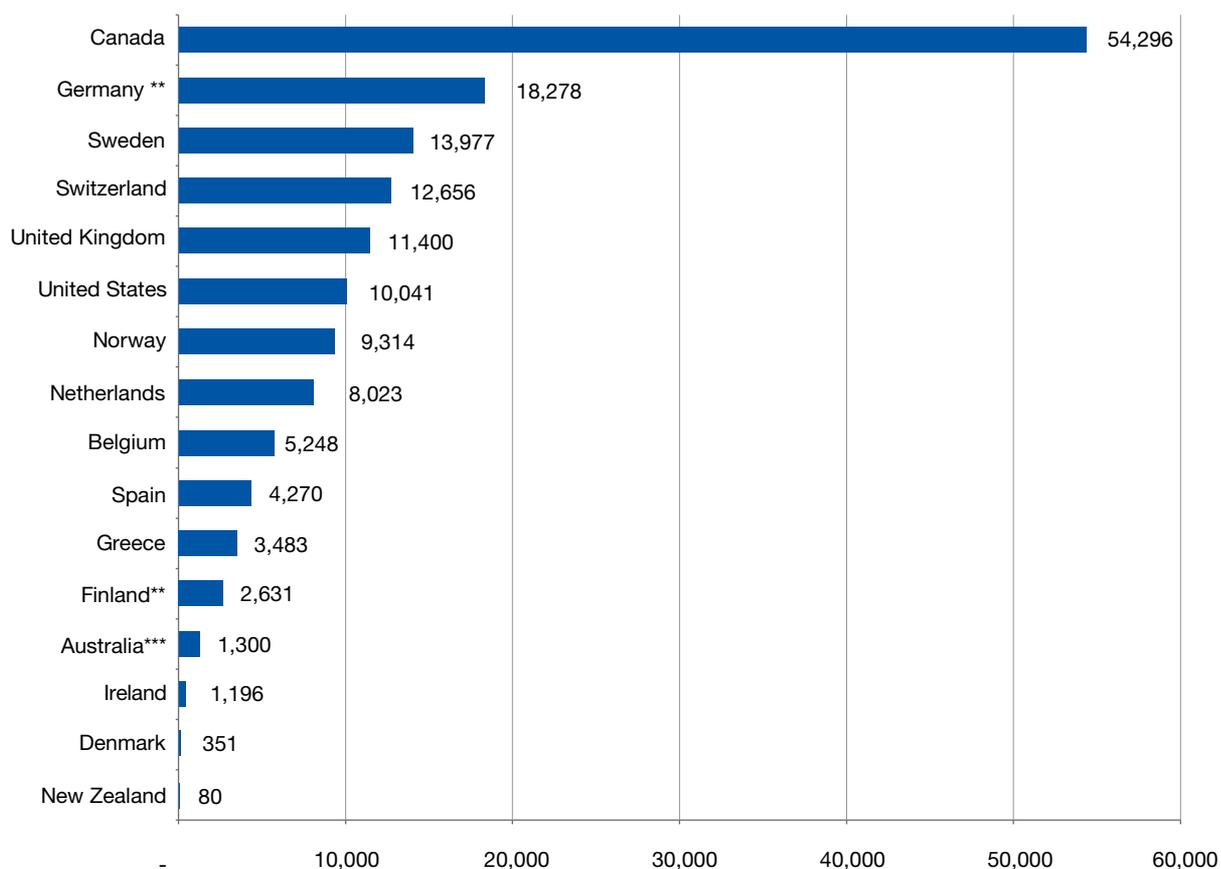
11. Asylum-Seekers in IGC Participating States by Country of Origin, 2008



12. Top Ten Countries of Origin, 2008

1	Iraq
2	China
3	Somalia
4	Afghanistan
5	Mexico
6	Pakistan
7	Russia
8	Sri Lanka
9	Eritrea
10	Iran

13. Number of Pending Cases at First Instance on 31 December 2008*



* France does not make data on pending cases publicly available.

** Data includes all instances.

*** This is an approximate figure.

Annexe 2



Basic Instruments of International Refugee Law and Human Rights Law: Relevant Extracts

1. 1948 UNIVERSAL DECLARATION OF HUMAN RIGHTS
2. 1950 STATUTE OF THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES
3. 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES
4. 1967 PROTOCOL RELATING TO THE STATUS OF REFUGEES
5. 1954 UNITED NATIONS CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT
6. 1954 CONVENTION RELATING TO THE STATUS OF STATELESS PERSONS
7. 1961 CONVENTION ON THE REDUCTION OF STATELESSNESS
8. 1966 INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS
9. 1989 CONVENTION ON THE RIGHTS OF THE CHILD

1. 1948 Universal Declaration of Human Rights

Article 13

- (1) Everyone has the right to freedom of movement and residence within the borders of each state.
- (2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

- (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.
- (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

2. 1950 Statute of the Office of the United Nations High Commissioner for Refugees

CHAPTER I

General Provisions

1. The United Nations High Commissioner for Refugees, acting under the authority of the General Assembly, shall assume the function of providing international protection, under the auspices of the United Nations, to refugees who fall within the scope of the present Statute and of seeking permanent solutions for the problem of refugees by assisting Governments and, subject to the approval of the Governments concerned, private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities.

In the exercise of his functions, more particularly when difficulties arise, and for instance with regard to any controversy concerning the international status of these persons, the High Commissioner shall request the opinion of the advisory committee on refugees if it is created.

(...)

CHAPTER II

Functions of the High Commissioner

6 . The competence of the High Commissioner shall extend to:

A. (i) Any person who has been considered a refugee under the Arrangements of 12 May 1926 and of 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization.

(ii) Any person who, as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion, is outside the country of his nationality and is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to return to it.

Decisions as to eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of the present paragraph;

The competence of the High Commissioner shall cease to apply to any person defined in section A above if:

- (a) He has voluntarily re-availed himself of the protection of the country of his nationality; or
- (b) Having lost his nationality, he has voluntarily re-acquired it; or
- (c) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or
- (d) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or
- (e) He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, claim grounds other than those of personal convenience for continuing to refuse to avail himself of the protection of the country of his nationality. Reasons of a purely economic character may not be invoked; or
- (f) Being a person who has no nationality, he can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist and he is able to return to the country of his former habitual residence, claim grounds other than those of personal convenience for continuing to refuse to return to that country;

B. Any other person who is outside the country of his nationality, or if he has no nationality, the country of his former habitual residence, because he has or had well-founded fear of persecution by reason of his race, religion, nationality or political opinion and is unable or, because of such fear, is unwilling to avail himself of the protection of the government of the country of his nationality, or, if he has no nationality, to return to the country of his former habitual residence.

7. Provided that the competence of the High Commissioner as defined in paragraph 6 above shall not extend to a person:

- (a) Who is a national of more than one country unless he satisfies the provisions of the preceding paragraph in relation to each of the countries of which he is a national; or
- (b) Who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country; or
- (c) Who continues to receive from other organs or agencies of the United Nations protection or assistance; or
- (d) In respect of whom there are serious reasons for considering that he has committed a crime covered by the provisions of treaties of extradition or a crime mentioned in article VI of the London Charter of the International Military Tribunal or by the provisions of article 14, paragraph 2, of the Universal Declaration of Human Rights.

3. 1951 Convention relating to the Status of Refugees

Article 1A

Definition of the Term "Refugee"

For the purposes of the present Convention, the term "refugee" shall apply to any person who:

(1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization; Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section;

(2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that

country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. In the case of a person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

Article 1C

Cessation Clause

This Convention shall cease to apply shall cease to apply to any person falling under the terms of section A if:

- (1) He has voluntarily re-availed himself of the protection of the country of his nationality; or
- (2) Having lost his nationality, he has voluntarily re-acquired it, or
- (3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or
- (4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or
- (5) He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

Provided that this paragraph shall not apply to a refugee falling under section A(1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;

- (6) Being a person who has no nationality he is, because of the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

Article 1E

Rights and Obligations of Nationality

This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

Article 1F

Exclusion Clause

The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

- (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
- (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

Article 2

General obligations

Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

(...)

Article 16

Access to courts

1. A refugee shall have free access to the courts of law on the territory of all Contracting States.
2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance and exemption from *cautio judicatum solvi*.
3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.

(...)

Article 31

Refugees unlawfully in the country of refuge

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.
2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

Article 32

Expulsion

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.
2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.
3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

(...)

Article 33

Prohibition of Expulsion or Return (“Refoulement”)

1. No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

(...)

Article 35

Co-operation of the national authorities with the United Nations

1. The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.

2. In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the Contracting States undertake to provide them in the appropriate form with information and statistical data requested concerning:

(a) The condition of refugees,

(b) The implementation of this Convention, and

(c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

(...)

4. 1967 Protocol relating to the Status of Refugees

Article 1

General provision

1. The States Parties to the present Protocol undertake to apply articles 2 to 34 inclusive of the Convention to refugees as hereinafter defined.

2. For the purpose of the present Protocol, the term “refugee” shall, except as regards the application of paragraph 3 of this article, mean any person within the definition of article 1 of the Convention as if the words “As a result of events occurring before 1 January 1951 and ...” “and the words”... “a result of such events”, in article 1 A (2) were omitted.

3. The present Protocol shall be applied by the States Parties hereto without any geographic limitation, save that existing declarations made by States already Parties to the Convention in accordance with article 1 B (1) (a) of the Convention, shall, unless extended under article 1 B (2) thereof, apply also under the present Protocol.

5. 1954 United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Article 1

1. For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 3

No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

6. 1954 Convention relating to the Status of Stateless Persons

Chapter I

GENERAL PROVISIONS

Article 1. - Definition of the term “stateless person”

1. For the purpose of this Convention, the term “stateless person” means a person who is not considered as a national by any State under the operation of its law.

2. This Convention shall not apply:

(i) To persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance so long as they are receiving such protection or assistance;

(ii) To persons who are recognized by the competent authorities of the country in which they have taken residence as having the rights and obligations which are attached to the possession of the nationality of that country;

(iii) To persons with respect to whom there are serious reasons for considering that:

(a) They have committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes;

(b) They have committed a serious non-political crime outside the country of their residence prior to their admission to that country;

(c) They have been guilty of acts contrary to the purposes and principles of the United Nations.

Article 2. - General obligations

Every stateless person has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

7. 1961 Convention on the Reduction of Statelessness

Article 1

1. A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless. Such nationality shall be granted:

(a) at birth, by operation of law, or

(b) upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this article, no such application may be rejected.

A Contracting State which provides for the grant of its nationality in accordance with subparagraph (b) of this paragraph may also provide for the grant of its nationality by operation of law at such age and subject to such conditions as may be prescribed by the national law.

2. A Contracting State may make the grant of its nationality in accordance with subparagraph (b) of paragraph 1 of this article subject to one or more of the following conditions:

(a) that the application is lodged during a period, fixed by the Contracting State, beginning not later than at the age of eighteen years and ending not earlier than at the age of twenty-one years, so, however, that the person concerned shall be allowed at least one year during which he may himself make the application without having to obtain legal authorization to do so;

(b) that the person concerned has habitually resided in the territory of the Contracting State for such period as may be fixed by that State, not exceeding five years immediately preceding the lodging of the application nor ten years in all;

(c) that the person concerned has neither been convicted of an offence against national security nor has been sentenced to imprisonment for a term of five years or more on a criminal charge;

(d) that the person concerned has always been stateless.

3. Notwithstanding the provisions of paragraphs 1 (b) and 2 of this article, a child born in wedlock in the territory of a Contracting State, whose mother has the nationality of that State, shall acquire at birth that nationality if it otherwise would be stateless.

4. A Contracting State shall grant its nationality to a person who would otherwise be stateless and who is unable to acquire the nationality of the Contracting State in whose territory he was born because he had passed the age for lodging his application or has not fulfilled the required residence conditions, if the nationality of one of his parents at the time of the person's birth was that of the Contracting State first above mentioned. If his parents did not possess the same nationality at the time of his birth, the question whether the nationality of the person concerned should follow that of the father or that of the mother shall be determined by the national law of such Contracting State. If application for such nationality is required, the application shall be made to the appropriate authority by or on behalf of the applicant in the manner prescribed by the national law. Subject to the provisions of paragraph 5 of this article, such application shall 5. The Contracting State may make the grant of its nationality in accordance with the provisions of paragraph 4 of this article subject to one or more of the following conditions:

(a) that the application is lodged before the applicant reaches an age, being not less than twenty-three years, fixed by the Contracting State;

(b) that the person concerned has habitually resided in the territory of the Contracting State for such period immediately preceding the lodging of the application, not exceeding three years, as may be fixed by that State;

(c) that the person concerned has always been stateless.

8. 1966 International Covenant on Civil and Political Rights

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

9. 1989 Convention on the Rights of the Child

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Annexe 3

Selected UNHCR Executive Committee Conclusions on International Protection

1. CONCLUSION No.8 (XXVIII -1977) - DETERMINATION OF REFUGEE STATUS
2. CONCLUSION No. 15 (XXX - 1979) - REFUGEES WITHOUT AN ASYLUM COUNTRY
3. CONCLUSION No. 28 (XXXIII - 1982) - FOLLOW-UP ON EARLIER CONCLUSIONS OF THE SUB-COMMITTEE OF THE WHOLE ON INTERNATIONAL PROTECTION ON THE DETERMINATION OF REFUGEE STATUS, INTER ALIA, WITH REFERENCE TO THE ROLE OF UNHCR IN NATIONAL REFUGEE STATUS DETERMINATION PROCEDURES
4. CONCLUSION No. 30 (XXXIV - 1983) - THE PROBLEM OF MANIFESTLY UNFOUNDED OR ABUSIVE APPLICATIONS FOR REFUGEE STATUS OR ASYLUM
5. CONCLUSION No. 58 (XL – 1989) - PROBLEM OF REFUGEES AND ASYLUM-SEEKERS WHO MOVE IN AN IRREGULAR MANNER FROM A COUNTRY IN WHICH THEY HAD ALREADY FOUND PROTECTION
6. CONCLUSION No. 81 (XLVIII – 1997) - GENERAL CONCLUSION ON INTERNATIONAL PROTECTION (EXTRACT)
7. CONCLUSION No. 82 (XLVIII – 1997)- SAFEGUARDING ASYLUM (EXTRACTS)

1. Conclusion No.8 (XXVIII -1977) - Determination of Refugee Status

The Executive Committee,

- (a) Noted the report of the High Commissioner concerning the importance of procedures for determining refugee status;
- (b) Noted that only a limited number of States parties to the 1951 Convention and the 1967 Protocol had established procedures for the formal determination of refugee status under these instruments;
- (c) Noted, however, with satisfaction that the establishment of such procedures was under active consideration by a number of Governments;
- (d) Expressed the hope that all Governments parties to the 1951 Convention and the 1967 Protocol which had not yet done so would take steps to establish such procedures in the near future and give favourable consideration to UNHCR participation in such procedures in appropriate form;
- (e) Recommended that procedures for the determination of refugee status should satisfy the following basic requirements:
 - (i) The competent official (e.g. immigration officer or border police officer) to whom the applicant addresses himself at the border or in the territory of a Contracting State, should have clear instructions for dealing with cases which might be within the purview of the relevant international instruments. He should be required to act in accordance with the principle of non-refoulement and to refer such cases to a higher authority.
 - (ii) The applicant should receive the necessary guidance as to the procedure to be followed.
 - (iii) There should be a clearly identified authority -- wherever possible a single central authority -- with responsibility for examining requests for refugee status and taking a decision in the first instance.
 - (iv) The applicant should be given the necessary facilities, including the services of a competent interpreter, for submitting his case to the authorities concerned. Applicants should also be given the opportunity, of which they should be duly informed, to contact a representative of UNHCR.
 - (v) If the applicant is recognized as a refugee, he should be informed accordingly and issued with documentation certifying his refugee status.
 - (vi) If the applicant is not recognized, he should be given a reasonable time to appeal for a formal reconsideration of the decision, either to the same or to a different authority, whether administrative or judicial, according to the prevailing stem.
 - (vii) The applicant should be permitted to remain in the country pending a decision on his initial request by the competent authority referred to in paragraph (iii) above, unless it has been established by that authority that his request is clearly abusive. He should also be permitted to remain in the country while an appeal to a higher administrative authority or to the courts is pending.
- (f) Requested UNHCR to prepare, after due consideration of the opinions of States parties to the 1951 Convention and the 1967 Protocol, a detailed study on the question of the extra-territorial effect of determination of refugee status in order to enable the Committee to take a considered view on the matter at a subsequent session taking into account the opinion expressed by representatives that the acceptance by a Contracting State of refugee status as determined by other States parties to these instruments would be generally desirable;
- (g) Requested the Office to consider the possibility of issuing-for the guidance of Governments-a handbook relating to procedures and criteria for determining refugee status and circulating -- with due regard to the confidential nature of individual requests and the particular situations involved -- significant decisions on the determination of refugee status.

2. Conclusion No. 15 (XXX - 1979) - Refugees without an Asylum Country

The Executive Committee,

Considered that States should be guided by the following considerations:

General principles

- (a) States should use their best endeavours to grant asylum to bona fide asylum-seekers;
- (b) Action whereby a refugee is obliged to return or is sent to a country where he has reason to fear persecution constitutes a grave violation of the recognized principle of non-refoulement;
- (c) It is the humanitarian obligation of all coastal States to allow vessels in distress to seek haven in their waters and to grant asylum, or at least temporary refuge, to persons on board wishing to seek asylum;
- (d) Decisions by States with regard to the granting of asylum shall be made without discrimination as to race, religion, political opinion, nationality or country of origin;
- (e) In the interest of family reunification and for humanitarian reasons, States should facilitate the admission to their territory of at least the spouse and minor or dependent children of any person to whom temporary refuge or durable asylum has been granted;

Situations involving a large-scale influx of asylum-seekers

- (f) In cases of large-scale influx, persons seeking asylum should always receive at least temporary refuge. States which because of their geographical situation, or otherwise, are faced with a large-scale influx should as necessary and at the request of the State concerned receive immediate assistance from other States in accordance with the principle of equitable burden-sharing. Such States should consult with the Office of the United Nations High Commissioner for Refugees as soon as possible to ensure that the persons involved are fully protected, are given emergency assistance, and that durable solutions are sought;
- (g) Other States should take appropriate measures individually, jointly or through the Office of the United Nations High Commissioner for Refugees or other international bodies to ensure that the burden of the first asylum country is equitably shared;

Situations involving individual asylum-seekers

- (h) An effort should be made to resolve the problem of identifying the country responsible for examining an asylum request by the adoption of common criteria. In elaborating such criteria the following principles should be observed:
 - (i) The criteria should make it possible to identify in a positive manner the country which is responsible for examining an asylum request and to whose authorities the asylum-seeker should have the possibility of addressing himself;
 - (ii) The criteria should be of such a character as to avoid possible disagreement between States as to which of them should be responsible for examining an asylum request and should take into account the duration and nature of any sojourn of the asylum-seeker in other countries;
 - (iii) The intentions of the asylum-seeker as regards the country in which he wishes to request asylum should as far as possible be taken into account;
 - (iv) Regard should be had to the concept that asylum should not be refused solely on the ground that it could be sought from another State. Where, however, it appears that a person, before requesting asylum, already has a connection or close links with another State, he may if it appears fair and reasonable be called upon first to request asylum from that State;

(v) Reestablishment of criteria should be accompanied by arrangements for regular consultation between concerned Governments for dealing with cases for which no solution has been found and for consultation with the Office of the United Nations High Commissioner for Refugees as appropriate;

(vi) Agreements providing for the return by States of persons who have entered their territory from another contracting State in an unlawful manner should be applied in respect of asylum-seekers with due regard to their special situation.

(i) While asylum-seekers may be required to submit their asylum request within a certain time limit, failure to do so, or the non-fulfilment of other formal requirements, should not lead to an asylum request being excluded from consideration;

(j) In line with the recommendation adopted by the Executive Committee at its twenty-eighth session (document A/AC.96/549, paragraph 53(6), (E) (i)), where an asylum-seeker addresses himself in the first instance to a frontier authority the latter should not reject his application without reference to a central authority;

(k) Where a refugee who has already been granted asylum in one country requests asylum in another country on the ground that he has compelling reasons for leaving his present asylum country due to fear of persecution or because his physical safety or freedom are endangered, the authorities of the second country should give favourable consideration to his asylum request;

(l) States should give favourable consideration to accepting, at the request of the Office of the United Nations High Commissioner for Refugees, a limited number of refugees who cannot find asylum in any country;

(m) States should pay particular attention to the need for avoiding situations in which a refugee loses his right to reside in or to return to his country of asylum without having acquired the possibility of taking up residence in a country other than one where he may have reasons to fear persecution;

(n) In line with the purpose of paragraphs 6 and 11 of the Schedule to the 1951 Convention, States should continue to extend the validity of or to renew refugee travel documents until the refugee has taken up lawful residence in the territory of another State. A similar practice should as far as possible also be applied in respect of refugees holding a travel document other than that provided for in the 1951 Convention.

3. Conclusion No. 28 (XXXIII - 1982) - Follow-up on Earlier Conclusions of the Sub-Committee of the Whole on International Protection on the Determination of Refugee Status, Inter Alia, with Reference to the Role of UNHCR in National Refugee Status Determination Procedures

The Executive Committee,

(a) Considered the report of the High Commissioner on the progress made in regard to the determination of refugee status (EC/SCP/22/Rev.1);

(b) Noted with satisfaction that since the twenty-eighth session of the Executive Committee procedures for the determination of refugee status have been established by a further significant number of States Parties to the 1951 Convention and the 1967 Protocol and that these procedures conform to the basic requirements recommended by the Executive Committee at its twenty-eighth session;

(c) Reiterated the importance of the establishment of procedures for determining refugee status and urged those States Parties to the 1951 Convention and the 1967 Protocol which had not yet done so to establish such procedures in the near future;

(d) Recognized the need for measures to meet the problem of manifestly unfounded or abusive applications for refugee status. A decision that an application is manifestly unfounded or abusive should only be taken by or after reference to the authority competent to determine refugee status. Consideration should be given to the establishment of procedural safeguards to ensure that such decisions are taken only if the application is fraudulent or not related

to the criteria for the granting of refugee status laid down in the 1951 United Nations Convention relating to the Status of Refugees. In view of its importance, the question of manifestly unfounded or abusive applications for refugee status should be further examined by the Sub-Committee at its next meeting, as a separate item on its agenda and on the basis of a study to be prepared by UNHCR;

(e) Noted with satisfaction the participation in various forms of UNHCR in procedures for determining refugee status in a large number of countries and recognized the value of UNHCR thus being given a meaningful role in such procedures.

4. Conclusion No. 30 (XXXIV - 1983) - The Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum

The Executive Committee,

(a) Recalled Conclusion No. 8 (XXVIII) adopted at its twenty-eighth session on the Determination of Refugee Status and Conclusion No. 15 (XXX) adopted at its thirtieth session concerning Refugees without an Asylum Country;

(b) Recalled Conclusion No. 28 (XXXIII) adopted at its thirty-third session in which the need for measures to meet the problem of manifestly unfounded or abusive applications for refugee status was recognized;

(c) Noted that applications for refugee status by persons who clearly have no valid claim to be considered refugees under the relevant criteria constitute a serious problem in a number of States parties to the 1951 Convention and the 1967 Protocol. Such applications are burdensome to the affected countries and detrimental to the interests of those applicants who have good grounds for requesting recognition as refugees;

(d) Considered that national procedures for the determination of refugee status may usefully include special provision for dealing in an expeditious manner with applications which are considered to be so obviously without foundation as not to merit full examination at every level of the procedure. Such applications have been termed either "clearly abusive" or "manifestly unfounded" and are to be defined as those which are clearly fraudulent or not related to the criteria for the granting of refugee status laid down in the 1951 United Nations Convention relating to the Status of Refugees nor to any other criteria justifying the granting of asylum;

(e) Recognized the substantive character of a decision that an application for refugee status is manifestly unfounded or abusive, the grave consequences of an erroneous determination for the applicant and the resulting need for such a decision to be accompanied by appropriate procedural guarantees and therefore recommended that:

(i) as in the case of all requests for the determination of refugee status or the grant of asylum, the applicant should be given a complete personal interview by a fully qualified official and, whenever possible, by an official of the authority competent to determine refugee status;

(ii) the manifestly unfounded or abusive character of an application should be established by the authority normally competent to determine refugee status;

(iii) an unsuccessful applicant should be enabled to have a negative decision reviewed before rejection at the frontier or forcible removal from the territory. Where arrangements for such a review do not exist, governments should give favourable consideration to their establishment. This review possibility can be more simplified than that available in the case of rejected applications which are not considered manifestly unfounded or abusive.

(f) Recognized that while measures to deal with manifestly un-founded or abusive applications may not resolve the wider problem of large numbers of applications for refugee status, both problems can be mitigated by overall arrangements for speeding up refugee status determination procedures, for example by:

(i) allocating sufficient personnel and resources to refugee status determination bodies so as to enable them to accomplish their task expeditiously, and

(ii) the introduction of measures that would reduce the time required for the completion of the appeals process.

5. Conclusion No. 58 (XL – 1989) - Problem of Refugees and Asylum-Seekers Who Move in an Irregular Manner from a Country in Which They Had Already Found Protection

- a) The phenomenon of refugees, whether they have been formally identified as such or not (asylum-seekers), who move in an irregular manner from countries in which they have already found protection, in order to seek asylum or permanent resettlement elsewhere, is a matter of growing concern. This concern results from the destabilizing effect which irregular movements of this kind have on structured international efforts to provide appropriate solutions for refugees. Such irregular movements involve entry into the territory of another country, without the prior consent of the national authorities or without an entry visa, or with no or insufficient documentation normally required for travel purposes, or with false or fraudulent documentation. Of similar concern is the growing phenomenon of refugees and asylum-seekers who wilfully destroy or dispose of their documentation in order to mislead the authorities of the country of arrival;
- b) Irregular movements of refugees and asylum-seekers who have already found protection in a country are, to a large extent, composed of persons who feel impelled to leave, due to the absence of educational and employment possibilities and the non-availability of long-term durable solutions by way of voluntary repatriation, local integration and resettlement;
- c) The phenomenon of such irregular movements can only be effectively met through concerted action by governments, in consultation with UNHCR, aimed at:
- i) identifying the causes and scope of irregular movements in any given refugee situation,
 - ii) removing or mitigating the causes of such irregular movements through the granting and maintenance of asylum and the provision of necessary durable solutions or other appropriate assistance measures,
 - iii) encouraging the establishment of appropriate arrangements for the identification of refugees in the countries concerned and,
 - iv) ensuring humane treatment for refugees and asylum-seekers who, because of the uncertain situation in which they find themselves, feel impelled to move from one country to another in an irregular manner;
- d) Within this framework, governments, in close co-operation with UNHCR, should
- i) seek to promote the establishment of appropriate measures for the care and support of refugees and asylum-seekers in countries where they have found protection pending the identification of a durable solution and
 - ii) promote appropriate durable solutions with particular emphasis firstly on voluntary repatriation and, when this is not possible, local integration and the provision of adequate resettlement opportunities;
- e) Refugees and asylum-seekers, who have found protection in a particular country, should normally not move from that country in an irregular manner in order to find durable solutions elsewhere but should take advantage of durable solutions available in that country through action taken by governments and UNHCR as recommended in paragraphs (c) and (d) above;
- f) Where refugees and asylum-seekers nevertheless move in an irregular manner from a country where they have already found protection, they may be returned to that country if
- i) they are protected there against refoulement and
 - ii) they are permitted to remain there and to be treated in accordance with recognized basic human standards until a durable solution is found for them. Where such return is envisaged, UNHCR may be requested to assist in arrangements for the re-admission and reception of the persons concerned;
- g) It is recognized that there may be exceptional cases in which a refugee or asylum-seeker may justifiably claim that he has reason to fear persecution or that his physical safety or freedom are endangered in a country where he

previously found protection. Such cases should be given favourable consideration by the authorities of the State where he requests asylum;

h) The problem of irregular movements is compounded by the use, by a growing number of refugees and asylum-seekers, of fraudulent documentation and their practice of wilfully destroying or disposing of travel and/or other documents in order to mislead the authorities of their country of arrival. These practices complicate the personal identification of the person concerned and the determination of the country where he stayed prior to arrival, and the nature and duration of his stay in such a country. Practices of this kind are fraudulent and may weaken the case of the person concerned;

i) It is recognized that circumstances may compel a refugee or asylum-seeker to have recourse to fraudulent documentation when leaving a country in which his physical safety or freedom are endangered. Where no such compelling circumstances exist, the use of fraudulent documentation is unjustified;

j) The wilful destruction or disposal of travel or other documents by refugees and asylum-seekers upon arrival in their country of destination, in order to mislead the national authorities as to their previous stay in another country where they have protection, is unacceptable. Appropriate arrangements should be made by States, either individually or in co-operation with other States, to deal with this growing phenomenon.

6. Conclusion No. 81 (XLVIII – 1997) - General Conclusion on International Protection (Extract)

The Executive Committee,

(...)

(h) Reaffirms Conclusion No. 80 (XLVIII), and notes that a comprehensive approach to refugee protection comprises, *inter alia*, respect for all human rights; the principle of *non-refoulement*; access, consistent with the 1951 Convention and the 1967 Protocol, of all asylum-seekers to fair and effective procedures for determining status and protection needs; no rejection at frontiers without the application of these procedures; asylum; the provision of any necessary material assistance; and the identification of durable solutions which recognize human dignity and worth;

(...)

7. Conclusion No. 82 (XLVIII – 1997)- Safeguarding Asylum (Extracts)

The Executive Committee,

(a) *Recalls* the fundamental importance of the High Commissioner's international protection function;

(b) *Reaffirms* that the institution of asylum, which derives directly from the right to seek and enjoy asylum set out in Article 14 (1) of the 1948 Universal Declaration of Human Rights, is among the most basic mechanisms for the international protection of refugees;

(c) Notes with concern that the growing complexity of refugee crises poses serious and novel challenges to the institution of asylum;

(d) Reiterates, in light of these challenges, the need for full respect to be accorded to the institution of asylum in general, and considers it timely to draw attention to the following particular aspects:

(i) the principle of *non-refoulement*, which prohibits expulsion and return of refugees in any manner whatsoever to the frontiers of territories where their lives or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion, whether or not they have been formally granted refugee status, or of persons in respect of whom there are substantial grounds for believing that they would

be in danger of being subjected to torture, as set forth in the 1984 Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment;

(ii) access, consistent with the 1951 Convention and the 1967 Protocol, of asylum-seekers to fair and effective procedures for determining status and protection needs;

(iii) the need to admit refugees into the territories of States, which includes no rejection at frontiers without fair and effective procedures for determining status and protection needs;

(iv) the need for rapid, unimpeded and safe UNHCR access to persons of concern to the High Commissioner;

(v) the need to apply scrupulously the exclusion clauses stipulated in Article 1 F of the 1951 Convention and in other relevant international instruments, to ensure that the integrity of the asylum institution is not abused by the extension of protection to those who are not entitled to it;

(vi) the obligation to treat asylum-seekers and refugees in accordance with applicable human rights and refugee law standards as set out in relevant international instruments;

(...)

(viii) the duty of refugees, and of asylum-seekers, to respect and abide by the laws of host States;

(e) *Calls upon* all concerned parties to respect and comply with the precepts on which the institution of asylum is based, and to implement their obligations in a spirit of true humanitarianism, international solidarity and burden-sharing.

Annexe 4

Selected Regional Instruments: Extracts

Europe

1. 1950 EUROPEAN CONVENTION ON HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS
2. 1985 CONVENTION IMPLEMENTING THE SCHENGEN AGREEMENT
3. PROTOCOL ON ASYLUM FOR NATIONALS OF MEMBER STATES OF THE EUROPEAN UNION (PAGE 103 OF THE TREATY OF AMSTERDAM)
4. 2000 COUNCIL REGULATION ON EURODAC
5. 2001 COUNCIL DIRECTIVE ON TEMPORARY PROTECTION
6. 2003 COUNCIL DIRECTIVE ON THE RECEPTION OF ASYLUM-SEEKERS (RECEPTION CONDITIONS DIRECTIVE)
7. 2003 COUNCIL REGULATION ON THE CRITERIA AND MECHANISMS FOR DETERMINING THE MEMBER STATE RESPONSIBLE FOR EXAMINING AN ASYLUM APPLICATION (DUBLIN II REGULATION)
8. 2004 COUNCIL DIRECTIVE ON QUALIFICATION AND STATUS AS REFUGEES OR PERSONS OTHERWISE IN NEED OF INTERNATIONAL PROTECTION
9. 2005 COUNCIL DIRECTIVE ON MINIMUM STANDARDS ON PROCEDURES IN MEMBER STATES FOR GRANTING AND WITHDRAWING REFUGEE STATUS (ASYLUM PROCEDURES DIRECTIVE)

North America

10. US – CANADA SAFE THIRD COUNTRY AGREEMENT

Europe

1. 1950 European Convention on Human Rights and Fundamental Freedoms

Article 1 Respecting rights

Article 1 simply binds the signatory parties to secure the rights under the other Articles of the Convention “within their jurisdiction”. In exceptional cases, “jurisdiction” may not be confined to a Contracting State’s own national territory; the obligation to secure Convention rights then also extends to foreign territory, such as occupied land in which the State exercises effective control.

(...)

Article 3 Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

(...)

Article 8 Right to respect for private and family life¹

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 9 Freedom of thought, conscience and religion²

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 13 Effective remedy

Article 13 provides for the right for an effective remedy before national authorities for violations of rights under the Convention. The inability to obtain a remedy before a national court for an infringement of a Convention right is thus a free-standing and separately actionable infringement of the Convention.

¹ Heading added according to the provisions of Protocol No. 11 (ETS No. 155).
² Heading added according to the provisions of Protocol No. 11 (ETS No. 155).

Article 14 Discrimination

Article 14 contains a prohibition of discrimination. This prohibition is broad in some ways, and narrow in others. On the one hand, the article protects against discrimination based on any of a wide range of grounds. The article provides a list of such grounds, including sex, race, colour, language, religion and several other criteria, and most significantly providing that this list is non-exhaustive. On the other hand, the article's scope is limited only to discrimination with respect to rights under the Convention. Thus, an applicant must prove discrimination in the enjoyment of a specific right that is guaranteed elsewhere in the Convention (e.g. discrimination based on sex - Article 14 - in the enjoyment of the right to freedom of expression - Article 10). Protocol 12 extends this prohibition to cover discrimination in any legal right, even when that legal right is not protected under the Convention, so long as it is provided for in national law.

(...)

2. 1985 Convention implementing the Schengen Agreement³

The KINGDOM OF BELGIUM, the FEDERAL REPUBLIC OF GERMANY, the FRENCH REPUBLIC, the GRAND DUCHY OF LUXEMBOURG and the KINGDOM OF THE NETHERLANDS, hereinafter referred to as the Contracting Parties,

TAKING as their basis the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at their common borders,

HAVING DECIDED to fulfil the resolve expressed in that Agreement to abolish checks at their common borders on the movement of persons and facilitate the transport and movement of goods at those borders,

WHEREAS the Treaty establishing the European Communities, supplemented by the Single European Act, provides that the internal market shall comprise an area without internal frontiers,

WHEREAS the aim pursued by the Contracting Parties is in keeping with that objective, without prejudice to the measures to be taken to implement the provisions of the Treaty,

WHEREAS the fulfilment of that resolve requires a series of appropriate measures and close cooperation between the Contracting Parties,

HAVE AGREED AS FOLLOWS:

(...)

TITLE II - ABOLITION OF CHECKS AT INTERNAL BORDERS AND MOVEMENT OF PERSONS

CHAPTER 1

CROSSING INTERNAL BORDERS

Article 2

1. Internal borders may be crossed at any point without any checks on persons being carried out.

³ *Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders.*

The first Schengen agreement between the five original contracting parties was signed on 14 June 1985. A further convention was signed in 1990 and came into effect in 1995, abolishing checks at the internal borders of the contracting states and creating a single external border. The Schengen area was gradually extended to include every Member State of the EU: Italy (27 November 1990), Spain and Portugal (25 June 1991), Greece (6 November 1992), Austria (28 April 1995) and Denmark, Finland and Sweden (19 December 1996). The Member States that joined the EU on 1 May 2004 are bound by the Schengen acquis, with certain provisions coming into force after border controls have been abolished. Iceland, Norway and Switzerland also take part in the Schengen acquis. The texts of the Schengen acquis are available on the European Commission website: http://eur-lex.europa.eu/LexUriServ/site/en/oj/2000/l_239/l_23920000922en00010473.pdf.

2. However, where public policy or national security so require a Contracting Party may, after consulting the other Contracting Parties, decide that for a limited period national border checks appropriate to the situation shall be carried out at internal borders. If public policy or national security require immediate action, the Contracting Party concerned shall take the necessary measures and at the earliest opportunity shall inform the other Contracting Parties thereof.

3. The abolition of checks on persons at internal borders shall not affect the provisions laid down in Article 22, or the exercise of police powers throughout a Contracting Party's territory by the competent authorities under that Party's law, or the requirement to hold, carry and produce permits and documents provided for in that Party's law.

4. Checks on goods shall be carried out in accordance with the relevant provisions of this Convention.

CHAPTER 2

CROSSING EXTERNAL BORDERS

Article 3

1. External borders may in principle only be crossed at border crossing points and during the fixed opening hours. More detailed provisions, exceptions and arrangements for local border traffic, and rules governing special categories of maritime traffic such as pleasure boating and coastal fishing, shall be adopted by the Executive Committee.

2. The Contracting Parties undertake to introduce penalties for the unauthorised crossing of external borders at places other than crossing points or at times other than the fixed opening hours.

Article 4

1. The Contracting Parties shall ensure that, as from 1993, passengers on flights from third States who transfer onto internal flights will be subject to an entry check, together with their hand baggage, at the airport at which the external flight arrives. Passengers on internal flights who transfer onto flights bound for third States will be subject to a departure check, together with their hand baggage, at the airport from which the external flight departs.

2. The Contracting Parties shall take the necessary measures to ensure that checks are carried out in accordance with paragraph 1.

3. Neither paragraph 1 nor paragraph 2 shall affect checks on registered baggage; such checks shall be carried out either in the airport of final destination or in the airport of initial departure.

4. Until the date laid down in paragraph 1, airports shall, by way of derogation from the definition of internal borders, be considered as external borders for internal flights.

Article 5

1. For stays not exceeding three months, aliens fulfilling the following conditions may be granted entry into the territories of the Contracting Parties:

(a) that the aliens possess a valid document or documents, as defined by the Executive Committee, authorising them to cross the border;

(b) that the aliens are in possession of a valid visa if required;

(c) that the aliens produce, if necessary, documents justifying the purpose and conditions of the intended stay and that they have sufficient means of subsistence, both for the period of the intended stay and for the return to their country of origin or transit to a third State into which they are certain to be admitted, or are in a position to acquire such means lawfully;

(d) that the aliens shall not be persons for whom an alert has been issued for the purposes of refusing entry;

(e) that the aliens shall not be considered to be a threat to public policy, national security or the international relations of any of the Contracting Parties.

3. Protocol on Asylum for Nationals of Member States of the European Union (Page 103 of the Treaty of Amsterdam)⁴

Given the level of protection of fundamental rights and freedoms by the Member States of the European Union, Member States shall be regarded as constituting safe countries of origin in respect of each other for all legal and practical purposes in relation to asylum matters. Accordingly, any application for asylum made by a national of a Member State may be taken into consideration or declared admissible for processing by another Member State only in the following cases:

- (a) if the Member State of which the applicant is a national proceeds after the entry into force of the Treaty of Amsterdam, availing itself of the provisions of Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms, to take measures derogating in its territory from its obligations under that Convention;
- (b) if the procedure referred to in Article F.1(1) of the Treaty on European Union has been initiated and until the Council takes a decision in respect thereof;
- (c) if the Council, acting on the basis of Article F.1(1) of the Treaty on European Union, has determined, in respect of the Member State which the applicant is a national, the existence of a serious and persistent breach by that Member State of principles mentioned in Article F(1);
- (d) if a Member State should so decide unilaterally in respect of the application of a national of another Member State; in that case the Council shall be immediately informed; the application shall be dealt with on the basis of the presumption that it is manifestly unfounded without affecting in any way, whatever the cases may be, the decision-making power of the Member State.

4. 2000 Council Regulation on Eurodac⁵

CHAPTER I

GENERAL PROVISIONS

Article 1

Purpose of 'Eurodac'

1. A system known as 'Eurodac' is hereby established, the purpose of which shall be to assist in determining which Member State is to be responsible pursuant to the Dublin

Convention for examining an application for asylum lodged in a Member State, and otherwise to facilitate the application of the Dublin Convention under the conditions set out in this Regulation.

2. Eurodac shall consist of:

- (a) the Central Unit referred to in Article 3;
- (b) a computerised central database in which the data referred to in Article 5(1), Article 8(2) and Article 11(2) are processed for the purpose of comparing the fingerprint data of applicants for asylum and of the categories of aliens referred to in Article 8(1) and Article 11(1);
- (c) means of data transmission between the Member States and the central database.

The rules governing Eurodac shall also apply to operations effected by the Member States as from the transmission of data to the Central Unit until use is made of the results of the comparison.

⁴ Commonly referred to as the Spanish Protocol, annexed to the Treaty of Amsterdam, which was signed on 2 October 1997 and came into force on 1 May 1999.

⁵ Council Regulation No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention.

3. Without prejudice to the use of data intended for Eurodac by the Member State of origin in databases set up under the latter's national law, fingerprint data and other personal data may be processed in Eurodac only for the purposes set out in Article 15(1) of the Dublin Convention.

Article 3 Central Unit

1. A Central Unit shall be established within the Commission which shall be responsible for operating the central database referred to in Article 1(2)(b) on behalf of the Member States. The Central Unit shall be equipped with a computerised fingerprint recognition system.

2. Data on applicants for asylum, persons covered by Article 8 and persons covered by Article 11 which are processed at the Central Unit shall be processed on behalf of the Member State of origin under the conditions set out in this Regulation.

3. The Central Unit shall draw up statistics on its work every quarter, indicating:

- (a) the number of data sets transmitted on applicants for asylum and the persons referred to in Articles 8(1) and 11(1);
- (b) the number of hits for applicants for asylum who have lodged an application for asylum in another Member State;
- (c) the number of hits for persons referred to in Article 8(1) who have subsequently lodged an application for asylum;
- (d) the number of hits for persons referred to in Article 11(1) who had previously lodged an application for asylum in another Member State;
- (e) the number of fingerprint data which the Central Unit had to request a second time from the Member States of origin because the fingerprint data originally transmitted did not lend themselves to comparison using the computerised fingerprint recognition system.

At the end of each year, statistical data shall be established in the form of a compilation of the quarterly statistics drawn up since the beginning of Eurodac's activities, including an indication of the number of persons for whom hits have been recorded under (b), (c) and (d).

The statistics shall contain a breakdown of data for each Member State.

4. Pursuant to the procedure laid down in Article 23(2), the Central Unit may be charged with carrying out certain other statistical tasks on the basis of the data processed at the Central Unit.

CHAPTER II

APPLICANTS FOR ASYLUM

Article 5(1) Recording of data

1. Only the following data shall be recorded in the central database:

- (a) Member State of origin, place and date of the application for asylum;
- (b) fingerprint data;
- (c) sex;
- (d) reference number used by the Member State of origin;
- (e) date on which the fingerprints were taken;
- (f) date on which the data were transmitted to the Central Unit;
- (g) date on which the data were entered in the central database;
- (h) details in respect of the recipient(s) of the data transmitted and the date(s) of transmission(s).

5. 2001 Council Directive on Temporary Protection⁶

CHAPTER I

General provisions

Article 1

The purpose of this Directive is to establish minimum standards for giving temporary protection in the event of a mass influx of displaced persons from third countries who are unable to return to their country of origin and to promote a balance of effort between Member States in receiving and bearing the consequences of receiving such persons.

Article 2

For the purposes of this Directive:

(a) “temporary protection” means a procedure of exceptional character to provide, in the event of a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, immediate and temporary protection to such persons, in particular if there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation, in the interests of the persons concerned and other persons requesting protection;

(b) “Geneva Convention” means the Convention of 28 July 1951 relating to the status of refugees, as amended by the New York Protocol of 31 January 1967;

(c) “displaced persons” means third-country nationals or stateless persons who have had to leave their country or region of origin, or have been evacuated, in particular in response to an appeal by international organisations, and are unable to return in safe and durable conditions because of the situation prevailing in that country, who may fall within the scope of Article 1A of the Geneva Convention or other international or national instruments giving international protection, in particular:

(i) persons who have fled areas of armed conflict or endemic violence;

(ii) persons at serious risk of, or who have been the victims of, systematic or generalised violations of their human rights;

(d) “mass influx” means arrival in the Community of a large number of displaced persons, who come from a specific country or geographical area, whether their arrival in the Community was spontaneous or aided, for example through an evacuation programme;

(...)

Article 3

1. Temporary protection shall not prejudice recognition of refugee status under the Geneva Convention.

2. Member States shall apply temporary protection with due respect for human rights and fundamental freedoms and their obligations regarding non-refoulement.

3. The establishment, implementation and termination of temporary protection shall be the subject of regular consultations with the Office of the United Nations High Commissioner for Refugees (UNHCR) and other relevant international organisations.

4. This Directive shall not apply to persons who have been accepted under temporary protection schemes prior to its entry into force.

5. This Directive shall not affect the prerogative of the Member States to adopt or retain more favourable conditions for persons covered by temporary protection.

⁶ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving protection in the event of mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (Temporary Protection Directive).

CHAPTER II

Duration and implementation of temporary protection

Article 4

1. Without prejudice to Article 6, the duration of temporary protection shall be one year. Unless terminated under the terms of Article 6(1)(b), it may be extended automatically by six monthly periods for a maximum of one year.

(...)

Article 5

1. The existence of a mass influx of displaced persons shall be established by a Council Decision adopted by a qualified majority on a proposal from the Commission, which shall also examine any request by a Member State that it submit a proposal to the Council.

2. The Commission proposal shall include at least:

- (a) a description of the specific groups of persons to whom the temporary protection will apply;
- (b) the date on which the temporary protection will take effect;
- (c) an estimation of the scale of the movements of displaced persons.

3. The Council Decision shall have the effect of introducing temporary protection for the displaced persons to which it refers, in all the Member States, in accordance with the provisions of this Directive. The Decision shall include at least:

- (a) a description of the specific groups of persons to whom the temporary protection applies;
- (b) the date on which the temporary protection will take effect;
- (c) information received from Member States on their reception capacity;
- (d) information from the Commission, UNHCR and other relevant international organisations.

4. The Council Decision shall be based on:

- (a) an examination of the situation and the scale of the movements of displaced persons;
- (b) an assessment of the advisability of establishing temporary protection, taking into account the potential for emergency aid and action on the ground or the inadequacy of such measures;
- (c) information received from the Member States, the Commission, UNHCR and other relevant international organisations.

5. The European Parliament shall be informed of the Council Decision.

Article 6

1. Temporary protection shall come to an end:

- (a) when the maximum duration has been reached; or
- (b) at any time, by Council Decision adopted by a qualified majority on a proposal from the Commission, which shall also examine any request by a Member State that it submit a proposal to the Council.

2. The Council Decision shall be based on the establishment of the fact that the situation in the country of origin is such as to permit the safe and durable return of those granted temporary protection with due respect for human rights and fundamental freedoms and Member States' obligations regarding non-refoulement. The European Parliament shall be informed of the Council Decision.

Article 7

1. Member States may extend temporary protection as provided for in this Directive to additional categories of displaced persons over and above those to whom the Council Decision provided for in Article 5 applies, where they are displaced for the same reasons and from the same country or region of origin. They shall notify the Council and the Commission immediately.

(...)

Article 17

1. Persons enjoying temporary protection must be able to lodge an application for asylum at any time.
2. The examination of any asylum application not processed before the end of the period of temporary protection shall be completed after the end of that period.

(...)

Article 19

1. The Member States may provide that temporary protection may not be enjoyed concurrently with the status of asylum seeker while applications are under consideration.
2. Where, after an asylum application has been examined, refugee status or, where applicable, other kind of protection is not granted to a person eligible for or enjoying temporary protection, the Member States shall, without prejudice to Article 28, provide for that person to enjoy or to continue to enjoy temporary protection for the remainder of the period of protection.

CHAPTER VIII

Special provisions

Article 28

1. The Member States may exclude a person from temporary protection if:
 - (a) there are serious reasons for considering that:
 - (i) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
 - (ii) he or she has committed a serious non-political crime outside the Member State of reception prior to his or her admission to that Member State as a person enjoying temporary protection. The severity of the expected persecution is to be weighed against the nature of the criminal offence of which the person concerned is suspected. Particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes. This applies both to the participants in the crime and to its instigators;
 - (iii) he or she has been guilty of acts contrary to the purposes and principles of the United Nations;
 - (b) there are reasonable grounds for regarding him or her as a danger to the security of the host Member State or, having been convicted by a final judgment of a particularly serious crime, he or she is a danger to the community of the host Member State.
2. The grounds for exclusion referred to in paragraph 1 shall be based solely on the personal conduct of the person concerned. Exclusion decisions or measures shall be based on the principle of proportionality.

6. 2003 Council Directive on the Reception of Asylum-Seekers (Reception Conditions Directive)⁷

Article 1

Purpose

The purpose of this Directive is to lay down minimum standards for the reception of asylum seekers in Member States.

(...)

Article 3

Scope

1. This Directive shall apply to all third country nationals and stateless persons who make an application for asylum at the border or in the territory of a Member State as long as they are allowed to remain on the territory as asylum seekers, as well as to family members, if they are covered by such application for asylum according to the national law.

2. This Directive shall not apply in cases of requests for diplomatic or territorial asylum submitted to representations of Member States.

3. This Directive shall not apply when the provisions of Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof⁽⁵⁾ are applied.

4. Member States may decide to apply this Directive in connection with procedures for deciding on applications for kinds of protection other than that emanating from the Geneva Convention for third-country nationals or stateless persons who are found not to be refugees.

Article 4

More favourable provisions

Member States may introduce or retain more favourable provisions in the field of reception conditions for asylum seekers and other close relatives of the applicant who are present in the same Member State when they are dependent on him or for humanitarian reasons insofar as these provisions are compatible with this Directive.

CHAPTER II

GENERAL PROVISIONS ON RECEPTION CONDITIONS

Article 5

Information

1. Member States shall inform asylum seekers, within a reasonable time not exceeding fifteen days after they have lodged their application for asylum with the competent authority, of at least any established benefits and of the obligations with which they must comply relating to reception conditions.

Member States shall ensure that applicants are provided with information on organisations or groups of persons that provide specific legal assistance and organisations that might be able to help or inform them concerning the available reception conditions, including health care.

⁷ Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum-seekers (Reception Conditions Directive).

2. Member States shall ensure that the information referred to in paragraph 1 is in writing and, as far as possible, in a language that the applicants may reasonably be supposed to understand. Where appropriate, this information may also be supplied orally.

Article 6 **Documentation**

1. Member States shall ensure that, within three days after an application is lodged with the competent authority, the applicant is provided with a document issued in his or her own name certifying his or her status as an asylum seeker or testifying that he or she is allowed to stay in the territory of the Member State while his or her application is pending or being examined.

If the holder is not free to move within all or a part of the territory of the Member State, the document shall also certify this fact.

2. Member States may exclude application of this Article when the asylum seeker is in detention and during the examination of an application for asylum made at the border or within the context of a procedure to decide on the right of the applicant legally to enter the territory of a Member State. In specific cases, during the examination of an application for asylum, Member States may provide applicants with other evidence equivalent to the document referred to in paragraph 1.

3. The document referred to in paragraph 1 need not certify the identity of the asylum seeker.

4. Member States shall adopt the necessary measures to provide asylum seekers with the document referred to in paragraph 1, which must be valid for as long as they are authorised to remain in the territory of the Member State concerned or at the border thereof.

5. Member States may provide asylum seekers with a travel document when serious humanitarian reasons arise that require their presence in another State.

Article 7 **Residence and freedom of movement**

1. Asylum seekers may move freely within the territory of the host Member State or within an area assigned to them by that Member State. The assigned area shall not affect the unalienable sphere of private life and shall allow sufficient scope for guaranteeing access to all benefits under this Directive.

2. Member States may decide on the residence of the asylum seeker for reasons of public interest, public order or, when necessary, for the swift processing and effective monitoring of his or her application.

3. When it proves necessary, for example for legal reasons or reasons of public order, Member States may confine an applicant to a particular place in accordance with their national law.

4. Member States may make provision of the material reception conditions subject to actual residence by the applicants in a specific place, to be determined by the Member States. Such a decision, which may be of a general nature, shall be taken individually and established by national legislation.

5. Member States shall provide for the possibility of granting applicants temporary permission to leave the place of residence mentioned in paragraphs 2 and 4 and/or the assigned area mentioned in paragraph 1. Decisions shall be taken individually, objectively and impartially and reasons shall be given if they are negative.

The applicant shall not require permission to keep appointments with authorities and courts if his or her appearance is necessary.

6. Member States shall require applicants to inform the competent authorities of their current address and notify any change of address to such authorities as soon as possible.

Article 8 Families

Member States shall take appropriate measures to maintain as far as possible family unity as present within their territory, if applicants are provided with housing by the Member State concerned. Such measures shall be implemented with the asylum seeker's agreement.

(...)

Article 10 Schooling and education of minors

1. Member States shall grant to minor children of asylum seekers and to asylum seekers who are minors access to the education system under similar conditions as nationals of the host Member State for so long as an expulsion measure against them or their parents is not actually enforced. Such education may be provided in accommodation centres.

(...)

Article 11 Employment

1. Member States shall determine a period of time, starting from the date on which an application for asylum was lodged, during which an applicant shall not have access to the labour market.

2. If a decision at first instance has not been taken within one year of the presentation of an application for asylum and this delay cannot be attributed to the applicant, Member States shall decide the conditions for granting access to the labour market for the applicant.

3. Access to the labour market shall not be withdrawn during appeals procedures, where an appeal against a negative decision in a regular procedure has suspensive effect, until such time as a negative decision on the appeal is notified.

4. For reasons of labour market policies, Member States may give priority to EU citizens and nationals of States parties to the Agreement on the European Economic Area and also to legally resident third-country nationals.

(...)

Article 13 General rules on material reception conditions and health care

1. Member States shall ensure that material reception conditions are available to applicants when they make their application for asylum.

2. Member States shall make provisions on material reception conditions to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence.

Member States shall ensure that that standard of living is met in the specific situation of persons who have special needs, in accordance with Article 17, as well as in relation to the situation of persons who are in detention.

3. Member States may make the provision of all or some of the material reception conditions and health care subject to the condition that applicants do not have sufficient means to have a standard of living adequate for their health and to enable their subsistence.

4. Member States may require applicants to cover or contribute to the cost of the material reception conditions and of the health care provided for in this Directive, pursuant to the provision of paragraph 3, if the applicants have sufficient resources, for example if they have been working for a reasonable period of time.

If it transpires that an applicant had sufficient means to cover material reception conditions and health care at the time when these basic needs were being covered, Member States may ask the asylum seeker for a refund.

5. Material reception conditions may be provided in kind, or in the form of financial allowances or vouchers or in a combination of these provisions.

Where Member States provide material reception conditions in the form of financial allowances or vouchers, the amount thereof shall be determined in accordance with the principles set out in this Article.

(...)

Article 15 **Health care**

1. Member States shall ensure that applicants receive the necessary health care which shall include, at least, emergency care and essential treatment of illness.

2. Member States shall provide necessary medical or other assistance to applicants who have special needs.

Article 16– Reduction or withdrawal of reception conditions

1. Member States may reduce or withdraw reception conditions in the following cases:

(a) where an asylum seeker:

- abandons the place of residence determined by the competent authority without informing it or, if requested, without permission, or

- does not comply with reporting duties or with requests to provide information or to appear for personal interviews concerning the asylum procedure during a reasonable period laid down in national law, or

- has already lodged an application in the same Member State.

When the applicant is traced or voluntarily reports to the competent authority, a duly motivated decision, based on the reasons for the disappearance, shall be taken on the reinstatement of the grant of some or all of the reception conditions;

(b) where an applicant has concealed financial resources and has therefore unduly benefited from material reception conditions.

If it transpires that an applicant had sufficient means to cover material reception conditions and health care at the time when these basic needs were being covered, Member States may ask the asylum seeker for a refund.

2. Member States may refuse conditions in cases where an asylum seeker has failed to demonstrate that the asylum claim was made as soon as reasonably practicable after arrival in that Member State.

3. Member States may determine sanctions applicable to serious breaching of the rules of the accommodation centres as well as to seriously violent behaviour.

4. Decisions for reduction, withdrawal or refusal of reception conditions or sanctions referred to in paragraphs 1, 2 and 3 shall be taken individually, objectively and impartially and reasons shall be given. Decisions shall be based on the particular situation of the person concerned, especially with regard to persons covered by Article 17, taking into account the principle of proportionality. Member States shall under all circumstances ensure access to emergency health care.

5. Member States shall ensure that material reception conditions are not withdrawn or reduced before a negative decision is taken.

(...)

Article 19 Unaccompanied minors

1. Member States shall as soon as possible take measures to ensure the necessary representation of unaccompanied minors by legal guardianship or, where necessary, representation by an organisation which is responsible for the care and well-being of minors, or by any other appropriate representation. Regular assessments shall be made by the appropriate authorities.

2. Unaccompanied minors who make an application for asylum shall, from the moment they are admitted to the territory to the moment they are obliged to leave the host Member State in which the application for asylum was made or is being examined, be placed:

- (a) with adult relatives;
- (b) with a foster-family;
- (c) in accommodation centres with special provisions for minors;
- (d) in other accommodation suitable for minors.

Member States may place unaccompanied minors aged 16 or over in accommodation centres for adult asylum seekers.

As far as possible, siblings shall be kept together, taking into account the best interests of the minor concerned and, in particular, his or her age and degree of maturity. Changes of residence of unaccompanied minors shall be limited to a minimum.

3. Member States, protecting the unaccompanied minor's best interests, shall endeavour to trace the members of his or her family as soon as possible. In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis, so as to avoid jeopardising their safety.

4. Those working with unaccompanied minors shall have had or receive appropriate training concerning their needs, and shall be bound by the confidentiality principle as defined in the national law, in relation to any information they obtain in the course of their work.

(...)

7. **2003 Council Regulation on the Criteria and Mechanisms for Determining the Member State responsible for Examining an Asylum Application (Dublin II Regulation)**⁸

CHAPTER II

GENERAL PRINCIPLES

Article 3

1. Member States shall examine the application of any third-country national who applies at the border or in their territory to any one of them for asylum. The application shall be examined by a single Member State, which shall be the one which the criteria set out in Chapter III indicate is responsible.

⁸ Council Regulation No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (Dublin II Regulation).

2. By way of derogation from paragraph 1, each Member State may examine an application for asylum lodged with it by a third-country national, even if such examination is not its responsibility under the criteria laid down in this Regulation. In such an event, that Member State shall become the Member State responsible within the meaning of this Regulation and shall assume the obligations associated with that responsibility. Where appropriate, it shall inform the Member State previously responsible, the Member State conducting a procedure for determining the Member State responsible or the Member State which has been requested to take charge of or take back the applicant.

3. Any Member State shall retain the right, pursuant to its national laws, to send an asylum seeker to a third country, in compliance with the provisions of the Geneva Convention.

4. The asylum seeker shall be informed in writing in a language that he or she may reasonably be expected to understand regarding the application of this Regulation, its time limits and its effects.

Article 4

1. The process of determining the Member State responsible under this Regulation shall start as soon as an application for asylum is first lodged with a Member State.

2. An application for asylum shall be deemed to have been lodged once a form submitted by the applicant for asylum or a report prepared by the authorities has reached the competent authorities of the Member State concerned. Where an application is not made in writing, the time elapsing between the statement of intention and the preparation of a report should be as short as possible.

3. For the purposes of this Regulation, the situation of a minor who is accompanying the asylum seeker and meets the definition of a family member set out in Article 2, point (i), shall be indissociable from that of his parent or guardian and shall be a matter for the Member State responsible for examining the application for asylum of that parent or guardian, even if the minor is not individually an asylum seeker. The same treatment shall be applied to children born after the asylum seeker arrives in the territory of the Member States, without the need to initiate a new procedure for taking charge of them.

4. Where an application for asylum is lodged with the competent authorities of a Member State by an applicant who is in the territory of another Member State, the determination of the Member State responsible shall be made by the Member State in whose territory the applicant is present. The latter Member State shall be informed without delay by the Member State which received the application and shall then, for the purposes of this Regulation, be regarded as the Member State with which the application for asylum was lodged.

The applicant shall be informed in writing of this transfer and of the date on which it took place.

5. An asylum seeker who is present in another Member State and there lodges an application for asylum after withdrawing his application during the process of determining the Member State responsible shall be taken back, under the conditions laid down in Article 20, by the Member State with which that application for asylum was lodged, with a view to completing the process of determining the Member State responsible for examining the application for asylum.

This obligation shall cease, if the asylum seeker has in the meantime left the territories of the Member States for a period of at least three months or has obtained a residence document from a Member State.

CHAPTER III

HIERARCHY OF CRITERIA

Article 5

1. The criteria for determining the Member State responsible shall be applied in the order in which they are set out in this Chapter.

2. The Member State responsible in accordance with the criteria shall be determined on the basis of the situation obtaining when the asylum seeker first lodged his application with a Member State.

Article 6

Where the applicant for asylum is an unaccompanied minor, the Member State responsible for examining the application shall be that where a member of his or her family is legally present, provided that this is in the best interest of the minor.

In the absence of a family member, the Member State responsible for examining the application shall be that where the minor has lodged his or her application for asylum.

Article 7

Where the asylum seeker has a family member, regardless of whether the family was previously formed in the country of origin, who has been allowed to reside as a refugee in a Member State, that Member State shall be responsible for examining the application for asylum, provided that the persons concerned so desire.

(...)

Article 9

1. Where the asylum seeker is in possession of a valid residence document, the Member State which issued the document shall be responsible for examining the application for asylum.

2. Where the asylum seeker is in possession of a valid visa, the Member State which issued the visa shall be responsible for examining the application for asylum, unless the visa was issued when acting for or on the written authorisation of another Member State. In such a case, the latter Member State shall be responsible for examining the application for asylum. Where a Member State first consults the central authority of another Member State, in particular for security reasons, the latter's reply to the consultation shall not constitute written authorisation within the meaning of this provision.

(...)

Article 10

1. Where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article 18(3), including the data referred to in Chapter III of Regulation (EC) No 2725/2000, that an asylum seeker has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the Member State thus entered shall be responsible for examining the application for asylum. This responsibility shall cease 12 months after the date on which the irregular border crossing took place.

(...)

Article 12

Where the application for asylum is made in an international transit area of an airport of a Member State by a third-country national, that Member State shall be responsible for examining the application.

(...)

CHAPTER V**TAKING CHARGE AND TAKING BACK****Article 16**

1. The Member State responsible for examining an application for asylum under this Regulation shall be obliged to:

(a) take charge, under the conditions laid down in Articles 17 to 19, of an asylum seeker who has lodged an application in a different Member State;

- (b) complete the examination of the application for asylum;
- (c) take back, under the conditions laid down in Article 20, an applicant whose application is under examination and who is in the territory of another Member State without permission;
- (d) take back, under the conditions laid down in Article 20, an applicant who has withdrawn the application under examination and made an application in another Member State;
- (e) take back, under the conditions laid down in Article 20, a third-country national whose application it has rejected and who is in the territory of another Member State without permission.

2. Where a Member State issues a residence document to the applicant, the obligations specified in paragraph 1 shall be transferred to that Member State.

3. The obligations specified in paragraph 1 shall cease where the third-country national has left the territory of the Member States for at least three months, unless the third-country national is in possession of a valid residence document issued by the Member State responsible.

4. The obligations specified in paragraph 1(d) and (e) shall likewise cease once the Member State responsible for examining the application has adopted and actually implemented, following the withdrawal or rejection of the application, the provisions that are necessary before the third-country national can go to his country of origin or to another country to which he may lawfully travel.

Article 17

1. Where a Member State with which an application for asylum has been lodged considers that another Member State is responsible for examining the application, it may, as quickly as possible and in any case within three months of the date on which the application was lodged within the meaning of Article 4(2), call upon the other Member State to take charge of the applicant.

Where the request to take charge of an applicant is not made within the period of three months, responsibility for examining the application for asylum shall lie with the Member State in which the application was lodged.

2. The requesting Member State may ask for an urgent reply in cases where the application for asylum was lodged after leave to enter or remain was refused, after an arrest for an unlawful stay or after the service or execution of a removal order and/or where the asylum seeker is held in detention.

(...)

CHAPTER VI

ADMINISTRATIVE COOPERATION

Article 21

1. Each Member State shall communicate to any Member State that so requests such personal data concerning the asylum seeker as is appropriate, relevant and non-excessive for:

- (a) the determination of the Member State responsible for examining the application for asylum;
- (b) examining the application for asylum;
- (c) implementing any obligation arising under this Regulation.

2. The information referred to in paragraph 1 may only cover:

- (a) personal details of the applicant, and, where appropriate, the members of his family (full name and where appropriate, former name; nicknames or pseudonyms; nationality, present and former; date and place of birth);
- (b) identity and travel papers (references, validity, date of issue, issuing authority, place of issue, etc.);
- (c) other information necessary for establishing the identity of the applicant, including fingerprints processed in accordance with Regulation (EC) No 2725/2000;
- (d) places of residence and routes travelled;
- (e) residence documents or visas issued by a Member State;

- (f) the place where the application was lodged;
- (g) the date any previous application for asylum was lodged, the date the present application was lodged, the stage reached in the proceedings and the decision taken, if any.

(...)

8. 2004 Council Directive on Qualification and Status as Refugees or Persons otherwise in Need of International Protection⁹

CHAPTER I

GENERAL PROVISIONS

Article 1 Purpose

The purpose of this Directive is to lay down minimum standards for the qualification of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

(...)

Article 3 More favourable standards

Member States may introduce or retain more favourable standards for determining who qualifies as a refugee or as a person eligible for subsidiary protection, and for determining the content of international protection, in so far as those standards are compatible with this Directive.

(...)

CHAPTER III

QUALIFICATION FOR BEING A REFUGEE

Article 9 Acts of Persecution

1. Acts of persecution within the meaning of article 1 A of the Geneva Convention must:

- (a) be sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or
- (b) be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in (a).

2. Acts of persecution as qualified in paragraph 1, can, inter alia, take the form of:

- (a) acts of physical or mental violence, including acts of sexual violence;
- (b) legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;
- (c) prosecution or punishment, which is disproportionate or discriminatory;

⁹ Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (Qualification Directive).

- (d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;
- (e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under the exclusion clauses as set out in Article 12(2);
- (f) acts of a gender-specific or child-specific nature.

3. In accordance with Article 2(c), there must be a connection between the reasons mentioned in Article 10 and the acts of persecution as qualified in paragraph 1.

Article 10 **Reasons for Persecution**

1. Member States shall take the following elements into account when assessing the reasons for persecution:

- (a) the concept of race shall in particular include considerations of colour, descent, or membership of a particular ethnic group;
- (b) the concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;
- (c) the concept of nationality shall not be confined to citizenship or lack thereof but shall in particular include membership of a group determined by its cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State;
- (d) a group shall be considered to form a particular social group where in particular:

members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and

that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society;

depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the Member States: Gender related aspects might be considered, without by themselves alone creating a presumption for the applicability of this Article;

- (e) the concept of political opinion shall in particular include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution mentioned in Article 6 and to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the applicant.

2. When assessing if an applicant has a well-founded fear of being persecuted it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution.

Article 11 **Cessation**

1. A third country national or a stateless person shall cease to be a refugee, if he or she:

- (a) has voluntarily re-availed himself or herself of the protection of the country of nationality; or
- (b) having lost his or her nationality, has voluntarily re-acquired it; or
- (c) has acquired a new nationality, and enjoys the protection of the country of his or her new nationality; or
- (d) has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to fear of persecution; or
- (e) can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of nationality;
- (f) being a stateless person with no nationality, he or she is able, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, to return to the country of former habitual residence.

2. In considering points (e) and (f) of paragraph 1, Member States shall have regard to whether the change of circumstances is of such a significant and non-temporary nature that the refugee's fear of persecution can no longer be regarded as well-founded.

Article 12

Exclusion

1. A third country national or a stateless person is excluded from being a refugee, if:

(a) he or she falls within the scope of Article 1 D of the Geneva Convention, relating to protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees. When such protection or assistance has ceased for any reason, without the position of such persons being definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Directive;

(b) he or she is recognised by the competent authorities of the country in which he or she has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country; or rights and obligations equivalent to those.

2. A third country national or a stateless person is excluded from being a refugee where there are serious reasons for considering that:

(a) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) he or she has committed a serious non-political crime outside the country of refuge prior to his or her admission as a refugee; which means the time of issuing a residence permit based on the granting of refugee status; particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes;

(c) he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations.

3. Paragraph 2 applies to persons who instigate or otherwise participate in the commission of the crimes or acts mentioned therein.

CHAPTER IV

REFUGEE STATUS

Article 13

Granting of refugee status

Member States shall grant refugee status to a third country national or a stateless person, who qualifies as a refugee in accordance with Chapters II and III.

Article 14

Revocation of, ending of or refusal to renew refugee status

1. Concerning applications for international protection filed after the entry into force of this Directive, Member States shall revoke, end or refuse to renew the refugee status of a third country national or a stateless person granted by a governmental, administrative, judicial or quasi-judicial body, if he or she has ceased to be a refugee in accordance with Article 11.

2. Without prejudice to the duty of the refugee in accordance with Article 4(1) to disclose all relevant facts and provide all relevant documentation at his/her disposal, the Member State, which has granted refugee status, shall on an individual basis demonstrate that the person concerned has ceased to be or has never been a refugee in accordance with paragraph 1 of this Article.

3. Member States shall revoke, end or refuse to renew the refugee status of a third country national or a stateless person, if, after he or she has been granted refugee status, it is established by the Member State concerned that:

- (a) he or she should have been or is excluded from being a refugee in accordance with Article 12;
- (b) his or her misrepresentation or omission of facts, including the use of false documents, were decisive for the granting of refugee status.

4. Member States may revoke, end or refuse to renew the status granted to a refugee by a governmental, administrative, judicial or quasi-judicial body, when:

- (a) there are reasonable grounds for regarding him or her as a danger to the security of the Member State in which he or she is present;
- (b) he or she, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that Member State.

5. In situations described in paragraph 4, Member States may decide not to grant status to a refugee, where such a decision has not yet been taken.

6. Persons to whom paragraphs 4 or 5 apply are entitled to rights set out in or similar to those set out in Articles 3, 4, 16, 22, 31 and 32 and 33 of the Geneva Convention in so far as they are present in the Member State.

CHAPTER V

QUALIFICATION FOR SUBSIDIARY PROTECTION

Article 15 Serious Harm

Serious harm consists of:

- (a) death penalty or execution; or
- (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or
- (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

(...)

CHAPTER VI

SUBSIDIARY PROTECTION STATUS

Article 18 Granting of subsidiary protection status

Member States shall grant subsidiary protection status to a third country national or a stateless person eligible for subsidiary protection in accordance with Chapters II and V.

(...)

Article 21 Protection from refoulement

1. Member States shall respect the principle of non-refoulement in accordance with their international obligations.
2. Where not prohibited by the international obligations mentioned in paragraph 1, Member States may refoule a refugee, whether formally recognised or not, when:

- (a) there are reasonable grounds for considering him or her as a danger to the security of the Member State in which he or she is present; or

(b) he or she, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that Member State.

3. Member States may revoke, end or refuse to renew or to grant the residence permit of (or to) a refugee to whom paragraph 2 applies.

9. 2005 Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status (Asylum Procedures Directive)¹⁰

CHAPTER I

GENERAL PROVISIONS

Article 1 Purpose

The purpose of this Directive is to establish minimum standards on procedures in Member States for granting and withdrawing refugee status.

(...)

Article 3 Scope

1. This Directive shall apply to all applications for asylum made in the territory, including at the border or in the transit zones of the Member States, and to the withdrawal of refugee status.

2. This Directive shall not apply in cases of requests for diplomatic or territorial asylum submitted to representations of Member States.

3. Where Member States employ or introduce a procedure in which asylum applications are examined both as applications on the basis of the Geneva Convention and as applications for other kinds of international protection given under the circumstances defined by Article 15 of Directive 2004/83/EC, they shall apply this Directive throughout their procedure.

4. Moreover, Member States may decide to apply this Directive in procedures for deciding on applications for any kind of international protection.

(...)

Article 5 More favourable provisions

Member States may introduce or maintain more favourable standards on procedures for granting and withdrawing refugee status, insofar as those standards are compatible with this Directive.

¹⁰ Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (Asylum Procedures Directive).

CHAPTER II

BASIC PRINCIPLES AND GUARANTEES

Article 6

Access to the procedure

1. Member States may require that applications for asylum be made in person and/or at a designated place.
2. Member States shall ensure that each adult having legal capacity has the right to make an application for asylum on his/her own behalf.
3. Member States may provide that an application may be made by an applicant on behalf of his/her dependants. In such cases Member States shall ensure that dependant adults consent to the lodging of the application on their behalf, failing which they shall have an opportunity to make an application on their own behalf.

Consent shall be requested at the time the application is lodged or, at the latest, when the personal interview with the dependant adult is conducted.

4. Member States may determine in national legislation:

- (a) the cases in which a minor can make an application on his/her own behalf;
- (b) the cases in which the application of an unaccompanied minor has to be lodged by a representative as provided for in Article 17(1)(a);
- (c) the cases in which the lodging of an application for asylum is deemed to constitute also the lodging of an application for asylum for any unmarried minor.

5. Member States shall ensure that authorities likely to be addressed by someone who wishes to make an application for asylum are able to advise that person how and where he/she may make such an application and/or may require these authorities to forward the application to the competent authority.

Article 7

Right to remain in the Member State pending the examination of the application

1. Applicants shall be allowed to remain in the Member State, for the sole purpose of the procedure, until the determining authority has made a decision in accordance with the procedures at first instance set out in Chapter III. This right to remain shall not constitute an entitlement to a residence permit.

2. Member States can make an exception only where, in accordance with Articles 32 and 34, a subsequent application will not be further examined or where they will surrender or extradite, as appropriate, a person either to another Member State pursuant to obligations in accordance with a European arrest warrant [6] or otherwise, or to a third country, or to international criminal courts or tribunals.

Article 8

Requirements for the examination of applications

1. Without prejudice to Article 23(4)(i), Member States shall ensure that applications for asylum are neither rejected nor excluded from examination on the sole ground that they have not been made as soon as possible.

2. Member States shall ensure that decisions by the determining authority on applications for asylum are taken after an appropriate examination. To that end, Member States shall ensure that:

- (a) applications are examined and decisions are taken individually, objectively and impartially;
- (b) precise and up-to-date information is obtained from various sources, such as the United Nations High Commissioner for Refugees (UNHCR), as to the general situation prevailing in the countries of origin of applicants for asylum and, where necessary, in countries through which they have transited, and that such information is made available to the personnel responsible for examining applications and taking decisions;

(c) the personnel examining applications and taking decisions have the knowledge with respect to relevant standards applicable in the field of asylum and refugee law.

(...)

Article 9

Requirements for a decision by the determining authority

1. Member States shall ensure that decisions on applications for asylum are given in writing.
2. Member States shall also ensure that, where an application is rejected, the reasons in fact and in law are stated in the decision and information on how to challenge a negative decision is given in writing.

Member States need not state the reasons for not granting refugee status in a decision where the applicant is granted a status which offers the same rights and benefits under national and Community law as the refugee status by virtue of Directive 2004/83/EC. In these cases, Member States shall ensure that the reasons for not granting refugee status are stated in the applicant's file and that the applicant has, upon request, access to his/her file.

Moreover, Member States need not provide information on how to challenge a negative decision in writing in conjunction with a decision where the applicant has been provided with this information at an earlier stage either in writing or by electronic means accessible to the applicant.

3. For the purposes of Article 6(3), and whenever the application is based on the same grounds, Member States may take one single decision, covering all dependants.

Article 10

Guarantees for applicants for asylum

1. With respect to the procedures provided for in Chapter III, Member States shall ensure that all applicants for asylum enjoy the following guarantees:

(a) they shall be informed in a language which they may reasonably be supposed to understand of the procedure to be followed and of their rights and obligations during the procedure and the possible consequences of not complying with their obligations and not cooperating with the authorities. They shall be informed of the time-frame, as well as the means at their disposal for fulfilling the obligation to submit the elements as referred to in Article 4 of Directive 2004/83/EC. This information shall be given in time to enable them to exercise the rights guaranteed in this Directive and to comply with the obligations described in Article 11;

(b) they shall receive the services of an interpreter for submitting their case to the competent authorities whenever necessary. Member States shall consider it necessary to give these services at least when the determining authority calls upon the applicant to be interviewed as referred to in Articles 12 and 13 and appropriate communication cannot be ensured without such services. In this case and in other cases where the competent authorities call upon the applicant, these services shall be paid for out of public funds;

(c) they shall not be denied the opportunity to communicate with the UNHCR or with any other organisation working on behalf of the UNHCR in the territory of the Member State pursuant to an agreement with that Member State;

(d) they shall be given notice in reasonable time of the decision by the determining authority on their application for asylum. If a legal adviser or other counsellor is legally representing the applicant, Member States may choose to give notice of the decision to him/her instead of to the applicant for asylum;

(e) they shall be informed of the result of the decision by the determining authority in a language that they may reasonably be supposed to understand when they are not assisted or represented by a legal adviser or other counsellor and when free legal assistance is not available. The information provided shall include information on how to challenge a negative decision in accordance with the provisions of Article 9(2).

2. With respect to the procedures provided for in Chapter V, Member States shall ensure that all applicants for asylum enjoy equivalent guarantees to the ones referred to in paragraph 1(b), (c) and (d) of this Article.

Article 11

Obligations of the applicants for asylum

1. Member States may impose upon applicants for asylum obligations to cooperate with the competent authorities insofar as these obligations are necessary for the processing of the application.

2. In particular, Member States may provide that:

- (a) applicants for asylum are required to report to the competent authorities or to appear before them in person, either without delay or at a specified time;
- (b) applicants for asylum have to hand over documents in their possession relevant to the examination of the application, such as their passports;
- (c) applicants for asylum are required to inform the competent authorities of their current place of residence or address and of any changes thereof as soon as possible. Member States may provide that the applicant shall have to accept any communication at the most recent place of residence or address which he/she indicated accordingly;
- (d) the competent authorities may search the applicant and the items he/she carries with him/her;
- (e) the competent authorities may take a photograph of the applicant; and
- (f) the competent authorities may record the applicant's oral statements, provided he/she has previously been informed thereof.

Article 12

Personal interview

1. Before a decision is taken by the determining authority, the applicant for asylum shall be given the opportunity of a personal interview on his/her application for asylum with a person competent under national law to conduct such an interview.

Member States may also give the opportunity of a personal interview to each dependant adult referred to in Article 6(3).

Member States may determine in national legislation the cases in which a minor shall be given the opportunity of a personal interview.

(...)

Article 15

Right to legal assistance and representation

1. Member States shall allow applicants for asylum the opportunity, at their own cost, to consult in an effective manner a legal adviser or other counsellor, admitted or permitted as such under national law, on matters relating to their asylum applications.

2. In the event of a negative decision by a determining authority, Member States shall ensure that free legal assistance and/or representation be granted on request, subject to the provisions of paragraph 3.

3. Member States may provide in their national legislation that free legal assistance and/or representation is granted:

- (a) only for procedures before a court or tribunal in accordance with Chapter V and not for any onward appeals or reviews provided for under national law, including a rehearing of an appeal following an onward appeal or review; and/or
- (b) only to those who lack sufficient resources; and/or
- (c) only to legal advisers or other counsellors specifically designated by national law to assist and/or represent applicants for asylum; and/or
- (d) only if the appeal or review is likely to succeed.

Member States shall ensure that legal assistance and/or representation granted under point (d) is not arbitrarily restricted.

4. Rules concerning the modalities for filing and processing requests for legal assistance and/or representation may be provided by Member States.

5. Member States may also:

- (a) impose monetary and/or time-limits on the provision of free legal assistance and/or representation, provided that such limits do not arbitrarily restrict access to legal assistance and/or representation;
- (b) provide that, as regards fees and other costs, the treatment of applicants shall not be more favourable than the treatment generally accorded to their nationals in matters pertaining to legal assistance.

6. Member States may demand to be reimbursed wholly or partially for any expenses granted if and when the applicant's financial situation has improved considerably or if the decision to grant such benefits was taken on the basis of false information supplied by the applicant.

Article 17

Guarantees for unaccompanied minors

1. With respect to all procedures provided for in this Directive and without prejudice to the provisions of Articles 12 and 14, Member States shall:

- (a) as soon as possible take measures to ensure that a representative represents and/or assists the unaccompanied minor with respect to the examination of the application. This representative can also be the representative referred to in Article 19 of Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers [7];
- (b) ensure that the representative is given the opportunity to inform the unaccompanied minor about the meaning and possible consequences of the personal interview and, where appropriate, how to prepare himself/herself for the personal interview. Member States shall allow the representative to be present at that interview and to ask questions or make comments, within the framework set by the person who conducts the interview.

Member States may require the presence of the unaccompanied minor at the personal interview, even if the representative is present.

(...)

4. Member States shall ensure that:

- (a) if an unaccompanied minor has a personal interview on his/her application for asylum as referred to in Articles 12, 13 and 14, that interview is conducted by a person who has the necessary knowledge of the special needs of minors;
- (b) an official with the necessary knowledge of the special needs of minors prepares the decision by the determining authority on the application of an unaccompanied minor.

(...)

6. The best interests of the child shall be a primary consideration for Member States when implementing this Article.

(...)

Article 21

The role of UNHCR

1. Member States shall allow the UNHCR:

- (a) to have access to applicants for asylum, including those in detention and in airport or port transit zones;
- (b) to have access to information on individual applications for asylum, on the course of the procedure and on the decisions taken, provided that the applicant for asylum agrees thereto;
- (c) to present its views, in the exercise of its supervisory responsibilities under Article 35 of the Geneva Convention, to any competent authorities regarding individual applications for asylum at any stage of the procedure.

(...)

CHAPTER III

PROCEDURES AT FIRST INSTANCE

SECTION I

Article 23

Examination procedure

1. Member States shall process applications for asylum in an examination procedure in accordance with the basic principles and guarantees of Chapter II.

2. Member States shall ensure that such a procedure is concluded as soon as possible, without prejudice to an adequate and complete examination.

Member States shall ensure that, where a decision cannot be taken within six months, the applicant concerned shall either:

(a) be informed of the delay; or

(b) receive, upon his/her request, information on the time-frame within which the decision on his/her application is to be expected. Such information shall not constitute an obligation for the Member State towards the applicant concerned to take a decision within that time-frame.

3. Member States may prioritise or accelerate any examination in accordance with the basic principles and guarantees of Chapter II, including where the application is likely to be well-founded or where the applicant has special needs.

4. Member States may also provide that an examination procedure in accordance with the basic principles and guarantees of Chapter II be prioritised or accelerated if:

(a) the applicant, in submitting his/her application and presenting the facts, has only raised issues that are not relevant or of minimal relevance to the examination of whether he/she qualifies as a refugee by virtue of Directive 2004/83/EC; or

(b) the applicant clearly does not qualify as a refugee or for refugee status in a Member State under Directive 2004/83/EC; or

(c) the application for asylum is considered to be unfounded:

(i) because the applicant is from a safe country of origin within the meaning of Articles 29, 30 and 31, or

(ii) because the country which is not a Member State, is considered to be a safe third country for the applicant, without prejudice to Article 28(1); or

(d) the applicant has misled the authorities by presenting false information or documents or by withholding relevant information or documents with respect to his/her identity and/or nationality that could have had a negative impact on the decision; or

(e) the applicant has filed another application for asylum stating other personal data; or

(f) the applicant has not produced information establishing with a reasonable degree of certainty his/her identity or nationality, or it is likely that, in bad faith, he/she has destroyed or disposed of an identity or travel document that would have helped establish his/her identity or nationality; or

(g) the applicant has made inconsistent, contradictory, improbable or insufficient representations which make his/her claim clearly unconvincing in relation to his/her having been the object of persecution referred to in Directive 2004/83/EC; or

(h) the applicant has submitted a subsequent application which does not raise any relevant new elements with respect to his/her particular circumstances or to the situation in his/her country of origin; or

(i) the applicant has failed without reasonable cause to make his/her application earlier, having had opportunity to do so; or

(j) the applicant is making an application merely in order to delay or frustrate the enforcement of an earlier or imminent decision which would result in his/her removal; or

(k) the applicant has failed without good reason to comply with obligations referred to in Article 4(1) and (2) of Directive 2004/83/EC or in Articles 11(2)(a) and (b) and 20(1) of this Directive; or

- (l) the applicant entered the territory of the Member State unlawfully or prolonged his/her stay unlawfully and, without good reason, has either not presented himself/herself to the authorities and/or filed an application for asylum as soon as possible, given the circumstances of his/her entry; or
- (m) the applicant is a danger to the national security or public order of the Member State, or the applicant has been forcibly expelled for serious reasons of public security and public order under national law; or
- (n) the applicant refuses to comply with an obligation to have his/her fingerprints taken in accordance with relevant Community and/or national legislation; or
- (o) the application was made by an unmarried minor to whom Article 6(4)(c) applies, after the application of the parents or parent responsible for the minor has been rejected and no relevant new elements were raised with respect to his/her particular circumstances or to the situation in his/her country of origin.

(...)

SECTION II

Article 25 Inadmissible applications

1. In addition to cases in which an application is not examined in accordance with Regulation (EC) No 343/2003, Member States are not required to examine whether the applicant qualifies as a refugee in accordance with Directive 2004/83/EC where an application is considered inadmissible pursuant to this Article.
2. Member States may consider an application for asylum as inadmissible pursuant to this Article if:
 - (a) another Member State has granted refugee status;
 - (b) a country which is not a Member State is considered as a first country of asylum for the applicant, pursuant to Article 26;
 - (c) a country which is not a Member State is considered as a safe third country for the applicant, pursuant to Article 27;
 - (d) the applicant is allowed to remain in the Member State concerned on some other grounds and as result of this he/she has been granted a status equivalent to the rights and benefits of the refugee status by virtue of Directive 2004/83/EC;
 - (e) the applicant is allowed to remain in the territory of the Member State concerned on some other grounds which protect him/her against refoulement pending the outcome of a procedure for the determination of status pursuant to point (d);
 - (f) the applicant has lodged an identical application after a final decision;
 - (g) a dependant of the applicant lodges an application, after he/she has in accordance with Article 6(3) consented to have his/her case be part of an application made on his/her behalf, and there are no facts relating to the dependant's situation, which justify a separate application.

Article 26 The concept of first country of asylum

A country can be considered to be a first country of asylum for a particular applicant for asylum if:

- (a) he/she has been recognised in that country as a refugee and he/she can still avail himself/herself of that protection; or
- (b) he/she otherwise enjoys sufficient protection in that country, including benefiting from the principle of non-refoulement;

provided that he/she will be re-admitted to that country.

In applying the concept of first country of asylum to the particular circumstances of an applicant for asylum Member States may take into account Article 27(1).

Article 27

The safe third country concept

1. Member States may apply the safe third country concept only where the competent authorities are satisfied that a person seeking asylum will be treated in accordance with the following principles in the third country concerned:

- (a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;
- (b) the principle of non-refoulement in accordance with the Geneva Convention is respected;
- (c) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected; and
- (d) the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention.

2. The application of the safe third country concept shall be subject to rules laid down in national legislation, including:

- (a) rules requiring a connection between the person seeking asylum and the third country concerned on the basis of which it would be reasonable for that person to go to that country;
- (b) rules on the methodology by which the competent authorities satisfy themselves that the safe third country concept may be applied to a particular country or to a particular applicant. Such methodology shall include case-by-case consideration of the safety of the country for a particular applicant and/or national designation of countries considered to be generally safe;
- (c) rules in accordance with international law, allowing an individual examination of whether the third country concerned is safe for a particular applicant which, as a minimum, shall permit the applicant to challenge the application of the safe third country concept on the grounds that he/she would be subjected to torture, cruel, inhuman or degrading treatment or punishment.

3. When implementing a decision solely based on this Article, Member States shall:

- (a) inform the applicant accordingly; and
- (b) provide him/her with a document informing the authorities of the third country, in the language of that country, that the application has not been examined in substance.

4. Where the third country does not permit the applicant for asylum to enter its territory, Member States shall ensure that access to a procedure is given in accordance with the basic principles and guarantees described in Chapter II.5. Member States shall inform the Commission periodically of the countries to which this concept is applied in accordance with the provisions of this Article.

SECTION III

Article 28

Unfounded applications

1. Without prejudice to Articles 19 and 20, Member States may only consider an application for asylum as unfounded if the determining authority has established that the applicant does not qualify for refugee status pursuant to Directive 2004/83/EC.

2. In the cases mentioned in Article 23(4)(b) and in cases of unfounded applications for asylum in which any of the circumstances listed in Article 23(4)(a) and (c) to (o) apply, Member States may also consider an application as manifestly unfounded, where it is defined as such in the national legislation.

Article 29

Minimum common list of third countries regarded as safe countries of origin

1. The Council shall, acting by a qualified majority on a proposal from the Commission and after consultation of the European Parliament, adopt a minimum common list of third countries which shall be regarded by Member States as safe countries of origin in accordance with Annex II.

2. The Council may, acting by a qualified majority on a proposal from the Commission and after consultation of the European Parliament, amend the minimum common list by adding or removing third countries, in accordance with Annex II. The Commission shall examine any request made by the Council or by a Member State to submit a proposal to amend the minimum common list.
3. When making its proposal under paragraphs 1 or 2, the Commission shall make use of information from the Member States, its own information and, where necessary, information from UNHCR, the Council of Europe and other relevant international organisations.
4. Where the Council requests the Commission to submit a proposal for removing a third country from the minimum common list, the obligation of Member States pursuant to Article 31(2) shall be suspended with regard to this third country as of the day following the Council decision requesting such a submission.
5. Where a Member State requests the Commission to submit a proposal to the Council for removing a third country from the minimum common list, that Member State shall notify the Council in writing of the request made to the Commission. The obligation of this Member State pursuant to Article 31(2) shall be suspended with regard to the third country as of the day following the notification to the Council.
6. The European Parliament shall be informed of the suspensions under paragraphs 4 and 5.
7. The suspensions under paragraphs 4 and 5 shall end after three months, unless the Commission makes a proposal before the end of this period, to withdraw the third country from the minimum common list. The suspensions shall in any case end where the Council rejects a proposal by the Commission to withdraw the third country from the list.
8. Upon request by the Council, the Commission shall report to the European Parliament and the Council on whether the situation of a country on the minimum common list is still in conformity with Annex II. When presenting its report, the Commission may make such recommendations or proposals as it deems appropriate.

Article 30

National designation of third countries as safe countries of origin

1. Without prejudice to Article 29, Member States may retain or introduce legislation that allows, in accordance with Annex II, for the national designation of third countries other than those appearing on the minimum common list, as safe countries of origin for the purposes of examining applications for asylum. This may include designation of part of a country as safe where the conditions in Annex II are fulfilled in relation to that part.
2. By derogation from paragraph 1, Member States may retain legislation in force on 1 December 2005 that allows for the national designation of third countries, other than those appearing on the minimum common list, as safe countries of origin for the purposes of examining applications for asylum where they are satisfied that persons in the third countries concerned are generally neither subject to:
 - (a) persecution as defined in Article 9 of Directive 2004/83/EC; nor
 - (b) torture or inhuman or degrading treatment or punishment.
3. Member States may also retain legislation in force on 1 December 2005 that allows for the national designation of part of a country as safe, or a country or part of a country as safe for a specified group of persons in that country, where the conditions in paragraph 2 are fulfilled in relation to that part or group.
4. In assessing whether a country is a safe country of origin in accordance with paragraphs 2 and 3, Member States shall have regard to the legal situation, the application of the law and the general political circumstances in the third country concerned.
5. The assessment of whether a country is a safe country of origin in accordance with this Article shall be based on a range of sources of information, including in particular information from other Member States, the UNHCR, the Council of Europe and other relevant international organisations.
6. Member States shall notify to the Commission the countries that are designated as safe countries of origin in accordance with this Article.

Article 31

The safe country of origin concept

1. A third country designated as a safe country of origin in accordance with either Article 29 or 30 may, after an individual examination of the application, be considered as a safe country of origin for a particular applicant for asylum only if:

- (a) he/she has the nationality of that country; or
- (b) he/she is a stateless person and was formerly habitually resident in that country;

and he/she has not submitted any serious grounds for considering the country not to be a safe country of origin in his/her particular circumstances and in terms of his/her qualification as a refugee in accordance with Directive 2004/83/EC.

2. Member States shall, in accordance with paragraph 1, consider the application for asylum as unfounded where the third country is designated as safe pursuant to Article 29.

3. Member States shall lay down in national legislation further rules and modalities for the application of the safe country of origin concept.

SECTION IV

Article 32

Subsequent application

1. Where a person who has applied for asylum in a Member State makes further representations or a subsequent application in the same Member State, that Member State may examine these further representations or the elements of the subsequent application in the framework of the examination of the previous application or in the framework of the examination of the decision under review or appeal, insofar as the competent authorities can take into account and consider all the elements underlying the further representations or subsequent application within this framework.

2. Moreover, Member States may apply a specific procedure as referred to in paragraph 3, where a person makes a subsequent application for asylum:

- (a) after his/her previous application has been withdrawn or abandoned by virtue of Articles 19 or 20;
- (b) after a decision has been taken on the previous application. Member States may also decide to apply this procedure only after a final decision has been taken.

3. A subsequent application for asylum shall be subject first to a preliminary examination as to whether, after the withdrawal of the previous application or after the decision referred to in paragraph 2(b) of this Article on this application has been reached, new elements or findings relating to the examination of whether he/she qualifies as a refugee by virtue of Directive 2004/83/EC have arisen or have been presented by the applicant.

4. If, following the preliminary examination referred to in paragraph 3 of this Article, new elements or findings arise or are presented by the applicant which significantly add to the likelihood of the applicant qualifying as a refugee by virtue of Directive 2004/83/EC, the application shall be further examined in conformity with Chapter II.

5. Member States may, in accordance with national legislation, further examine a subsequent application where there are other reasons why a procedure has to be re-opened.

6. Member States may decide to further examine the application only if the applicant concerned was, through no fault of his/her own, incapable of asserting the situations set forth in paragraphs 3, 4 and 5 of this Article in the previous procedure, in particular by exercising his/her right to an effective remedy pursuant to Article 39.

SECTION VI

Article 36

The European safe third countries concept

1. Member States may provide that no, or no full, examination of the asylum application and of the safety of the applicant in his/her particular circumstances as described in Chapter II, shall take place in cases where a competent authority has established, on the basis of the facts, that the applicant for asylum is seeking to enter or has entered illegally into its territory from a safe third country according to paragraph 2.

2. A third country can only be considered as a safe third country for the purposes of paragraph 1 where:

- (a) it has ratified and observes the provisions of the Geneva Convention without any geographical limitations;
- (b) it has in place an asylum procedure prescribed by law;
- (c) it has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and observes its provisions, including the standards relating to effective remedies; and
- (d) it has been so designated by the Council in accordance with paragraph 3.

3. The Council shall, acting by qualified majority on a proposal from the Commission and after consultation of the European Parliament, adopt or amend a common list of third countries that shall be regarded as safe third countries for the purposes of paragraph 1.

4. The Member States concerned shall lay down in national law the modalities for implementing the provisions of paragraph 1 and the consequences of decisions pursuant to those provisions in accordance with the principle of non-refoulement under the Geneva Convention, including providing for exceptions from the application of this Article for humanitarian or political reasons or for reasons of public international law.

5. When implementing a decision solely based on this Article, the Member States concerned shall:

- (a) inform the applicant accordingly; and
- (b) provide him/her with a document informing the authorities of the third country, in the language of that country, that the application has not been examined in substance.

6. Where the safe third country does not re-admit the applicant for asylum, Member States shall ensure that access to a procedure is given in accordance with the basic principles and guarantees described in Chapter II.

CHAPTER V

APPEALS PROCEDURES

Article 39

The right to an effective remedy

1. Member States shall ensure that applicants for asylum have the right to an effective remedy before a court or tribunal, against the following:

- (a) a decision taken on their application for asylum, including a decision:
 - (i) to consider an application inadmissible pursuant to Article 25(2),
 - (ii) taken at the border or in the transit zones of a Member State as described in Article 35(1),
 - (iii) not to conduct an examination pursuant to Article 36;
- (b) a refusal to re-open the examination of an application after its discontinuation pursuant to Articles 19 and 20;
- (c) a decision not to further examine the subsequent application pursuant to Articles 32 and 34;
- (d) a decision refusing entry within the framework of the procedures provided for under Article 35(2);
- (e) a decision to withdraw of refugee status pursuant to Article 38.

2. Member States shall provide for time-limits and other necessary rules for the applicant to exercise his/her right to an effective remedy pursuant to paragraph 1.

3. Member States shall, where appropriate, provide for rules in accordance with their international obligations dealing with:

- (a) the question of whether the remedy pursuant to paragraph 1 shall have the effect of allowing applicants to remain in the Member State concerned pending its outcome;
- (b) the possibility of legal remedy or protective measures where the remedy pursuant to paragraph 1 does not have the effect of allowing applicants to remain in the Member State concerned pending its outcome. Member States may also provide for an ex officio remedy; and
- (c) the grounds for challenging a decision under Article 25(2)(c) in accordance with the methodology applied under Article 27(2)(b) and (c).

4. Member States may lay down time-limits for the court or tribunal pursuant to paragraph 1 to examine the decision of the determining authority.

5. Where an applicant has been granted a status which offers the same rights and benefits under national and Community law as the refugee status by virtue of Directive 2004/83/EC, the applicant may be considered as having an effective remedy where a court or tribunal decides that the remedy pursuant to paragraph 1 is inadmissible or unlikely to succeed on the basis of insufficient interest on the part of the applicant in maintaining the proceedings.

6. Member States may also lay down in national legislation the conditions under which it can be assumed that an applicant has implicitly withdrawn or abandoned his/her remedy pursuant to paragraph 1, together with the rules on the procedure to be followed.

North America

10. US – Canada Safe Third Country Agreement¹¹

Article 2

This Agreement does not apply to refugee status claimants who are citizens of Canada or the United States or who, not having a country of nationality, are habitual residents of Canada or the United States.

Article 3

In order to ensure that refugee status claimants have access to a refugee status determination system, the Parties shall not return or remove a refugee status claimant referred by either Party under the terms of Article 4 to another country until an adjudication of the person's refugee status claim has been made.

The Parties shall not remove a refugee status claimant returned to the country of last presence under the terms of this Agreement to another country pursuant to any other safe third country agreement or regulatory designation.

Article 4

Subject to paragraphs 2 and 3, the Party of the country of last presence shall examine, in accordance with its refugee status determination system, the refugee status claim of any person who arrives at a land border port of entry on or after the effective date of this Agreement and makes a refugee status claim.

Responsibility for determining the refugee status claim of any person referred to in paragraph 1 shall rest with the Party of the receiving country, and not the Party of the country of last presence, where the receiving Party determines that the person:

¹¹ *Agreement between the Government of Canada and the Government of the United States of America for cooperation in the examination of refugee status claims from nationals of third countries.* The Agreement was signed on 5 December 2002 and came into force on 29 December 2004.

Has in the territory of the receiving Party at least one family member who has had a refugee status claim granted or has been granted lawful status, other than as a visitor, in the receiving Party's territory; or

Has in the territory of the receiving Party at least one family member who is at least 18 years of age and is not ineligible to pursue a refugee status claim in the receiving Party's refugee status determination system and has such a claim pending; or

Is an unaccompanied minor; or

Arrived in the territory of the receiving Party:

With a validly issued visa or other valid admission document, other than for transit, issued by the receiving Party; or

Not being required to obtain a visa by only the receiving Party.

The Party of the country of last presence shall not be required to accept the return of a refugee status claimant until a final determination with respect to this Agreement is made by the receiving Party.

Neither Party shall reconsider any decision that an individual qualifies for an exception under Articles 4 and 6 of this Agreement.

Article 5

In cases involving the removal of a person by one Party in transit through the territory of the other Party, the Parties agree as follows:

Any person being removed from Canada in transit through the United States, who makes a refugee status claim in the United States, shall be returned to Canada to have the refugee status claim examined by and in accordance with the refugee status determination system of Canada.

Any person being removed from the United States in transit through Canada, who makes a refugee status claim in Canada, and:

whose refugee status claim has been rejected by the United States, shall be permitted onward movement to the country to which the person is being removed; or

who has not had a refugee status claim determined by the United States, shall be returned to the United States to have the refugee status claim examined by and in accordance with the refugee status determination system of the United States.

Article 6

Notwithstanding any provision of this Agreement, either Party may at its own discretion examine any refugee status claim made to that Party where it determines that it is in its public interest to do so.

Article 7

The Parties may:

Exchange such information as may be necessary for the effective implementation of this Agreement subject to national laws and regulations. This information shall not be disclosed by the Party of the receiving country except in accordance with its national laws and regulations. The Parties shall seek to ensure that information is not exchanged or disclosed in such a way as to place refugee status claimants or their families at risk in their countries of origin.

Exchange on a regular basis information on the laws, regulations and practices relating to their respective refugee status determination system.

(...)

Asylum Procedures: Report on Policies and Practices in IGC Participating States takes its inspiration from the Report on Asylum Procedures, which the IGC Secretariat published in 1997.

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