Asylum Procedures

Report on Policies and Practices in IGC Participating States - 2015

igc intergovernmental consultations on migration, asylum and refugees

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September 2015

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 16 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, Germany, Greece, Ireland, The Netherlands, New Zealand, Norway, Spain, Sweden, Switzerland, The United Kingdom and The United States of America.

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PREFACE

This is the sixth edition of the *Asylum Procedures: Report on Policies and Practices in IGC Participating States* – often referred to as the "Blue Book". The 2015 Report is an important resource for senior officials and asylum policy and decision makers in IGC Participating States, as well as officials in other Governments and international and non-governmental organizations. Members of civil society, academics and journalists also profit from the insights offered in this Report.

Since the publication of the fifth edition in 2012, there has been a significant rise in the number of persons seeking asylum in IGC Participating States and other countries, and in the percentage and number of persons granted asylum. With about 580,000 applications, 2014 marked the year with the third-highest number since IGC began collecting data. It is likely that the number of asylum applications filed in IGC Participating States in 2015 will reach an all-time record high, thereby surpassing the 1992 record of 835,935 applications.

The focus of the Blue Book has been two-fold: to highlight the policies and practices related to streamlining or improving efficiencies and to maintaining the quality of decision-making in many IGC Participating States, some of which are under strain from the rising numbers of applications; and to showcase the measures taken by IGC Participating States in the treatment of vulnerable populations of asylum seekers and persons granted asylum and other forms of subsidiary protection.

The information contained in the current Report includes substantial contributions by Participating States. All statistical data were obtained directly from Participating States as part of the regular and longstanding IGC data collection process. Unless otherwise indicated, the statistical information reflects first and repeat applications and is presented up to December 2014. Each Participating State submitted the information on asylum, law and procedures included in the country chapters. Those chapters were submitted at various times between September 2014 and September 2015.

This Report would not have been possible without the considerable input of dedicated asylum policy makers and practitioners in Participating States, the assistance of national contact points, and the support of Dienne Miller (editor). The completion of this version of the Report required substantial work from each member of the IGC Secretariat, who made important contributions.

The IGC Secretariat is responsible for coordinating the publication of this edition.

CONTENTS

GLOSSARY[1]

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 individuals 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%20I%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. See Removal.

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.

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 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 or her life or freedom would be threatened on account of his or her 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.

4 *Black's Law Dictionary with Pronunciations*, fifth edition, 1979
5 UNESCO & the Hague Process, *People on the Move: Handbook of Selected Terms and Concepts*, July 2008.
6 *Black's Law Dictionary with Pronunciations*, fifth edition, 1979.

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: Permit granted in Australia to asylum-seekers who have been recognised as Convention refugees.

QUOTA REFUGEE: A refugee, as identified by the UNHCR, who is accepted by a State as part of a yearly Resettlement Programme. See also Resettlement.

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 also 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 Relation 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 also 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 refugee's free and informed decision. See also Return.[8]

7 European Migration Network (EMN), *Glossary of Terms relating to Asylum and Migration*, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/glossary/index_a_en.htm

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

INTRODUCTION

INTRODUCTION

Asylum Procedures: Report on Policies and Practices in IGC Participating States, often referred to as the "Blue Book", is published to provide an accurate, up-to-date comparative survey and to contribute to the universal understanding of the asylum procedures of IGC Participating States. Since the last edition in 2012, IGC Participating States have pursued efforts to adapt and to improve their legal and procedural frameworks for asylum determination, in light of increasingly complex refugee-generating situations and movements towards destination countries. While most of the focus remains on enhancing the quality, efficiency and integrity of asylum procedures, including the ongoing development of a common asylum system at the European Union (EU) level, IGC States have taken additional measures and identified innovative approaches to managing considerable pressures on their status determination and reception systems, and have focused on preventing and tackling abuses of the asylum system. Policy changes have often been adopted in national contexts of polarized political debates on immigration and asylum.

The most important change affecting procedures in IGC Participating States since 2012 has been the steep rise in the number of persons seeking asylum. Given the escalation in humanitarian crises during this period, there has been a concomitant increase in the percentage of persons who applied for and were granted asylum. However, the rise in applications has not been consistent across all IGC States. Since 2012, Germany, Sweden and the United States have seen major increases in asylum applications, putting considerable pressure on their asylum systems, while asylum application numbers have remained constant in other States (Belgium, Ireland, New Zealand, the Netherlands and the United Kingdom) or even decreased (Australia and Canada). Regardless of the size of their programmes, all IGC States have remained dedicated to ensuring the quality of their decisions and to maintaining the integrity of their refugee protection systems.

Global Developments

Rise in Displacement Numbers

The massive and sustained growth in global displacement is unprecedented in the post Second World War period. In 2013, the United Nations High Commissioner for Refugees (UNHCR) announced that global forced displacement numbers had reached 51.2 million. This growth in the population of forcibly displaced persons is the largest ever recorded in a single year. By the end of 2014, there were 14.4 million refugees under UNHCR's mandate, the highest number since 1995. High Commissioner for Refugees António Guterres stated:

> *We live in a dangerous world, and one of its symptoms is displacement. It is a symptom but is also a relevant indicator of broader humanitarian, social, economic, political and security problems of our times. We recently published the statistics of 2014, and at the end of last year we had 59.5 million people displaced by conflict in the world. Roughly two thirds were internally displaced, and one third refugees. Sometimes the internally displaced live much worse lives than refugees because their government, that is supposed to protect them, can be part of their problem.*
>
> *This means an increase of 16% in relation to the year before, and an increase of 60% in relation to 10 years before…*
>
> *But beyond that what is also amazing is the staggering escalation of forced displacement in the last few years. In 2010 there were 11,000 new people displaced by conflict per day; in 2011, 14,000; in 2012, 23,000; in 2013, 32,000; and in 2014, last year, 42,500 people displaced by conflict per day.*[1]

While these trends are global, European IGC States in particular have experienced some of the largest and most sustained pressures. Similar, albeit smaller, movements have affected both the United States and Australia.

Boat Arrivals and Deaths: Focus on the Mediterranean

Looking at the European context, asylum seekers and migrants have arrived after crossing various countries in Central Europe by land, while thousands of others have made dangerous journeys by boat across the Mediterranean Sea. The number of attempted sea crossings has risen sharply, and the perilous situation for asylum seekers and other vulnerable migrants who attempt to cross the Mediterranean has dominated the asylum and migration discourse in Europe. The large-scale movements are driven in large part by the conflict in Syria and by Eritreans fleeing their government. Nationals of both Eritrea and Syria often move after having lived in countries of first asylum for extended periods. Nationals of sub-Saharan African countries and North African countries are also migrating, some mostly for economic reasons, but others due to unstable conditions in their home countries or countries of first asylum.

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[1] High Commissioner for Refugees António Guterres, "Global conflicts and human displacement: Twenty-first century challenges", speech given at the Ditchley Foundation, 11 July 2015.

In Europe, the tragic loss of hundreds of lives off the coast of Lampedusa on 3 October 2013 was a catalytic event. In the aftermath of the tragic shipwreck, Italy began an extraordinary humanitarian operation called Mare Nostrum, deploying its navy, coast guard and police to respond to the exceptional migratory pressures. In the first 10 months of 2014, some 153,000 persons reached Italy by sea. The main nationalities were Syrians and Eritreans, and the most important last point of embarkation was Libya. In October 2014, Mare Nostrum was ended and replaced with the Frontex-led Operation Triton. In May 2015, the EU tripled resources for the Frontex-led Triton and Poseidon operations, which are aimed at strengthening search and rescue in the Mediterranean. As of 8 September 2015, UNHCR reported that there were 367,902 arrivals by sea so far in 2015.

Approximately 80 per cent of persons arriving by boat come from the world's top 10 refugee-producing countries: Syria (51 per cent), Afghanistan (14 per cent), Eritrea (8 per cent), Nigeria (4 per cent), Iraq (3 per cent), Somalia (2 per cent), Sudan (2 per cent), Gambia (1 per cent), Bangladesh (1 per cent), and Senegal (1 per cent).[2] The majority of those arriving by sea are men (75 per cent), with smaller numbers of children (13 per cent) and women (12 per cent). Tragically, as of 7 September 2015, 3,788 deaths from drowning had been reported worldwide since the beginning of the year, of which 2,760 had occurred in the Mediterranean.[3]

Dangerous movements by sea have also affected countries worldwide, including many IGC States, and have led to unilateral and regional responses to the challenges posed by sea crossings and boat arrivals. In South-East Asia, it is estimated that some 88,000 persons undertook such journeys between January 2014 and March 2015.

Protecting Persons on the Move and Mixed Migration Flows

Of those arrivals in IGC States, sizeable numbers of persons have not fled persecution but have moved for other, non-protection related considerations, creating mixed migration flows.[4] This has led some countries to adjust their policies and to adopt measures to stem the arrival of persons by boat and to manage those mixed flows successfully. For example, Australia adopted measures in 2013 that have resulted in a significant decrease in the number of asylum seekers and migrants arriving irregularly by boat.

Around the world, persons in mixed flows put their lives at risk or die in attempting to travel to countries in sea voyages. Since 2012, Participating States have increasingly focused on protecting those travelling in mixed movements – both persons in need of protection and those who journey for other reasons – especially by sea but also by land. This has emerged as a critical issue for IGC Participating States as well as other countries and international actors.

Meanwhile in North America, a different yet often no less perilous journey is occurring on land. As crime and violence have increased dramatically in Mexico and Central America in recent years, there has been a dramatic rise in the number of asylum seekers and other migrants (both children and adults), particularly from El Salvador, Guatemala and Honduras, arriving in the United States. The conditions of their journey to the United States are often unsafe and physically dangerous, and leave the migrants at the mercy of Mexican and Central American gangs, other criminals and corrupt officials. The alarming frequency of kidnapping, extortion, human trafficking, rape and homicide puts the plight of primarily Central American migrants in sharp relief.

All IGC States are working hard to find ways to help to prevent these dangerous journeys and the loss of life. One innovative United States programme called the Central American Minors (CAM) Refugee/Parole Program began accepting applications from qualifying parents in the United States for their children on 1 December 2014. The programme provides certain qualified minors in El Salvador, Guatemala and Honduras with a safe, legal and orderly alternative to the dangerous journey that some children are currently undertaking to the United States.

Regional Developments: Focus on Europe

The mounting asylum and migration pressures are triggering new discussions on both asylum policies and the future of the Dublin and Schengen systems, as well as on free movement within the EU itself. The EU recently issued the European Agenda on Migration, which is a set of political guidelines and tailored initiatives aimed at improving all aspects of migration management. The Agenda, adopted on 13 May 2015, put forward concrete actions to respond to the immediate crisis and save lives at sea, and proposed structural responses for the medium and long terms. It includes an emergency relocation scheme for asylum seekers within the EU, an EU-wide resettlement scheme and enhanced efforts to fight people smuggling. Although the Agenda is not yet being implemented, it is the topic of much debate. Some European States, such as Austria, Denmark, France and Germany, have raised the possibility of reintroducing border controls, while others, such as Greece and Hungary, are reinforcing their border control capacities. These developments could, however, have limited effects on access to asylum.

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2 http://data.unhcr.org/mediterranean/regional.html.
3 http://missingmigrants.iom.int/.
4 UNHCR, "UNHCR viewpoint: "Refugee" or "migrant" – Which is right?", 27 August 2015. Available from www.unhcr.org/55df0e556.html.

Because many European asylum determination systems are under tremendous pressure, the European Commission and the Member States have debated and proposed a new allocation of asylum seekers throughout all 28 Member States. This is an effort to increase solidarity and share responsibilities shouldered especially by Greece and Italy in the context of boat arrivals. On 22 September 2015, a decision at the Extraordinary Justice and Home Affairs Council was made to relocate 120,000 refugees from Greece, Italy and other Member States directly affected by the refugee crisis – as an exception to the current Dublin Regulation. Since it had already adopted a 27 May 2015 proposal to relocate 40,000 asylum seekers present in Italy and Greece, the EU is now able to relocate a total of 160,000 people in clear need of international protection in the coming two years. The European Commission continues to stress the need for a coordinated European response on the refugee and migration front and that relocating refugees is part of a comprehensive approach to deal with the ongoing crisis. Relocation could also eliminate some of the breeding grounds for people smuggling within the EU.

National Developments

Challenges to National Asylum Programmes

Since the publication of the 2012 Blue Book, many European Participating States have made progress in transposing into national law the recast asylum directives under the Common European Asylum System. This should also reinforce system integrity and intake management efforts. Participating States have focused on quality decision-making and on improving policies for the protection of vulnerable individuals, including minors, women and persons with claims based on sexual orientation or gender identity.

Given the sharp increase in the volume of cases and the requirement to be responsive, Participating States continue to refine and reshape asylum operations. From a management perspective, many IGC States, including Denmark, Germany, Sweden and the United States, have increased operational capacity by hiring new staff or shifting staff from other parts of the agency responsible or other government departments. The German Federal Office for Migration and Refugees added 300 new employees in 2014 and expects to create 750 new posts in 2015, and the United States Asylum Officer Corps grew from 272 officers in 2012 to 475 in 2015. Given recent staff hiring efforts, the training and support of new staff have emerged as a priority for most IGC States. More staff alone, however, is not the complete answer.

In terms of adjustments to decision-making, several IGC States, including Denmark, the Netherlands, Norway and Sweden, are using the “lean” processing method to streamline the asylum process. Through optimizing workflows, “lean” processing creates better value for clients with fewer resources. Greece has made extraordinary efforts to address its backlog and to strengthen its asylum programme in order to handle all new applications in a timely fashion.

The surge in asylum seekers, particularly in Europe, has also dramatically strained reception capacity and conditions. Many IGC States that offer housing to persons who apply for and who are granted asylum face significant and growing challenges related to pressures on reception capacity to match rising applications, leading some to resort to non-traditional reception facilities to meet these demands. In 2014, UNHCR began a food distribution programme in Hungary for asylum seekers, the first time this response has been required since the Second World War.

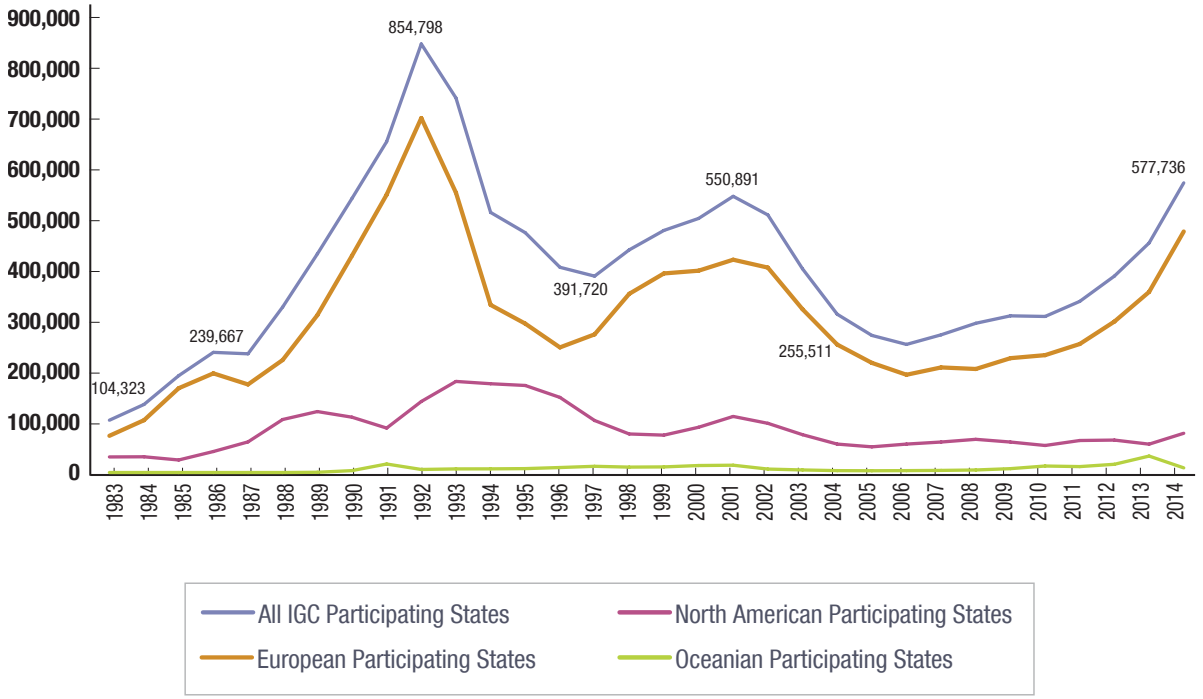
Data Trends

In addition to providing statistical information on asylum applications and asylum decisions for each Participating State, the 2015 Blue Book contains comparative data on applications and first instance decisions, which can be found in the annexes to the report.

Below are some highlights of the major trends in asylum applications since 1983.

INTRO
Fig. 1

Evolution of Asylum Applications in IGC Participating States, 1983-2014



The asylum data of the past 30 years provide some context and perspective on the current situation. There have been two significant peaks in asylum applications in IGC States, which occurred in 1992 and in 2001. They were mainly driven by two conflicts in the Balkans, namely the collapse of Yugoslavia and the crisis in Kosovo. There were simultaneous large inflows to IGC States of nationals of Bulgaria, Lebanon and Romania in 1992, while the consequences of the 2001 crisis in Kosovo were amplified by significant inflows of nationals of Afghanistan, China and Iraq. Following a dip in applications received by IGC States in 2006, a slow but steady increase took place over the following eight years. There has been an acceleration in application numbers since 2011, with a return to the levels experienced in the early 1990s and in 2001.

In 2014, the total asylum intake for IGC Participating States surpassed the peak of the 2001 crisis in Kosovo. With about 580,000 applications, 2014 marked the year with the third-highest number since IGC began collecting data. From 2012 to 2014, the top three receiving IGC States were Germany, Sweden and the United States.

Considering current trends, it is likely that the number of initial asylum applications filed in 2015 will surpass the 1992 record of 835,935 applications and reach an all-time record high. In Germany in particular, applications are rising significantly. In August 2015, the German Minister of the Interior, Thomas de Maizière, announced: "We've got to reckon there will be 800,000 people coming to Germany as refugees or seeking asylum". This was a dramatic revision of the estimation given in March 2015 of 250,000 first applications and 50,000 repeat applications for the year. Sweden expects to receive about 190,000 asylum applications in 2015, while Denmark, Norway and Finland have forecasted 18,500, 12,000 and 4,000, respectively. The numbers for these countries are slightly higher than they were in 2014.

With 173,000 asylum claims in 2014, Germany continues to be the largest single recipient of new asylum claims among IGC States, followed by Sweden (over 81,000) and the United States (65,000). Overall, states along the Central and Eastern Mediterranean routes, particularly Greece and Italy, have received the most significant increases in applications since the beginning of 2013. The increases were overwhelmingly due to applications from nationals of Syria and Eritrea until the beginning of 2015, when the number of applications from Iraqis began to rise sharply. Germany and Sweden are the preferred destination countries but other states such as Austria and Switzerland have also seen their numbers rise sharply. At the same time, there were peaks in asylum applications during the winter months from nationals of Serbia, Albania, Kosovo and the former Yugoslav Republic of Macedonia, mainly to Germany, Sweden, Austria, France, the United Kingdom and Belgium. These flows

included high numbers of manifestly unfounded cases, and several states have undertaken measures to stem these poverty-driven flows, including information campaigns and the swift voluntary return of rejected cases with little or no support. In the spring and summer of 2015, outflows from Albania continued to increase with Germany as the main destination country. Overall application numbers for Western European countries such as Belgium, France, Ireland, the Netherlands and the United Kingdom were quite stable from 2012 to 2014. Although there were isolated peaks in applications in some Participating States during this time (for example, the sudden increase in applications of Eritreans in the Netherlands in 2014), the increases in applications in those countries were by no means as dramatic as they were in Germany and Sweden.

In Belgium, the Netherlands and the United Kingdom, the overall trend of rather stable annual numbers changed in 2015, when there was a noticeable increase in asylum applications by Iraqis. In the first half of 2015, the number of applications from Iraqis in the aforementioned countries were double or triple the number during the same period in 2014.

Declining Asylum Applications

Notably, Canada and Australia show a counter-trend with declining asylum intake. In Canada, more than two years after reforms to its inland asylum system were implemented, the new system is providing faster protection to genuine refugees fleeing persecution while discouraging unfounded claims, with a goal of creating a much more efficient and effective asylum system. Asylum intake levels in Canada have reached historic lows, and in the two years since the reforms took effect, the number of new asylum claims decreased to roughly 10,390 in 2013, compared with nearly 20,500 claims in 2012. These results serve to bolster public confidence in the Canadian refugee protection system.

In Australia, the protection status determination process was reformed through the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014 (RALC Act) and the Migration Amendment (Protection and Other Measures) Act 2015 (POM Act). Together, these two pieces of legislation made broad-ranging changes designed to improve the integrity and efficiency of protection processing. These changes were made in part to permit the Department of Immigration and Border Protection to resolve the 30,000 cases in the legacy caseload referred to as illegal maritime arrivals.

Earlier, in August 2012, the Government of Australia had announced that persons arriving in Australia by boat without a valid visa (illegal maritime arrivals) would be subject to regional processing arrangements. To effect this policy, the Migration Amendment (Regional Processing and Other Measures) Act 2012 introduced regional processing arrangements, which included the power to designate certain countries as regional processing countries for the purpose of receiving people transferred from Australia. This law has been used to deny admission to persons who where smuggled by boat to Australia.

Non-IGC European States

Non-IGC States in Europe with very high numbers of total applications in 2014 include Italy with 64,625 applications, Hungary with 42,775 applications, Austria with 28,065 applications and Bulgaria with 11,080 applications. Central and Eastern European countries are most affected by the flows through the Central and Eastern Mediterranean routes. Since those countries are situated along the route to Germany, they receive high numbers of asylum applications by nationals of the Balkan countries. This is a mixed group that includes genuine asylum seekers and persons who try to escape poverty and harsh living conditions in the wintertime. Central and Eastern European countries also have very high numbers of asylum seekers from the Horn of Africa and the Middle East. Applications from Iraqis have also recently risen in these countries after a period between 2009 and 2014 when there was a slowdown in the outflow. It should be noted, however, that the rate of abandoned asylum claims often reaches 80 per cent in Eastern European countries; the intended destination is often Germany or Sweden and asylum applications are generally only filed in Eastern Europe by those who are intercepted there.

Top Countries of Origin

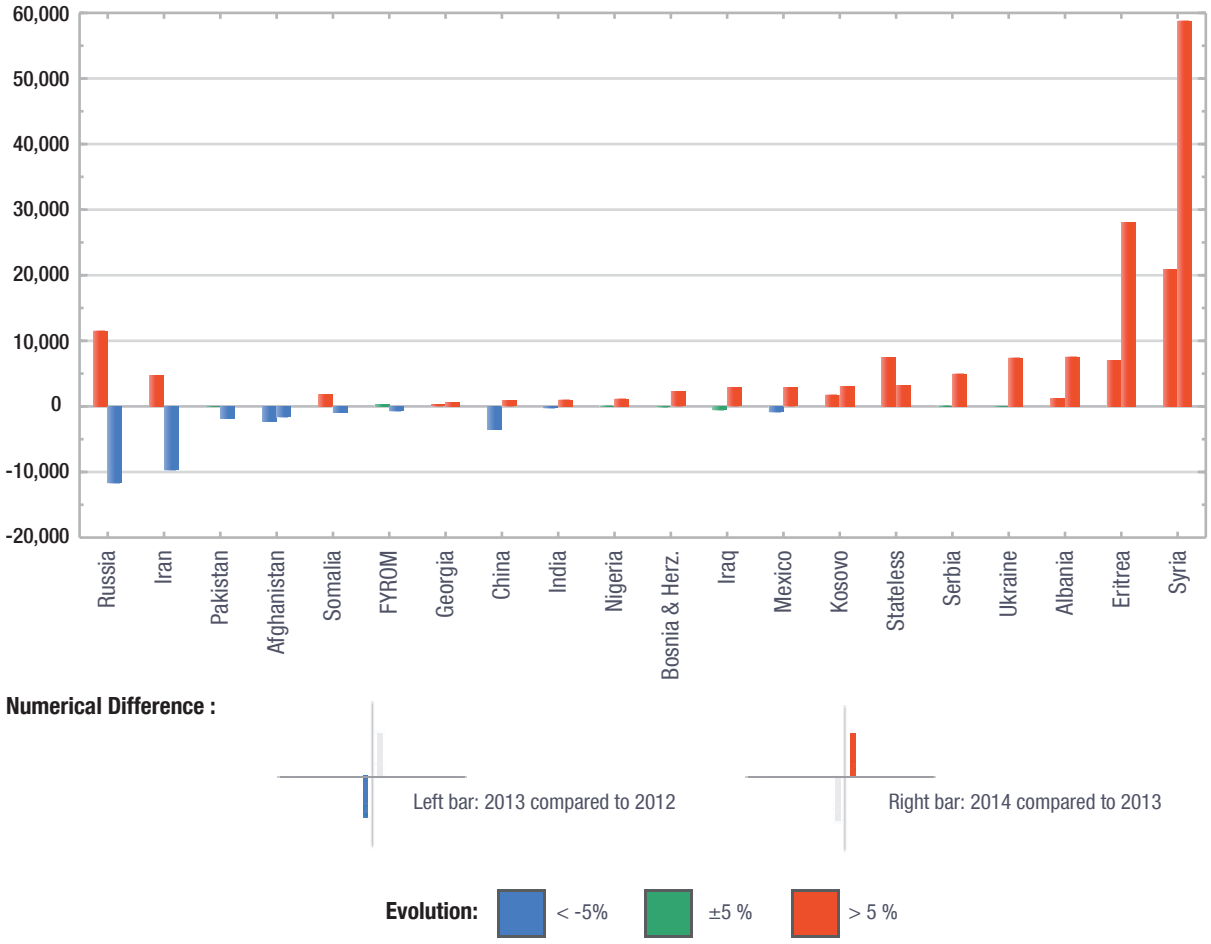
In 2014, the top 10 countries of origin of applicants in all IGC States in descending order were Syria, Eritrea, Afghanistan, Serbia, China, Iraq, Somalia, stateless persons, Albania and Pakistan. In Australia and New Zealand, applicants from Pakistan, Iraq and Afghanistan were also among the top 10 nationalities. In 2012 and 2013, Russia and Iran were still among the top 10 nationalities, but they were replaced by stateless persons and Albania in 2014. It is worth noting that the top 10 nationalities of asylum seekers in IGC States in 2012 were the same in 2013 but ranked in a different order.

In 2014, among the top 5 countries of origin of applicants in Australia and New Zealand were China and India, which have not been among the top 10 nationalities applying for asylum in European countries for more than 10 years. The United States also includes China and India in its top 10 countries of origin of applicants for asylum, while the other eight are countries in Latin America, including notably Mexico, Guatemala and El Salvador. Canada shares a number of top applicant nationalities with Europe but also with the other non-European IGC States. The top 10 countries of origin applying for asylum in Canada include China, Pakistan,

Iraq, Syria, Afghanistan and Haiti, which are among the top 10 nationalities for some other countries as well. Canada is the only IGC State with nationals of Slovakia and Hungary among the top 10.

Looking at the situation at the external borders of Europe, asylum applications for Greece remained rather stable during the period 2012 to 2014. The main countries of origin were Afghanistan, Pakistan, Syria and Bangladesh and the asylum seekers arrived almost exclusively via Turkey. Greece's neighbouring country Albania completes its top five and is a primary source country for asylum and of irregular migration to Greece. In 2015, tens of thousands of persons arrived in Greece via boat from Turkey, bringing the asylum reception capacity of the country to the verge of collapse. Numbers for Spain also continued to increase during the period 2012 to 2014. Over this three-year period, the top five countries of origin of applicants were Syria, Mali, Ukraine, Algeria and Nigeria. Ukraine is surprisingly present given the geographic distance and the fact that no other IGC Participating State has this country among its top five for this period.

INTRO Fig. 2 Evolution of Top Countries of Origin for Asylum Applications in All IGC Participating States, 2013–2014



Syria and Eritrea in the Spotlight

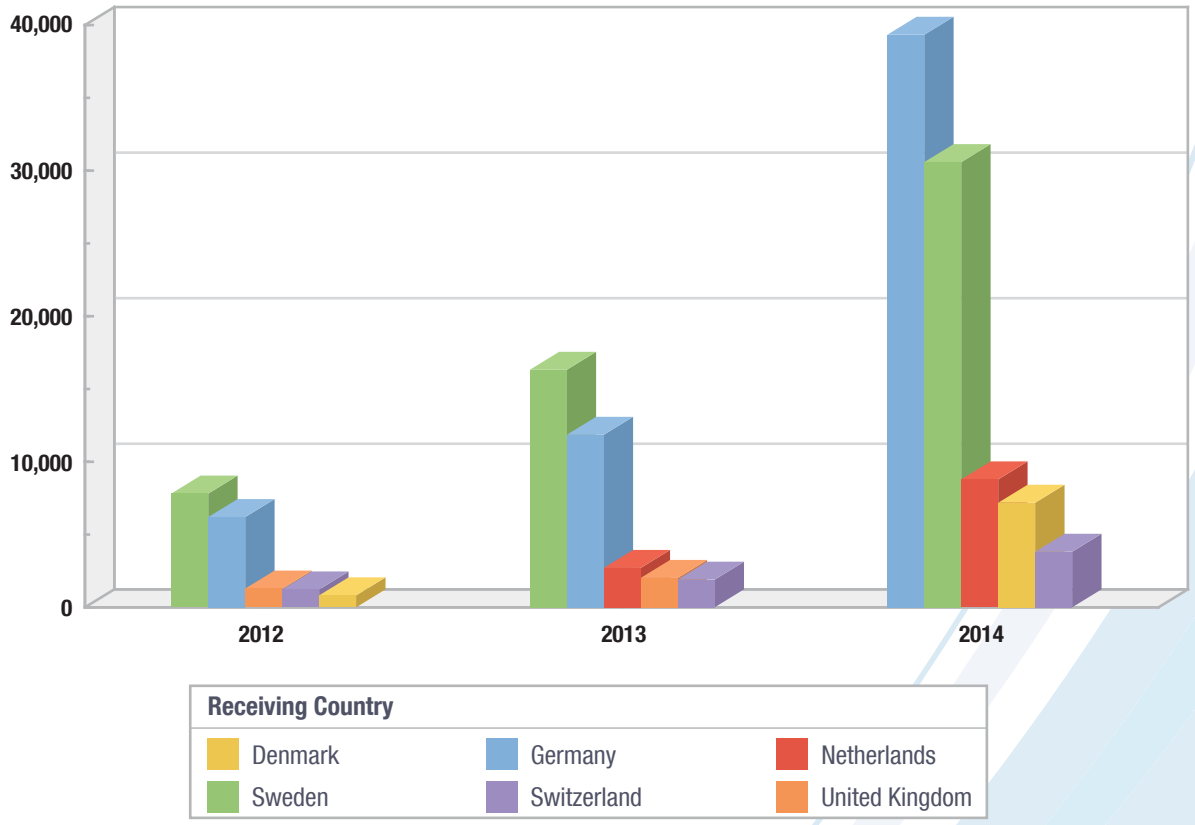
As illustrated in the first section on data trends, since 2012, Syria and Eritrea have stood out in terms of significant increases in asylum intake in IGC States.

Syria

Syria was the number one source country for overall asylum claims made in IGC States in 2013 (41,831) and 2014 (100,645). The number is expected to continue to rise given the ever-worsening humanitarian situation in Syria, as well as the exhausted reception capacity of host countries in the region and their struggle to meet the protection needs of the refugee population. In Germany, the number of asylum claims from Syrians more than tripled from 2013 to 2014, while in Sweden, the number doubled over the same period. Combined, Germany and Sweden received 112,098 asylum claims by Syrians in the period 2012 to 2014, which represents nearly 67 per cent of all applications made by Syrians in IGC States.

INTRO Fig. 3a

Asylum Applications from Syrians in Top Five Receiving IGC States, 2012–2014



In IGC Participating States, the ultimate outcome for Syrian asylum applicants is broadly consistent – almost all are granted protection. Current acceptance rates for Syrian asylum seekers in all IGC States are very high, ranging from 85 to 95 per cent or higher, but the means by which that protection is achieved vary. In terms of the type of protection status granted (refugee status versus subsidiary protection), some divergence in approach appears with some countries offering subsidiary protection in place of refugee status.

Eritrea

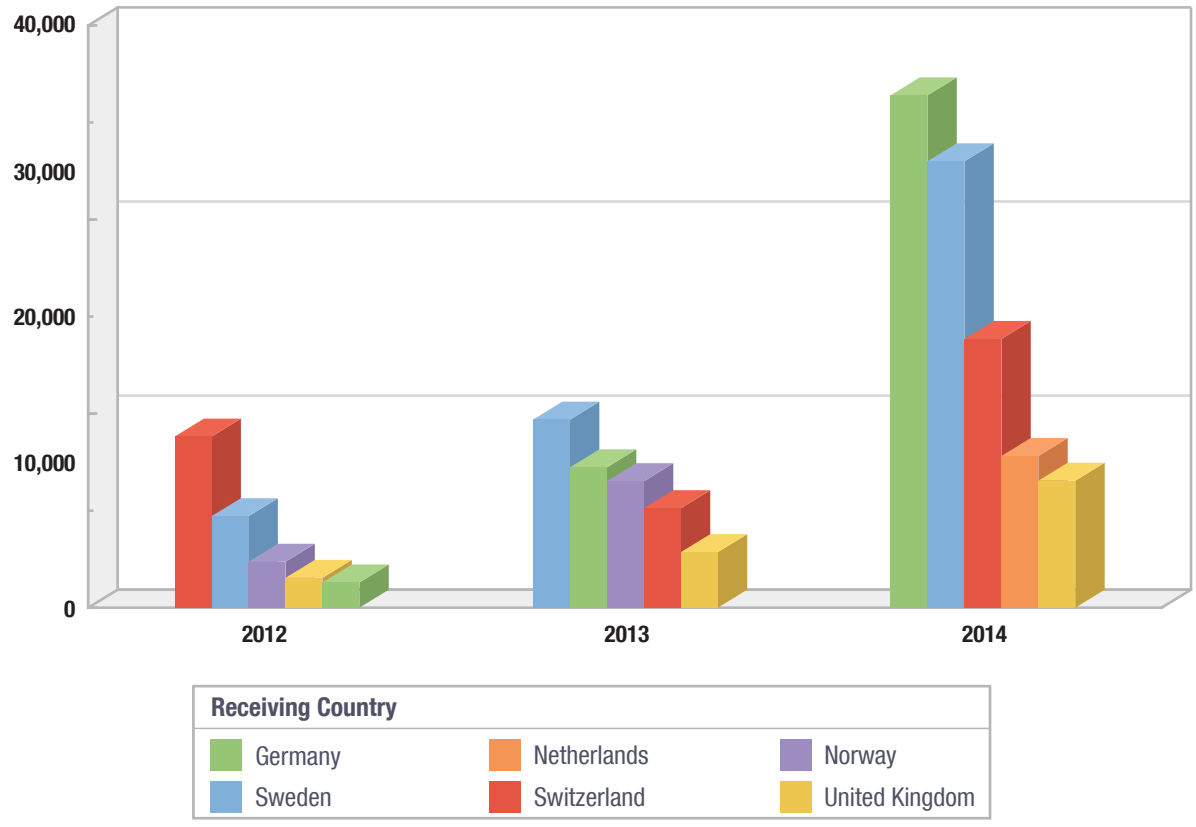
As of 1 January 2015, there were more than 363,077 Eritrean refugees or persons living in refugee-like situations in 56 countries worldwide.[5] In 2014, the number of asylum seekers from Eritrea in European IGC States had nearly tripled since 2013, with many having arrived by boat across the Mediterranean Sea. In Ethiopia and Sudan, which neighbour Eritrea, the number of Eritrean refugees has also increased sharply.

Germany, Switzerland, Sweden, the Netherlands, the United Kingdom and Norway are among the main final destination countries for Eritrean asylum seekers in Europe. In European IGC States in 2013, Eritrea ranked third after Syria and Afghanistan in asylum applications, with a 46 per cent increase in the first four months of 2014 compared with the same period in 2013. By the end of 2014, Eritrea ranked second only to Syria in terms of total claims in IGC States.

In IGC States, the ultimate outcome for Eritrean asylum applicants is consistent – a significant majority are granted protection. The majority of Eritrean asylum seekers are granted Convention status by IGC countries.

INTRO Fig. 3b

Asylum Applications from Eritreans in Top Five Receiving IGC States, 2012–2014



There is a combination of push and pull factors driving the rise in Eritreans on the move. Recent changes to policies in Israel, as well as in Egypt, Saudi Arabia and Yemen, play a large role. Eritreans who have been in countries of first asylum for lengthy periods are on the move, using family or friends to support their travel. For those arriving from North Africa, the most frequently cited factors for movement were the uncertainty in Libya, the willingness to embark on sea crossings along the Central Mediterranean route and the subsequent impact of Mare Nostrum (now ceased), as well as the active role played by smugglers. In terms of pull factors, high acceptance rates, the speed of processing, social benefits and diaspora communities were identified.

[5] Statistical Snapshot, *2015 UNHCR subregional operations profile - East and Horn of Africa*, available at http://www.unhcr.org/pages/49e4838e6.html.

Vulnerable Caseloads

IGC States have continued to focus on how to address vulnerable caseloads to ensure that the cases are properly decided and the applicants are given appropriate treatment during the interactions.

Unaccompanied Minors

In developing and implementing asylum policies and operational responses, Participating States are working to ensure that the protection needs of children are met, and several IGC States make use of specialized procedures for unaccompanied minors. Australia, Denmark, Ireland and the United States have created national guidelines for addressing asylum claims lodged by unaccompanied minors, and in Canada, the Immigration and Refugee Board established the Chairperson's Guideline "Child Refugee Claimants: Procedural and Evidentiary Issues".

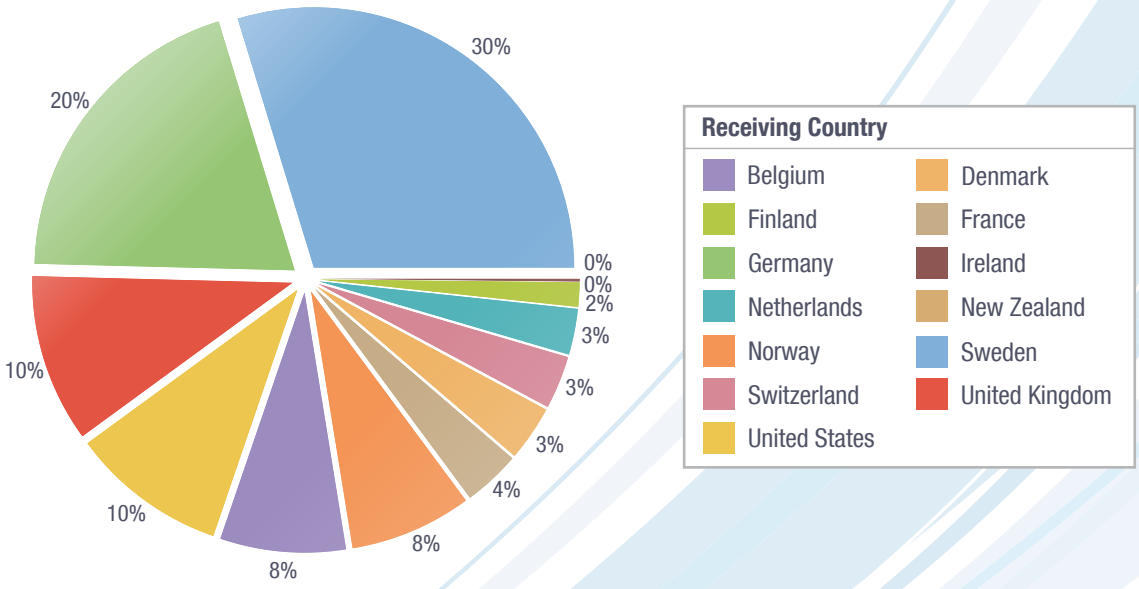
A number of IGC States also report specialized procedures for foreign national children who may be victims of trafficking or who may have been abducted, and almost all IGC States have specialized training for decision-makers. In some cases, there is also training for support staff such as interpreters. The practices of IGC States differ, however, with respect to the use of specialists as decision-makers. Many States, including Canada, Ireland, Sweden, Switzerland and the United States, train all decision-makers in matters relating to unaccompanied minors. Others, such as Belgium, Denmark and Germany, use dedicated teams of specialists to interview unaccompanied minors. Several countries, including Germany, Ireland and the United States, are developing products such as leaflets and brochures as a way of providing minors with information. Belgium has developed a comic book to assist unaccompanied minors in understanding the asylum process.

With regard to refugees, many IGC States accept resettlement applications from unaccompanied minors, although none reserve dedicated places in their annual targets or quotas. Other IGC States have not created programmes to offer resettlement to unaccompanied minors.

The volume of asylum applications lodged by unaccompanied minors has varied widely across IGC States over the past five years. In New Zealand, only three claims were received during this period, while in other countries, notably the United States and Sweden, the number of unaccompanied minors filing asylum claims is large and growing. The number of such asylum applications reported in IGC States in 2014 was 21,877, double that of 2013. Many of these unaccompanied minors arrived in Europe by boat. In the United States, tens of thousands of unaccompanied minors from El Salvador, Guatemala and Honduras arrived at the land border with Mexico. Since the majority of these unaccompanied minors are placed in proceedings, the applications of those who apply for asylum first in an immigration court are not reflected in the figure for the United States.

INTRO Fig. 4

Asylum Applications by Unaccompanied Minors in IGC Participating States, 2010–2014[6]



[6] No data on unaccompanied minors are available for Australia, Canada, Greece or Spain. France is included. No 2014 data on unaccompanied minors are available for Ireland or the Netherlands.

In the past two decades, unaccompanied minors seeking asylum in Europe have been primarily from Afghanistan and sub-Saharan Africa. The surge in applications from unaccompanied minors that occurred in 2008 could almost exclusively be attributed to Afghan minors. Today, the caseloads of unaccompanied minors in IGC States are comprised of nationals from a variety of countries. As was the case in 2013, five Participating States, namely Sweden, the United States, Germany, Norway and the United Kingdom, received more than 1,000 applications from unaccompanied minors in 2014. There were high numbers of applications in Sweden, the United States and Germany made by unaccompanied minors from Eritrea, Afghanistan, Syria and Somalia. The numbers of children arriving unaccompanied are expected to continue to rise in the coming years.

At the southern border of the United States, there has been an unprecedented rise in arriving minors (both accompanied and unaccompanied) in recent years. In Europe, the overall number of unaccompanied minors from Syria, Eritrea and Iran in many IGC States is also rising since large numbers of unaccompanied minors have been arriving via the Central and Eastern Mediterranean routes by boat.

European Participating States receive applications from unaccompanied minors from many of the same source countries as the adult or family applicants: Afghanistan, Eritrea, Ethiopia, Iraq, Somalia and Syria all figure prominently. Across most IGC States, a large majority of unaccompanied minors are males. Exceptions include Canada, where the gender ratio over the past five years has been close to even (53 per cent male to 47 per cent female), and Germany, where Ethiopian applicants have mostly been girls. With the exception of Canada, most States report that the average age of the unaccompanied minors is between 14 and 16 years; in Canada the average age of the unaccompanied minors is 11 years.

The Democratic Republic of the Congo is an important source of claims from unaccompanied minors for Belgium and Canada (likely due to historical and linguistic factors). Not surprisingly, the United States and Canada are alone in reporting significant numbers of unaccompanied minors from the Americas. Only Canada and Sweden report European States as major source countries (Russia and the western Balkans for Sweden; Hungary for Canada).

Claims Based on Female Genital Mutilation, Sexual Orientation or Gender Identity

Since the last report in 2012, many IGC Participating States have continued to develop policies and practices to improve protection outcomes for asylum cases based on sexual orientation or gender identity. Efforts to improve staff training are ongoing in almost all Participating States, including Australia, Ireland, Norway, Sweden, Switzerland and the United Kingdom, which have invested in enhanced training. In Canada, the Immigration and Refugee Board has updated its Chairperson's Guideline "Concerning Procedures with Respect to Vulnerable Persons Appearing before the Immigration and Refugee Board of Canada". Norway has issued new instructions on the interpretation of the 1951 Convention Relating to the Status of Refugees, and new instructions on claims related to lesbian, gay, bisexual, transgender or intersex persons, female genital mutilation or gender-based persecution have been released. In Belgium, the Belgian Office of the Commissioner General for Refugees and Stateless Persons has revised practices for interviews and decision-making regarding the assessment of risk of female genital mutilation for girls and women. Improvements to the provision of information are also noteworthy; the Swedish Migration Agency website provides specific information for persons with lesbian, gay, bisexual and transgender related claims, available in English, Spanish, Arabic, French and Persian. Similarly, the Government of Norway has launched information pages on its website for lesbian, gay, bisexual or transgender persons and for victims of female genital mutilation, forced marriage, violence in domestic relations or human trafficking.

Refugee or Humanitarian Admission in IGC States

With the exception of Greece, all IGC States offer resettlement or humanitarian admission. In the context of the international response to the crisis in Syria, a number of non-traditional resettlement countries have introduced programmes. This includes Germany, with its large Humanitarian Admission Programme, designed to facilitate the swift entry of vulnerable refugees, mostly Syrians, from Lebanon in order to secure their immediate protection until such time as they are able to return home in safety and dignity or to find other durable solutions.

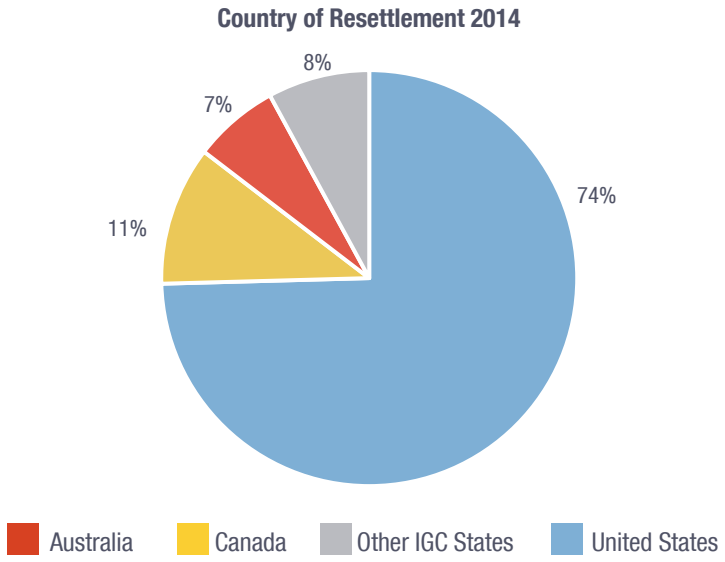
In 2014, resettlement took place from more than 90 countries of asylum to 30 countries of resettlement (including special programmes), involving refugees from 64 countries.[7]

UNHCR has called upon countries to admit 130,000 Syrian refugees through resettlement, humanitarian admission or other programmes in 2016. In response to the situation in Syria, 14 IGC States have made commitments to resettlement or humanitarian assistance programmes, and the United Kingdom is resettling refugees through its Syrian Vulnerable Persons Relocation Scheme. States such as Canada, Germany and Sweden have endeavoured to broaden the community of

[7] UNHCR, "Resettlement fact sheet 2014". Available from www.unhcr.org/524c31a09.html.

INTRO Fig. 5

Resettlement Arrivals in Select IGC States, 2012–2014[8]



Country of Resettlement	2012	2013	2014
Australia	5,937	13,169	11,570
Belgium	0	100	34
Canada	9,624	12,173	12,277
Denmark	476	515	344
Finland	731	674	1,089
France	62	89	110
Germany	307	293	280
Ireland	39	76	96
Netherlands	429	311	791
New Zealand	781	840	737
Norway	1,228	948	1,286
Spain	80	0	0
Sweden	1,873	1,902	1,971
Switzerland	0	0	152
United Kingdom	1,039	966	787
United States	66,289	66,249	73,011

[8] Source: Governments.

resettlement States and to engage civil society, adding to the overall capacity of resettlement efforts. Many IGC States committed to increase the number of resettlement places for Syrian refugees. As an example, in September 2015, the United Kingdom and Australia agreed to accept 20,000 and 12,000 Syrians, respectively.

Conclusion

The 2015 Blue Book reflects the sophistication of the asylum procedures and practices within IGC States. As the systems have developed over the past decades, they have become multilayered. Comparing procedures is useful for gauging success and opportunities for refinement. At the EU level, there is keen interest in ensuring a convergence in policy and practice. Yet policy differences remain, especially between IGC States in and outside of the EU. One striking variation among IGC States is the difference in the nationalities of the asylum seekers, even between neighbouring IGC States.

At this point in the stage of policy development, and given the surge in asylum applications in certain IGC States, it is clear that the focus in the short and medium terms will be on streamlining procedures, ensuring fairness in a time of strained resources, and denying access to the programme to persons who pose criminal or terrorist threats.

Looking at the near future, it is apparent that the massive displacement of persons that is taking place will require many IGC States to adjust their policies, operations and practices to respond. IGC States will consider streamlining measures, as well as changes to existing administrative structures, staffing model adjustments and perhaps legislative modifications.

Serious and sustained international engagement to address the needs of genuine refugees will also certainly be required. IGC States will focus on ensuring effective settlement and integration for those who will be offered protection, and on deterrence measures to deny access or effect removal for those who are subject to exclusion or who are not otherwise eligible. Ensuring the integrity of their asylum programmes will remain a top priority for IGC Participating States.

Country Chapters

Girl evacuated from the Central African Republic, arriving in Doyaba Transit Centre, Chad.

AUSTRALIA

igc

1 BACKGROUND: MAJOR ASYLUM TRENDS AND DEVELOPMENTS

Asylum Applications[1]

Australia has long afforded protection under its international obligations to those in need. However, reported data have been available only since the early 1990s. Asylum application numbers peaked at 17,000 in 1991 and again in 2000 and 2001, with more than 12,000 each year. Applications fell to about 4,000 per year from 2002 to 2009, but increased over following years, with 11,491 applications registered in 2010/11 and 9,846 applications in 2011/12.

In 2012/13, there were 17,007 protection visa applications lodged, including those from illegal maritime arrivals (IMAs). In 2013/14, there were 10,695 protection visa applications, including from IMAs. The substantial decline in applications between 2012/13 and 2013/14 is largely due to changes to IMA processing arrangements, including the introduction of permanent offshore transfers, processing and resettlement arrangements that were implemented for IMAs that arrived on or after 19 July 2013.

Top Nationalities

In the early 1990s, the majority of asylum seekers arrived from China and Indonesia. By 2000 and 2001, however, the top countries of origin were Iraq and Afghanistan. In 2010/11, the top five countries of origin of IMAs in Australia were Afghanistan, Iran, China, stateless persons and India. From 1 July 2011 to 30 June 2012, the top five nationalities of origin of applicants for asylum among IMAs were Afghanistan, Iran, Iraq, Sri Lanka and stateless persons.

In 2012/13, the top three citizenship groups of non-IMA applicants lodging protection visa applications were China, India and Pakistan. This was consistent for 2013/14.

In 2012/13, the top three citizenship groups of IMA applicants screened into a refugee status determination process were Sri Lanka, Iran and Afghanistan. In 2013/14, the top three citizenship groups of IMA applicants were Iran, Afghanistan and Sri Lanka.

Key Developments

Recent Legislative Changes

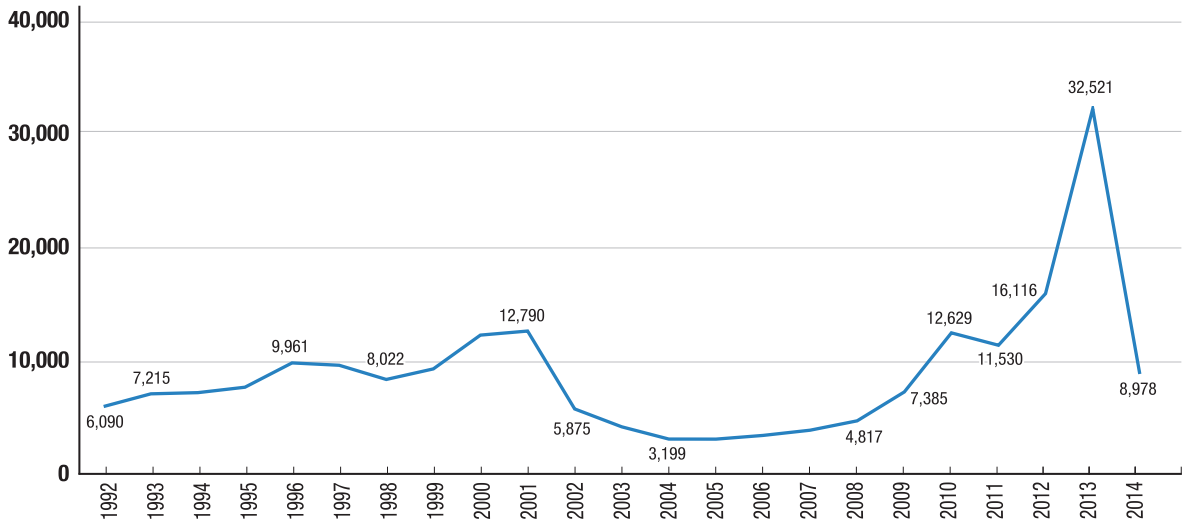
Australia's protection status determination process has been reformed by the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014 (RALC Act) and the Migration Amendment (Protection and Other Measures) Act 2015 (POM Act).

The measures contained within these Acts, as well as the supporting Regulations, came into effect on or before 18 April 2015. These two pieces of legislation, which reintroduced the temporary protection visa, created the framework for the safe haven enterprise visa and introduced the Fast Track Assessment process.

The RALC Act passed both houses of Parliament on 5 December 2014 and received Royal Assent on 15 December 2014. The POM Act passed both houses of Parliament on 25 March 2015 and received Royal Assent on 13 April 2015.

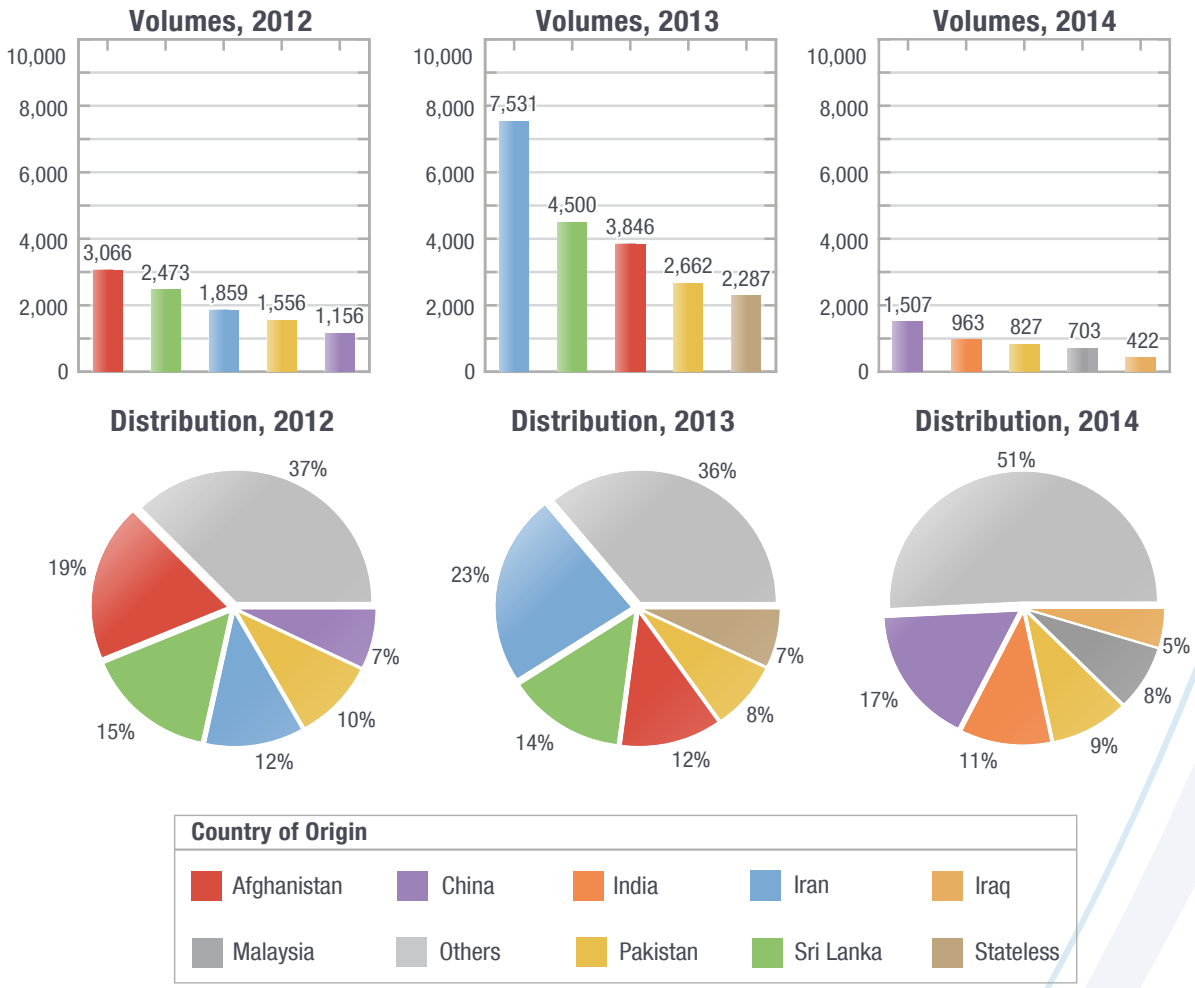
The measures in the POM Act support an effective and coherent protection determination process that responds to the challenging domestic asylum-seeker landscape.

AUS. Fig. 1 **Total Asylum Applications by Year, 1992–2014**



[1] The comments refer to statistics based on Australian fiscal years (from July to June). Statistics in graphs refer to calendar years (Jan.-Dec.).

AUS. Fig. 2 | Asylum Applications Received from Top Five Countries of Origin in 2012, 2013 and 2014



The measures in the RALC Act are closely related to the measures in the POM Act. Together, these two pieces of legislation enact broad-ranging changes to improve the integrity and efficiency of protection processing.[2]

The passage of these Acts marks a turning point that saw the Government of Australia implement fundamental reforms to the way asylum seekers are processed. These changes mean that the Department of Immigration and Border Protection (thereinafter referred to as "the Department") can move forward with the Government's commitment to resolving the 30,000 IMA legacy cases, which includes finalizing those outstanding permanent protection visa applications that were converted by the RALC Act to applications for temporary protection visas, and inviting those who have not yet applied to have their claims assessed.

Illegal Maritime Arrivals and Regional Processing

In August 2012, the Government of Australia announced that persons arriving in Australia by boat without a valid visa (IMAs) would be subject to regional processing arrangements. To effect this policy, the Migration Amendment (Regional Processing and Other Measures) Act 2012 introduced regional processing arrangements, which included the power to designate certain countries as regional processing countries for the purpose of receiving people transferred from Australia for refugee claims processing.

Memorandums of understanding (MOUs) were signed with Nauru (29 August 2012) and Papua New Guinea (8 September 2012) to give effect to regional processing arrangements. The Government subsequently designated Nauru (12 September 2012) and Papua New Guinea (9 October 2012) as regional processing countries.

These changes rendered all IMAs arriving on or after 13 August 2012 liable to be taken to a regional processing country for assessment of their protection claims, unless exempted from transfer by the Minister for Immigration and Border Protection. Transfers of IMAs from Australia to Nauru

[2] Further details are provided in section 2 on the national legal framework.

commenced on 13 September 2012 and to Papua New Guinea on 21 November 2012.

A further legislative amendment – the Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Act 2013, effective 1 June 2013 – ensures that individuals arriving anywhere in Australia (including its excised offshore territories) by unauthorized maritime means are subject to regional processing arrangements, unless specifically exempted.

The Regional Resettlement Arrangement signed between the Government of Australia and the Government of Papua New Guinea on 19 July 2013 provides for the transfer, processing and settlement of persons transferred to Papua New Guinea in Papua New Guinea and other participating States. An MOU was signed with Papua New Guinea (6 August 2013) giving effect to the agreed processing and settlement arrangements. A similar MOU was signed with Nauru (3 August 2013) for transfer, processing and settlement. This policy initiative removed Australia as a settlement destination for prospective IMAs and has directly resulted in a significant reduction in illegal maritime travel initiated by people smuggling.

Under the MOU, Nauru has committed to temporarily settle refugees in Nauru and, with assistance from Australia, resettle refugees in safe third countries. In accordance with this, an MOU between Australia and Cambodia was signed on 26 September 2014 for the settlement of refugees from Nauru in Cambodia. This arrangement affirms Australia's commitment to regional processing and to combatting people smuggling in the region.

Enhanced Screening
Since October 2012, the Government of Australia has developed and implemented a process to better identify asylum seekers who do not engage Australia's protection obligations and expedite their removal from Australia. This has become known as "enhanced screening". This process was developed as a tailored response to a specific set of circumstances, namely an unprecedented expansion of irregular movements from Sri Lanka to Australia, which was contrary to both Sri Lankan asylum seeker movements internationally and country circumstances in Sri Lanka.

The purpose of enhanced screening is to determine whether a person can be removed or has claims that warrant consideration in a protection assessment process. Enhanced screening is designed to collect information from the individual to ascertain his or her reasons for leaving the home country and coming to Australia; this informs a decision as to whether the person can be removed.

Machinery of Government Changes
A new ministry led by Prime Minister Tony Abbott was sworn in by the Governor-General on 18 September 2013. An Administrative Arrangements Order issued by the Governor-General confirmed the following changes to the Department's responsibilities:

- The Department of Immigration and Citizenship was renamed the Department of Immigration and Border Protection.
- The portfolio will manage entry, stay and departure arrangements for non-citizens, border immigration control, citizenship, ethnic affairs, and customs and border control other than quarantine and inspection.
- Settlement and multicultural affairs functions were transferred to the new Department of Social Services, and the Adult Migrant English Programme was transferred to the Department of Education and Training.

On 9 May 2014 it was announced that, from July 2015, the Department and the Australian Customs and Border Protection Service would be consolidated into a single department. At this time, the Australian Border Force, a single frontline operational border agency, was established within the Department.

2 NATIONAL LEGAL FRAMEWORK

2.1 Legal Basis for Granting Protection

One of the means by which Australia provides protection to persons who are refugees, as defined in the Migration Act 1958, is through the grant of a protection visa. Through this process, Australia also meets its non-refoulement obligations under other international human rights instruments, such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the International Covenant on Civil and Political Rights (ICCPR). The grant of a protection visa is governed by the Migration Act and the Migration Regulations 1994.

2.2 Recent/Pending Reforms

Temporary Protection for Illegal Arrivals
Since the 2012 version, the passage of the RALC Act in December 2014 has meant that IMAs who engage protection obligations will only be provided with temporary protection. Providing temporary rather than permanent protection to an IMA or unauthorized air arrival who is found to be a refugee is a key component of the Government's strategy to counter people smuggling. The Government believes that the granting of temporary protection strikes an appropriate balance

between a genuine need for a safe haven from persecution, a disincentive for illegal arrival and a response to changing circumstances in a person's home country.

The legislation, among other measures, established the temporary protection visa and introduced the safe haven enterprise visa, which will be an option available to IMAs who engage protection obligations and who indicate an intention to work or study in a specified regional area.

The temporary protection visa and the safe haven enterprise visa largely have the same conditions:

- Travel will be allowed only under compassionate or compelling circumstances, as determined by the Department, to places other than the country from which protection was sought.
- Holders of temporary protection visas and safe haven enterprise visas will not:
  - Be offered a permanent protection visa
  - Be able to bring family members to Australia through the Humanitarian Programme or the Family Migration Programme
  - Have access to settlement services, except where the relevant minister grants access as required.
- Holders of temporary protection visas and safe haven enterprise visas will have:
  - Permission to work
  - Access to Medicare (Australia's publicly funded national health care scheme) and related benefits
  - Access to early health assessment and intervention services (including counselling for torture or trauma)
  - Access to Special Benefit, rent assistance, family allowance, maternity allowance and family tax benefits
  - Access to education for school-aged children.

Illegal Maritime Arrivals

For the relevant reforms in this area, see "Illegal maritime arrivals and regional processing" in the section on key developments.

The Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload - RALC) Act 2014

The RALC Bill 2014 passed both houses of Parliament on 5 December 2014 and received Royal Assent on 15 December 2014. The RALC Act will enhance the integrity of Australia's onshore process for determining protection refugee status and clear the backlog of 30,000 IMAs currently awaiting processing.

Generally, the measures in the RALC Act:

- Ensure that no illegal arrival receives a permanent protection visa and allow only temporary protection (via a temporary protection visa or the newly created safe haven enterprise visa) to be granted to those who arrive illegally.
- Remove the bar on applications by IMAs who are lawful non-citizens who hold or have held a safe haven enterprise visa, who have met the safe haven enterprise visa work/study/social security requirements and who are applying for a visa specified in a prescribed list of visas, which includes skilled and family visas.
- Establish a different protection assessment model, supporting faster, more efficient processing and removal of those who do not engage Australia's protection.
- Clarify Australia's international law obligations.
- Restore the effective and orderly management of Australia's migration programme.
- Appropriately manage those trying to enter Australian waters illegally.
- Reinforce the Government's powers and support for officers conducting maritime operations to stop people smuggling ventures at sea.
- Provide certainty about the size of the Humanitarian Programme in the coming years.

More specifically, the RALC Act amends legislation to:

- Establish the Fast Track Assessment process for IMAs and establish the Immigration Assessment Authority – a new review body undertaking a new model of limited merits review for eligible Fast Track applicants. The process will apply to those unauthorized maritime arrivals who arrived in Australia on or after 13 August 2012 but before 1 January 2014 and who have not been taken to a regional processing centre.
- Replace relevant references to the Convention Relating to the Status of Refugees (1951 Convention) with the Government's interpretation of Australia's protection obligations under the Convention.
- Clarify that the status of children who are born to IMAs are also IMAs.

The Government also supported an amendment to the RALC Act to the new statutory refugee framework in schedule 5 of the Act, which provides further clarity to subsection 5J(3) by setting out examples of the types of behaviour that a person could not reasonably be required to alter or conceal in order to avoid a real chance of persecution in his or her home country.

Now that the legislation has passed, IMAs currently on Christmas Island or in mainland detention facilities who arrived up until 31 December 2013 can be considered for release into the community and processed as part of the legacy caseload. IMAs already transferred to Nauru or Papua New Guinea and any new IMAs will remain subject to the regional processing policy.

Migration Amendment (Protection and Other Measures - POM) Act 2015

The POM Act was passed by Parliament on 25 March 2015, received Royal Assent on 13 April 2015 and received proclamation on 18 April 2015. The POM Act amends the Migration Act 1958 to implement a range of measures that increase the efficiency and enhance the integrity of the onshore protection status determination process.

The POM Act, together with the RALC Act, forms a package of legislative reforms required to achieve the Government's intended policy outcomes of an effective and coherent protection status determination process that responds to the evolving challenges in the asylum seeker caseload arising from judicial decisions and management of the backlog of IMAs.

Specifically, the measures in the POM Act include:

- Creating two mandatory grounds to refuse a protection visa when an applicant destroys identity documents, provides bogus documents for the purposes of establishing his or her identity, or refuses or fails to comply with a request to establish identity. An exception applies if the applicant has a reasonable explanation for taking these actions and then produces genuine identity documents, or has taken reasonable steps to obtain them. These changes are reflected in the amended section 91W and the newly inserted section 91WA of the Act.
- Placing the responsibility on asylum seekers to establish their protection claims and to provide sufficient evidence to support those claims. This measure does not change the decision-maker's duty to evaluate or ascertain certain facts. This change is reflected in the newly inserted section 5AAA of the Act.
- Ensuring a protection visa cannot be granted to an applicant applying as a member of the same family unit of a person who has been granted a protection visa (the family visa holder), unless the application is made before the family visa holder is granted the protection visa. This change is reflected in the newly inserted section 91WB of the Act.
- Granting the Refugee Review Tribunal[3] the power to draw an adverse inference on the credibility of any new claims or evidence where a review applicant raises those claims or evidence for the first time at the review stage and does not have a reasonable explanation for not raising them at the primary decision stage. This change is reflected in the newly inserted section 423A of the Act.
- Streamlining the statutory bar under section 46A of the Migration Act (which prevents a valid visa application from being made) to apply to IMAs regardless of whether they are unlawful or hold bridging visas or other prescribed temporary visas. This includes temporary protection visa holders.
- Improving the processing and administration of the Migration Review Tribunal[3] and the Refugee Review Tribunal, by:
  - Strengthening the powers of the principal member to issue guidance decisions and practice directions
  - Enabling the tribunals to make an oral statement of reasons where there is an oral decision without the need for a written statement of reasons
  - Introducing the power to dismiss an application where an applicant fails to appear at a scheduled hearing before a tribunal, and to reinstate the application where it is appropriate to do so.

Complementary Protection Legislation: March 2012

Complementary protection is the term used to describe a category of protection for persons who have been found not to be refugees under the new statutory refugee framework, as inserted by part 2 of schedule 5 in the RALC Act, but who cannot be returned to their home country because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the removal of the person to the receiving country, there is a real risk they will suffer significant harm, thus engaging Australia's non-refoulement obligations under ICCPR and its Second Optional Protocol or under CAT.

Significant harm is defined as:

- Arbitrary deprivation of life
- Having the death penalty imposed and carried out
- Being subjected to torture
- Being subjected to cruel, inhuman or degrading treatment or punishment.

The Migration Amendment (Complementary Protection) Act 2011 amended the Migration Act with effect from 24 March 2012. As a result, applicants in respect of whom Australia has complementary protection obligations are granted a protection visa. This is the same visa granted to refugees.

[3] Following the passage of the Tribunals Amalgamation Act 2015 on 1 July 2015, the Administrative Appeals Tribunal took over the review functions of the former Refugee Review Tribunal and the former Migration Review Tribunal.

3 INSTITUTIONAL FRAMEWORK

3.1 Principal Institutions

The Department administers the Humanitarian Programme, which consists of an offshore resettlement component and an onshore protection component. The Department receives applications for resettlement and for protection visas. In the case of protection visa applications, Department officers, acting as delegates of the Minister for Immigration and Border Protection, decide if the protection visa applicant engages Australia's protection obligations as a refugee or under complementary protection provisions. The Migration and Refugee Division of the Administrative Appeals Tribunal (AAT) reviews decisions by the Department to refuse to grant or to cancel a protection visa.

Additionally, the Immigration Assessment Authority, a statutory body within the Migration and Refugee Division of AAT, undertakes a new model of limited merits review for certain Fast Track applicants found not to be owed Australia's protection. The Immigration Assessment Authority is relevant to IMAs who arrived in Australia on or after 13 August 2012 but before 1 January 2014 and who have not been taken to a regional processing centre. The Department will automatically refer these cases to the Immigration Assessment Authority for review. The applicant will not need to apply for a review.

Protection visa decisions that relate to character and that are decided under section 65 of the Migration Act are reviewed by the General Division of AAT, relying on subsections 5H(2), 36(1C), paragraphs 36(2C)(a) or (b) of the Act (which are statutory codification of the matters covered by articles 1F, 32 or 33(2) of the 1951 Convention). The General Division of AAT also reviews decisions by the Department to refuse to grant, or to cancel, a visa on character grounds under section 501 of the Act.

The Federal Circuit Court of Australia hears applications for judicial review of a decision of the former Refugee Review Tribunal or of AAT if there has been an error of law. The Federal Court of Australia hears applications for judicial review of AAT decisions. In its appellate jurisdiction, the Federal Court can hear appeals from judgements relating to decisions of the former Refugee Review Tribunal and of AAT. Applicants may also pursue judicial review in the High Court, either by seeking leave to appeal a judgement of the Federal Court, or directly to the High Court in its original jurisdiction, on a question of law.

3.2 Cooperation between Government Authorities

There is no structural cooperation between the Department and AAT or the courts, as these bodies work independently when reviewing protection visa decisions by the Department. Regular meetings are held between the AAT executive and the Department to discuss and resolve issues of concern and to settle general policies and procedures related to protection visas.

The following government agencies are also involved in the protection visa procedure:

- Australian Federal Police: 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: This organization conducts security checks to ascertain whether an applicant meets security criteria for the grant of a protection visa.
- Department of Foreign Affairs and Trade (DFAT): The Minister for Foreign Affairs determines whether an applicant may be directly or indirectly associated with the proliferation of weapons of mass destruction. DFAT overseas posts also provide the Department with in-country information on human rights and other local issues relevant to refugee determinations.

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

4 PRE-ENTRY MEASURES

The Migration Act requires citizens and non-citizens to identify themselves when entering Australia to an immigration clearance officer or authorized system at a port of entry and to provide certain information. This process is designed to regulate the entry of people to Australia, to ensure 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.

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

4.1 Visa Requirements

Australia has a non-discriminatory migration programme and a universal visa system requiring all non-citizens (with some very limited exceptions) to hold a visa before entering Australia. The Department is the competent authority for issuing visas.

4.2 Carrier Sanctions

The Migration Act allows for fines of up to AUD 10,000 for the master, owner, agent, charterer, operator or agent of a vessel that carries any person who does not hold a visa or other authority to enter Australia. As a matter of policy, the Department may issue infringement notices for up to AUD 5,000 for the same offence, where organized malpractice is not an issue.

4.3 Interception

As part of its universal visa requirement and requirements on arrival, Australia has processes in place to prevent the entry of people who may be a security, criminal or health risk to Australia.

Advance Passenger Processing

Airlines and cruise ships provide the Department with information on all passengers and crew, including transit passengers, travelling to or via Australia using the Advance Passenger Processing system. This system also checks passenger data against passport and visa databases to confirm a person's eligibility to travel to Australia. From 1 July 2015, airlines will also provide information on all passengers and crew departing Australia.

5 ASYLUM PROCEDURES

5.1 Application Possibilities and Requirements, Procedures and Legal Remedies

Protection Visa Applications

A protection visa application may be made by persons in Australia either at the port of entry or at offices of the Department.

Protection visa 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 protection visa application forms that need to be submitted (and the protection visa application charge payable)[4] by a family unit. Family unit members can make claims of their own and may lodge separate protection visa applications if they so wish.

Access to Information on Protection Visa Procedures

Some information on the protection visa procedure is available in English on the Department's website.[5] Staff at Department offices can also provide additional information on the protection visa procedure.

Material from the Protection Application Information and Guides became available on the Department's website on 31 March 2014. These guides provide clear instructions and information on the various stages of the protection application and assessment process.[6] The Protection Application Information and Guides were recently translated into the top 10 languages of asylum seekers.

In addition to the Protection Application Information and Guides, Australia has introduced the Primary Application Information Service for illegal arrivals who meet strict eligibility criteria. The key component of eligibility for the Primary Application Information Service is an inability, due to a particular vulnerability, of the applicant to participate actively in the protection visa process (for example, in articulating their claims). Most illegal arrivals will not have access to government-funded legal assistance.

Unaccompanied minors who are under the care of the Minister for Immigration and Border Protection as guardian according to the provisions of the Immigration (Guardianship of Children) Act 1946 (the IGOC Act), will be able to access the Primary Application Information Service for merits review. Anyone seeking protection in Australia continues to be able to source his or her own privately engaged (including pro bono) migration agent at any time, but there is no requirement to have a migration agent assist with lodging any visa application.

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 who fall under the refugee category of the offshore Humanitarian Programme, as described below.

Resettlement

Average Yearly Quota of Refugees

In 2015, the Government of Australia made a commitment to increase the size of the Humanitarian Programme over the next four financial years from the current level of 13,750 places up to 18,750 places by 2018/19. This will allow 7,500 more people to be resettled in Australia over this period. This intake will represent the largest offshore humanitarian intake in more than 30 years.

[4] The protection visa application charge is AUD 35 per application for applicants in the community and who have the financial means to pay.
[5] See www.border.gov.au.
[6] These guides can be found at www.border.gov.au/paig.

Selection of Humanitarian Entrants

There is a planning level of 11,000 places for the offshore (resettlement) component of Australia's 2014/15 Humanitarian Programme. The priorities in the 2014/15 offshore component will be on resettling those most in need from the three key regions of Asia, the Middle East and Africa. This will include refugees referred by the United Nations High Commissioner for Refugees (UNHCR) and other people in need of resettlement proposed by close family members in Australia through the Special Humanitarian Programme (SHP).

Australia has set aside 4,400 places (40 per cent of the offshore component of the Humanitarian Programme) for Syrians and Iraqis who have fled to neighbouring countries. Other nationalities to be resettled in 2014/15 include Burmese from Thailand, Malaysia and India; Bhutanese from Nepal; Afghans from Pakistan and Iran; UNHCR-referred refugees from Indonesia; and a range of African nationalities. In 2013/14, 11,016 visas were granted under the offshore component of the Humanitarian Programme (under either the refugee category or the SHP category), with 50 per cent granted to persons from Asia, 35 per cent to those from the Middle East and 15 per cent to those from Africa.

In the offshore component of the 2013/14 programme, the top five countries of birth were Afghanistan, Iraq, Myanmar, the Democratic Republic of the Congo and Eritrea.

Criteria for Resettlement

Persons who are subject to persecution in their home country and who are currently residing outside their home country may qualify under the refugee category and be resettled in Australia. The majority of applicants who are granted under this category are identified and referred by UNHCR for resettlement. The refugee category includes those in the Women at Risk programme. In 2013/14, a total of 1,052 refugee visas (16.2 per cent) were granted to women at risk and their dependants.

Persons who may qualify for resettlement under the SHP category of visa are those who are subject to substantial discrimination amounting to human rights violations in their home country, who are living outside their home country and who are "proposed" for entry by a close family member who is an Australian citizen or permanent resident (the "proposer"). The proposer is expected to assist the entrant with travel and settlement.

The Community Proposal Pilot was introduced on 1 June 2013. It aims to strengthen Australia's commitment to assisting refugees by providing an additional resettlement pathway for people in humanitarian situations outside Australia. It also aims to harness the goodwill that exists within the community to assist people to settle successfully through the provision of settlement support and associated costs. Applications under the Community Proposal Pilot must be proposed by an approved proposing organization, (that is, a well-established community organization in Australia that has entered into a deed of agreement with the Department). Approved proposing organizations work either independently, or with the assistance of Australian family members or community organizations, to propose the applicant, ensure all costs associated with the application are paid, and provide the required settlement services and support to the entrant, should he or she be granted a visa. Persons applying under the Community Proposal Pilot may be granted a visa under the refugee category or the SHP category.

All applicants are required to meet the compelling humanitarian, health, character and security criteria to be eligible for the grant of a visa.

Procedures

Refugee and humanitarian visa applications that are accompanied by a proposal form for the SHP category must be sent to the prescribed address in Sydney or Melbourne. Refugee and humanitarian applications under the Community Proposal Pilot must be sent to the prescribed address in Melbourne.

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

There is no provision to appeal against decisions to refuse resettlement to offshore applicants based on the merits of the application. However, an applicant may apply for judicial review of the decision. Refused applicants may also reapply at any time.

5.1.2 At Ports of Entry: Non-authorized Maritime Arrivals

If a person, regardless of his or her immigration status, states at a port of entry (a seaport or an 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 an officer authorized by the Department to ascertain the reasons for the person's arrival in Australia. This includes the nature of any claims for asylum the person may make. It is not an assessment of the merits of the claim for protection.

Based on the information given by the person, the assessing officer will decide whether the person may engage Australia's protection obligations. This is a low threshold test. If the assessing officer considers that the person may engage Australia's protection obligations, the person will be permitted to lodge a protection visa application. Arrangements will then be made for the person to be transferred to the nearest immigration detention facility (IDF). The protection visa application is processed in the normal protection visa

procedure. Priority is given to finalizing detention cases.

If the person provides information or makes claims that the assessing officer considers not to engage with Australia's protection obligations, arrangements may be made for the person to be removed. However, a person can apply for a protection visa 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 protection visa application form.

5.1.3 Inside the Territory

Application and Admissibility

Requirements for Making a Valid Application

Asylum seekers may lodge a protection visa application with the Department, either in person or via the postal service. Protection visa applications are processed in the Department's regional offices in Sydney, Melbourne or Perth by trained protection visa decision-makers.

For a protection visa application to be valid, the applicant must be physically present in Australia, the application must be made with an approved form (Form 866), and the prescribed fee of AUD 35 must be paid. The applicant also must not be subject to any application bar (discussed below) that prevents him or her from making a valid application.

A protection visa application will not be invalid simply because not all of the questions in Form 866 have been completed. However, the application will be considered invalid if it omits material information that would enable a decision-maker to consider the substantive issues directed to the protection visa application (for example, the applicant's biodata and reasons for claiming protection).

Where an application is invalid due to the lack of material information, but the applicant later provides the necessary information, the invalid protection visa application will become a valid application at that point.

The Migration Act provides for a number of circumstances in which a person would be prevented from making a valid protection visa application. Where such a circumstance applies to a person, any purported application made by that person becomes an invalid application, unless the Minister personally intervenes to allow a valid protection visa application to be made.

A protection visa application is invalid if a person is affected by any of these provisions:

- Section 46A: A visa application made by an unauthorized maritime arrival unlawfully in Australia is invalid. The Minister can lift this application bar under subsection 46A(2).
- Section 48A: A non-citizen who, while in the migration zone, has been refused a protection visa application or who held a protection visa that was cancelled, cannot make a valid application while remaining in the migration zone. The Minister can lift this application bar under section 48B of the Migration Act.
- Sections 91C, 91D and 91E: A person covered by the 1989 Comprehensive Plan of Action approved by the Steering Committee of 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 protection visa application. The Minister can lift this bar under section 91F.
- Sections 91J and 91K: A protection visa application by a person in Australia who holds a temporary safe haven visa, or who has not left Australia since ceasing to hold a temporary safe haven visa, will not be a valid application. The Minister can lift the bar under section 91L.
- Sections 91N and 91P: A person who is a national of two or more countries, or who has a right to re-enter and reside, whether temporarily or permanently and however that right arose or is expressed, 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 permitted to make a valid protection visa application. The Minister can lift the application bar under section 91Q.

The Minister's powers to lift the application bars can only be exercised personally by the Minister and are non-compellable. In addition, the exercise of the Minister's personal powers is not merits reviewable, although it may be judicially reviewed.

Applicants whose protection visa applications are found to be valid may be eligible for the grant of an associated bridging visa, which allows them to remain lawfully in Australia for the duration of the application process. The bridging visa is issued with certain conditions and remains in effect until the protection visa application is finally determined.[7] A further bridging visa may be granted if a person seeks judicial review after his or her protection visa application has been finally determined, or requests ministerial intervention on public interest grounds. This is done on a case-by-case basis provided the person meets the relevant criteria for the grant of a further bridging visa.

[7] The specific class of bridging visa for which a protection visa applicant will be eligible depends on his or her immigration status at the time of the application for a protection visa. Depending on his or her status and immigration history, he or she either will be eligible for work rights or can gain access to work rights if he or she can demonstrate a compelling need to work and in some cases an acceptable reason for the delay in lodging the protection visa application. Generally, applicants with access to work rights can also have access to publicly funded national health care. A protection visa application is finally determined within the meaning of section 5(9) of the Migration Act if a decision has been made to refuse and the decision is not, or is no longer, subject of any form of merits review by the relevant review authority, or the decision is subject to some form of review but the period in which such a review could be sought has ended without the review having been sought.

Accelerated Procedures

As a matter of policy, certain categories of applications are given a higher priority.[8] The order of priority is as follows, from first to last:

- Detention cases
- Sensitivity and priority of cases involving unaccompanied minors in the community are to be considered in each individual case and priority given accordingly
- Torture/trauma cases
- Protection visa applicants in receipt of Status Resolution Support Services Band 6 (formerly known as the Asylum Seeker Assistance Scheme)
- Special needs applicants, such as persons with physical or psychological disabilities, or who are in serious ill health
- Further protection visa applications lodged following a decision by the Minister to lift the section 48A bar to make a further protection visa application
- All new initial protection visa applications.

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 protection visa application has been determined to be valid, a protection visa decision-maker from the Department assesses the applicant's protection claims, with reference to up-to-date information on conditions in the applicant's home country. Country of origin information (COI) research is provided by a dedicated unit within the Department. The assessment also takes into account Australia's obligations under other human rights treaties to which Australia is a party, namely ICCPR and CAT. All protection visa applications are assessed on an individual basis. Section 65A of the Migration Act requires all primary protection visa decisions by the Department to be made within three months of application, or a report must be made to Parliament indicating why this time frame was not met.

Other Requirements

Where a protection visa applicant is found to be a person to whom Australia has protection obligations, the applicant must satisfy the following criteria before a protection visa 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
- Sign a values statement to confirm that he or she will respect the Australian way of life and obey the laws of Australia.

Interview

Under current Department policy, all protection visa applicants are interviewed prior to a primary decision on the application being made.

The Department uses sensitive questioning techniques for children and victims of torture or trauma during the interview process.

Review/Appeal of Protection Visa Decisions

Merits Review

If the Department refuses a protection claim, the protection visa applicant (other than a Fast Track applicant) may appeal the decision at an independent tribunal (AAT). Depending, that is, on the basis for the initial refusal, the decision is reviewed by either the Migration and Refugee Division or the General Division of AAT.

The applicant has 28 days from the date of notification of the decision to refuse a protection visa (7 working days for an applicant in immigration detention) to lodge an application with AAT.

If AAT 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 1,540 becomes payable if AAT affirms the original refusal decision made by the Department.

A protection visa applicant who is a Fast Track applicant and who has been refused by the Department will not have access to merits review by the Migration and Refugee Division of AAT. Instead, he or she will be referred automatically by the Department to the Immigration Assessment Authority, which is a statutory body established within the Migration and Refugee Division to undertake a limited form of merits review based on the papers.

The General Division of AAT reviews the Department's decisions that refuse to grant a protection visa, or cancel a protection visa, relying on subsections 5H(2), 36(1C), paragraphs 36(2C)(a) or (b), of the Migration Act (previously articles 1F, 32 or 33(2) of the 1951 Convention). AAT also reviews the Department's decisions that either refuse to grant a visa or cancel a visa on character grounds under section 501 of the Migration Act.

[8] For details of the recently established protection decision-making process called "Fast Track", see the section on key developments at the beginning of this chapter.

Judicial Review

An asylum seeker may apply for judicial review of a decision of a review body in the Federal Circuit Court of Australia on grounds relating to the legality (error of law, also referred to as jurisdictional error), rather than the merits, of the decision. Examples of jurisdictional error include where correct procedures were not followed in the decision-making process, where the person was not given a fair hearing, where the decision-maker incorrectly interpreted or applied the relevant law, and where the decision-maker was biased. An applicant may appeal the Federal Circuit Court decision to the Federal Court of Australia (or the Federal Court of Australia Full Court where the matter is of sufficient importance as determined by the Federal Court of Australia). An application for special leave to appeal can be made to the High Court from a decision of the Federal Court of Australia or the Federal Court of Australia Full Court. Alternatively, applicants may pursue judicial review directly to the High Court in its original jurisdiction, on a question of law.

Freedom of Movement during the Procedure

There are no restrictions placed on the freedom of movement of asylum seekers 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, detention is not usually necessary. However, undocumented arrivals, IMAs and persons who have been denied entry will be detained for the management of health, identity and security risks to the community.

Why Are People Detained?

With the establishment of Operation Sovereign Borders on 18 September 2013, the Government of Australia is focusing on disrupting and deterring people smugglers, detecting and intercepting IMAs, and supporting regional processing and resettlement of asylum seekers as well as returns of those not found to be owed protection. These measures are intended to deny people smugglers a product to sell to often vulnerable people and to restore integrity to the migration programme. All arrivals from 1 January 2014 will be transferred to the Manus (Papua New Guinea) or the Nauru regional processing centre. Anyone who comes to Australia illegally by boat will not be eligible for permanent residency in Australia.

Nauru and Papua New Guinea are both parties to the 1951 Convention and their Governments process protection claims and make refugee status determinations. Transferees found to be refugees may be settled in Nauru, Papua New Guinea or Cambodia. Transferees found not to be refugees are expected to return to their country of origin or to a third country where they have the right to reside. They will be removed where they do not depart voluntarily.

Immigration detention supports Australia's well-managed migration system and is used to identify and manage potential risks, including national security, health and character risks, to the Australian community. Those subject to mandatory detention include:

- All illegal arrivals, for the management of health, identity and security risks to the community
- Unlawful non-citizens who present unacceptable risks to the community
- Unlawful non-citizens who have repeatedly refused to comply with their visa conditions.

Length of Detention and Placement Decisions

Detention is not limited by a set time frame but is dependent upon a number of factors, including identity determination, developments in country information, and the complexity of processing due to individual circumstances relating to health, character or security matters. Detention that is indefinite or arbitrary is not acceptable.

Placement decisions for people in immigration detention are made taking into consideration each individual's circumstances and risks, with a view to seeking a balance between the best interests of the individuals, particularly children, and operational and security factors. They may include:

- The individual's character, any identity and security issues, age and family composition, health and well-being
- Any unique or exceptional circumstances
- The individual's cooperation with immigration processes
- The likelihood of the person's compliance with any conditions (such as reporting regularly, staying at the specified address and not working).

The Department seeks to accommodate the members of family units together wherever possible. Options for accommodating in Australia IMA families with children include community detention, alternative places of detention and accommodation in the community on bridging visas. The Government has routinely used the Community Detention programme for unaccompanied minors, families with children and other vulnerable people, given the additional support that this programme provides.

The immigration detention of all detainees is subject to regular review, both from within the Department and by external agencies, including the Commonwealth Ombudsman. The reviews consider the lawfulness and appropriateness of the person's detention, his or her detention arrangements/placement, health and welfare, and other matters relevant to his or her ongoing detention and case resolution.

Scrutiny from a number of external bodies helps to ensure that detainees held in immigration detention are treated humanely and fairly. These parties include parliamentary committees, the Commonwealth Ombudsman's Office, the Australian Human Rights Commission and UNHCR.

Immigration detention occurs in immigration detention centres, immigration residential housing, immigration transit accommodation, alternative places of detention and community detention (also known as residence determination).

In all cases, the Department must justify a decision to detain. Services provided at Immigration Detention Facilities (IDFs) are subject to parliamentary scrutiny and accountability. The immigration detention process is among the most closely scrutinized of all Government of Australia programmes.

Onshore IDFs, including those on Christmas Island, are regularly visited by the Australian Human Rights Commission, the Commonwealth Ombudsman's Office, the Australian Red Cross, pastoral care providers and representatives of community groups.

Both the Commonwealth Ombudsman and the Australian Human Rights Commission can investigate complaints made by individuals in relation to administrative actions of government officials and breaches of human rights. These bodies also provide the Department with advice on the administration of immigration detention, as well as insights into the broader work of the Department and how it can be improved.

The Department facilitates visits by federal parliamentarians and parliamentary committees who regularly visit Australian IDFs and report on conditions in these facilities. The Commonwealth Ombudsman has a statutory right to enter IDFs to investigate complaints and can undertake its own inquiries into aspects of immigration detention.

While the Australian Human Rights Commission has no express rights or powers of entry to IDFs, the Department facilitates visits wherever possible.

The Government of Australia supports, in principle, the monitoring role of non-governmental organizations (NGOs) in respect of transferees located in the regional processing centres in Nauru and Papua New Guinea; however, this is a matter for the Governments of those countries.

Recent Reforms to Detention Policies Affecting Families

As a signatory to the Convention on the Rights of the Child, Australia takes its obligations very seriously.

The Community Detention programme (residence determination) was established in June 2005. In October 2010, the programme was expanded to include unaccompanied minors, families and other vulnerable adults. Community detention allows people to live at a specified place in the community instead of being detained in an IDF.

Expanding the Government's Community Detention programme has enabled significant numbers of unaccompanied minors and vulnerable family groups to be relocated from IDFs to community-based accommodation, and has given effect to the Government's policy not to separate children from their families while they are in immigration detention, wherever possible.

On 29 August 2014, the Department entered into contracts with 11 organizations for the provision of Status Resolution Support Services (SRSS). The SRSS programme brings together service delivery arrangements for the former Community Detention programme, Community Assistance Support programme and Asylum Seeker Assistance Scheme into a single consolidated programme.

The SRSS programme provides services via six bands; each band provides services to a category of recipient, depending on the recipient's circumstances. Under Bands 2 and 3, detainees in immigration detention are allowed to live in the community while seeking to resolve their immigration status.

The Department takes a risk-based approach to the management of IMAs, including ensuring that appropriate identity, health and security risk assessments are undertaken prior to moving detainees into the community. Under the Migration Act, before approving any detainee for Bands 2 and 3, the Minister for Immigration and Border Protection must be satisfied that it is in the public interest to do so.

Being placed under Bands 2 and 3 of the SRSS programme is voluntary. Being part of this category requires a certain level of independence and self-sufficiency, which means it is important that detainees are fully informed and agree to being considered for the programme.

SRSS recipients under Bands 2 and 3 are required to adhere to a range of conditions, including residing at their allocated address and abiding by Australian laws. They are supported by service providers contracted by the Department. Services include housing, case management, an allowance to meet daily living costs, schooling for children, English language classes for adults and access to health care. Community detention does not give a person any lawful status or the right to work or undertake vocational education or training.

SRSS recipients under Bands 2 and 3 continue to work with their case managers on the resolution of their status, including the option of return, and as such may be in community detention for shorter or extended periods of time, depending on their circumstances.

In August 2014, the Minister announced new measures to move families with children out of detention (including residence determination arrangements). The measures include enhanced support arrangements for families with children exiting immigration detention on bridging visas while seeking to resolve their immigration status.

Bridging Visa E for IMAs as an Alternative to Immigration Detention

Since 25 November 2011, successive ministers for immigration and border protection have used their intervention power under section 195A of the Migration Act to grant a bridging visa E to IMAs. A bridging visa E is a temporary visa that allows the holder to be released from immigration detention to live in the Australian community while their immigration status is resolved.

The Minister must personally intervene to allow IMAs to be granted a further bridging visa E by the Department.

The consideration of a grant of a bridging visa E is subject to an IMA satisfying health, security, identity and behavioural checks.

Since 14 December 2013, all IMAs aged 18 years or older must sign a Code of Behaviour before they can be considered for a grant of a bridging visa E. The Code of Behaviour was introduced to help to ensure that IMAs living in the community on a bridging visa E are aware of community behavioural expectations and behave appropriately within the Australian community.

The current support arrangements for IMAs who are holders of a bridging visa E are provided through the SRSS programme, specifically Bands 4 to 6.

Subject to meeting eligibility requirements, IMA bridging visa E holders may be supported by a caseworker, receive an income support payment (administered by the Department of Human Services on behalf of the Department) and access health care provided through the SRSS programme and Medicare.

Enhanced support arrangements are available to IMA families with children 10 years of age or younger exiting immigration detention (including residence determination) on bridging visas in order to enable them to be more self-sustaining and resilient in the community. The support available includes:

- Up to three months transition support (SRSS Band 4) on exit from immigration detention. This includes assistance to secure independent accommodation, access to emergency relief, education, health services and income support; followed by:
- Up to three months in SRSS Band 5 to provide recipients with a higher level of caseworker support for their first three months in independent accommodation; followed by:
  - SRSS Band 6 for ongoing support following the initial transition period
  - Access to the schooling requirements package of AUD 450 at the start of each new school year, which covers items such as uniforms, school books, bags and stationary
  - Assistance where public transport assistance is not already available from the state or territory government, or where the child lives more than 2 km from the school.

Reporting

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

Repeat/Subsequent Applications

Under section 48A(1) of the Migration Act, a person whose application for a protection visa has been refused (whether or not the application has been finally determined) may not make another protection visa application while the person is in the migration zone. Under section 48A(1B) of the Migration Act, the same restriction applies to a person whose protection visa has been cancelled.

However, under section 48B of the Migration Act, the Minister for Immigration and Border Protection has a non-delegable, non-compellable power to determine that section 48A of the Act does not apply to the person if the Minister thinks it is in the public interest to do so.

The Minister will only consider lifting the section 48A bar where the request contains new information that is likely to enhance the person's chance of making a successful protection visa application.

A person's chance of making a successful claim for protection is likely to be enhanced if the additional information provided:

- Has not already been assessed by the Department or a review body

- Appears to be credible
- Is related to protection obligations under section 36(2) of the Migration Act.

If the Minister decides to lift the section 48A bar, the applicant can make another protection visa application onshore within a period of seven working days from the time the notice is given. The further application is considered by a protection visa decision-maker from the Department in accordance with standard protection visa application procedures, guidelines and legislation. The Minister's decisions under section 48B of the Migration Act are not judicially reviewable. However, the person will have access to merits and judicial review if the further protection visa application is refused by the Department.

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 EU Nationals

A claim for asylum by a citizen of an EU Member State is considered individually based on the merits of the claim, and in light of Australia's obligations under the 1951 Convention, complementary protection criteria and the domestic legislative framework.

5.2.2 First Country of Asylum

Subject to the applicant meeting all requirements for a grant of a protection visa, asylum seekers who are found to be owed protection are granted permanent protection visas if they arrived in Australia as a lawful non-citizen. They are granted temporary protection visas if they arrived in Australia as unlawful non-citizens, even if 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 protection visa assessment process, decision-makers examine whether effective protection in a safe third country is available to the applicant. Decision-makers have regard to section 36(3)–(7) of the Migration 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.

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.

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. They will consider information provided by the applicant, including visa and passport evidence, and 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 that decision reviewed in light of any new information or a change in circumstances.

Other safe third country provisions are found in subdivisions AI and AK of the Migration Act. These provisions prevent certain non-citizens from making a valid protection visa application, including those covered by the Comprehensive Plan of Action for 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 Border Protection thinks that it is in the public interest to do so.

Australia and China have a safe third country agreement in which China agreed to accept the return of Vietnamese refugees from Australia who had already been resettled in China, and to continue to afford them protection. In practice, these provisions have not been used in recent years.

5.3 Special Procedures

5.3.1 Children and Unaccompanied Minors

The policies that the Government of Australia has implemented under Operation Sovereign Borders also apply to children who arrive with family members (accompanied minors) and to unaccompanied minors. As such, all IMAs, including children, are liable to regional processing arrangements (for those who arrived in Australia after 19 July 2013) or temporary protection.

While a period of detention is required for all IMAs so that health, security and character checks can be undertaken, alternative arrangements are made for children wherever possible and appropriate. The majority of children are located in community detention arrangements, where they live in residential housing with their family members or, in the case of unaccompanied minors, with a contracted carer in a group housing arrangement with other unaccompanied minors. In other instances, children are detained in low-security alternative places of detention or community detention, or are granted bridging visas with the appropriate levels of support.

The Government of Australia recognizes that children and young people, particularly unaccompanied minors, have specific needs and vulnerabilities. A range of care, welfare and support arrangements are in place to provide for the day-to-day needs of children and young people in immigration detention. Specialist service providers are contracted to ensure that health, recreational, cultural and spiritual needs

are met. School education is also compulsory in line with community standards.

In August 2014, the Government announced new measures to enable more children to be released from detention with bridging visas. These measures include improved support arrangements for families with young children on bridging visas and extending the services currently available, in recognition of the needs of children and families. This support will allow families with children to be more self-sustaining and resilient in the community while they await the completion of their processing.

Eligible unaccompanied minors granted permanent or temporary refugee or humanitarian visas are provided with accommodation, care, supervision and welfare services under the Unaccompanied Humanitarian Minors Programme and are also able to access the relevant mainstream services. These unaccompanied minors remain in the programme until they turn 18 years of age, obtain Australian citizenship or permanently depart Australia.

A range of specific safeguarding procedures are followed during any interactions between unaccompanied minors and Department officials. These include the presence of independent observers during interviews and tailored arrangements to take into account the age, maturity and background, including any specific vulnerabilities, of the child.

Guardianship

Under the IGOC Act, the Minister for Immigration and Border Protection is the legal guardian of certain unaccompanied non-citizen minors who arrive in Australia without a parent or relative 21 years of age or older to care for them. These children are referred to as "IGOC minors". The majority of the Minister's responsibilities as guardian are delegated to various officers in the Department (or state or territory officers when a visa has been granted) and his or her care obligations are discharged through arrangements with custodians, who may be contracted service providers or individual community links.

IMAs who are unaccompanied minors arriving on or after 13 August 2012 are liable for transfer to a regional processing country for refugee claim processing. Under current government policy, only unaccompanied minors arriving after 19 July 2013 have been transferred to Nauru. There are no current plans to transfer unaccompanied minors to Papua New Guinea.

Unaccompanied minors who arrived illegally prior to 31 March 2014 were provided with migration advice and application assistance by a registered migration agent under the Immigration Advice and Application Assistance Scheme (IAAAS). They will now be provided with assistance through the new primary application information service arrangements.[9]

AUS. Fig. 3 | **Asylum Applications by Unaccompanied Minors**

Data are not available.

5.3.2 Stateless Persons

Australia is a party to the Convention Relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness. Australia has implemented its obligations under these Conventions through a combination of policy, procedural guidance and citizenship legislation.

The Government is strengthening existing practices and the identification and assessment of persons who claim to be stateless. For example, on 1 July 2012, the Department implemented guidelines for protection visa decision-makers on assessing claims of statelessness. The guidelines support more robust findings on statelessness as they relate to protection claims.

Australia recognizes that there are difficulties in returning claimed stateless persons with no lawful right to remain in Australia unless their country of habitual residence or former nationality is willing to accept them. The Department continues to progress case resolution for those who do not engage Australia's protection obligations but who have claimed to be stateless. Where a person who has claimed to be stateless does not engage Australia's protection obligations, the Minister for Immigration and Border Protection may consider intervention based on his or her non-compellable public interest powers.

In the period 1 July 2010 to 30 June 2014, a total of 1,763 protection visas were granted to persons reporting to be stateless: 501 in 2010/11; 656 in 2011/12; 505 in 2012/13; and 101 in 2013/14.

5.3.3 Illegal Maritime Arrivals

Excision

IMAs who arrive in Australia as unauthorized maritime arrivals due to their method and place of arrival are not eligible to make a protection visa application unless the Minister intervenes to lift the application bar under section 46A of the Migration Act. Unauthorized maritime arrivals who arrived on or after 13 August 2012 are liable to be taken to a regional processing country such as Nauru or Papua New Guinea for assessment of their protection claims, unless exempted from transfer by the Minister.

The assessment of their protection claims will take place under the domestic law of the regional processing country.

[9] For more information on this subject, see "Application Assistance" under the section on assistance and reception benefits for asylum seekers.

The protection visa process for the onshore caseload is governed by statutory provisions within the Migration Act that specify time frames for decision-making and merits review rights through AAT. There is also provision for judicial review to remedy any potential legal errors in either the primary or the review decision-making process.

The protection visa process for unauthorized maritime arrivals was, until 24 March 2012, governed by a series of non-statutory processes that partially mirrored the statutory provisions of the Migration Act in providing for a primary assessment and merits review process. The non-statutory primary assessment process was originally referred to as the Refugee Status Assessment from 2008 until 1 March 2011, whereupon it was replaced by the Protection Obligations Determination process, which applied to the IMA caseload until 24 March 2012.

IMAs who arrived between 24 March 2012 and 13 August 2012, or who arrived before 24 March 2012 but were not at the interview stage, have been allowed into the statutory process.

Regional Processing

On 18 August 2012 amendments to the Migration Act commenced. These amendments introduced new provisions relating to regional processing, including the ability to designate a country as a regional processing country and clear legislative authority for the taking of unauthorized maritime arrivals to a regional processing country. Persons entering Australia by sea without a valid visa on or after 13 August 2012 are liable for transfer to a regional processing country as soon as reasonably practicable, unless exempted by the Minister. The MOUs between Australia and the designated countries of Nauru and Papua New Guinea provide for the determination of such persons' asylum claims to be undertaken in those countries, under the laws of those countries.

Unauthorized maritime arrivals who arrived between 13 August 2012 and 19 July 2013 and who have not been transferred to a regional processing country remain liable for transfer at a future date while they hold the status of an unauthorized maritime arrival.[10]

Return

People who are found not to have engaged Australia's protection obligations process are expected to depart voluntarily or they may be returned to a country where they have a right of entry and long-term residence.

For those asylum seekers who are subject to regional processing arrangements, processes are in place to ensure transfers to a regional processing country are consistent with Australia's non-refoulement obligations, both in relation to the processing country and to countries where they may be subsequently sent. The MOUs with both Nauru and Papua New Guinea explicitly state that asylum seekers will not be expelled or returned to another country where their life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion, or where there is a real risk that they will be subjected to torture, cruel, inhuman or degrading treatment or punishment, arbitrary deprivation of life or the imposition of the death penalty.

IOM/2012.

[10] See "Illegal Maritime Arrivals and Regional Processing" under the "Key Developments" section for more information.

6 DECISION-MAKING AND STATUS

6.1 Inclusion Criteria

6.1.1 Convention Refugee

Decision-makers assess the merits of a protection claim against the criteria for the grant of a protection visa as set out in the Migration Act. A protection visa is granted to persons in Australia who are owed protection.

6.1.2 Complementary Protection

With the implementation of complementary protection legislation on 24 March 2012, a protection assessment also includes consideration of Australia's non-refoulement obligations that arise under the human rights conventions to which Australia is a party, including ICCPR and its Second Optional Protocol, and CAT.

6.2 The Decision

Applications for protection visas are assessed by decision-makers who are experienced and trained in the law and in policies and procedures concerning protection and complementary protection obligations. Decision-makers access COI provided by a dedicated research section within the Department. Decision-makers are required under the Migration Act to notify the applicant of the decision to grant or to 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 authorized recipient.

6.3 Types of Decisions, Statuses and Benefits Granted

If a person entered Australia lawfully and is found to meet the requirements for Australia's protection obligations, he or she will be granted a permanent protection visa.

Benefits

Protection visa holders are entitled to the following benefits:

- Permanent residence
- Capacity to sponsor certain family members to Australia
- Right to education
- Right to work and immediate access to social welfare benefits on the same basis as Australian citizens
- Permission to travel and to enter Australia
- Travel documents
- Eligibility for Australian citizenship by meeting the same requirement as other permanent residents.

If a person entered Australia illegally, the Government is committed to ensuring only temporary protection is offered to those who are found to engage Australia's protection obligations. The current temporary product, a temporary protection visa, can be granted for up to three years. It provides work rights and access to Medicare and services such as Special Benefit.

Residence Requirement for Citizenship

Persons who are permanent residents may apply for citizenship if they were lawfully resident in Australia for four years immediately before applying, including at least 12 months as a permanent resident.

There are also special residence requirements for persons engaging in activities of benefit to Australia, or persons whose work requires regular travel outside Australia. In addition, there is a reduced residence requirement for persons who have completed relevant defence service, and their families.

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. A protection visa applicant whose application is refused on the basis that the person meets the exclusion clause under article 1F may have his or her case reviewed by AAT, and subsequently by the court.

If the protection visa applicant excluded has been assessed to be a threat to the Australian community and to national interest, and does not hold a visa, he or she may be detained in accordance with the detention provisions in the Migration Act.

6.5 Cessation

People found to engage Australia's protection obligations may be granted a permanent protection visa, providing they meet other visa criteria, including health, character and security requirements.

Cessation consideration will generally arise only if visa cancellation processes have been instigated. These processes are instituted by the Government of Australia. Cases that invoke article 1C are assessed on a case-by-case basis. Cessation of refugee status is given effect through the visa cancellation provisions of the Migration Act.

A person whose refugee status is ceased may, if he or she is in Australia, apply to AAT for review of the decision to refuse a protection visa or to cancel a protection visa. Subsequently,

he or she may apply to have AAT's decision reviewed by a court.

6.6 Revocation/Cancellation

Australia does not have a specific provision to revoke a protection visa. Australia may cancel a protection visa under the visa cancellation provisions of the Migration Act. This includes cancellation on the basis that incorrect information was provided in a protection visa application. An assessment of international obligations arising under treaties to which Australia is a party must be undertaken prior to cancelling a protection visa.

A person whose protection visa is cancelled may, if he or she is in Australia, apply to AAT for review of the decision to cancel the visa. Subsequently, he or she may apply to have AAT's decision reviewed by a court.

6.7 Support and Tools for Decision-Makers

The Department's Refugee Law and Complementary Protection Guidelines provide departmental decision-makers with advice and assistance on the law relevant to the assessment of whether Australia has protection obligations to persons seeking protection in Australia. The effect of the relevant provisions in Australia's domestic law on the assessment process, namely the Migration Act, is also explained. These guidelines provide the basis for the training given to protection decision-makers in the Department.

Australian protection decision-makers use the following tools:

- Domestic legislation (the Migration Act and the Migration Regulations)
- Australian case law
- The Protection Visa Procedures Advice Manual, which provides guidance on the policy and practice, and sets out migration law provisions, relevant to the determination of protection visa applications, including key articles of the 1951 Convention and its 1967 Protocol and details of other human rights instruments that decision-makers must consider
- The Department's Refugee Law Guidelines, which are prepared by in-house lawyers to provide legal guidance on the assessment of protection obligations
- The Department's Complementary Protection Guidelines, which are prepared by in-house lawyers to provide legal guidance on the assessment of protection obligations under the complementary protection provisions of the Migration Act
- UNHCR's *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status*[11] and *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*[12]
- The Department's Gender Guidelines, outlining how to assess gender-related claims and deal with clients making such claims in a sensitive manner, giving regard to their personal circumstances.
  - The Gender Guidelines have been developed to help officers to address and assess effectively and sensitively the gender dimension of claims of onshore applicants for protection visas and offshore applicants for refugee and humanitarian visas in line with international best practice standards. The guidelines are also intended to assist Department decision-makers in assessing the claims of offshore entry persons undergoing a refugee status assessment.
  - Recognizing that women may experience particular acts of persecution and discrimination differently from men due to their gender, the guidelines provide advice on how decision-makers can best approach claims of gender-related persecution. The guidelines consider gender-related persecution and procedural issues that can influence applicants and their ability to present their claims, the lodgement of applications, interview management and confidentiality.
- The Department's Onshore Protection Interim Procedures Advice instructions, which provide decision-makers with supplementary guidance.

6.7.1 Country of Origin Information

The Department's Country of Origin Information Section is responsible for providing COI to primary and review decision-makers, and for a range of visa-related decision-making processes. The section produces COI products covering the political, legal, cultural, social, economic and human rights conditions in source countries of asylum seekers. The section's products and services include:

- Issues and background papers
- Country-specific COI resource guides
- Daily COI monitoring
- Country briefings and situation reports
- Written question and answer service for case-specific research
- COI training and country-specific workshops.

The section prepares an annual research programme that is regularly reviewed in consultation with Department decision-makers, AAT and DFAT to ensure that COI products are meeting the needs of decision-makers and other key stakeholders.

[11] UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status: Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* (Geneva, 2011).

[12] UNHCR, *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum* (February 1997).

All Country of Origin Information Section research is made available and accessible to Department officers and tribunal members via an electronic database, CISNET. All COI is unclassified, open-source and publicly available or able to be made publicly available on request.

The Country Information Section (CIS) of DFAT works in close partnership with the Country of Origin Information Section to produce country information reports exclusively for protection status determination purposes. DFAT reports differ from COI reports in that they contain assessments based on DFAT's in-country knowledge (drawn from fact-finding missions) and its expertise drawn from its extensive overseas network. Australian decision-makers are directed by the Minister (Ministerial Direction 56) to take into account DFAT country information reports, where these are available, in their decision-making process. Significantly, while decision-makers are directed to consider these DFAT assessments, individual decision-makers are not bound by these assessments.

7 EFFICIENCY AND INTEGRITY MEASURES

7.1 Technological Tools

7.1.1 Biometric Information

Most protection visa applicants are required to provide a digital photograph of their face and a scan of their fingerprints in order to submit a valid protection visa application. Fingerprints cannot be acquired from minors under the age of 15 years or from persons who are incapable of understanding the general nature, effect and purposes of the requirement to provide them. Minors between 15 and 17 years of age are required to provide fingerprints and a digital photograph (with the consent of a parent, guardian or independent person). Minors under the age of 15 years or incapable persons can only be required to provide a digital photograph (with the consent of a parent, guardian or independent person).

Sections 46 and 40 of the Migration Act allow for the collection of a digital photograph and fingerprints from non-citizens who apply for a visa, including a protection visa. The applicant must be advised, in a language that he or she is reasonably likely to understand, why and how the fingerprints will be collected and to whom they may be disclosed, as well as of their rights under the Privacy Act 1988 and the Freedom of Information Act 1982.

The digital photograph and fingerprint scans are converted by the Biometric Acquisition and Matching System into biometric templates and compared against other departmental data holdings. Fingerprint data are also automatically checked against Australian law enforcement data holdings and may be checked against the databases of other countries or agencies where permitted.

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 protection visa applicant decides to undertake DNA testing, the Department provides information on how to arrange a test that will meet the Department's requirements.

7.1.3 Forensic Testing of Documents

The Document Examination Team, located within the Department, has the capacity to provide decision-makers with forensic document examination services. These services are provided upon request and on a case-by-case basis.

7.1.4 Database of Asylum Applications/ Applicants

The Integrated Client Service Environment is a departmental system that records the lodgement 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 application for a protection visa. This tool captures the entire protection visa process from the receipt of the application to the finalization of the protection claim.

7.1.5 Others

Central Movement Alert List

The Central Movement Alert List is a database that decision-makers can access to ensure that a protection visa is not granted to anyone who may be subject to article 1F of the 1951 Convention or is excluded pursuant to a United Nations Security Council resolution or autonomous sanction.

7.2 Pending Cases

As of 1 May 2015, there were 7,495 initial protection visa applications by non-IMAs and 1,072 initial protection visa applications by IMAs on hand at the primary stage.

7.3 Information Sharing

International agreements between the Five Country Conference partners – Australia, Canada, New Zealand, the United Kingdom and the United States – have been signed for the purpose of cross-checking fingerprints. These agreements allow biometric information to be cross-checked with that of the immigration databases of the partner countries.

The Department also shares information with domestic agencies, including the Australian Federal Police and DFAT, for purposes related to Australia's immigration and citizenship programme.

8 ASSISTANCE AND RECEPTION BENEFITS FOR ASYLUM SEEKERS

8.1 Procedural Support and Safeguards

8.1.1 Legal Assistance

All protection visa applicants are able to make their own private arrangements and engage a registered migration agent, who may or may not be a lawyer, at their own expense. They can also seek forms of pro bono assistance. The Office of Migration Agents Registration Authority or the Department can provide them with a list of registered migration agents.

8.1.2 Interpreters

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

8.1.3 Application Assistance

Lawful Arrivals

IAAAS is government-funded, offering migration advice and application assistance free of charge to protection visa applicants who arrived lawfully and who are in detention or are vulnerable in the community and meet eligibility criteria. 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.

Protection visa 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. Since 31 March 2014, eligibility for IAAAS-funded assistance ceases after primary processing.

IAAAS is not available to failed asylum seekers requesting ministerial intervention or applying for judicial review.

Illegal Arrivals

On 31 March 2014, the Government of Australia removed access to IAAAS for illegal arrivals who had not previously lodged a protection visa application. In addition, the Government removed access to IAAAS for all arrivals (both lawful and illegal) at merits review. Removing access to IAAAS at review is designed to encourage the provision of full, personal and accurate claims as early as possible in the protection status determination process.

The decision to remove IAAAS for illegal arrivals who had not previously lodged a protection visa application at all stages of protection visa processing was made as part of a set of broader strategies to deter people from making the dangerous journey by boat to Australia. Removing taxpayer-funded agent assistance places the onus back on the asylum seeker to articulate his or her claim, and UNHCR guidance notes state that this is appropriate.[13] Where an individual feels that he or she needs additional help, he or she remains able to source his or her own private or pro bono migration agent.[14]

8.1.4 UNHCR

UNHCR's Regional Office in Canberra is responsible for the promotion and protection of refugee rights in the region, which includes Australia, New Zealand, Papua New Guinea and the Pacific Island States. UNHCR is not formally involved in determining whether a person is a refugee in Australia. Nevertheless, UNHCR does review some individual cases brought to its attention after a person has explored all avenues of review in Australia to determine whether there are grounds for UNHCR to make recommendations to the appropriate authorities.

UNHCR may make recommendations to the Government of Australia in exceptional circumstances. However, UNHCR has no power to overturn decisions made by the Australian authorities.

8.1.5 NGOs

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

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

The Government of Australia consults the Refugee Council of Australia and other NGOs that provide assistance on key policy and procedural issues that have an impact on asylum seekers.

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[13] UNHCR, *Note on Burden and Standard of Proof in Refugee Claims* (Geneva, 16 December 1998).

[14] For more information on this subject, see "Access to information on protection visa procedures" under the section on application possibilities and requirements, procedures and legal remedies.

8.2 Reception Benefits

8.2.1 Accommodation

Australia does not have reception centres to accommodate asylum seekers. Financial assistance provided under the SRSS programme may cover the cost of accommodation.

8.2.2 Social Assistance

The Department manages the SRSS programme, which provides eligible individuals with targeted support while their immigration status is being resolved. The programme is administered, through contractual arrangements, by 11 contracted service providers.

The following principles underpin the delivery of the SRSS programme:

- Services will be delivered in a nationally consistent, transparent, accountable, flexible, efficient and integrated manner.
- Expenditure of SRSS programme funds will comply with legal obligations under the Public Governance, Performance and Accountability Act 2013 (which has replaced the Financial Management and Accountability Act 1997).
- Recipients will receive access to the relevant support services that reflect their circumstances and status resolution needs.
- Duty of care, convention and treaty obligations are considered.
- Recipients are assisted in progressively increasing self-agency.
- Recipients will be treated in a lawful manner and with respect.

Eligibility for services under the SRSS programme is contingent on recipients' cooperation with the Department's rules and instructions, including in relation to status resolution, residence determination and a code of behaviour (where applicable). The Department expects a person's immigration status resolution to be one of the following:

- Grant of a substantive visa
- Departure from Australia.

The individual circumstances of the person will determine the type and level of assistance and support provided by the SRSS programme. There are six Bands within the SRSS programme, through which varying levels of assistance and support are offered to individuals who meet eligibility criteria, as described in section 5 under "Recent reforms to detention policies affecting families" and "Bridging visa E for IMAs as an alternative to immigration detention".

The SRSS programme provides eligible protection visa applicants with financial assistance during the period in which their applications for protection are processed.

Financial assistance provided under the SRSS programme is 89 per cent of the Special Benefit paid by Centrelink. It is paid every two weeks. The level of financial assistance offered to protection visa applicants depends on family composition. The financial assistance provided under SRSS programme is to cover food, accommodation and basic health care.

Services in Immigration Detention

While in immigration detention, all individuals are able to access the services they require to meet their daily needs. The Department has contracted service providers with the expertise to deliver a range of services to people in immigration detention, including garrison services, health and welfare, catering and cleaning services, programmes and activities, and education, in order to ensure the well-being of the individuals in immigration detention.

8.2.3 Health Care

The Department ensures that all persons in immigration detention, including those on Christmas Island, have access to health care at a standard broadly commensurate to the health care available to the Australian community through the public health system. These services are provided by contracted health service providers, who are general practitioners, nurses, paramedics, psychologists and a visiting psychiatrist. Staffing levels of health service providers are adjusted to be appropriate for the number and needs of the people in immigration detention.

All individuals entering immigration detention receive a health induction assessment, which occurs within 48 hours for IMAs and 72 hours for non-IMAs. As part of the assessment, detainees are screened for pre-existing medical conditions, including communicable diseases, and undergo a mental state examination. The assessment is conducted to assess detainees for any physical and mental health concerns, including signs of past torture or trauma. The health induction assessment informs an ongoing health care plan, if required, for the person while he or she remains in immigration detention. It also ensures that any potential risks to public health, such as communicable diseases, are identified and treated.

Mental Health Care

Mental health screening is offered by mental health clinicians at scheduled intervals, and on an ad-hoc basis. The first scheduled screening occurs within 48 hours of an IMA entering immigration detention, or within 72 hours for non-IMAs, and then between 10 and 30 days. Subsequent screenings are offered at 6, 12 and 18 months, and then three monthly thereafter. Screening can also be conducted at any time when "triggered" – for example, when concerns are raised about a person's mental health by any party, including the detainee him- or herself.

Any detainee who discloses a history of torture or trauma is offered referral to specialist torture and trauma counselling, which can be taken up at any time. Torture and trauma counselling is provided by member organizations of the Forum of Australian Services for Survivors of Torture and Trauma, and by the Indian Ocean Territories Health Service on Christmas Island.

Mental health care is provided by general practitioners, mental health nurses, psychologists and psychiatrists (on a visiting basis or through external appointments). Referrals to specialists or acute care facilities are organized as clinically indicated, with specialist waiting times commensurate with those of the public health system.

The Government of Australia has implemented mental health policies that reflect best practice approaches to identifying existing or emerging mental health issues, providing people in immigration detention with mental health support, and preventing self-harm in immigration detention. The mental health policies were developed in consultation with the Department's former Detention Health Advisory Group with reference to the Government's National Mental Health Policy and standards recommended by the Royal Australian College of General Practitioners. The Department receives advice regarding its mental health policies through its contracted health service provider, and internal and external health experts.

8.2.4 Education

Consistent with state and territory government requirements, school-aged IMAs (generally aged 5 to 17 years) are required to be enrolled in and to attend school. IMA minors accommodated in alternative places of detention or community detention and those holding a bridging visa E are provided with access to education through various funding agreements the Department has in place with government and non-government schools.

8.2.5 Services at Regional Processing Centres

The Governments of Nauru and Papua New Guinea are responsible for managing all aspects of the operation of the regional processing centres, such as providing appropriate arrangements and support to meet the needs of transferees. The Government of Australia provides assistance through funding and contract management for the delivery of services at the regional processing centres, including security, accommodation, health and welfare, programmes and activities, and education.

Refugee Status Determination at Regional Processing Centres

Consistent with the MOU with each country, Nauru and Papua New Guinea undertake the refugee status determination of persons who have been transferred from Australia in accordance with section 198AD of the Migration Act. Transferees found to be refugees may be resettled in Nauru, Papua New Guinea or a third country such as Cambodia. Transferees found not to be in need of international protection are expected to return to their country of origin or to a third country where they have the right to reside. Transferees have their claims for protection assessed under the laws of Nauru and Papua New Guinea. Both Nauru and Papua New Guinea are party to the 1951 Convention and its 1967 Protocol.

The Government of Australia funds the provision of independent claims assistance to asylum seekers in order to support the Nauru and Papua New Guinea refugee status determination process and the implementation of regional processing arrangements.

8.2.6 Access to the Labour Market

If a person applies for a protection visa when he or she already holds another (temporary) visa, he or she will generally receive permission to work. Restrictions on access to permission to work exist for individuals who seek protection when they do not hold a substantive visa, or are unlawful, or are in immigration or criminal detention.

Protection visa applicants who are granted a bridging visa with permission to work are able to access the labour market while their applications for protection are being considered.

Protection visa applicants who are not granted permission to work may apply for such permission on the basis of a compelling need to work, as they are in financial hardship, or upon nomination by an employer. In some cases, a protection visa applicant will also have to demonstrate acceptable reasons for the delay in lodging his or her protection visa application before he or she can be granted permission to work. Generally, a protection visa applicant will only have permission to work during a judicial review if he or she had permission to work on the last visa held.

Applicants who are seeking ministerial intervention to a protection visa application will only be able to gain access to permission to work if they had permission to work at the time their protection visa application was finally determined and made the request to the Minister while holding that visa. Previously, IMAs who arrived on or after 13 August 2012 and were granted bridging visa Es did not have permission to work. Following passage of the RALC Act, the Government announced that IMAs on bridging visas would be allowed to work while they underwent protection processing.

8.2.7 Family Reunification

On 28 September 2012, with the intention of deterring irregular migration, the Government introduced changes to the family reunion provisions of the Humanitarian Programme. First, people who became IMAs on or after 13 August 2012 can no longer propose people for an SHP category visa. An

additional 4,000 places were made available in the family stream of the migration programme as an alternative visa pathway.

Though most individuals who became IMAs before 13 August 2012 (and other protection visa holders) can still propose their immediate family under SHP, their family members receive lowest processing priority and no longer have access to the concession whereby applicants were accepted solely on the basis of their relationship. Concessions for applicants proposed by unaccompanied humanitarian minors were discontinued early in 2014.

In late 2013, the incoming Government made changes to the family stream of the migration programme, removing the 4,000 additional places for protection visa holders' family members who were no longer eligible for an SHP category visa and giving those sponsored by IMAs the lowest processing priority.

The highest processing priority for an SHP visa is now given to immediate family members of people who migrated to Australia under the offshore component of the Humanitarian Programme.

8.2.8 Access to Benefits by Asylum Seekers Found Not To Be Owed Protection

Assistance payments to recipients under SRSS Band 6 cease upon the grant of a protection visa or after notification that protection visa applications have been refused by the Department. Some asylum seekers found not to be owed protection who seek appeal at AAT may be eligible for SRSS Band 6 if they meet specific exemption criteria. SRSS payments cease when AAT makes a decision on the application.

Applicants who are refused a protection visa, who reside lawfully in the community, whose cases are finalized and who do not depart from Australia within 28 days of their asylum application being finalized, may continue to have access to emergency health care and primary and secondary education for children.

Under SRSS Band 5, assistance is provided to lawful non-citizens living in the Australian community who hold bridging visas and meet certain eligibility criteria. A range of services is available under Band 5, which focuses on the well-being of individuals who hold bridging visas and have complex needs. Recipients in Band 5 must be working with the Department to resolve their immigration status.

Under Band 5, assistance includes arranging access to health and welfare services, offering financial assistance, and providing additional case management to resolve the recipient's immigration status.

9 STATUS AND PERMITS GRANTED OUTSIDE THE ASYLUM PROCEDURE

9.1 Humanitarian and Public Interest Grounds

The Minister for Immigration and Border Protection has non-compellable power to substitute a more favourable decision than that of AAT in relation to character issues, if the Minister considers it is in the public interest to do so. These public interest powers allow visas to be granted on broader public interest grounds where the criteria for the grant of a protection visa have otherwise not been met.

The Minister's intervention powers are intended for cases where the circumstances are unique or exceptional and 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:

- Strong compassionate circumstances such that a failure to recognize 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).
- Compassionate circumstances regarding the age, health or psychological state of the person such that a failure to recognize them would result in irreparable harm and continuing hardship to the person.
- 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, but the mistreatment does not meet the criteria for the grant of any type of protection visa.
- Circumstances not anticipated by the relevant legislation, or clearly unintended consequences of the legislation or the application of the relevant legislation leads to unfair or unreasonable results in a particular case.
- Circumstances where exceptional economic, scientific, cultural or other benefit to Australia would result from the person being permitted to remain in Australia.

9.2 Risk Assessment and Withholding Removal

The Government of Australia may undertake, as a risk management tool, a pre-removal clearance prior to a person being removed from Australia. The pre-removal clearance is an internal assessment that reviews whether or not there are outstanding protection claims that have not already been considered by the Department. It complements the protection visa process, as well as other processes that can be pursued where protection is refused, including independent merits review, ministerial intervention, and requests to allow further purported protection claims to be considered.

A pre-removal clearance is undertaken where risk factors are identified that may contravene Australia's non-refoulement obligations under the 1951 Convention, ICCPR or CAT.

Once a pre-removal clearance is completed, it will be valid for a period of 12 months from the date of the clearance unless there is a change in the person's circumstances or a change in country information.

9.3 Obstacles to Return

Bridging Visas and Removal Pending Bridging Visas

Asylum seekers who are unable to be returned or removed may be granted a bridging visa, including a removal pending bridging visa (RPBV) to enable them to be released from immigration detention and to remain lawfully in Australia while arrangements for their removal are made. All applicants for an RPBV must meet the relevant character and security requirements before a visa can be granted.

There is no formal application form for an 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 RPBVs 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 his or her removal from Australia.
- Any visa application made by the individual, other than a repeat protection visa application, must have been finally determined.

Holders of an RPBV have access to a range of social support benefits, including:

- Permission to work
- 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-aged minors; access to English as a second language services for school-aged children.

An RPBV is granted by the Minister personally and permits the holder to remain in Australia. The RPBV ceases if the holder departs Australia; it does not allow re-entry. An RPBV does not have a cessation date and is reviewed after a period of time as specified by the Minister at the time of grant.

Holders of an RPBV are subject to eight mandatory conditions, broadly covering reporting, behaviour and cooperation with removal planning. Should the holder breach any of these conditions, the RPBV can be cancelled by the Department or ceased by the Minister. Additionally, the RPBV can be ceased by the Minister if removal is considered reasonably practicable.

9.4 Community Status Resolution Service

The national Community Status Resolution Service of the Department assists eligible individuals in the community to reach a timely and durable immigration outcome (namely the grant of a substantive visa or departure from Australia). The assistance provided is based on a number of status resolution principles, such as early intervention, active engagement in the provision of needs-based support and the promotion of self-agency.

The Community Status Resolution Service specifically targets non-vulnerable bridging visa holders who require some level of intervention in order to resolve their immigration status (bridging visas may be granted to people to enable them to remain in the community while they work cooperatively with the Department to resolve their immigration status). Target groups include individuals on a departure pathway who are resistant or reluctant to depart, people whose immigration process has become protracted and may be inclined to return to their country of origin with the right support and counselling, and people whose substantive visa application process has become delayed or protracted. Individuals who quickly self-resolve are not referred to the service. Those with significant vulnerabilities are not referred to the Community Status Resolution Service; instead, they are referred to

the case management service for more intensive support and assistance.

The Community Status Resolution Service provides a central contact point for engaging and communicating viable pathways in accordance with the above-mentioned status resolution principles. Community Status Resolution officers establish a rapport with the individuals, clearly identify realistic pathways, and undertake an assessment of options to facilitate a timely and durable immigration outcome tailored to the person's specific needs and services. A key aspect of the officer's role is to liaise with officers from other areas and status resolution programme services within the Department to ensure a joined-up, holistic and well-planned approach to managing cases. Community Status Resolution officers also use the services of external agencies to deliver needs-based community support and returns assistance where appropriate, in order to facilitate timely immigration outcomes.

Effective status resolution, as applied in the Community Status Resolution Service, not only accelerates outcomes but also aims to deter further non-compliance. It builds community and stakeholder confidence in the status resolution approach, and trust in the Department and in the integrity of the migration programme.

9.5 Group-Based Protection

Under the current protection visa framework, Australia does not have procedures in place for granting group-based protection. Historically, Australia has granted temporary haven for certain prescribed groups. The current Australian migration framework allows the Government to develop regulations as necessary, 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 Government of Australia considers the most appropriate assistance to be temporary safe haven. Safe haven visas were used to assist displaced Kosovars in 1999 and East Timorese in particularly vulnerable situations. The visa provides temporary stay on the understanding that holders return to their home country when the Government of Australia considers it safe to do so.

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

9.6 Regularization of Status over Time

Australia does not have procedures in place to regularize 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 in Australia unlawfully, he or she may be removed.

9.7 Regularization of Status of Stateless Persons

For information on this subject, see "Stateless Persons" in the section on special procedures.

10 RETURN

The Department works collaboratively with service providers to achieve timely returns and removals solutions for lawful and unlawful non-citizens.

Individuals who are found not to engage Australia's protection obligations are expected to depart voluntarily. If a person remains in Australia with no legal right to do so, the Department will commence planning to enforce his or her removal.

10.1 Return Services

The International Organization for Migration (IOM), on behalf of the Department, offers assisted voluntary return and reintegration assistance to those non-citizens who wish to voluntarily return, but who require financial assistance to do so. The assistance provided by IOM is based on the assessed needs and circumstances of the prospective returnee. Prospective returnees are encouraged to engage with IOM at the earliest opportunity to obtain information regarding returns services, as early engagement will assist a person in making an informed decision to participate in voluntary return.

A prospective returnee may benefit from one or all of the following assisted voluntary return services provided by IOM:

- Returns counselling
- Travel assistance
- Travel documents
- Airfares
- Accommodation, including pre-departure, en route and in-country
- Immediate post-return assistance in the form of a small cash allowance.

In addition to assisted voluntary return services, IMAs who are not currently in immigration detention and who wish to depart voluntarily are able to access reintegration assistance. This assistance is aimed at achieving a dignified and sustained return by facilitating income-generating activities for returnees upon return. It is recognized that some IMAs may have to return to a country where they have not lived for a number of years, where they have few assets and where their support network may be limited. As a result, income-generating opportunities are often limited, as are local community links.

Typically, a sustained return:

- Is realistic and feasible in the country of return
- Contains prospects for a returnee to build a livelihood
- Reduces the likelihood of further irregular migration.

A general objective of reintegration assistance is to tailor assistance to the individual needs of the prospective returnee. This assistance is generally provided as in-kind assistance focusing on income-generating, employment or educational activities. Reintegration assistance is not intended to offset the cost of engaging a people smuggler or to pay debts.

Reintegration assistance is not available to IMAs who request voluntary removal from Australian immigration detention under the applicable provisions of the Migration Act. In these circumstances, detainees are able to access post-arrival reintegration assistance, administered and managed by IOM in-country.

There are some countries where, for security reasons, IOM is unable to assist with voluntary return. For IMAs residing in Nauru or Papua New Guinea who request voluntary return to such countries, the Department is able to facilitate departure via voluntary departure assistance. This assistance consists of cash allowances structured on a country-specific basis and a variety of services, including:

- Travel assistance and obtaining travel documents
- Pre-departure, en route or in-country accommodation
- In-country information.

10.2 Removal

The Migration Act provides the legislative basis for the removal of unlawful non-citizens, including failed asylum seekers, from Australia in particular circumstances. As stated in section 198 of the Migration Act, Department officers are required to remove an unlawful non-citizen (that is, a person with no lawful right to remain in Australia) from Australia as soon as reasonably practicable. The Act does not define a period of time that is considered "as soon as reasonably practicable", but officers must ensure that there are no unwarranted delays in progressing and effecting a removal.

10.2.1 Pre-removal Considerations

Where a person's claims have been fully assessed and the Government has determined that the person is not owed protection, a pre-removal clearance is conducted as a final measure prior to removal if the person engages particular risk factors.

The pre-removal clearance is an assessment through which a final check is done to confirm that removal of the person will not be inconsistent with Australia's non-refoulement obligations. It is designed to identify any changes in the person's circumstances or in the country of return that may give rise to protection or humanitarian issues, and is independent of any other processes initiated by the individual.

This clearance is separate from any other assessment made in connection with a previous protection visa application or ministerial intervention request and is designed to identify any changes in the person's circumstances or their country of return that could give rise to a breach of Australia's non-refoulement obligations. In addition, a client can submit an account of the reasons why he or she cannot be removed from Australia at any stage, which are assessed prior to removal.

10.3 Readmission Agreements

Australia has a small number of return and readmission agreements in place. Details of such agreements are confidential at the request of the agreement partner country. In the majority of situations, formal returns agreements are not required between Australia and other countries. Where particular circumstances exist, agreements are established to articulate appropriate assurances and streamlined processes in support of dignified returns of individuals who have no lawful right to remain in Australia.

11 INTEGRATION

Persons who are granted a visa under Australia's offshore Humanitarian Programme have access to a range of settlement services that are administered by the Department of Social Services.

Prior to arrival in Australia, resettled refugees have access to the Australian Cultural Orientation programme, which is delivered offshore to refugee and humanitarian entrants over five years of age and is aimed at enhancing their settlement prospects. Australian Cultural Orientation courses are

designed to prepare entrants for travel to Australia, to create realistic expectations about life in Australia and to provide a practical introduction to Australian life, laws, culture and values.

Eligible humanitarian entrants can access the Humanitarian Settlement Services programme, which delivers initial practical support designed to build the independence of newly arrived humanitarian entrants, generally for the first 6 to 12 months, but may be extended in particular cases. The Department of Social Services contracts Human Settlement Service providers in metropolitan and regional locations across Australia to furnish this support. The programme assists humanitarian entrants in participating effectively in the Australian community and in accessing mainstream services beyond the initial settlement period. Services provided under the programme generally include assistance in finding suitable accommodation, orientation to life in Australia, links to mainstream services and the community, and the delivery of basic household goods such as simple furnishings, linen and kitchen equipment.

The Complex Case Support programme helps humanitarian visa holders resolve complex situations, beyond the scope of Humanitarian Support Services. It is available for up to five years after arrival in Australia. Typically, these clients have multiple complex needs and the programme provides tailored case management services to address their immediate needs and improve self-reliance. Case management support can include support for people with disabilities or complex health problems and people experiencing domestic violence. Limited access to Complex Case Support is available to holders of temporary protection, temporary humanitarian concern, temporary humanitarian stay or safe haven enterprise visas. Access to Complex Case Support is assessed on a needs basis and subject to individuals meeting programme criteria.

The Department of Social Services also provides grant funding for settlement services. These grants deliver core settlement support for humanitarian entrants and other eligible migrants in their first five years of life in Australia. These grants fund services that assist eligible clients to become self-reliant and to participate in Australian society as soon as possible after arrival, with a focus on fostering social participation, economic well-being, independence, personal well-being and community connectedness. Eligible clients include humanitarian entrants, family migrants with low levels of English proficiency, and dependants of skilled migrants in rural and regional areas with low English proficiency. The support may also involve providing clients with advice on employment issues, the law, tenancy, banking practices, the health system, and on how to access programmes that assist them in becoming "job ready" by building capabilities in employment and education. Other services offered by the Department of Social Services include providing a brokerage role for government agencies to assist new arrivals to connect with their services; working in partnerships with communities and local neighbourhoods to build the self-reliance of the new arrivals, to support their access to local services and to provide them with a welcoming environment; and assisting newly arrived community leaders and organizations to develop self-supporting skills.

The Department of Social Services funds the Free Interpreting Service and the Free Translating Service. The Free Interpreting Service assists approved organizations and individuals, such as private medical practitioners, in communicating with non-English speaking permanent residents and Australian citizens. TIS National also provides interpreting services on a fee-for-service basis for individuals who do not speak English and the English speakers who need to communicate with them. The Free Translating Service enables permanent residents and Australian citizens to participate in the community by having personal documents translated into English during their initial two-year settlement period.

The Government of Australia, as well as state and territory governments, fund the National Accreditation Authority for Translators and Interpreters Ltd in recognition of its community service function in supporting Australian residents not fluent in English to access mainstream services.

The Adult Migrant English Programme, administered by the Department of Education and Training, provides eligible migrants and humanitarian entrants with free English language tuition. Clients of the programme receive up to 510 hours of English language tuition within the first five years of arrival to assist with their settlement in Australia. Refugees and persons with complementary protection status who have limited prior education or difficult pre-migration experiences, such as torture or trauma, may be eligible for additional tuition hours under the Special Preparatory Programme to support their complex learning needs. In addition, some Adult Migrant English Programme clients may be able to access additional vocational-specific tuition under the Settlement Language Pathways to Employment and Training programme, to help prepare them for entry into the workforce. Support services such as educational counselling and free childcare for under school-aged children, are available to Adult Migrant English Programme clients during their time in the programme.

IMAs who have been found to be in need of Australia's protection and granted certain temporary visas, namely temporary protection, temporary humanitarian stay, safe haven enterprise or temporary humanitarian concern visas, also receive support while living in the Australian community. These visa holders have full access to the Free Translating Service for two years following the grant of their initial visa, to allow for the translation of the relevant documents (such as personal identification, drivers licences, and educational

or trade qualifications). They have partial access to the Free Interpreting Service to enable them to use effectively Medicare and other health services provided by general practitioners, medical specialists and pharmacies. These visa holders may be eligible for some social security income support, and they may have access to some Complex Case Support on as needs basis. If they are disabled, they have access to Employment Support Service of Disability Employment Services. They may also receive support to find work through Job Services Australia, administered by the Department of Employment.

12 ANNEX

12.1 Asylum Procedure Flow Chart

No information available.

12.2 Additional Statistical Information

AUS. Fig. 4 | Asylum Applications from Top 10 Countries of Origin in 2012, 2013 and 2014

	2012		2013		2014	
1	Afghanistan	3,066	Iran	7,531	China	1,507
2	Sri Lanka	2,473	Sri Lanka	4,500	India	963
3	Iran	1,859	Afghanistan	3,846	Pakistan	826
4	Pakistan	1,556	Pakistan	2,662	Malaysia	699
5	China	1,156	Stateless	2,287	Iraq	422
6	India	966	Iraq	1,617	Libya	323
7	Iraq	773	China	1,554	Fiji	287
8	Stateless	570	India	1,201	Viet Nam	263
9	Egypt	395	Egypt	866	Iran	261
10	Lebanon	329	Bangladesh	820	Bangladesh	250

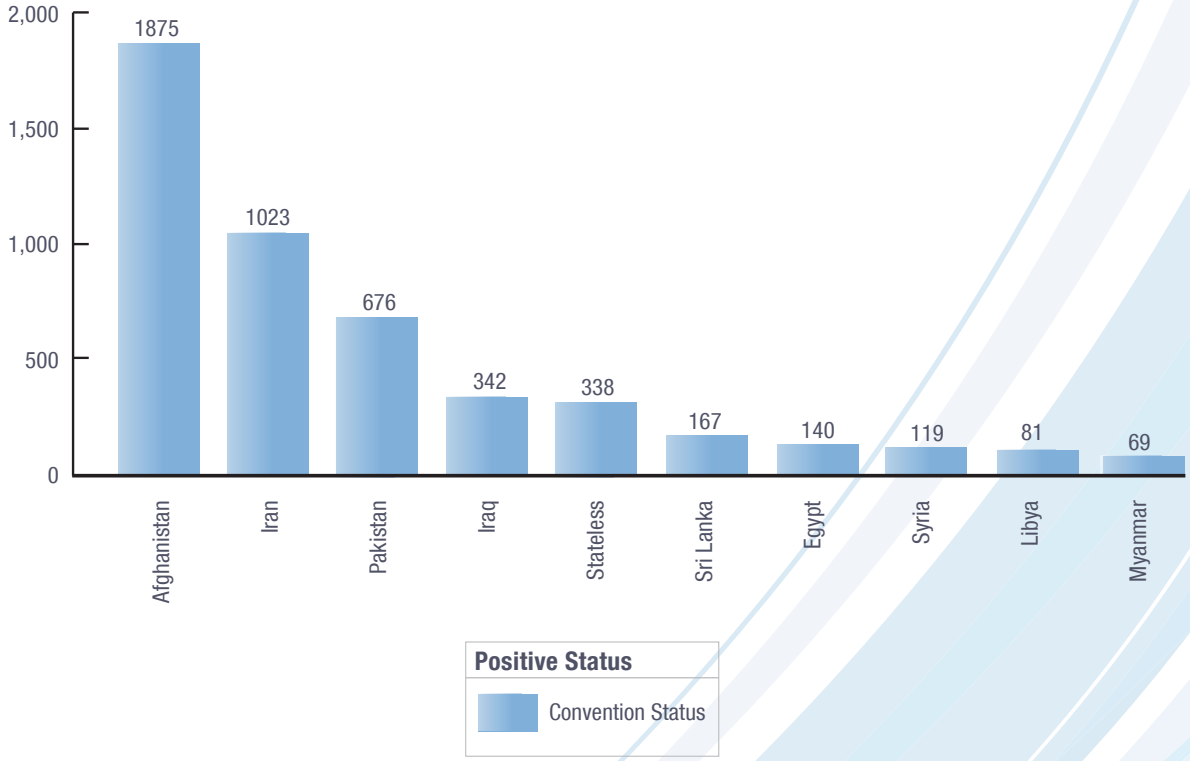
AUS. Fig. 5 | Decisions Taken at the First Instance in 2012, 2013 and 2014

	Convention Status		Humanitarian Status and Subsidiary/Complementary Protection		Rejections		Withdrawn, Closed and Abandoned Cases		
Year	Number	%	Number	%	Number	%	Number	%	Grand Total
2012	5,246	45%	0	0%	6,377	55%	0	0%	11,623
2013	2,780	34%	0	0%	5,505	66%	0	0%	8,285
2014	1,825	19%	0	0%	7,948	81%	0	0%	9,773

AUS. Fig. 6.a Positive First-Instance Decisions, Top 10 Countries of Origin in 2012[15]

	Country of Origin	Total Positive	Total Decisions	Rate
1	Afghanistan	1,875	2,441	76.8%
2	Iran	1,023	1,572	65.1%
3	Pakistan	676	1,147	58.9%
4	Iraq	342	481	71.1%
5	Stateless	338	439	77.0%
6	Sri Lanka	167	705	23.7%
7	Egypt	140	351	39.9%
8	Syria	119	130	91.5%
9	Libya	81	161	50.3%
10	Myanmar	69	81	85.2%

Total Positive Decisions by Status from Top 10 Countries of Origin, 2012

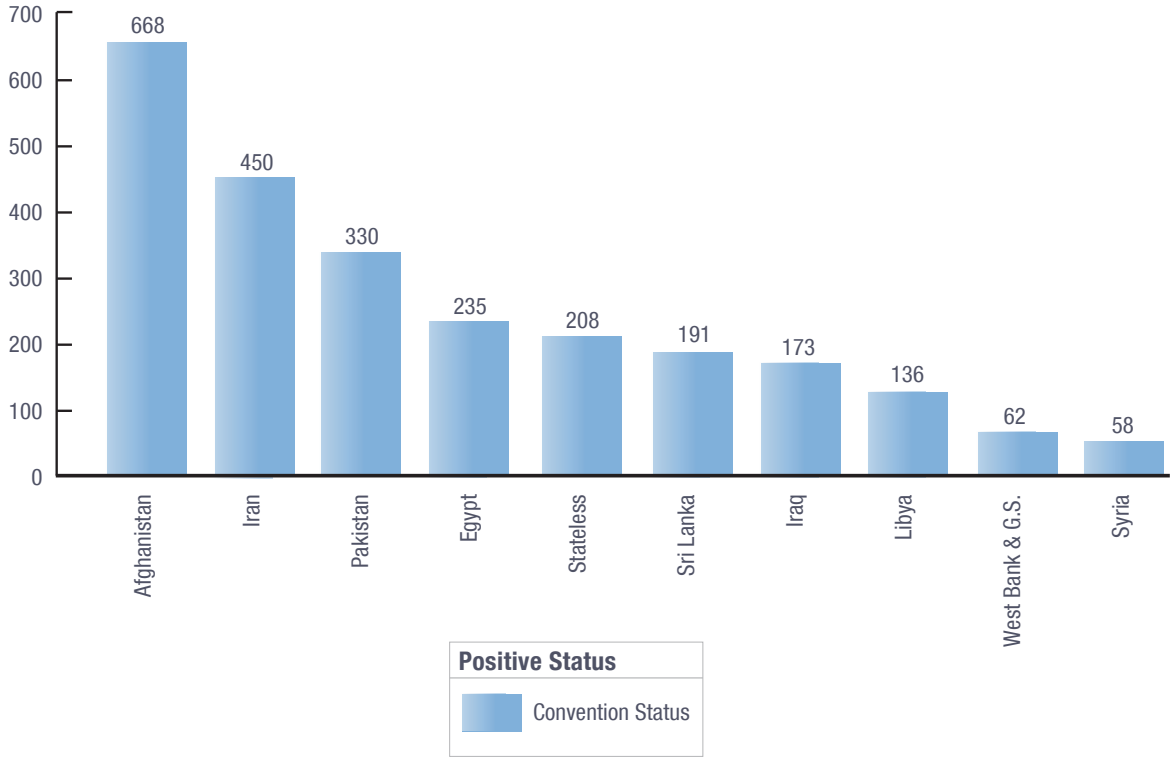


[15] Excluding withdrawn, closed and abandoned claims.

AUS. Fig. 6.b | Positive First-Instance Decisions, Top 10 Countries of Origin in 2013[16]

	Country of Origin	Total Positive	Total Decisions	Rate
1	Afghanistan	668	936	71.4%
2	Iran	450	909	49.5%
3	Pakistan	330	711	46.4%
4	Egypt	235	379	62.0%
5	Stateless	208	249	83.5%
6	Sri Lanka	191	1,313	14.5%
7	Iraq	173	285	60.7%
8	Libya	136	206	66.0%
9	West Bank and Gaza Strip	62	63	98.4%
10	Syria	58	62	93.5%

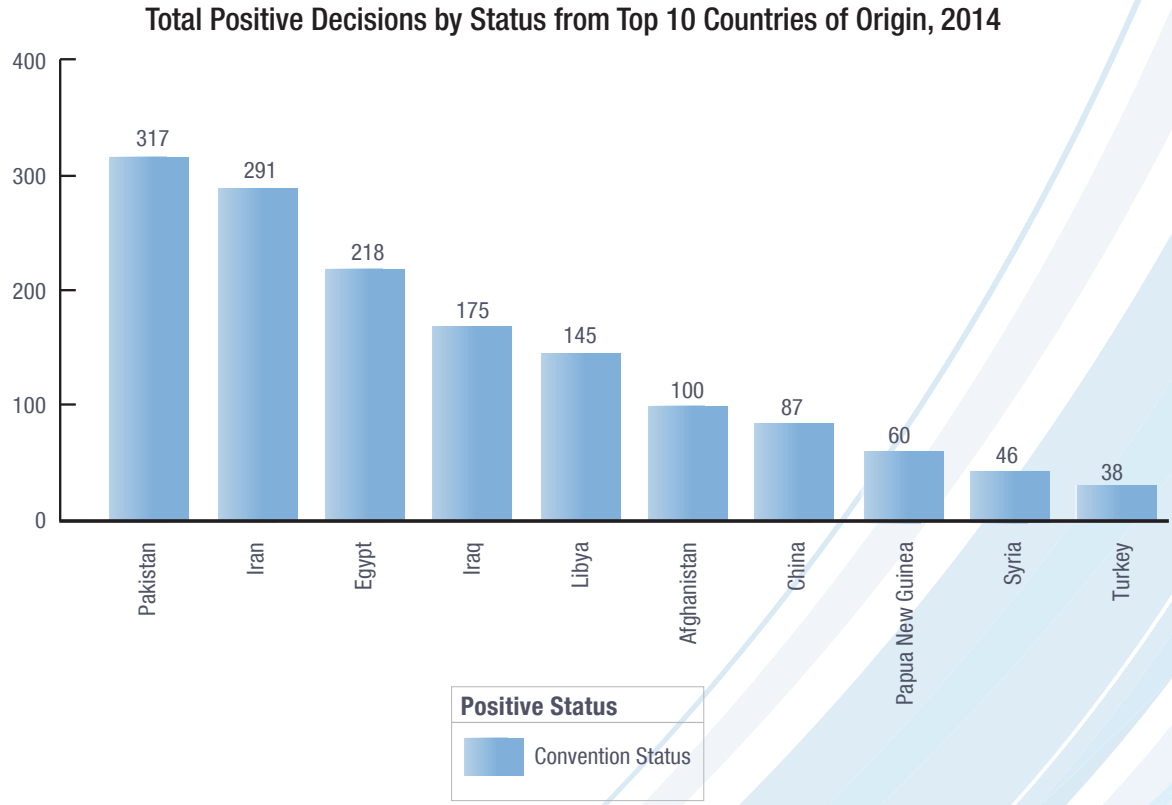
Total Positive Decisions by Status from Top 10 Countries of Origin, 2013



[16] Excluding withdrawn, closed and abandoned claims.

AUS. Fig. 6.c Positive First-Instance Decisions, Top 10 Countries of Origin in 2014[17]

	Country of Origin	Total Positive	Total Decisions	Rate
1	Pakistan	317	989	32.1%
2	Iran	291	688	42.3%
3	Egypt	218	614	35.5%
4	Iraq	175	319	54.9%
5	Libya	145	230	63.0%
6	Afghanistan	100	463	21.6%
7	China	87	1,298	6.7%
8	Papua New Guinea	60	110	54.5%
9	Syria	46	53	86.8%
10	Turkey	38	93	40.9%



[17] Excluding withdrawn, closed and abandoned claims.

Eritrean refugee girl.

UNHCR/F. Courbet/December 2008

BELGIUM

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1 BACKGROUND: MAJOR ASYLUM TRENDS AND DEVELOPMENTS

Asylum Applications

In the early 1980s, Belgium received fewer than 5,000 applications per year. The numbers started to increase in the mid-1980s, reaching a peak of 26,000 in 1992 and another peak of 42,690 in 2000. This reflected the instability in the world (for example, wars in the former Yugoslavia), but it was also due to the large waves of unfounded applications, exploiting the gaps in the asylum procedure. Annual applications have decreased considerably since the second peak, and in 2006 and 2007 Belgium received about 11,000 applications per year. Since 2009, Belgium has again witnessed a sharp annual increase, reaching a peak of 25,479 in 2011. This was strongly related to Belgium liberalizing its visa restrictions for nationals of western Balkan countries. From then on a steady decrease followed: 21,463 in 2012; 15,840 in 2013; and a slight increase to 17,213 in 2014.

Top Nationalities

In the 1990s, most applications came from Zaire (now the Democratic Republic of the Congo), Romania, India and the former Yugoslavia. Since 2004, the Democratic Republic of the Congo, Russia, Serbia and Guinea (Conakry) have ranked in the top five. Application numbers from (the former) Serbia and Montenegro were consistently high in the period 2004–2011. Since 2009, most applications have come from Afghanistan and Iraq, and since 2012, there has been a gradual rise in the number of applications from Syria. In 2014, the top five countries included Afghanistan, Syria, Iraq, Guinea (Conakry) and Russia.

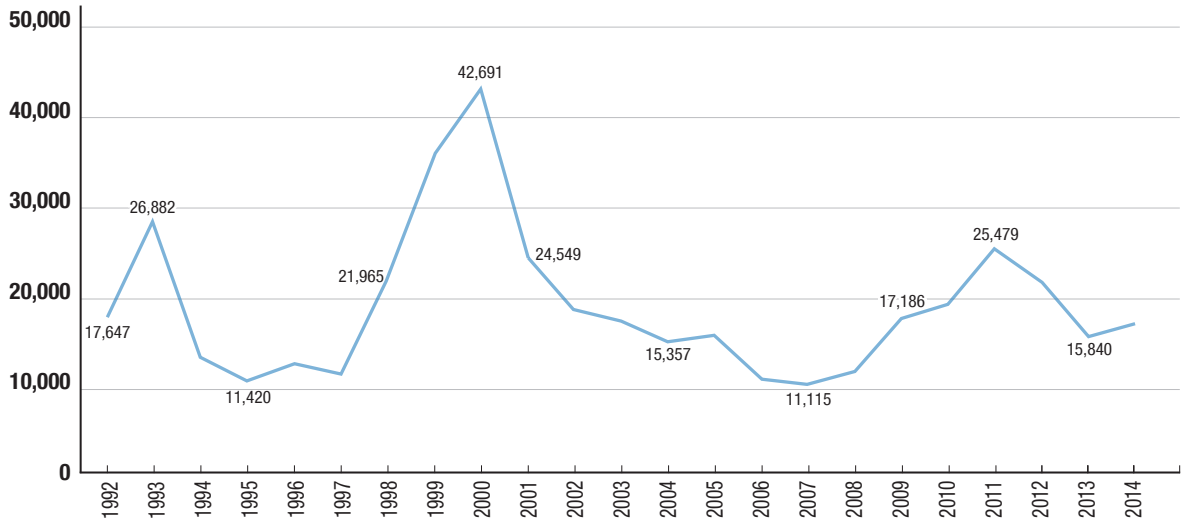
Important Reforms

After a peak in applications in 2000, the Government of Belgium undertook important policy measures including the use of the "last in, first out" principle, which was applied in order to achieve a more efficient procedure, and applicants no longer receiving financial benefits, but rather benefits in kind at reception centres. The large numbers of, and the long procedures for, older applications had created a strong feeling that the asylum procedure needed to be fundamentally reformed. This fact, together with the obligation to transpose a number of European Union (EU) Directives, led to important legal changes in 2006 and 2007.

The asylum procedure was simplified (one phase instead of two), one body (Office of the Commissioner General for Refugees and Stateless Persons, or CGRS) became the central asylum authority, and a new appeal body, the Council for Alien Law Litigation (CALL), was created. The Council of State became a court of cassation,[2] where appeals of decisions taken by CALL can be heard. The reception policy was reformed as well: applicants would receive only material assistance (reception and guidance) during their procedure.

The significant legislative reforms adopted in 2006 also resulted in the introduction of subsidiary protection and a new single asylum procedure. The single procedure considers

BEL. Fig. 1 **Total Asylum Applications by Year, 1992–2014[1]**



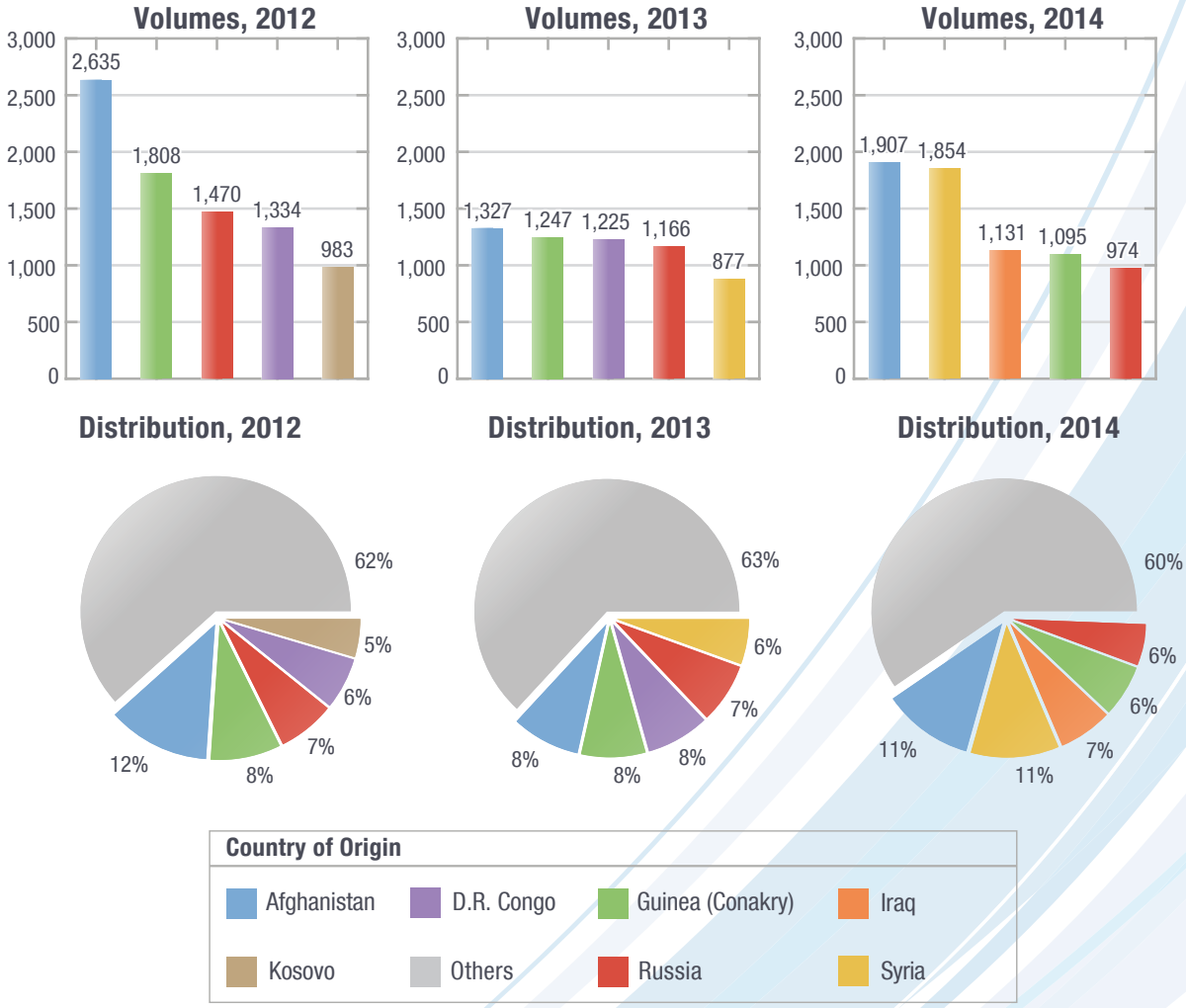
1 Accompanied minor dependants are not included.
2 Court of last resort.

grounds for both Convention refugee status and subsidiary protection in the examination of applications. In line with the Asylum Procedures Directive, the term "application for international protection" (covering both Convention refugee status and subsidiary protection) was introduced.

Since 2006, there have been no major reforms to the asylum procedure, but rather some fine-tuning and reinforcement to be able to cope with the high influxes, to maintain a solid and efficient system, and to implement certain provisions of the EU Directives.

In 2012 and 2013, following the steady rise in the number of applications for international protection, including many unfounded and subsequent applications, some legislative changes were introduced to create a more streamlined and efficient procedure that also tackles abuse. The concepts of "safe countries of origin" and "first country of asylum" were introduced in the Belgian Aliens Act, together with the possibility to declare inadmissible applications by applicants who had already obtained refugee status in another EU Member State. Regarding subsequent applications, the competence to assess new facts and circumstances presented by the applicant shifted from the Immigration Department to CGRS, as it is in a better position to assess the new element. Also regarding CALL, some procedural rules were adopted or simplified (for example, the first steps in the electronic treatment of appeals were introduced, the improper use of access to a judge was discouraged, some administrative tasks were eliminated and pro bono rules were modified). In addition, the Royal Decree pertaining to free legal assistance has changed. In the past, an applicant for international protection was automatically considered as not having sufficient means of subsistence, but this presumption has now become rebuttable.

BEL. Fig. 2 Asylum Applications Received from Top Five Countries of Origin in 2012, 2013 and 2014[3]



[3] Accompanied minor dependants are not included.

BELGIUM

Recent Developments

Since 2009, Belgium has witnessed a substantial increase in the number of applicants for international protection and ranked in the top five of all EU countries regarding the total number of applicants. Taking into account the number of inhabitants, Belgium received five times the EU average in 2011.

Because applications for international protection have reached peak levels year after year, there has been a crisis of the asylum and reception systems. The length of the asylum procedure increased, as well as the backlog. The reception system became saturated, and between October 2009 and April 2012, the Federal Agency for the Reception of Asylum Seekers (Fedasil) proved no longer able to provide applicants with a place at a reception centre. As a result, about 12,000 applicants were not assigned to a reception centre. The Government applied a more comprehensive approach and responded with a variety of measures, at both the legislative and the operational levels, to tackle these crises.

On the legislative side, new concepts were introduced in the Aliens Act (for example, regarding safe countries of origin and for subsequent application procedures), which allowed for the quicker processing of many unfounded applications. The Reception Act introduced a variety of limitations to the right of reception, such as excluding under certain circumstances the right to reception and material aid for applicants who file a subsequent application, and a quicker ceasing of the reception rights after a negative decision issued on appeal.

On the operational side, the Government quickly made available additional resources to deal with the rising influx of applications to guarantee a well-functioning asylum system and to avoid bottlenecks. On the one hand, the capacities of the asylum authorities were reinforced. In this way, CGRS recruited in the period 2009–2011 nearly 140 extra personnel consisting mainly of protection officers, administrative support and interpreters. Increased capacity allowed for quicker processing and consequently a reduction in the duration applicants had to remain in the reception network, thereby freeing up reception places for newcomers. On the other hand, the reception capacity was significantly increased from 15,611 (July 2007) to almost 25,000 (May 2012) individuals. In order to free spaces for new arrivals, asylum seekers were exceptionally offered the possibility to leave a reception facility and apply for financial aid during a few months in 2012. Other measures include the reinforcement of the return policy, the establishment of prevention campaigns in certain countries of origin and a quicker reaction against criminal networks who abused the procedure. This approach allowed Belgium to identify and combat unfounded and abusive applications for international protection quickly while maintaining a qualitative asylum system that offers international protection to those in need.

This resulted in 2013 and 2014 in a significant decrease in asylum applications in Belgium (in contrast to the rising trend in other European countries) and applications reached pre-crisis levels. As a consequence, CGRS was able to decrease significantly its backlog and to reduce the processing times. Due to the decrease in the number of applications and faster processing times, applicants had a shorter stay in the reception centres and some reception capacity was insufficiently used. The reception network was reorganized and (emergency) centres were closed or downsized. By the end of 2014, the reception network counted about 18,000 reception places and had a buffer capacity of 1,800 places.

By mid-2014 the downward trend reversed, mainly due to the higher influx of applicants originating from conflict areas (Syria, Iraq and Afghanistan) and the protection rate increased accordingly.

Following successful pilot experiences and the development of the Joint EU Resettlement Programme, the Government of Belgium decided in December 2011 to start a structural resettlement programme in 2013. Belgium pledged to resettle 100 persons in 2013 and 2014 and to increase gradually its annual quota to 250 by 2020.

UNHCR/M.H. Vemey/2008

IN FOCUS

CONTINGENCY PLANNING

Although Belgium has no formal contingency plan, contingency measures are in place within the organizations involved in the asylum process. They are coordinated by the State Secretary responsible for asylum and migration. These measures already proved their effectiveness during the asylum and reception crisis of 2010–2012, which was mainly due to the sharp increase in unfounded applications for international protection originating from the western Balkans. An integrated approach was developed with the goal of improving efficiency and effectiveness within each organization and within the asylum chain as a whole. This was accompanied by other measures, such as encouraging voluntary return, an intensification of forced return, and dissuasion/prevention campaigns to the region by the Minister of the Interior or other high-ranking officials.

At the CGRS level, country-specific action plans were developed that outlined a variety of measures, such as prioritizing and accelerating the examination of, for example, unfounded applications. The intensification of preliminary screening and profiling of cases enables CGRS to organize the interviews for international protection more efficiently. Based on the profiles identified, interview guidelines and objective country information are developed. In addition, so-called "building blocks" for reasoning are created, which help to decrease the processing time. The country of origin information (COI) department and legal department provide protection officers with tailored information and training. Afterwards, staff can be increased, and special training programmes for protection officers who need to be operational within short time frames are developed and extra employee motivation techniques are initiated. A communication strategy (including objectives at the organizational and team levels) towards internal and external stakeholders is developed.

At the reception level, Fedasil, the reception agency, has a permanent monitoring mechanism for a number of critical parameters, such as influx, outflow and the level of occupation of the capacity, on the basis of which forecasts can be made regarding the expected inflow and outflow as well as reception capacity needs. Fedasil has established critical levels of occupation (for example, saturation at 94 per cent of capacity), and since 2013, it has added additional capacity. A fully established, integrated contingency plan is being developed. Chain management, introduced during Belgium's recent crisis, led to changes to the reception model, in order to adapt it to the reduced processing times of applications for international protection and to the profile of applicants arriving in the country.

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).[4] The Aliens Act includes provisions for subsidiary protection (that is, complementary protection), residence permits granted for medical or health reasons, and humanitarian status.

2.2 Recent/Pending Reforms

Since the last major legislative reforms in 2006 and 2007, the Aliens Act and Royal Decree have not substantially changed, but have been fine-tuned, mainly to be able to cope with the high influxes, to maintain a solid and efficient asylum system, to transpose the dispositions of the EU Directives or to align with developments in jurisprudence. The Reception Act and several other Royal Decrees dealing with asylum issues have also seen some minor changes.

By mid-2015, all EU Member States will have to transpose the new provisions in the EU Directives on asylum procedures and reception. Belgium already has high standards and the implementation of these provisions will in principle not require major legislative reforms. However, changes will have to be introduced regarding the following issues: the identification and support of asylum seekers with special procedural or reception needs, the organization of the personal interview, the organization of an effective remedy and special procedures.

3 INSTITUTIONAL FRAMEWORK

3.1 Principal Institutions

The institutions involved in the asylum procedure are as follows:

- The Immigration Department, part of the Ministry of the Interior, registers all applications for international protection submitted inside the territory or at the border, applies the Dublin Regulation, is responsible for the asylum seekers' legal residence status throughout the procedure, as well as the follow-up of the final decision on the application (delivers orders to leave the territory and enforces returns).

[4] The Aliens Act is currently available only in French and Dutch at the following links on the website of the Immigration Department: https://dofi.ibz.be/sites/dvzoe/FR/Documents/19801215_F.pdf (French) and https://dofi.ibz.be/sites/dvzoe/NL/Documents/19801215_n.pdf (Dutch).

- CGRS is the independent federal administrative body with the competence to grant or refuse applications for international protection (refugee status or subsidiary protection), and to determine whether or not to take into consideration a subsequent application.
- CALL is the administrative court responsible for person-related decisions made in application of the Aliens Act. It has competences in the field of asylum (appeals of decisions taken by CGRS) and migration (appeals of decisions taken by the Immigration Department).
- The Council of State hears appeals by cassation of decisions of CALL.
- Fedasil is responsible for the reception of asylum seekers and coordinates the voluntary return programmes.

The State Secretary responsible for asylum and migration is the supervising authority of the Immigration Department, CGRS, CALL and Fedasil. At the organizational level, the Immigration Department, CGRS, CALL and, since 2014, Fedasil fall under the Federal Public Service of the Interior.

3.2 Cooperation between Government Authorities

CGRS and the Immigration Department work closely together at the organizational level. Since the Immigration Department has certain competences within the asylum procedure (lodging and registration of the application, checking the possible responsibility of another EU Member State according to the Dublin III Regulation and completing the CGRS questionnaire), it also cooperates with CGRS at the operational level. However, when it comes to decision-making, no consultation takes place in order to uphold the independence of CGRS. Both CGRS and the Immigration Department are financed by the Ministry of the Interior.

CALL works independently. Due to the independent position of CALL as an appeal court, there is no structural cooperation with the other asylum agencies.

However, since the setting up of the Business Improvement Project, initiated by the Government in November 2010, more attention has been paid to the asylum process as a chain, transcending the three authorities involved in the process (Immigration Department, CGRS and CALL). The project was created to evaluate the output and efficiency of the three authorities and to find further opportunities for reducing the processing time for applications for international protection while maintaining high-quality standards.

CGRS has no structural cooperation with the Police Department or Justice Department. When ad hoc contacts do take place between these authorities (for example, issues involving public order, human trafficking or human smuggling), the basic principles of confidentiality and privacy are guaranteed. The Immigration Department cooperates with the police on border management and with the Justice Department on the issue of unaccompanied minors.

CGRS and the Immigration Department also cooperate with other government agencies and ministries, such as Fedasil, the Ministry of Foreign Affairs and the National Register. This cooperation, however, is done on a more ad hoc basis.

At the international level, CGRS, Fedasil and the Immigration Department cooperate with foreign state authorities. In general, this takes the form of practical cooperation within EU and international forums, such as the European Asylum Support Office (EASO) and the Intergovernmental Consultations on Migration, Asylum and Refugees (IGC). Yet, CGRS and Fedasil are also involved in bilateral cooperation and capacity-building efforts. For example, CGRS is assisting in the reinforcement of the asylum authority in Burundi.

4 PRE-ENTRY MEASURES

To enter Belgium, foreign nationals must have a valid travel document (and if needed, a visa issued by Belgium or one of the other States parties to the Schengen Agreement) or a valid residence permit.

4.1 Visa Requirements

The Immigration Department is the competent authority for issuing visas to third country nationals. A person whose visa application has been denied may appeal before CALL.

4.2 Carrier Sanctions

Carrier sanctions are applicable to airplanes and ships. According to the Aliens Act and the Chicago Convention, 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 EUR 5,000 per passenger.

4.3 Interception

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

Belgium does not carry out pre-departure clearance in countries of origin or transit. However, airline companies do check the authenticity of the documents before boarding.

5 ASYLUM PROCEDURES

5.1 Application Possibilities and Requirements, Procedures and Legal Remedies

Foreign nationals seeking international protection may apply at airports and seaports. Applications inside the territory must be made at the Immigration Department. Applications may also be introduced in detention centres, prisons and closed centres.

Children of asylum seekers (accompanied minors) in principle have their asylum application included with those of their parents as the parent has the legal capacity to lodge the application for him or her. However, in the rare case that the accompanied minor expresses a specific fear of persecution or risk of serious harm, it is possible for this minor to lodge an application for international protection in his or her own name. Unaccompanied minors have the legal capacity to apply for international protection themselves, or their guardian can make this application in the name of the unaccompanied minor. Persons over 18 years of age must file their own application for international protection.

Access to Information

The applicant for international protection is informed about his or her rights and obligations and the various steps in the asylum and reception procedures in several ways. The most common method is through information leaflets or brochures that may be obtained at the reception centres, at the offices of the government authorities involved in the asylum procedure (CGRS, Fedasil and the Immigration Department), and through non-governmental organizations (NGOs). The leaflets or brochures are available in a number of languages (for example, the information leaflet provided by the Immigration Department upon lodging the application is available in 25 languages). CGRS and Fedasil also have developed a DVD about the different steps in the asylum procedure, which is shown to every applicant upon arrival at a reception centre. Moreover, staff are available both at closed and open reception centres to provide applicants for international protection with additional information on procedures.

Besides the more general brochures directed at all applicants for international protection, some specific brochures and leaflets are made available. The brochure "Women, girls and asylum in Belgium" was created for female applicants in nine languages. Specific brochures are also available for applicants in closed centres at the border or in other detention centres or prisons. The comic book *Kizito*, which uses drawings to explain the different steps of the asylum procedure, is handed out to all unaccompanied minors seeking international protection.

In addition, CGRS has launched several brochures on different aspects of the asylum procedure. There is the code of conduct for interpreters and translators, the so-called interview charter that serves as the CGRS protection officers' code of conduct, and a publication for professionals assisting applicants throughout the procedure. All of the brochures and publications are available on the CGRS website.

UNHCR/I/Prickett/September 2014

IN FOCUS

QUALITY–EFFICIENCY ENHANCEMENT

In the last few years, CGRS has been confronted with numerous challenges that have had an impact at the organizational level, including large fluctuations in the number of asylum seekers, the need to absorb additional personnel and the implementation of various legislative changes. A process-improvement project that was carried out throughout 2011 and 2012 helped to identify and implement enhancement opportunities. In this context, CGRS set up a "quality project" to develop tools, harmonize working processes and develop support mechanisms in order to improve the quality of decision-making and to further the harmonization of the working methods while maintaining the maximum level of efficiency.

The project, scheduled to end in early 2015, began with identifying the quality indicators and the challenges and best practices within the core and supporting processes of CGRS. The guiding principles of this project are quality, transversality, efficiency, the autonomy of the protection officer and task variation. This eventually led to a roadmap with a listing of the different objectives to be met, covering the following aspects:

- Responsibilities, tasks and roles of all actors will be clarified and realigned in order to ensure harmonized qualitative processes, including the role of the supervisor, the supervision system, coaching and an assessment of the personnel.
- An organization-wide structure to guide internal communication and consultations will be put in place. It will be aimed at quickly identifying and resolving problems at the most appropriate levels, strengthening the sharing of knowledge and stimulating the group dynamics. The structure is intended to create a new "quality and policy unit" that will ensure more horizontal monitoring and support to the different entities within the organization. A clearer process on the development of country guidelines and the identification of COI needs will be developed.
- Indicators on quality will be defined, which will be used as a reference to monitor and improve internal processes and cases for international protection.

Aside from the quality project, other efficiency enhancing projects are being undertaken, such as a project on guidelines. In the current situation internal guidelines/instructions have a limited scope and are not always up-to-date. Often, the information is spread among different services, which leads to different practices. In the scope of this project, the current guidelines/instructions were screened and the most relevant topics were identified. An editing committee updated and elaborated the content, applied uniform drafting rules, used standardized templates and developed a validation matrix. This resulted in different categories: general guidelines, guidelines for protection officers (eligibility guidelines on subsidiary protection, réfugié sur place, internal flight alternative, exclusion and female genital mutilation, or FGM) and service-specific guidelines (case handling, interviews, administrative procedures, public order, deontology and human resources management), which are made available on the new documentary e-platform, InSite.

Through InSite, to which all employees have access, the sharing of knowledge is further facilitated. It contains information not only on the organization, but also on COI and on policy. A new approach has been applied in the set-up of the platform, whereby it is more country-oriented. All information (COI, policy, guidelines) is organized by country, which enables protection officers and other supporting services to identify quickly the most relevant information and guidelines.

5.1.1 Outside the Country

Applications at Diplomatic Missions

Belgium does not have a legal procedure in place for persons to make an application for international protection at diplomatic missions.

Resettlement

In December 2011, the Government of Belgium decided to develop a structural resettlement programme. This decision was based on pilot experiences through different ad hoc resettlement operations (in Iraq and Libya) and the development of the Joint EU Resettlement Programme. The size of the quota is decided by the Government (State Secretary responsible for asylum and migration) and, for 2014, it was set at 100. The annual quota will gradually increase to 250 by 2020. The allocation of the quota is based on the United Nations High Commissioner for Refugees (UNHCR) projected global resettlement needs, the EU priori ties and national considerations.

The two main operational authorities for resettlement are CGRS and Fedasil. The Immigration Department is responsible for issuing travel documents, if refugees do not possess such documents.

The selection process is managed by CGRS, mainly through the organization of selection missions. In 2014, two selection missions took place. Travel and medical arrangements, pre-departure orientation, initial reception and transition to mainstream integration services are managed by Fedasil. Transportation and medical arrangements are delegated to the International Organization for Migration (IOM). Resettled

refugees stay for a period of six to seven weeks at a reception centre, after which they move to individual housing. Resettled refugees are offered specific individual support for a period of at least 12 months through volunteering local municipalities (local public welfare centres) and NGOs (Caritas and Convivial).

There are no specific provisions on resettlement in Belgian legislation (such as the Aliens Act or the Reception Act). Resettlement can be handled within the existing legislation. Refugee status is granted on the basis of the 1951 Convention. The asylum procedure and the competences of asylum authorities are governed by the Aliens Act.

In order to be eligible for resettlement to Belgium, a person must meet the refugee criteria as defined in the Belgian Aliens Act. Cases for resettlement are assessed exactly the same way as are those for regular asylum seekers. The asylum seeker must be able to articulate an individual need for protection in relation to his or her country of origin. There are no supplementary criteria for selection. Belgium accepts only UNHCR submissions.

Resettled refugees are granted refugee status immediately after arrival in Belgium. There is no difference between refugee status criteria for asylum seekers and those for resettled refugees.

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 refoulement decision (a decision of refusal of entry). Such a decision may be based on the use of false documents or on not having satisfied entry conditions. According to the Chicago Convention and the Aliens Act, this person may be sent back to the place of departure.

Asylum applications may be made at the border, and should be done as soon as the person is questioned by the border police officer about the purpose of the journey. The border police section of the Federal Police that receives the asylum application delivers the document stating the request for international protection and notifies the Border Control Department (within the Immigration Department), which proceeds with the registration of the application. If an asylum application is made, return will be suspended, and the case will be examined without triggering a right to enter Belgian territory. Usually, the applicant for international protection will be taken to a closed centre located at the border for the duration of the procedure (up to a maximum of two months, but it may be extended to five months). Families with children are placed in open housing units, which are better adapted to their specific needs, but which are in legal terms considered to be closed centres located at the border.

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 application for international protection according to the Dublin III Regulation. If Belgium is responsible for examining the application, a protection officer and an interpreter from CGRS will visit the closed centre or housing unit to interview the applicant. The applicant has the right to legal representation at no cost. The procedure in the closed centre or housing unit is the same as the regular procedure, except for the time limits within which CGRS must take the decision (within 15 days after having been notified by the Immigration Department).

In cases where the application results in the granting of international protection status, the applicant is granted permission to enter the territory.

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 application under Regulation (EU) No 604/2013.[5] If it determines that Belgium is not responsible for processing the application, the Immigration Department issues a refusal along with an order for the person to leave the country. A laissez-passer is provided so the person can travel to the country responsible for processing his or her application.

Freedom of Movement and Detention

Persons whose applications 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 examining the application for international protection. In particularly complex cases, detention may be extended for an additional month. Persons may be detained for one of the following reasons:

- He or she holds an expired residence permit or an expired visa for another Dublin country.
- He or she does not have the necessary travel documents and has resided in another Dublin country.

Once a decision has been taken that Belgium is not the responsible State, the person can be detained also for the time necessary to carry out the transfer.

Conduct of Transfers

The applicant for international protection has to attend a specific Dublin interview in which they can state their reasons for opposing the transfer to the responsible Dublin State.

[5] Regulation (EU) No 604/2013 of the European Parliament and the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (Dublin III Regulation).

Transfers are either voluntary or forced. 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 transfers may be suspended for some time based on a suspension judgement by CALL, or following a decision by the Immigration Department either on a case-by-case basis (for example, if a person is unable to travel due to medical reasons) or on a more general basis (for example, the suspension of transfers to Greece).

Review/Appeal
Persons may appeal the Immigration Department's decision to transfer them under the Dublin Regulation before CALL within 30 days of the decision. This is a non-suspensive annulment procedure.

While assessing whether all formalities have been respected by the Immigration Department, CALL also considers whether the sovereignty clause should have been applied by assessing potential breaches of article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights). In order to do this, CALL takes into consideration all the relevant elements concerning the state of reception conditions and the asylum procedure in the responsible State to where the Immigration Department wishes to transfer the applicant.

Under a special procedure (the so-called "extremely urgent necessity"), the lawyer of the applicant for international protection may request a suspension of transfer when removal is imminent and would cause irreparable harm if carried out. The lawyer must also show CALL that an appeal for annulling the Dublin decision would in all likelihood result in a suspension of the removal order for the applicant. CALL may grant a suspension of transfer if the applicant can prove that, upon transfer to a Dublin country, he or she would be subject to refoulement.

Application and Admissibility

Application
When filing an application for international protection with the Immigration Department, applicants are required to do the following:

- Have their photographs and fingerprints taken
- Undergo a chest x-ray to detect tuberculosis
- Appear at an interview with immigration officials, with the assistance of an interpreter, if requested
- Make declarations in order to establish identity, travel route and origin
- Complete a questionnaire in order to establish the reasons for fleeing as well as the possibility to return to the country of origin. This questionnaire gives CGRS the opportunity to prepare its examination and interview of the applicant.

The Immigration Department also determines the language in which the asylum procedure will take place. In Belgium, this is either Dutch or French.

Admissibility
If the Immigration Department finds that, under the Dublin III Regulation, Belgium is responsible for processing the application for international protection, the applicant's file is forwarded to CGRS. No specific admissibility procedure exists in Belgium, but it is nevertheless possible for CGRS to take a decision refusing to enter into a further in-depth examination of the application according to the regular procedure on grounds of inadmissibility. Under Belgian law this is not referred to as a decision of "inadmissibility", but as a decision "not to take the application into consideration".

CGRS can decide to take a subsequent application into consideration, depending on the presence or absence of new elements (or in case the first application had been refused for technical reasons). This is the only grounds for admissibility where the law also obliges CGRS to take a (positive) decision of admissibility.

For the following other categories, CGRS can decide not to take into consideration the following applications:

- Applications from EU citizens
- Applications from persons who already have obtained refugee status in a EU Member State that still effectively protects them
- Applications from persons from safe countries of origin or from a first country of asylum.

These applications for international protection are examined in the same thorough and individual manner as applications that go through the regular procedure. Applicants originating from these countries are, however, confronted with the rebuttable presumption that the country of origin, or the country of first asylum, is safe and has an adequate judicial protection system, and it is for the applicant to rebut this presumption. The burden of proof rests thereby entirely on the applicant.

For all of these grounds, only formal written negative decisions on the admissibility of the application stating the reasons for the decision are delivered to the applicant. If the grounds for inadmissibility do not apply, a further examination by CGRS takes place concerning whether the application is well founded, resulting in a decision on the substance (without an intermediate decision on admissibility).

Positive decisions on subsequent applications are delivered as formal written decisions, but reasons are not provided (as no one would have an interest in appealing a decision in their favour).

Regarding the application of any of these grounds, there is no difference between applications made at the border and those made within the country's territory.

Appeal

In principle, a full appeal can be lodged with CALL for all negative decisions on the substance made by CGRS. These appeals should be introduced within 30 calendar days and have an automatic suspensive effect.

Appeals against decisions by CGRS not to take an application into consideration can be lodged with CALL, although, depending on the motives, different time frames and conditions apply. Some will be made according to the full jurisdiction procedure with a suspensive effect, others will be through an annulment procedure without a suspensive effect. The following time frames and conditions apply:

- 30 calendar days + annulment procedure: citizens of EU Member States; applicants with refugee status in another Member State
- 15 calendar days + full judicial appeal: safe country of origin; subsequent applications
- 10 calendar days: subsequent application when in detention
- 5 calendar days: subsequent application when second or further decision is not taken into consideration.

An appeal in cassation against the decision of CALL can be made with the Council of State within 30 days of the day that the decision was served to the applicant. Such an appeal does not have a suspensive effect. For this second tier appeal, a filter mechanism has been put in place.

Accelerated Procedures

Belgian legislation does not set out different types of first instance procedures, but in practice not every application for international protection is processed within the same time frame. In some specifically determined situations, CGRS has to accelerate or prioritize the examination of the application and has to take a decision within a prescribed period of time. The time frames are as follows:

- 2 working days for a subsequent application from an applicant in detention
- 5 working days if the applicant is a national of an EU Member State
- 8 working days for a subsequent application
- 15 working days if the applicant originates from a safe country of origin
- 15 working days if the applicant has already obtained refugee status in an EU Member State that still effectively protects him or her
- 15 days if the Minister of the Interior demands priority treatment (right of injunction)
- 15 days if the applicant is considered to be a threat to public order or national security
- 15 days (when the applicant is in detention) or 2 months (when applicant is not in detention) for the following eight specific situations:
  - The border police questions the applicant about the purpose of his or her journey.
  - The applicant has lodged a previous application.
  - The applicant refuses to state, or gives false information or documents about, his or her identity or nationality.
  - The applicant has deliberately destroyed his or her identity and travel documents.
  - The applicant has made an application with the sole purpose of postponing or frustrating an immediate expulsion.
  - The applicant refuses to have his or her fingerprints taken.
  - The applicant fails to reveal that he or she has already made an application in another EU Member State.
  - The applicant refuses to make the declarations required at the registration phase (such as filling out the CGRS questionnaire).

The deadlines are considered to be indicative only, as there are no sanctions attached should they not be respected.

The right of injunction by the Minister (article 52/2 of the Aliens Act) can be exercised at any time through an official letter to the Commissioner General for Refugees and Stateless Persons. This occurred in October 2010 when the Minister requested accelerated treatment of applications from the former Yugoslav Republic of Macedonia, Kosovo and Serbia (prior to the adoption of the list of safe countries of origin).

Normal Procedure

Application Requirements

Under the normal procedure (but also for accelerated procedures), applicants are required to do the following:

- Make their application
- Submit all of their identity documents and any other documentation that may be relevant to their application
- Appear at an interview, where they will be provided with an opportunity to explain the particulars of their application.

Interviews and Examination of a Case

Once the Immigration Department has transferred the administrative file, CGRS will summon the applicant for international protection for an in-depth interview. Interviews are conducted by a CGRS protection officer belonging to one of the five geographical desks (Africa, Balkans, Eastern Europe, Middle East and Asia, or the Democratic Republic of the Congo) or a project desk. When required, an interpreter will be made available. The applicant's lawyer or trusted person may attend the interview. The protection officer drafts a verbatim written interview report, the content of which is treated as confidential. The protection officer has to confront the applicant with any contradictions in their declarations. Additional remarks or supporting documents can be sent to CGRS afterwards and will be taken into consideration. The protection officer then examines the individual asylum story based on the one hand on the credibility and truthfulness of the statements and on the other hand on the criteria of the 1951 Convention and the provisions concerning subsidiary protection. The protection officer then submits a proposal to his or her supervisor who will check the content and the reasoning of the decision. Once approved by the supervisor, the decision is presented to the Commissioner General for Refugees and Stateless Persons, who can further discuss it if required, and then sign the decision.

A supervisor is a senior protection officer who manages a unit of four to eight protection officers. The supervisor will systematically review the quality of every decision of the protection officer, but has the duty to coach the protection officers. Some protection officers are part-time supervisors.

Review/Appeal of Asylum Decisions

Appealing CGRS Decisions

CALL is the competent authority to confirm, change or annul the CGRS decision if a full jurisdictional appeal has been lodged. If an appeal for annulment has been lodged, CALL may either reject the appeal or annul the CGRS decision. If CALL decides to annul a CGRS decision due to substantial irregularities that cannot be repaired by CALL or because there are essential elements lacking that prevent CALL from reaching a decision without additional research, the case is returned to CGRS for an examination of the file, while taking into account the elements of the judgement in order to obtain a new decision.

CALL does not have a power of investigation of its own. The judgement of CALL is based solely on the elements submitted by the appellant and the defendant for the purposes of the appeal. In most cases, CALL must reach a decision within three months. In certain cases, CALL must reach a decision within two months; for example, when the Minister uses his or her right of injunction to prioritize cases, or when the application is not taken into consideration because the applicant originates from an EU Member State or a safe country of origin. CALL also has competences on migration issues.

In principle, all appeals procedures provide for a full and ex nunc assessment of both facts and points of law (full jurisdiction), with a suspensive effect. Appeals must be made within 30 days of the CGRS decision. If the applicant is detained, appeals must be made within 15 days. The applicant is eligible to obtain free legal assistance for his or her appeal.

For the following two categories, only an annulment procedure with no suspensive effect is available:

- Applicants who have been granted refugee status in another EU Member State
- Applicants who are citizens of an EU Member State or of a State that has signed a Treaty of Accession with the EU.

In such cases, only the legality of the decision made by CGRS may be examined. If there is an annulment of the CGRS decision, the case is sent back and CGRS has to render a new decision.

The procedure before CALL is a paper process. The appellant and his or her legal representative may make an oral intervention during the hearing. When lodging a full jurisdictional appeal, the applicant is allowed to present new information during the court session on a number of conditions, provided this information could not have been put forward earlier in the procedure. However, new information may not be included in an appeal for annulment.

A court session is normally organized in every appeal case. However, the Council may consider an appeal merely on the basis of written documents, but both the applicant and the deciding body can still ask to be heard. The appeal body is then obliged to organize a court session. Both parties – that is, the applicant and his or her representative, and CGRS – are present at the hearing. Hearings at CALL are open to the public, but a private hearing is possible if requested.

The State Secretary responsible for asylum and migration may appeal a CGRS decision to grant international protection status within 30 days of the decision. This appeal is made before CALL.

Appealing CALL Decisions

Decisions of CALL 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 CALL. 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 CALL for a new hearing, and CALL must observe the judgement 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 applicant for international protection in a closed centre during the determination procedure at CGRS or pending return following a negative decision on the application. 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 applicants at the border who do not fulfil the entry conditions, and applicants on the territory who:

- had been served a removal order by Ministerial Edict or Royal Edict in the previous 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 application for international protection more than eight working days after entering Belgium, without providing a valid reason for this delay
- refused to disclose their identity or nationality or provided false information or documents in this regard
- made an application for the sole reason of delaying removal from Belgium.

Applicants pending transfer to another State under the Dublin procedure may be detained.

Applicants can be detained in one of the five closed detention centres managed by the Immigration Department. If the asylum procedure is not concluded within two months, and in cases where an international protection status had been granted within this two-month period, the applicant will be released from detention.

Having been condemned by the European Court of Human Rights for having detained a family with four children while awaiting their transfer to Poland under the Dublin II Regulation, Belgium has introduced the use of housing units for families as an alternative to detention. Families who apply for international protection at the border will stay in these houses during the course of their asylum procedure. As is the case for persons staying in detention centres, their asylum procedure will be accelerated. Despite the open structure, from a legal point of view these houses are considered to be detention centres.

Reporting

All applicants for international protection must choose a residence in Belgium when submitting their application. The elected domicile is the official address where the applicant can be contacted by the asylum authorities. The address of the applicant's residence can be different from the elected domicile address. If no domicile has been elected, the address of CGRS will be automatically considered as the elected domicile. Applicants who are detained in a detention centre or prison will have that address as their elected domicile by default. Applicants who applied at the border without meeting the required entry conditions are deemed to have their elected domicile at the place where they are being held. The applicant may have their elected domicile be the address of the person of trust, the lawyer, a counselor or a social service agency.

The asylum authorities must be informed by registered post of any changes to the elected domicile. A failure to do so could lead to the applicant not receiving the summons for hearing, requests for information or the decision on international protection, and could eventually result in a negative decision. When the applicant has the address of his or her lawyer as the elected domicile, notifications by the asylum authorities can legally take place by fax or e-mail.

Applicants are assigned a place in a reception centre. This is the compulsory place of registration and corresponds to the residence of the applicant during the asylum procedure. Although the applicant is not obliged to stay in the offered accommodation, most choose to settle in a reception centre in order to be entitled to material assistance. The applicant assigned to a reception centre has freedom of movement on Belgian territory. The house rules of the reception centre often state that the resident may be absent 10 days per month if he or she notifies the centre in advance. The resident cannot be absent for more than three consecutive nights without prior consent. If the applicant does not respect these rules, he or she will lose his or her assigned reception place. If the resident reappears, he or she will then again have to request a reception place. The rule is not aimed at restraining the movement of freedom; it is merely a measure for managing available reception places so that no reception place is vacant for a significant period of time.

Unaccompanied minors are at first accommodated in Observation and Orientation Centres, where stricter rules apply in order to ensure the protection and supervision of unaccompanied minors. Immediately after arrival at the centre and for a period of seven days, unaccompanied minors may not have contact with the outside world (this rule does not apply to contacts required in connection with procedures regarding the minor, nor to contacts with the

minor's guardian or lawyer, or during activities organized by the centre). During the entire stay in an Observation and Orientation Centre (15 days), the unaccompanied minor's contacts are under specific supervision. The modalities of visits, activities outside the Centre, phone conversations and correspondence by letter are defined in the house rules. An unauthorized 24-hour absence is directly reported to the police and the guardian of the minor (and reported immediately in cases of vulnerable unaccompanied minors).

When a family with children is assigned to a housing unit run by the Immigration Department, the applicants are required to sign an acceptance contract stipulating that, if they definitively leave the housing unit without prior authorization, they may, when apprehended, be subject to detention in a closed centre. This would also be the case if they did not cooperate in the process towards their return.

Repeat/Subsequent Applications

Requirements and Procedure

Since September 2013, the competence to assess new facts and circumstances presented by the applicant during a subsequent application has shifted from the Immigration Department to CGRS. This change should allow for an accelerated handling of many unfounded subsequent applications. The subsequent application first has to be registered with the Immigration Department, where a questionnaire is completed regarding all the new evidence the applicant wishes to provide and the reasons why this evidence could not have been presented earlier. This new evidence should be judged as "significantly increasing" the probability of being granted a status of international protection (refugee or subsidiary protection). This information is then immediately transferred to CGRS.

On the basis of the applicant's written statements, CGRS will decide whether or not to take into consideration the subsequent application. This decision is in principle based solely on these written statements, and CGRS is not required to organize a personal interview. Only in exceptional cases (for example, if the statements are unclear or incomplete, or the first application had been refused for technical reasons) will a personal interview be organized. If the applicant is in detention, CGRS must take a decision within two working days; in all other cases the decision has to be taken within eight working days.

Applicants who lodge a subsequent application (a second or following application) will in principle not have the right to a place at a reception centre and will be entitled just to medical care. Only when CGRS or CALL decides to take into consideration the subsequent application, will the applicant have the right to a place at a centre. However, Fedasil has some discretion in providing an applicant with material aid on humanitarian grounds even before a decision on taking the second application into consideration has been reached.

Detention

The Aliens Act provides for the possibility of detaining asylum seekers who have submitted a subsequent application.

Appeal

If CGRS decides to take into consideration the subsequent application, it is processed according to the normal procedure and a personal interview is organized. If the application is not taken into consideration, a full jurisdictional appeal can be lodged with CALL.

However, the appeal is non-suspensive when it concerns (a) a second application (the first subsequent application) lodged within 48 hours before a planned return that was lodged merely to delay or frustrate the enforcement of the return, or a second asylum application that was introduced within 48 hours before the repatriation; or (b) a third application (that is, a second or following subsequent application).

5.2 Safe Country Concepts

5.2.1 Safe Country of Origin

In November 2011, Belgium introduced the possibility to designate safe countries of origin, and the Royal Decree implementing this concept came into force on 1 June 2012. Under this procedure and based on advice from CGRS, the State Secretary responsible for asylum and migration, and the Minister of Foreign Affairs submit a list of safe countries to the Government for consideration. The list must be reviewed at least once per year. On 15 May 2014, the following seven countries were listed: Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, India, Kosovo, Montenegro and Serbia.

For nationals of these countries applying for international protection, the individual treatment of their application is still guaranteed, but it will be subject to an accelerated (15 working days) procedure at CGRS and it will require a higher standard of proof. There is a rebuttable presumption that the country is safe.

CGRS may not take into consideration the application if the applicant's declarations do not clearly indicate a well-founded fear of persecution or a real risk of suffering serious harm.

A full jurisdictional appeal can be lodged with CALL within 15 calendar days of a negative decision by CGRS. The appeal is automatically suspensive but the periods for the introduction of the appeal are shortened.

Reception is guaranteed during the accelerated procedure and the appeal phase.

Applications Made by EU Nationals

Declaration No. 56 relating to the Spanish Protocol, which is contained in the annex to the Treaty of Amsterdam,[6] states:

[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.

"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 an EU Member State or of a State that has signed a Treaty of Accession with the EU makes an application for international protection, CGRS has five working days to decide whether or not to take into consideration the application, after determining whether there is a well-founded fear of persecution or a serious risk of harm being invoked in the application.

While the EU national is not entitled to a full jurisdictional appeal, he or she may appeal for the annulment of a decision by CGRS not to take into consideration the application, within 30 days of that decision, before CALL. While this appeal has no suspensive effect, it is possible for the applicant to make a request for a suspension of removal together with his or her appeal.

5.2.2 First Country of Asylum

The concept of "first country of asylum" as in the EU Asylum Procedures Directive was only transposed into the Belgian Aliens Act in August 2013 to allow for more efficient case handling. Those applicants who already enjoy real protection in another State (refugee status or real protection with respect to the principle of non-refoulement) could be considered not to be in need of international protection in Belgium. However, if the applicant provides evidence that he or she can no longer benefit from this protection or that he or she cannot regain access to the territory of the first country of asylum, the concept cannot be applied. In that case, the fear of persecution or serious harm will not be examined vis-à-vis the country in which he or she obtained this protection but vis-à-vis the country or countries of nationality, or in case of a stateless person vis-à-vis the former place of residence.

5.2.3 Safe Third Country

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

5.2.4 Refugee Status in Another EU Member State

CGRS may decide not to take into consideration applications if applicants have already obtained refugee status in an EU Member State. It is a specific category of applicants whereby it can be assumed that they are not in need of international protection in Belgium as another EU Member State has already granted the refugee status. As it concerns another EU Member State, it can be assumed that the fundamental rights of the applicant will not be breached. However, this is a rebuttable presumption. Each application will be assessed on an individual basis and the mere fact of having obtained refugee status in another Member State will not automatically result in a decision not to take into consideration the application. The concept can be applied only if the following cumulative conditions are fulfilled:

- The protection entails only the refugee status (not the subsidiary protection status, nor other national statuses)
- The protection is actual and sufficient
- The applicant is able to regain access to the other Member State.

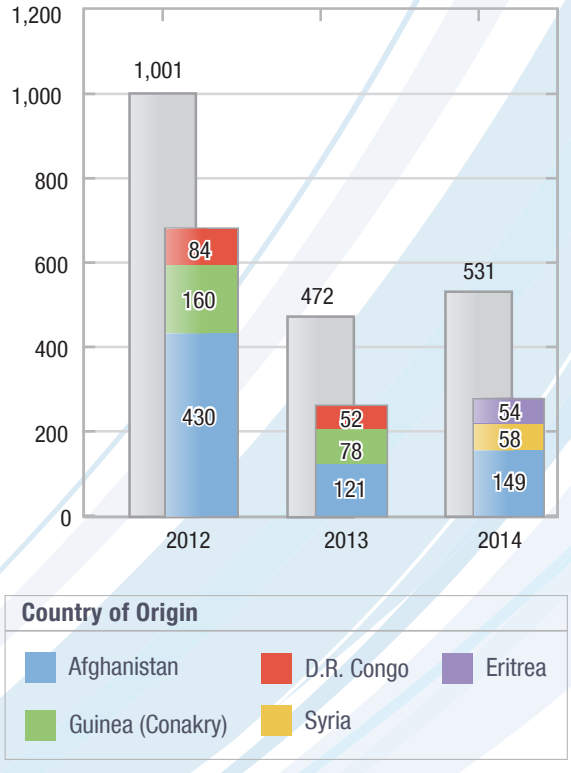
5.3 Special Procedures

5.3.1 Unaccompanied Minors

The definition of a refugee is the same for all persons, regardless of their age. The recognition criteria for minors do not differ from those for adults. Hence, unaccompanied minors go through the same steps in the asylum procedure as adults. However, the fact that a person is an unaccompanied minor will be taken into account throughout the procedure.

BEL. Fig. 3 Asylum Applications by Unaccompanied Minors in 2012, 2013 and 2014

	2012	2013	2014
Total Asylum Applications	21,463	15,840	17,213
Applications by Unaccompanied Minors	1,001	472	531
Percentage	5%	3%	3%



Unaccompanied minors must present themselves at the offices of the Immigration Department in order to apply for international protection. Unaccompanied minors are separated from other applicants and placed in a specific waiting room. They are assisted by personnel from the Immigration Department specifically trained to deal with unaccompanied minors. As the Immigration Department is often the first authority to have contact with an unaccompanied minor, it will have to inform the Guardianship Service and fill out the identification form for the minors. The Guardianship Service takes charge of the unaccompanied minor and transfer him or her to one of two Observation and Orientation Centres. If there is doubt about the person's age, the Guardianship Service proceeds with an age assessment.

During the identification procedure, a provisional guardian can be appointed. Once it has been determined that the applicant is a minor, a guardian is officially appointed. This guardian will decide in consultation with the unaccompanied minor if the application for international protection is the most appropriate procedure to follow. Belgian law states that unaccompanied minors have the legal capacity to apply for international protection themselves or that a guardian can make this application in the name of the unaccompanied minor. There is no minimum age to apply for international protection.

If it is decided that an application for international protection is the best option, the unaccompanied minor and his or her guardian will be invited again to the Immigration Department to be interviewed by a protection officer. In principle, these protection officers have received training including on interviewing vulnerable groups and on intercultural communication.

Regarding reception, Belgium has developed a three-phase reception model for unaccompanied minors. In the first phase, the unaccompanied minor is placed in an Observation and Orientation Centre. These centres are open to all unaccompanied minors regardless of their administrative status (such as applicants for international protection, undocumented children or European unaccompanied minors).

In principle, the unaccompanied minor remains at the centre for 15 days (this period can be renewed once). During this time, the Guardianship Service conducts the identification and registration of the minor and assigns a guardian.

In the Observation and Orientation Centre, each unaccompanied minor is assigned a personal coach who monitors the unaccompanied minor during his or her stay at the centre. Through conversations, activities and daily functioning, the coach can get an understanding of the unaccompanied minor and his or her possible needs. The coach will then prepare a report based on his or her assessment of the needs of the minor which will inform reception centre placement. This can involve transferring the unaccompanied minor to a more specialized reception centre in order to allow for better care related to his or her specific needs (for example, for victims of human trafficking or very young unaccompanied minors). In the second reception phase, unaccompanied minors who applied for international protection are transferred to a collective reception centre in the Fedasil reception network, where the minors will stay in a separate community with their own team of counsellors and educators for a period of four months to one year. The minors are accompanied in their schooling and are progressively prepared for more autonomy. Unaccompanied minors in need of special aid are accommodated by the regional Youth Assistance Services.

In the third reception phase, unaccompanied minors 16 or 17 years of age who have received international protection status can be placed in a facility where they can enjoy greater autonomy but also receive the necessary support until they turn 18 years of age.

Unaccompanied minors arriving at the border without valid entry documents will have extraterritorial status and will be placed in an Observation and Orientation Centre for 15 days (which can be extended by 5 days in exceptional circumstances). During this period, he or she will be considered as not having accessed the territory.

Competent Authority

CGRS, as the determining authority, prioritizes the processing of applications by unaccompanied minors. See the section below on the asylum interview.

Guardianship

Created in 2004, the Guardianship Service is administered by the Department of Justice and has the mission to ensure the judicial protection of all unaccompanied minors by systematically appointing a guardian. The Guardianship Service is responsible for the general coordination, training and supervision of the guardians, and also deals with issues such as identification and age assessment. The Guardianship Service takes charge of the unaccompanied minor as soon as they are informed about his or her presence. Once the individual has been identified as being a minor, the Guardianship Service assigns a guardian to assist him or her. There are no specific qualifications required to become a guardian and candidates are invited by the Guardianship Service for an interview. Guardians may be professional or voluntary guardians. The guardian assists the unaccompanied minor in all legal duties, all residence procedures and any other legal or administrative procedures. Either the unaccompanied minor or the guardian can file the application for international protection.

The Guardianship Act previously excluded by definition unaccompanied minors with the nationality of a European Economic Area country and excluded them from benefits, as problems can in principle be solved quickly through contact with the national authorities (directly or via embassies

or consulates). However, this left a great number of those unaccompanied minors in limbo. In 2014, legislation was approved to extend this judicial protection to this category of unaccompanied minors who find themselves in a vulnerable situation or who have started the specific procedure for victims of human trafficking or human smuggling. This should allow for a quicker durable solution, including adequate social counselling and support, the issuance of a residence permit or voluntary reunification with their parents.

Age Determination

The Guardianship Service is responsible for determining whether a person can be considered an unaccompanied minor. The Guardianship Service will, based on the person's declarations and presented documents, try to obtain confirmation of the individual's name, nationality and family ties. If there is doubt, an age assessment can be done by means of a medical test. The test is organized by and under the control of the Guardianship Service. Doubt regarding the age of the person declaring himself or herself to be a minor can only be expressed by the Immigration Department or the Guardianship Service. The so-called "triple test" is performed. The age assessment is based on the clinical impression of an experienced dentist, and a radiological examination of the dentition and of the hand and wrist of the non-dominant hand, as well as the medial ends of both collarbones. The average age of the results of these three tests will be approximate and will always indicate a range with a margin of error. In case of doubt, the lowest attested age will be taken into consideration.

Asylum Interview

The unaccompanied minor is invited to an interview at the offices of CGRS to explain his or her motives for applying for international protection. The minor's guardian must be present otherwise the interview cannot proceed. A lawyer or other trusted representative can also be present at the interview. The standardized interviews can take place in a room specially adapted for this purpose. A specialized CGRS protection officer conducts the interview, taking into account personal, cultural and family factors. The protection officer makes an effort to put the unaccompanied minor at ease and to ensure he or she understands the procedure. The interview is based on the dialogical communication method, as instructed in the EASO training module on interviewing children. 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 involves regular breaks. Generally, minors under the age of six years are not interviewed, unless doing so is considered necessary. The CGRS protection officers who hear the minors are specialized in the area and have received specific training. CGRS has a coordinator for unaccompanied minors, who is in close contact with the other services concerned and who is closely involved in the development and updating of the EASO teaching modules on interviewing children and vulnerable persons and interview techniques.

After the interview, the application is assessed to determine if the unaccompanied minor qualifies for an international protection status. The age and the personal development of the minor are taken into account and the fact that the applicant is a minor places a larger burden of proof upon the authorities, and in principle the benefit of the doubt will have a larger field of application. If the decision is negative, the unaccompanied minor can appeal the decision with CALL. If CGRS grants an international protection status, the unaccompanied minor no longer qualifies as an unaccompanied minor under the definition of the Guardianship Act. However, the role of guardian can be taken over by a civil guardian. In the case of a negative decision, CGRS will always state that the person is an unaccompanied minor and consequently the Convention on the Rights of the Child is applicable.

Information

In 2008, a special booklet was introduced to address the information needs of unaccompanied minors who apply for international protection. The booklet, in the form of a comic strip called *Kizito*, is designed to help minors to understand better the different steps in the asylum procedure. In addition, a special guide for unaccompanied minors was produced by Fedasil and is available in six languages.

5.3.2 Temporary Protection

The Aliens Act transposes Council Directive 2001/55/EC 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.

The Immigration Department is the authority responsible for handling the applications of temporary protection, and those applications will thus not be examined by CGRS in the normal asylum procedure. Temporary protection will be given from the moment that a Council decision is adopted according to the procedure laid out in the Council Directive.

The law lays down, among other things, the conditions for persons who have been granted temporary protection to file an application for international protection. The Aliens 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, and then for a second term of one year.

5.3.3 Stateless Persons

On 1 July 2014, Belgium ratified the 1961 Convention on the Reduction of Statelessness. However, there is no specific procedure under Belgian law concerning the recognition of statelessness. In practice, a person who wishes to be recognized as a stateless person will have to start a procedure before the Court of First Instance, as these courts have competence on issues of nationality in general. The courts

will investigate whether the person has a right to a nationality of one of the countries with which he or she has certain ties. The courts take a decision after being advised by the Public Prosecutor's Department.

Once a person has been granted the status of statelessness, he or she does not have an automatic right to remain. The person will need to address the Immigration Department and introduce an application for a residence permit on exceptional grounds (according to article 9 bis of the Aliens Act).

A specific procedure for the recognition of statelessness has been pending for several years. In the government declaration of October 2014, it was announced that the Government intended to centralize the procedure at the judicial level, whereby magistrates could request advice from CGRS. The granting of the status of statelessness should lead to the issuing of a temporary residence permit.

5.3.4 Gender-Based Applications

Gender-sensitive procedures at CGRS ensure that all persons with asylum claims related to gender, including gender identity and sexual orientation, shall have the chance to put forward all relevant elements of their application (for example, by organizing individual hearings for all adult applicants, by offering the possibility of being interviewed by a protection officer of the same sex and by offering day care for children during the interview).

Since 2011, the information brochure "Women and girls and asylum in Belgium", which is available in nine languages, has been provided to all women and girls over the age of 16 who apply for international protection. The brochure gives specific information for women and girls on the application process, on other situations and facts affecting women in particular, and on specific issues that may be important for women and girls. It also contains information on organizations that provide migrant women with legal, medical or social assistance.

All protection officers receive training on gender issues. Furthermore, specific training for interpreters was developed in 2012. The Gender Unit developed a handbook with all of the reference texts, notes, documents and information relevant for processing gender-related applications for international protection. The use of keywords in the database makes it possible to extract gender-specific statistics.

Belgium has also developed a specific policy on Female Genital Mutilation (FGM), which entails that, if a girl has a well-founded fear of FGM, refugee status can be granted to her and to her parents. To avoid the girl from becoming a victim of FGM after she has obtained refugee status, CGRS has installed a monitoring mechanism. The parents need to deliver annually a medical certificate that shows the girl has not been mutilated. In case it is found the girl has been victim of FGM, or the parents fail to provide CGRS with a medical certificate, CGRS informs the authorities of the judiciary. As FGM is punishable according to the Belgian Penal Code, parents can be prosecuted. CGRS can also decide to re-examine the case and withdraw the refugee status.

In 2014, CGRS developed a specific guideline on how to handle asylum applications from persons who put forward their sexual orientation in support of their asylum claim. These guidelines provide on the one hand theoretic elements (definitions of concepts) and on the other hand the guiding principles of CGRS regarding the issue, as well as operational guidance for the assessment of applications for international protection based on an applicant's sexual orientation.

6 DECISION-MAKING AND STATUS

6.1 Inclusion Criteria

When considering the merits of an application for international protection, a CGRS protection officer must first consider whether the criteria for granting refugee status are met. If this is not the case, the protection officer 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 application is found by CGRS to be credible.

6.1.2 Complementary Forms of Protection

Subsidiary protection is provided to persons whose applications are credible and who do not meet the criteria for Convention refugee status but who run a real risk of serious harm if returned to their country of origin. "Serious harm" comprises the death penalty or execution, torture or inhuman or degrading treatment or punishment, or a serious threat to life or person as a result of random violence in the case of an international or national armed conflict.

For medical cases where refoulement to the country of origin would be in violation of article 3 of the European Convention on Human Rights, as well as for humanitarian cases, a separate procedure has been elaborated outside of the asylum procedure (see section 9).

6.2 The Decision

The CGRS protection officer submits a proposal for a decision on an application for international protection to his or her supervisor, who will then present it to the Commissioner General for Refugees and Stateless Persons or to one of two deputy commissioners for their approval. Decisions are made

in writing and delivered to the applicant (by registered mail or by messenger against receipt), the legal representative and the trusted representative. Negative decisions must be justified with motives for the refusal provided.

6.3 Types of Decisions, Statuses and Benefits Granted

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 take into consideration an application made by a citizen of an EU Member State or of a State that has signed a Treaty of Accession with the EU
- Refusal to take into consideration an application made by a citizen of a country listed on the safe countries of origin list
- Refusal to take into consideration an application from a person who has already obtained refugee status in an EU Member State that still effectively protects him or her
- Refusal to take into consideration a subsequent application
- Closure of the application if the applicant has voluntarily withdrawn his or her application, has returned to the country of origin, has had his or her status regularized and confirmed that he or she does not want to proceed with the application, has acquired Belgian nationality, or has died before the completion of the procedure.

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 is section 6.4 below.

Benefits

Recognized 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 recognized as refugees, the mother and father are eligible for family reunification)
- A proof of refugee status certificate issued by CGRS
- The possibility of obtaining Belgian nationality after fulfilling the necessary conditions (for example, five years of residence).

Beneficiaries of subsidiary protection are entitled to the following:

- A residence permit valid for one year, which can be renewed by the municipality, upon instruction from the Immigration Department. Upon renewal, the residence permit is valid for two years.
- A permanent residence permit, five years from the date of the application for international protection.
- The right to travel abroad. If the person does not have a passport, the Ministry of Foreign Affairs will issue an "alien's passport" when he or she becomes eligible for a permanent residence permit.
- The right to work, but one must apply for a work permit or a professional card.
- The possibility for family reunification and to obtain social assistance.

6.4 Exclusion

6.4.1 Refugee Protection

CGRS considers article 1F of the 1951 Convention, as well as any security-risk cases, when examining the application for international protection. All applications before CGRS are screened for exclusion. Within CGRS, there is a central reference person for exclusion issues and within each geographical section there are senior protection officers who had received special training on exclusion issues and who are in charge of processing those cases. Within the framework of a general quality improvement project, CGRS develops new guidelines on exclusion.

As a rule, exclusion issues are considered after protection needs are assessed (inclusion before exclusion). If the applicant is not eligible for international protection, a regular refusal decision will be taken.

An applicant who has been excluded may lodge an appeal within 30 days of being notified of the CGRS decision. CALL has full jurisdiction in such appeals, meaning that it can confirm, change or annul the decision of CGRS. This appeal has a suspensive effect.

Excluded persons are not entitled to any alternative protection status and will only be tolerated (no legal or administrative status) as they may be protected from refoulement. According to its international obligations, as set out in the European Convention on Human Rights and in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Belgium does not forcibly return excluded persons. If the crimes committed are susceptible to criminal proceedings in Belgium, asylum applicants risk prosecution in Belgium based on the so-called universal jurisdiction of Belgian courts and they may be convicted because of serious crimes committed in their country of origin.

Over time, excluded persons may apply for a residence permit on humanitarian grounds. This is a procedure outside of the asylum procedure and applications must be lodged with the Immigration Department, which will make the decision on a discretionary basis.

6.4.2 Subsidiary Protection

Persons may be excluded from subsidiary protection on the basis of the 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 application for international protection was made.

The applicant may lodge an appeal with full legal power with CALL within 30 days of notification of the CGRS decision. This appeal has a 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 it cannot 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 applicant may lodge a full jurisdictional appeal with CALL within 30 days of notification of the CGRS decision. This appeal has an automatic suspensive effect.

The Commissioner General for Refugees and Stateless Persons has the competence to apply cessation clauses on 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, 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 (the period of limited residence), the State Secretary responsible for asylum and migration or his or her representative in the 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 decision within 60 days. The 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, 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 application for international protection.
- 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 on his own initiative. The State Secretary responsible for asylum and migration or his or her representative in the Immigration Department may make a formal request to the Commissioner General to do the following:

- Revoke refugee status or subsidiary protection status in the case of fraud. The Commissioner General must then write a motivated decision within 60 days. The 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 European Convention on Human Rights. Revocation on this basis is possible within the first five years after the status had been granted. This period is extended to the first 10 years in cases where the status was obtained through fraud or when the behaviour of the applicant indicates that he or she had never feared persecution.

The applicant may lodge an appeal with CALL.

6.7 Support and Tools for Decision-Makers

6.7.1 Country of Origin Information

Cedoca, the research and documentation centre of CGRS, is one of the largest and most specialized COI units in Europe. It is composed of a 41-member team that provides protection officers and the legal service of CGRS with support for the assessment of the applications for international

protection. A project team and administrative assistants are responsible for developing and maintaining InSite, the documentary intranet of CGRS.

Each of the 26 Cedoca researchers specialize in specific geographical areas. They provide information on the countries of origin of applicants for international protection in the form of COI. These reports, called COI Focus, cover a variety of topics. Every year, the researchers answer about 500 written requests for information in individual asylum files, called COI Cases. Apart from the written COI, the researchers give protection officers advice on COI on a daily basis through calls or visits. Cedoca also organizes in-depth training sessions and briefings on a given country, and is involved in the organization of fact-finding missions. To ensure up-to-date and comprehensive information, Cedoca researchers consult national and international sources and can consequently call upon an extended network of contacts within countries of origin. The researchers take great care to ensure that their research does not put their contacts, or the applicants or their relatives at risk. The harmonization of all COI products started in 2012 with the elaboration of a style guide and continued with the synchronization of several horizontal themes, such as lesbian, gay, bisexual and transgender issues and the security situation in a country.

At the end of 2013, Cedoca introduced a peer review system, which is now implemented in the daily work of the unit. Cedoca is also involved in the development of the new CGRS website, which will also publish COI and policy information.

At the international level, Cedoca is an active player in workshops, projects and presentations. Cedoca is the co-author of the *Common EU Guidelines for Processing Country of Origin Information (COI)*[7] and the *EU Common Guidelines on (Joint) Fact Finding Missions*[8]. It is also heavily involved in the COI-related activities of EASO, as well as other international and bilateral cooperation.

6.7.2 Language Analysis

The Language Analysis Desk, which is located within Cedoca, may be requested to make recordings of an applicant's speech. These are forwarded to foreign-language analysis bureaux 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 CGRS. Mainly due to budgetary constraints, the use of language analysis has declined in recent years and is now used only occasionally.

6.7.3 Psychological Support Unit

The main task of the Psychological Support Unit is to provide protection officers with advice on the mental and psychological capacities of applicants in cases where they may have an important bearing on the application. These include situations in which applicants may claim to be experiencing loss of memory, post-traumatic stress disorder or depression. The unit invites the applicant to a meeting to assess his or her psychological state and then provides the protection officer with a report.

Although the report reflects only the psychological capacities of the applicant, 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 application.

The unit is also responsible for giving (upon request) the protection officers advice on the medico-psychological certificates submitted by the applicants (for example, on the medical terms used or on coherence) in order to facilitate a correct understanding of the certificate. Contact with the author of a certificate is therefore sometimes initiated.

The new EU Asylum Procedures Directive requires that greater attention be paid to applicants with specific needs during the asylum process (relating to, for example, identification, support or medical issues). The impact on the functioning of the Psychological Support Unit within CGRS still needs to be assessed.

6.7.4 Gender Unit

To assess asylum applications based on gender-related motives, CGRS has set up a gender unit. It is composed of a full-time coordinator, as well as 11 reference persons within the geographical sections and the legal section who devote a portion of their time to gender issues. Their main task is to improve and harmonize the assessment of gender-related applications at CGRS.

See also section 5.3.4 on gender-based applications.

6.7.5 UNHCR Handbook

The UNHCR *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status*[9] does not hold any legally enforceable provisions for CGRS and is used as a manual for the application of the 1951 Convention.

6.7.6 Training Programmes

The Knowledge and Learning Centre provides CGRS personnel with training. It finds its legal base in the Royal Decree that stipulates that CGRS personnel should receive continuous training on the application of the 1951 Convention and other national and international standards, interviewing techniques, intercultural communication and the specific needs of vulnerable groups.

The centre thus provides newly recruited protection officers with training (the learning trajectory includes training and observation for one month) but also organizes continuous specific trainings based on the particular needs and objectives of the organization and its personnel. The competences are annually evaluated through a tool called "the evaluation cycles".

7 European Union, *Common EU Guidelines for Processing Country of Origin Information (COI)* (2008). Available from www.refworld.org/docid/48493f7f2.html.
8 European Union, *EU Common Guidelines on (Joint) Fact Finding Missions: A Practical Tool to Assist Member States in Organizing (Joint) Fact Finding Missions* (2010). Available from www.refworld.org/docid/4d0246f79.html.
9 UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* (2011). Available from www.refworld.org/docid/4f33c8d92.html.

In practice, protection officers receive an initial training for one month, which consists of 15 working days for courses, including the full EASO training module on inclusion, and an adapted version of the EASO training module on interview techniques, COI and evidence assessment. The knowledge the protection officers have acquired is tested, and the protection officer will in the next five months be closely monitored and coached by his supervisor.

CGRS relies mainly, but not exclusively, on the EASO training curriculum (previously called the European Asylum Curriculum). Belgium was one of the first countries that gradually introduced these EASO training modules into its training programme for protection officers. This project set up uniform training modules for the asylum authorities in the EU as a means to harmonize asylum policies throughout the EU. Newly recruited protection officers follow the basic training modules and more experienced protection officers are progressively taking up these and other EASO training modules. Belgium has undertaken a leading role in developing and promoting this tool. Within CGRS, several persons participated in train-the-trainer sessions to become national trainers. The national pool is now composed of about 20 trainers, who are often asked to give trainings at the EU level on creating or updating new training modules.

All national training sessions (at the CGRS level) are coordinated through the Knowledge and Learning Centre in order to guarantee the harmonization of practices.

7 EFFICIENCY AND INTEGRITY MEASURES

7.1 Technological Tools

7.1.1 Fingerprinting

All applicants for international protection are fingerprinted after making an application at the Immigration Department. The fingerprints are stored in the national PRINTRAK system, which also contains data on other categories of aliens. The data of asylum seekers are sent to Eurodac to check previous applications or irregular entry in other EU Member States.

7.1.2 Age Determination

See section 5.3.1 on unaccompanied minors.

7.1.3 DNA Tests

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

7.1.4 Forensic Testing of Documents

The Immigration Department and CGRS may request the police to verify identity documents when there are doubts about the documents' authenticity. The documents are sent to the police department that specializes in fraudulent documents. The forensic testing of documents is not systematically undertaken in the asylum procedure, as the majority of applicants claim not to be in possession of identity documents.

7.1.5 Database of Asylum Applications/Applicants

All applicants for international protection are listed in a "waiting register", a subdivision of the national population register, in which all inhabitants of Belgium are registered. The waiting register contains information on identity, places of residence, and each stage of the asylum procedure and the decisions taken. The Immigration Department is responsible for the first entry of an application into the register and remains responsible for any further changes relating to identity information. Local municipalities can also introduce a number of changes to the register, such as changes to the place of residence, the applicant's civil status and the residence documents delivered to the applicant.

If a person is granted refugee status or the status of subsidiary protection, the data in the waiting register are transferred to the "foreigner's register". Access to the waiting register is limited to a certain number of governmental institutions.

7.2 Length of Procedures

Applications for international protection must be made within eight working days of the person's arrival in Belgium or before a valid permit to remain in Belgium expires. An applicant arriving at the border without valid documents to enter the territory must immediately submit his or her application to the border authorities. However, no specific penalties are imposed on a person who does not meet these requirements, and applications made after these deadlines will be processed. The fact that an applicant has not immediately submitted his or her application might be taken into account by CGRS as it damages the applicant's general credibility because it can be a negative indication of his or her urgent need for protection.

In general, the Aliens Act does not stipulate time limits. CGRS, however, applies so-called "terms of internal order", and aims to render a decision within three to six months after the application has been received from the Immigration Department. Time limits might be extended for particularly complex files. In some cases, however, specific time limits apply to CGRS (see section 5).

7.3 Pending Cases

As of 31 August 2014, there was a backlog of 10,125 first instance applications (the number of persons, including children). However, the actual workload of CGRS is much lower, at 5,433 files (as of September 2014), of which 1,533 can be considered to be actual backlog and the rest as normal stock.

7.4 Information Sharing

The only information-sharing agreements to which Belgium is party are the Dublin Regulation and the agreements that extend the Dublin III Regulation to Denmark, Iceland, Liechtenstein, Norway and Switzerland. Specific information on applicants for international protection can be released to other EU Member States in accordance with article 34 of the Dublin III Regulation. No information on an applicant can be released to a third country unless the applicant consents.

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, applicants are required to submit only one application for international protection in order to obtain either Convention refugee status or subsidiary protection. 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.

8 ASSISTANCE AND RECEPTION BENEFITS FOR ASYLUM SEEKERS

8.1 Procedural Support and Safeguards

8.1.1 Legal Assistance

The Aliens Act guarantees free legal assistance of a lawyer to all asylum seekers at each stage of the asylum procedure (first instance, appeal and cassation) and in all types of procedures (regular, accelerated, admissibility, appeal in full jurisdiction, annulment and suspension). The only exception is at the initial registration stage by the Immigration Department, when this service is not available.

There are two types of free legal assistance. "First line assistance" is organized by local commissions, composed of lawyers representing the local bar associations and the public welfare centres. Second line assistance is organized by the local bar association, which exists in every judicial district. Each bar association has a bureau for legal assistance that can appoint a lawyer for free second-line assistance, the pro-Deo (pro bono) lawyer. Within this second line assistance, a lawyer is appointed to give substantial legal advice and to assist and represent the person in the asylum procedure. A Royal Decree determines the conditions under which one can benefit from this second line of assistance free of charge. Different categories are defined, in general depending on the level of income or financial resources, and, with regard to specific procedures, on the social group to which they belong.

In 2013, the Government of Belgium had put forward an important reform of the overall legal aid system, but this was subsequently abandoned. The proposal would have made access to legal assistance more difficult, particularly for migrants and applicants for international protection. The plan foresaw, among other things, the inclusion of a minimum access fee and stricter means testing.

Applicants appearing before CGRS may have their legal representatives present during the interview. An applicant can also personally assign someone with whom he or she has a special bond of trust for assistance during the asylum procedure. This trusted representative has to meet certain conditions: he or she must reside legally in Belgium; he or she cannot be the subject of an application for international protection; and he or she may not represent a danger to the public order or national security. 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 applicant might be entitled to refugee status or subsidiary protection.

8.1.2 Interpreters

Upon registration of the application for international protection, the language of the asylum procedure is determined (French or Dutch). If an interpreter is needed, the Immigration Department will assign the applicant to one of the two "language roles". During interviews at all stages of the asylum procedure, there is in principle an interpreter available who speaks the mother tongue of the applicant. If there is no interpreter of the applicant's language preference available, the authorities will try to find an interpreter that speaks another language the applicant understands. Interpretation is free of charge.

The Immigration Department and CGRS use independent and impartial interpreters for interpretation into Dutch, French or English during asylum interviews. Translators are also available to CGRS for the translation of documents or declarations submitted by the applicant. There are no legal requirements for the qualification of interpreters or translators. They do not need to be a member of an interpreters' association, nor do they need to be sworn translators. However, their knowledge of the language and other important skills are tested upon recruitment and they also have to subscribe to a code of conduct that contains an overview of the

different tasks and responsibilities of the interpreter or translator. The Interpreters' Service, a special unit within CGRS, coordinates the work of interpreters and translators.

At the reception centres, applicants can rely on social interpreting and translating services in order to facilitate communication and enable them to access various social services. Some organizations offer their services free of charge (subsidized by the Government), whereas most charge a fee. These interpreters and translators are in principle certified and have signed a code of conduct. Since Fedasil reduced by half its subsidy to the community interpreting and translating services in 2013 and completely eliminated it in 2014, the fees for these services have increased significantly. Furthermore, as processes to harmonize the various social interpreters' services are underway (mainly in Flanders), the tariff for interpretation has been fixed at EUR 45 per hour, excluding transport costs in cases where an interpreter has to be present at the reception facility. This may have a significant impact on costs, or may alternatively reduce the use of such services in order to lower expenditures.

A pilot project using intercultural mediators and interpreters through a video remote service at medical facilities is presently being carried out.

8.2 Reception Benefits

According to the Reception Act, every applicant for international protection has the right to reception conditions that would allow him or her to lead a life with human dignity. Since the 2007 reform of the asylum system, state aid to applicants has shifted from financial to material aid. Material aid comprises accommodation; food; clothing; medical, social and psychological assistance; access to interpretation services, legal representation, training and a voluntary return programme; and a small daily allowance. An applicant can, however, choose not to accept a place at a reception centre and instead to stay at a private address. In such cases, he or she will not be entitled to this material aid (except medical assistance).

Applicants and their dependants are entitled to reception benefits for the duration of the procedure, including any appeal procedure that has a suspensive effect. However, for subsequent applications, Fedasil can restrict the right to material aid until the application is taken into consideration by CGRS or by CALL.

The Reception Act also stipulates special reception arrangements for unaccompanied 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 international protection 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

Fedasil coordinates and oversees the different types of accommodation to ensure a common standard of living conditions. Reception facilities may be managed by Fedasil itself, or by partner organizations, among them the Red Cross Society, local reception initiatives run by local public welfare centres, or NGO partners Ciré or Vluchtelingenwerk Vlaanderen.

On the day that an application for international protection is filed with the Immigration Department, the dispatching service of Fedasil assigns a reception centre to the applicant based on criteria such as the family situation (the composition of the family), health status or knowledge of one of the country's official languages. Fedasil pays specific attention to the situation of vulnerable persons. The applicant is then provided with a brochure outlining his or her rights regarding reception during the asylum procedure. The Reception Act stipulates that applicants may apply for a transfer to individual (private) accommodation after a four-month stay in a collective reception centre.

The Reception Act stipulates that a social worker conduct an individual assessment within one month of reception in order to determine if the reception facility is adapted to the specific needs of the resident. The assessment of the personal situation of the resident continues throughout the stay at the reception facilities.

Fedasil also offers specific reception facilities to certain categories of beneficiaries. These include the specialized reception structure "Kirikou" (within the federal reception centre of Rixensart), where pregnant unaccompanied minors or unaccompanied minors with children are accommodated and assisted, and "Les Logis de Louvranges", organized by the reception partner Caritas for single females. Two other federal reception centres have a separate housing block for single women with or without children in need of more protection. There are three Observation and Orientation Centres for unaccompanied minors and specific reception facilities that accommodate exclusively unaccompanied minors or that have a special wing for unaccompanied minors. Due to an increase in the number of unaccompanied minors seeking international protection over the last years, extra reception places had to be created and, in August 2014, Belgium counted a total of 1,319 places for unaccompanied minors (see section 5.3.1 for more details).

Since September 2012, Fedasil has organized 300 "open return places", located in four federal reception centres. Applicants who fail to receive international protection (except for residents who belong to certain exempted categories) are transferred to these open return places where they receive

the same material aid they received during the procedure, in combination with intensified return assistance for a period of up to 30 days (see section 10.2).

8.2.2 Social Assistance

Upon arrival at a reception centre, each applicant is assigned a social worker who will individually assist the resident. Social assistance comprises the provision of information on, among other things, access to material aid and its concrete implementation, daily life in a reception facility, the activities and training available to the resident, the stages of the asylum procedure (including the possible judicial appeals and their consequences), and the content and importance of the voluntary return programmes. Social assistance also includes support in executing administrative acts.

The tasks of the social worker exist to help the resident to overcome and improve the emergency situation in which he or she resides. To this end, the social worker provides information, advice and social guidance, if necessary by referral to external services. The social worker's tasks also include assessing the specific needs of the resident and, where necessary, proposing the transfer of the resident to another reception facility.

8.2.3 Health Care and Psychological Counselling

According to the Reception Act, medical services are available to all applicants for international protection whether or not they currently reside at a reception centre. The services are provided by a resident doctor or a consulting general practitioner.

A Royal Decree sets out which medical care is covered. Some treatments that are not covered, but that are important in everyday life (such as certain drug prescriptions or glasses for children) can be reimbursed by Fedasil.

Applicants for international protection who are rejected may in some cases (for example, due to a medical problem or pregnancy) obtain an extension of their reception rights. Those who are no longer entitled to general medical care (such as third-country nationals who remain in the country illegally) still have a right to emergency medical assistance if needed.

Applicants who receive material aid are also entitled to psychological counselling. In most cases, applicants requiring such counselling are referred to psychologists or psychological services provided by the general health care system or specialized psychological services offered by NGOs. There is also a specialized reception facility in the reception network that caters to residents with psychological problems.

8.2.4 Education

Schooling for minors between the ages of 6 and 18 years is mandatory. Special "transition" classes, often close to the reception centre, are organized for children of asylum seekers. Kindergarten classes are offered to younger children (from 2.5 to 6 years of age).

Foreign national minors (including unaccompanied minors) who arrive in Belgium can make use of specially adapted educational programmes (for primary and secondary education) that allow them to attend school on a regular basis. This kind of education is aimed at minors who already have some level of education as well as those who are illiterate.

As education is the responsibility of the communities (Flemish, French and German), some differences can be discerned. The Flemish community organizes "OKAN" classes (a welcoming class for non-Dutch speaking newcomers). The non-Dutch speaking newcomers at the secondary level of education receive a one-year Dutch language immersion course and then move to regular schools. The French community also organizes special classes for newcomers. These transition classes offer specific support to help them to adapt to the Belgian educational system. The newcomers can take these transition classes for a maximum of one year, and then move up to the level of education that is best suited to them.

Language issues often remain a challenge, making the move from the OKAN or transitional class not an easy task. As a result, these children often have to start at a lower level than their peers. The initiative for the creation of these classes is left, in both the Flemish and the French speaking parts of the country, to the schools themselves, which also have to assure the financing.

Adults can take a range of classes organized at the reception centres; there are classes, for example, in language, information technology, cooking and sewing. Applicants for international protection may also take classes outside the reception facilities in centres for basic education or adult education. Similar education possibilities are offered to applicants residing in private accommodation. Reception centres also organize activities such as sports and cultural outings.

8.2.5 Access to the Labour Market

Since 12 January 2010, applicants for international protection who fulfil certain criteria are allowed to apply for a labour card C, which permits them to work in Belgium. This applies to applicants who do not receive a first instance decision within six months of registering their application. These applicants can work until a decision is taken by CGRS, or, in case of an appeal, until a decision has been taken by CALL.

The labour card C permits the applicant to obtain salaried employment with any employer, and is valid for 12 months (renewable). Adult applicants who have access to the labour market (with a valid labour card C) can register as a jobseeker

at one of the four Offices of Employment and are then entitled to an assistance programme and vocational training free of charge.

Since 2 July 2014, applicants who are at least 15 years old are permitted to do voluntary work, irrespective of what stage they are at in their asylum procedure (as long as they are entitled to material aid). However, Fedasil has the necessary tools to ensure that voluntary work does not evolve into de facto regular labour.

Applicants are also entitled to perform certain community services (maintenance, cleaning) within their reception centre in order to increase their income to a maximum of EUR 185 per month.

8.2.6 Family Reunification

There is no possibility of family reunification for applicants for international protection awaiting a final decision on their claim.

8.2.7 Access to Integration Programmes

Each reception centre has a budget to organize 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.

Applicants may take part in integration programmes (for more details see section 11 on integration).

8.2.8 Access to Benefits by Rejected Asylum Seekers

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

- Persons who, due to their medical problems, cannot leave the reception facility and who have submitted an application for a residence permit on the grounds of a serious medical condition (under article 9 ter 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 spouse, child, parent or guardian has the right to material benefits
- Persons who need to finish their school year (request for prolongation at least three months before the end of the school year)
- Persons who cannot leave because of pregnancy (an extension period covering from the seventh month of pregnancy to two months after the birth)
- Persons who have submitted an application for a residence permit on the grounds of being a parent of a Belgian child (under article 9 bis of the Aliens Act).

In some cases, children of irregular migrants without any means of subsistence and their families have the right to shelter in the reception network. In these cases, the public welfare centre has established that the children are in need because the parents are not complying or are not able to comply with their obligation to support their children, often due to their illegal residence status. In order not to separate the children from their parents, the right to reception is extended to the parents.

9 STATUS AND PERMITS GRANTED OUTSIDE THE ASYLUM PROCEDURE

9.1 Humanitarian Grounds

Under the humanitarian clause, CGRS may include in a negative decision a note to the State Secretary responsible for asylum and migration to consider any humanitarian grounds put forth by the applicant for international protection.

Situations that may warrant such a clause include the following:

- The person's medical condition or age
- Pregnancy or recent birth of a child
- The presence of relatives who are residents of Belgium.

The Minister and the Immigration Department decide whether or not such advice is to be considered. The recommendation is not binding and its value is limited, as CALL is not obliged to uphold such a clause in its appeal decision.

Receiving a humanitarian clause does not lead to an alternative protection status. It can be grounds for introducing to the Immigration Department an application for the regularization of stay on humanitarian grounds if there are no indications of danger to the public order or national security. Decisions on such applications are, however, taken on a discretionary basis by the Immigration Department, as explained in section 9.5.

9.2 Risk Assessment and Withholding Removal

Before a person is removed from Belgium, the Immigration Department performs a risk assessment to determine whether or not removal would violate the non-refoulement principle of the 1951 Convention, the provisions contained in article 3 of the European Convention on Human Rights, or fundamental freedoms.

9.3 Regularization of Status Over Time

The Immigration Department may regularize the status of a rejected applicant for international protection; this is done on a case-by-case basis (see section 9.5 on exceptional circumstances below).

9.4 Regularization of Status of Stateless Persons

On 1 July 2014, Belgium ratified the 1961 Convention on the Reduction of Statelessness. However, there is not yet a specific procedure under Belgian law concerning the recognition of statelessness. See section 5.3.3 on stateless persons.

9.5 Exceptional Circumstances

Certain persons who live in Belgium but who have neither a right of residence nor the authorization to stay in Belgium can apply for a residence permit on exceptional grounds on the basis of article 9 bis (humanitarian grounds) or article 9 ter (medical grounds) of the Aliens Act. It has to be noted that, in reality, these articles do not state that a residence permit can be obtained on exceptional grounds. In fact, these articles allow for an exception to the rule that a foreign national must request an authorization of residence at a diplomatic representation of Belgium abroad. More specifically, these articles state that, in exceptional circumstances and on the condition that the applicant is in possession of an identity document (there are certain exemptions), a foreign national can apply for an authorization of residence in Belgium himself or herself. The foreign national must in principle prove that he or she is not able to return to the country in order to introduce a request for authorization of residence. In practice, a double evaluation (admissibility and eligibility) is made: on the one hand an assessment of the circumstances that would justify an application for a residence permit in Belgium, on the other hand an assessment of the reasons invoked to stay in Belgium.

An exact definition of the categories of persons who can qualify for a residence permit on the basis of exceptional grounds has not been laid down in the Aliens Act, which means that, in essence, decision-making on such applications is discretionary in all cases.

10 RETURN

10.1 Pre-departure Considerations

When an applicant of international protection is issued a removal order, he or she is asked to leave the country independently, at his or her own initiative. He or she receives an information package outlining the possibilities of voluntary return. The person is expected to adhere voluntarily to that decision and can make use of the voluntary return program. If he or she fails to leave the territory, he or she may be held in a detention centre or housing unit (for families with children) in order to enforce the return.

In 2012, the Reception Act was amended in order to introduce the concept of the "return path". This is an individual (personalized) counselling path offered to applicants for international protection in the reception network, in order to facilitate their return to the country of origin. The return path is formalized in a document that states the rights and obligations of the applicant, and is signed by him or her.

Once the asylum procedure is closed, the rejected applicant is assigned to an "open return place", where the staff has specific expertise on voluntary return, and where cooperation exists between Fedasil and the Immigration Department (responsible for the access to the territory, the residence, the establishment and the expulsion of foreigners). There are currently 300 open return places located in four federal reception centres. The open return facilities fall within the scope of the Reception Act and all rights and obligations provided in the Reception Act remain applicable. The internal rules in these facilities are the same as in the regular reception network, and therefore provide access to the same rights and obligations (right to material assistance, a small allowance and community services).

From the moment a person has lodged an application for international protection, return counselling becomes an integral part of the support offered to applicants in all reception facilities. The return path is divided into two main phases: (a) voluntary return counselling while the asylum procedure is still ongoing and (b) voluntary return counselling in an open return place, when the asylum procedure is closed.

During the course of the entire asylum procedure, applicants receive tailored voluntary return counselling in all reception structures. This counselling is an integral part of the individualized and permanent (ongoing) social guidance provided by the social worker during the beneficiary's entire stay at a reception centre. It is mandatory to start the return path no longer than five days after a negative decision on international protection by CGRS. It is also mandatory to address the voluntary return issue at the appeal stage, namely approximately one month after CALL has confirmed the negative decision by CGRS.

Aside from the mandatory stages, the issue of voluntary return can be raised and further discussed at any given time by the applicant or the social worker.

Rejected applicants are assigned to the specialized return places where they receive for a maximum of one month intensive return counselling in three phases: arrival and start of the return counselling; return counselling and evaluation of the return path (evaluation on day 15); and the end of the return path. When the rejected applicant choses to cooperate, the social worker will continue to actively support him or her in taking the necessary steps to complete the voluntary return. This may even include an extension of the order to leave the territory if an application for voluntary return is filed and a realistic plan for return is put into place. When the rejected applicant does not cooperate, the focus will shift from voluntary towards enforced return, and the Immigration Department will start taking concrete steps. Two days before the expiration of the order to leave the territory (and the right to stay in the return facility), the Immigration Department can give an instruction to the local police to summon the failed applicant to the local police department in view of his removal from the territory. If the person fails to do so at the end of his legal stay, the Immigration Department may give an instruction to the local police to retrieve that person from the return facility.

10.2 Procedure

Voluntary Return

Fedasil is responsible for organizing the voluntary return programme and all parallel measures (such as information and communication). In fulfilling this responsibility, Fedasil delegates several tasks to third parties. The voluntary return programme consists of two parts: return and reintegration.

IOM is responsible for the practical implementation of this return programme, called Return and Emigration of Asylum Seekers ex-Belgium (REAB). Some of the tasks are then re-delegated by IOM to a network of NGOs, reception centres and local authorities (so-called REAB partners). Through a counselling process, migrants receive from the REAB network information about voluntary return and opportunities to reintegrate into their country of origin. The NGO Caritas has had a structural involvement in implementing the reintegration programme. Like IOM, Caritas delegates support and assistance after return via local branches in the country of origin.

The REAB programme is intended not only for applicants for international protection who withdrew their application or were rejected, but also for irregular migrants. Migrants originating from Kosovo or from countries with no visa requirements for Belgium cannot benefit from any cash or in-kind assistance. An exception is made for vulnerable persons from these countries (part of the exceptional assistance to vulnerable persons).

A person who wishes to return will receive:

- A flight to the airport nearest to his or her final destination
- A “reinstallation” grant of EUR 250 per adult and EUR 125 per minor given at the airport prior to departure
- Reimbursement of travel documents, transport to the airport (limited to EUR 50 per person)

In addition, reintegration support can be granted to persons who wish to return voluntarily. Since 2012, this support is not available to rejected applicants originating from Kosovo or countries with no visa requirements for Belgium. With this support, the reintegration in the country of origin can be facilitated. The amount of the support can be as high as EUR 2,200 per person (EUR 700 general reintegration plus EUR 1,500 for micro-business development or a wage subsidy). Vulnerable groups (including vulnerable migrants from visa-free countries) are entitled to additional reintegration support, covering, for example, medical costs. The amount varies between EUR 500 (for migrants from visa-free countries) and EUR 1,500 (for vulnerable persons).

In 2014, Fedasil requested IOM to initiate a project for unaccompanied minors to the Balkan countries (normally not entitled to reintegration support). The reintegration partners of IOM or Caritas in these countries are given additional resources to accommodate, train, assist and provide assistance to voluntary returned unaccompanied minors.

The reintegration support is provided in the form of in-kind assistance, which is partially funded by the European Return Fund.

In 2013, 4,388 beneficiaries (431 applicants for international protection, 2,169 ex-applicants for international protection and 1,788 irregular migrants) were returned through the Fedasil voluntary return programme.

Enforced Return

Belgium also has the possibility of enforcing returns and detaining rejected applicants for international protection pending return. Enforced return is executed in collaboration with the Federal Police. The conditions of forced return can vary from situations where the person clearly cooperates in his or her removal, to a situation where the Federal Police will escort the person on the plane until he or she reaches his or her final destination on a secured flight.

Under Belgian law there can be no enforced return of unaccompanied minors.

10.3 Freedom of Movement and Detention

Pending return, rejected applicants for international protection may be detained for a period of two months, extended by 15 calendar days if an appeal is lodged. If a final negative asylum decision has been made before that period has passed and the decision to expel or order to leave the country has become enforceable, and the necessary steps are taken by the Immigration Department to execute effectively that decision within a reasonable time, the detention can be extended by another two months. Following the additional two-month detention period, the Minister of the Interior is the only authority who may decide to extend the period of detention. Following five months of detention, the person must in principle be released. If he or she presents a danger to public order or national security, the detention period can be extended for up to eight months.

The detention of families with minor children in closed centres is prohibited but remains legally possible in facilities adapted to the needs of the families, as long as it is an ultimate measure and for a short period of time. These housing units are individual houses or apartments that are provided for a temporary stay. Legally these persons are not considered to have entered the territory and are in detention, but in practice these families have a certain liberty of movement, under the control of their coach. This alternative form of detention has been in place since October 2009.

10.4 Readmission Agreements

EU readmission agreements are a means whereby EU Member States 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 through or resided in that country. The purpose of the readmission agreement is to set out 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 EU Member State.

In Belgium, the Ministry of the Interior (Immigration Department) and the Ministry of Foreign Affairs are the competent authorities for negotiating and implementing readmission agreements. Belgium can conclude bilateral readmission agreements (seldom the case), but also has a long tradition in the negotiation and conclusion of readmission agreements within the Benelux (Belgium, Netherlands, Luxembourg) framework.

11 INTEGRATION

In Belgium, integration policy is part of the competences of the Regions and Communities. The Flemish Community, the Brussels Capital Region and the Walloon Region each defines its own vision and projects based on the experiences and perceptions of migratory flows, as well as reception and social/cultural cohesion-related issues. As a consequence, legal aspects, practices and budgets attributed to integration differ from one region to the other. The Government has a number of instruments to support the integration policies of the Regions and Communities.

Flanders

Flanders has had an integration pathway for newcomers for several years, but the civic integration sector in Flanders is now subject to a structural reform laid down in the Civic Integration Decree of 7 June 2013. One of the goals of the reform is to have a more coordinated approach in the integration and civic integration sector. For this reason, in November 2013, an external autonomous civic integration agency was created, and is responsible for policy implementation. The Flemish Community can assign policy implementation to a local administration (for example, the cities of Antwerp and Ghent). Until January 2015, the civic integration programme was organized by a “welcome office” (eight offices in Flanders and Brussels). Since January 2015, the external autonomous civic integration agency has assumed responsibility.

Integration policy is intended for a range of target groups. Persons who received international protection status are part of the obligatory target group. Since 2012, applicants for international protection are no longer obligated to take part in the civic integration programme. However, from four months into the asylum procedure, they have the right to participate in one or more components of the civic integration process.

The individual in question signs a contract regarding his or her integration programme. The primary civic integration programme consists of a training programme that is underpinned by individual coaching and guidance efforts tailored to the individual’s needs. The training programme consists of social orientation for the applicant to become acquainted with Flemish and Belgian society, Dutch language lessons and career orientation. Persons integrating who have a civic integration obligation and fail to comply with it, as well as persons integrating who are entitled to integrate and fail to comply with the terms of their civic integration contract, can be subjected to an administrative fine of between EUR 50 and EUR 5,000. The civic integration obligation does not apply in Brussels and the administrative fines do not apply in the Brussels Capital Region.

After successfully completing the first civic integration programme, the individual is awarded a certificate and he or she can then move on to the secondary integration programme. During this programme, the person integrating can further shape the choice he or she made during the initial civic integration programme, whether it is to enter the labour market or to continue his or her education through mainstream services.

Aside from adults, foreign-speaking minors are among the target group for civic integration. For minors, civic integration takes place not by means of an integration programme but mainly by attending school. They are the same target group of children and young people who are eligible for welcome classes.

Brussels Capital Region

A decree on the reception and integration pathways for newcomers in the Brussels Capital Region was approved on 18 July 2013. Beneficiaries are foreigners (older than 18 years of age) who have been legally staying in Belgium for less than three years, who are registered in the foreigners' register of a Brussels Capital Region municipality and who are in possession of a residence permit of more than three months. Participation in the integration programme is optional.

The integration pathway aims to, among other things, increase beneficiaries' social, economic and cultural participation. The primary component of the integration pathway consists of a welcome session, a social evaluation and a linguistic assessment. The secondary component of the integration pathway consists of an individualized project that is translated into an agreement, which states the objectives and the parties' rights and obligations. Based on the needs identified, beneficiaries are provided with administrative support and follow-up regarding housing, livelihood, health care and socio-professional integration. Individualized training comprises language training (French language and literacy) and citizenship training. The implementation of the integration pathway is entrusted to the welcome offices.

The new integration pathway should better meet newcomers' basic needs (such as accommodation, health care and education) and enable them to participate in social, cultural and community life. It should result in better knowledge of and compliance with social norms and common rules of life.

Walloon Region

The Decree on the integration pathway for newcomers in the Walloon Region was approved on 27 February 2014 by the Walloon government. The reception and integration pathway consists of a personalized reception module, French language training, training in citizenship and a socio-professional orientation. The target group consists of foreigners who have lived less than three years in Belgium and who hold a residence permit valid for more than three months (with certain exceptions, such as EU citizens, embassy personnel, and foreigners younger than 18 years of age or older than 65 years of age). Eight regional integration centres organize the integration pathway in the Walloon Region.

The initial reception module is obligatory and consists of (at a minimum):

- Information on the rights and duties of each person living in Belgium
- A social assessment (including a linguistic assessment)
- Orientation towards or assistance from support services for completing various administrative procedures.

The social assessment is aimed at identifying the needs of the newcomer based on his or her skills and personal experiences and at evaluating the achievements of the newcomer in order to enable him or her to valorize them. The newcomer is bound to follow the initial reception module within a period of three months from the date of his or her first registration in the commune. The regional integration centre issues a certificate of attendance that must be returned to the commune within a period of six months from the date of registration. If the newcomer fails to comply with this obligation he or she may receive an administrative fine of between EUR 50 and EUR 2,500.

To meet the needs of the newcomer, as identified during the social assessment, the regional integration centre will conclude a hosting agreement (maximum of two years, which may be extended for another year, on a voluntary basis) with the newcomer. Based on the social assessment, the centre provides the newcomer, free of charge, with:

- A personalized follow-up
- French language training: the newcomer has access to training organized by the agencies accredited by the local integration initiatives and bodies recognized by the public authorities or by the public services themselves
- A training module on citizenship: basic information is made available on the functioning of society in general, on social relations in Belgium and on the functioning of public institutions in order to be able to participate fully in social, cultural and associative life
- Social and professional orientation: the orientation will be coordinated by accredited organizations in the context of local integration initiatives, by organizations licensed by the public authorities and by the public authorities themselves.

In 2014, the Walloon government expressed its intention to make French learning mandatory in the future. This obligation will be gradually implemented according to the available budgetary resources.

12 ANNEX

12.1 Asylum Procedure Flow Chart

The flowchart from the Blue Book 2012 is no longer accurate and there is no up-to-date version of the flowchart available. The new flowchart will be produced after the implementation of currently pending law reforms.

12.2 Additional Statistical Information

BEL. Fig. 4 **Asylum Applications from Top 10 Countries of Origin in 2012, 2013 and 2014[10]**

	2012		2013		2014	
1	Afghanistan	2,635	Afghanistan	1,327	Afghanistan	1,907
2	Guinea (Conakry)	1,808	Guinea (Conakry)	1,247	Syria	1,854
3	Russia	1,470	D.R. Congo	1,225	Iraq	1,131
4	D.R. Congo	1,334	Russia	1,166	Guinea (Conakry)	1,095
5	Kosovo	983	Syria	877	Russia	974
6	Iraq	803	Iraq	787	Eritrea	716
7	Syria	793	Kosovo	754	D.R. Congo	696
8	Pakistan	760	Albania	487	Kosovo	494
9	Albania	667	Cameroon	417	Albania	481
10	Serbia	571	China	397	Ukraine	451

BEL. Fig. 5 **Decisions Taken at the First Instance in 2012, 2013 and 2014[11]**

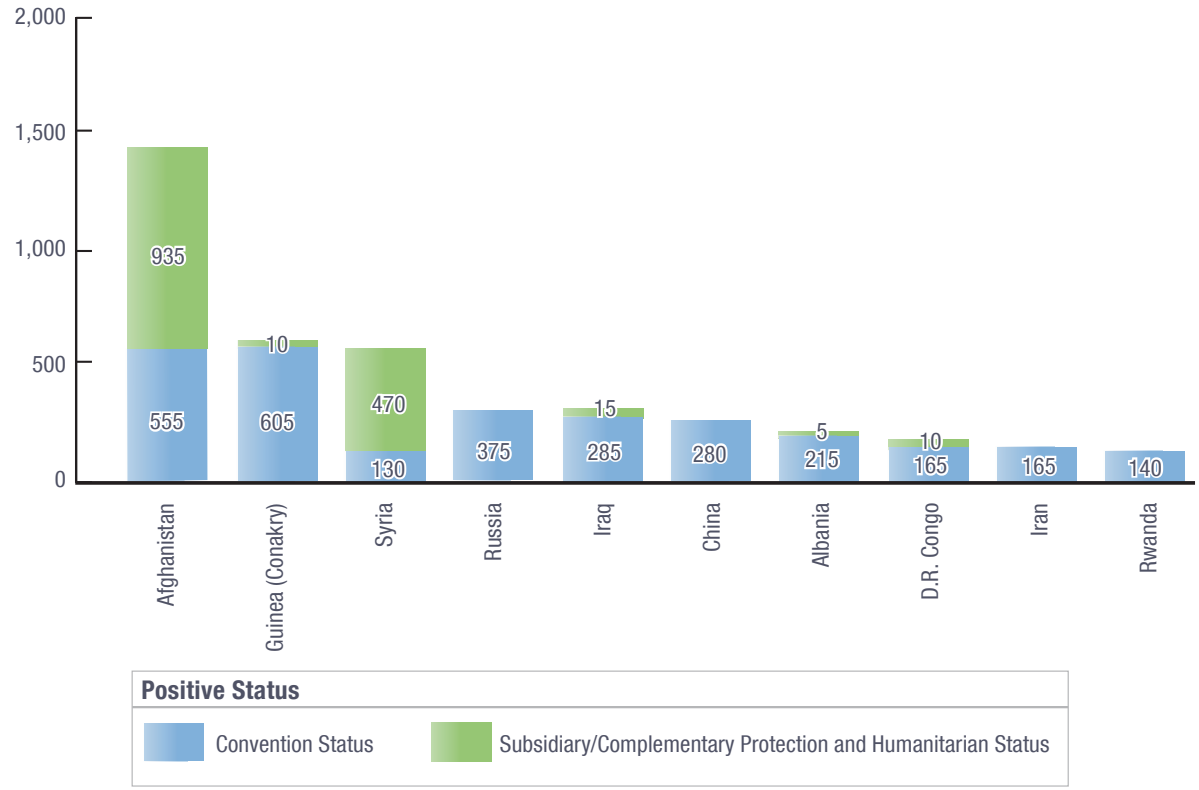
	Convention Status		Humanitarian Status and Subsidiary/Complementary Protection		Rejections		Withdrawn, Closed and Abandoned Cases		
Year	Number	%	Number	%	Number	%	Number	%	Grand Total
2012	3,950	16%	1,560	6%	19,090	78%	0	0%	24,600
2013	3,900	20%	2,355	12%	13,585	68%	0	0%	19,840
2014	6,470	32%	1,585	8%	12,355	61%	0	0%	20,410

[10] Accompanied minor dependants are not included.
[11] First-instance decision data for 2012–2014 are rounded to the nearest five.

BEL. Fig. 6.a Positive First-Instance Decisions, Top 10 Countries of Origin in 2012[12]

	Country of Origin	Total Positive	Total Decisions	Rate
1	Afghanistan	1,490	2,525	59.0%
2	Guinea (Conakry)	615	2,880	21.4%
3	Syria	600	630	95.2%
4	Russia	375	1,820	20.6%
5	Iraq	300	1,245	24.1%
6	China	280	305	91.8%
7	Albania	220	1,625	13.5%
8	D.R. Congo	175	1,630	10.7%
9	Iran	165	300	55.0%
10	Rwanda	140	555	25.2%

Total Positive Decisions by Status from Top 10 Countries of Origin, 2012

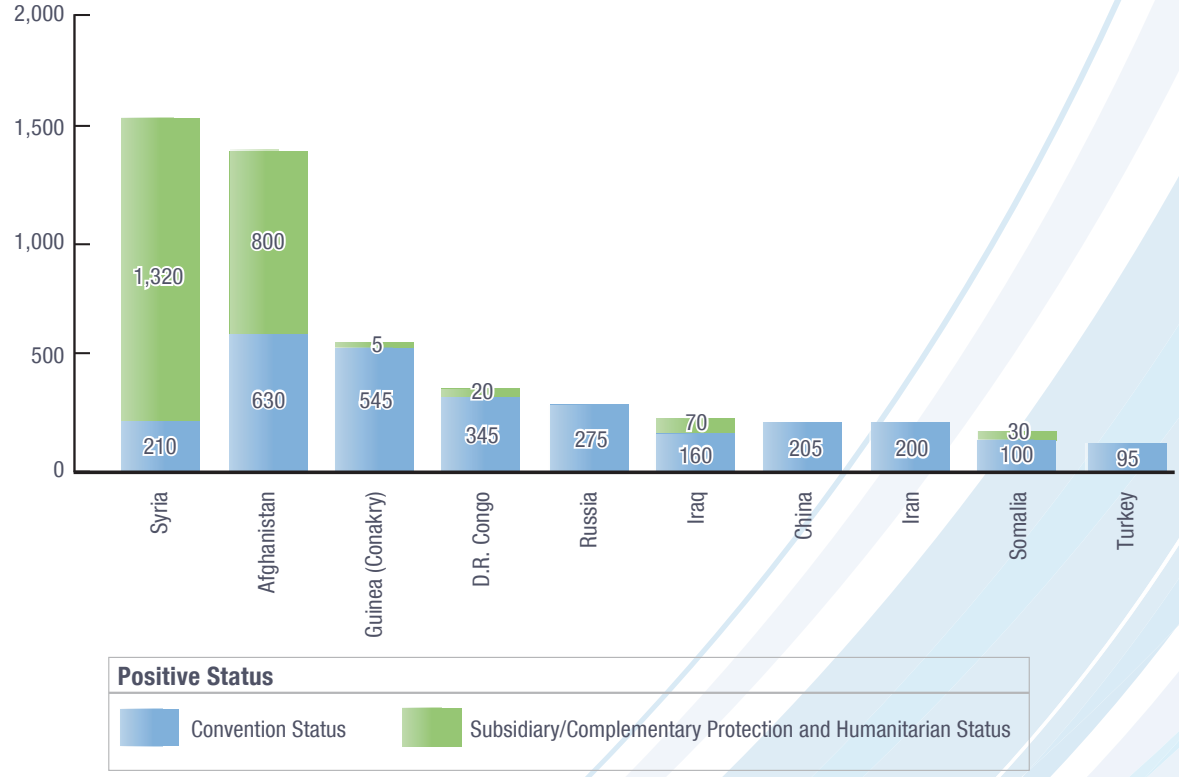


[12] For the purpose of this exercise, positive decisions include decisions to grant Convention status, subsidiary/complementary protection and other humanitarian statuses. First-instance decision data for 2012 are rounded to the nearest five. Excluding withdrawn, closed and abandoned claims.

BEL. Fig. 6.b Positive First-Instance Decisions, Top 10 Countries of Origin in 2013[13]

	Country of Origin	Total Positive	Total Decisions	Rate
1	Syria	1,530	1,610	95.0%
2	Afghanistan	1,430	2,495	57.3%
3	Guinea (Conakry)	550	2,035	27.0%
4	D.R. Congo	365	2,100	17.4%
5	Russia	275	1,105	24.9%
6	Iraq	230	490	46.9%
7	China	205	255	80.4%
8	Iran	200	435	46.0%
9	Somalia	130	250	52.0%
10	Turkey	95	420	22.6%

Total Positive Decisions by Status from Top 10 Countries of Origin, 2013

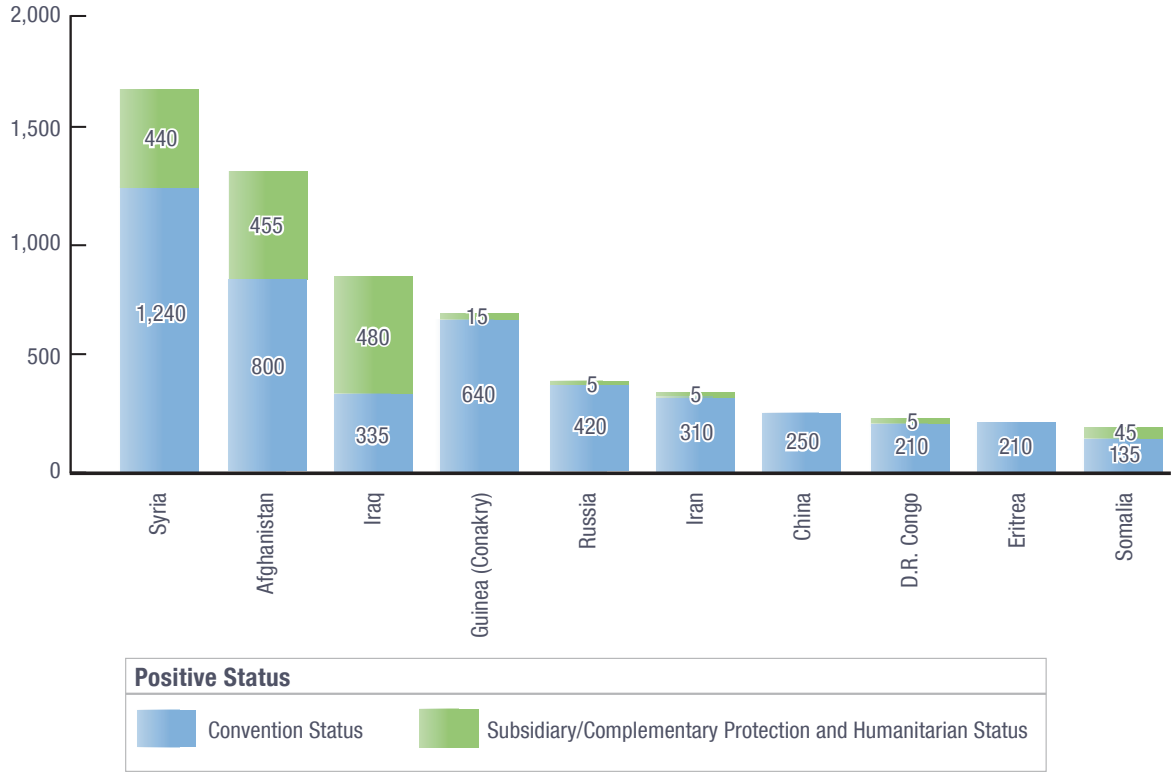


[13] For the purpose of this exercise, positive decisions include decisions to grant Convention status, subsidiary/complementary protection and other humanitarian statuses. First-instance decision data for 2013 are rounded to the nearest five. Excluding withdrawn, closed and abandoned claims.

BEL. Fig. 6.c Positive First-Instance Decisions, Top 10 Countries of Origin in 2014[14]

	Country of Origin	Total Positive	Total Decisions	Rate
1	Syria	1,680	1,745	96.3%
2	Afghanistan	1,255	1,980	63.4%
3	Iraq	815	1,180	69.1%
4	Guinea (Conakry)	655	1,550	42.3%
5	Russia	425	1,535	27.7%
6	Iran	315	620	50.8%
7	China	250	595	42.0%
8	D.R. Congo	215	1,050	20.5%
9	Eritrea	210	260	80.8%
10	Somalia	180	300	60.0%

Total Positive Decisions by Status from Top 10 Countries of Origin, 2014



[14] For the purpose of this exercise, positive decisions include decisions to grant Convention status, subsidiary/complementary protection and other humanitarian statuses. First-instance decision data for 2014 are rounded to the nearest five. Excluding withdrawn, closed and abandoned claims.

Syria Crisis:
Ashraf loves to run around the settlement but is still traumatized by memories of conflict in Syria.

UNHCR/A. McConnell/March 2014

CANADA

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1 BACKGROUND: MAJOR ASYLUM TRENDS AND DEVELOPMENTS

Asylum Applications

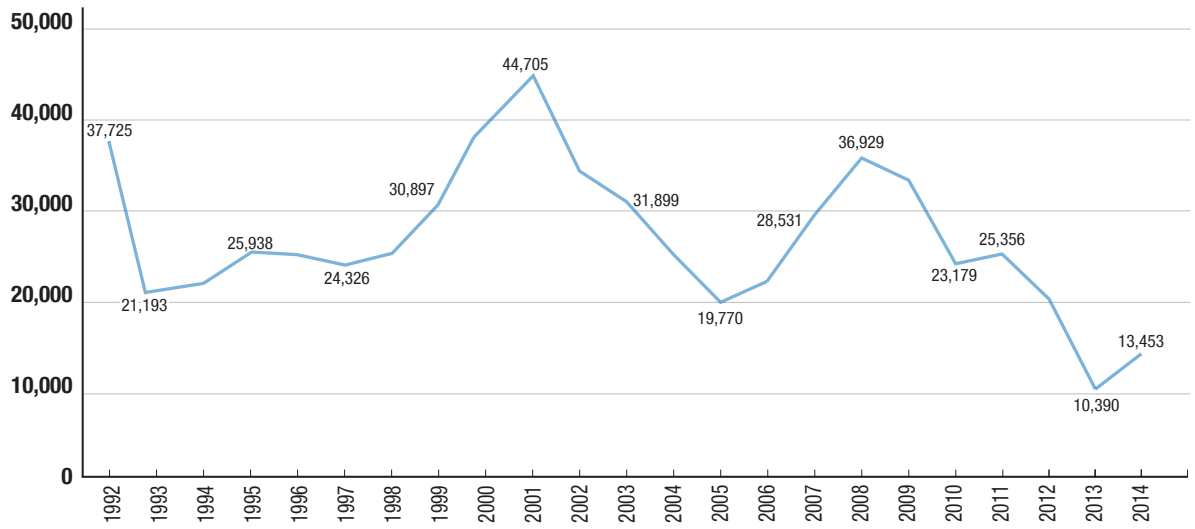
In the early 1980s, Canada received between 5,000 and 8,000 asylum applications per year. Numbers increased to 35,000 in 1985 and peaked at 45,000 in 1988, but then dropped to 20,000 in 1989. Between 1990 and 2000, the number of applications fluctuated between 37,000 and 21,000. Applications peaked again in 2001 with more than 44,000, then decreased to about 19,500 in 2005. Numbers rose to over 28,000 in 2007 and almost 37,000 in 2008.

Claims for refugee protection made in Canada are heard by the Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada (IRB). IRB is an independent, quasi-judicial tribunal. The number of referrals to RPD in 2011 was 25,356 claimants, with 20,223 in 2012. Since reforms to Canada's asylum system came into effect on 15 December 2012, intake levels have dropped to historically low levels. For instance, Canada received only about 10,400 asylum claims in 2013 and about 13,500 in 2014. In comparison, the yearly average between 2010 and 2012 was approximately 23,000 claims.

Important Reforms

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 Supreme Court decisions affecting both the substance and the procedures of the law relating to refugee protection.

CAN. Fig. 1 **Total Asylum Applications by Year, 1992–2014**



Top Nationalities

In the early 1990s, Sri Lanka, Somalia and Iran were the top source countries of asylum claimants. In the late 1990s 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, the United States (mainly children born in the United States of third nationality claimants) and China. The top source countries of refugee claims in 2010 were Hungary, China, Colombia, Mexico, Sri Lanka, Haiti, Nigeria, Saint Vincent and the Grenadines, India and Pakistan. In 2011, the top ten countries were Hungary, China, Colombia, Pakistan, Namibia, Mexico, Nigeria, Saint Vincent, Sri Lanka and India. The top ten source countries in 2012, were Hungary, China, Croatia, Pakistan, North Korea, Nigeria, Colombia, India, Slovakia, Somalia. In 2013, the top ten countries were China, Pakistan, Colombia, Syria, Nigeria, Afghanistan, Haiti, the Democratic Republic of the Congo, Somalia and Egypt. In 2014, the top ten countries were China, Pakistan, Colombia, Nigeria, Iraq, Syria, Slovakia, Afghanistan, Hungary and Haiti.

In 1985, an important Supreme Court of Canada decision[1] declared the lack of an oral hearing in the refugee status determination process to be in contravention of the Canadian Charter of Rights and Freedoms. As a result, IRB was created, and a new refugee status determination system based on a quasi-judicial process was introduced in January

[1] *Singh v. Minister of Employment and Immigration [1985]* 1 S.C.R. 177.

1989, and remains in effect today. IRB was given responsibility for adjudicating refugee claims. This task was delegated to the Convention Refugee Determination Division of IRB. IRB applies the provisions of the Convention relating to the Status of Refugees (the 1951 Convention) and its Protocol relating to the Status of Refugees (the 1967 Protocol), which is reflected in Canadian immigration law. The IRB determination process added the requirement of an oral hearing. The process was then modified by legislation passed in 1992 and 1995, and further modified by the Immigration and Refugee Protection Act (IRPA) in 2002. IRPA remains Canada's key legislative framework for immigration and refugee matters. IRPA has, however, been modified through the passage of the Balanced Refugee Reform Act in 2010 and the Protecting Canada's Immigration System Act in 2012 (described below).

Just prior to the legislative changes noted above, in November 2001, the Government of Canada 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.

IRPA was proclaimed in June 2002, incorporating Canada's obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. IRB remained an independent and impartial decision-making body with respect to refugee protection claims in Canada, with RPD replacing the Convention Refugee Determination Division.

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

- The grounds under which a claimant could be granted Canada's protection were expanded to include consideration of the Convention against Torture and articles 6 and 7 of the International Covenant on Civil and Political Rights.
- Prior to the implementation of IRPA, 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), which permits refused refugee claimants and other inadmissible individuals to apply for protection before being removed from Canada on the grounds that there is new evidence or evidence that was not possible or reasonable to provide at the original hearing.
- IRPA modified the provisions governing detention by requiring an earlier detention review. Previous legislation had 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 IRB within 48 hours or without delay after 48 hours, at least once during the 7 days following, and at least once every 30 days thereafter. IRPA also extended the authority to detain foreign nationals already inside Canada if they failed to establish their identity, possibly posed a danger to the public or were a flight risk.

Other important developments include the signing on 5 December 2002 of the 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, known as the Safe Third Country Agreement (STCA). The STCA came into force on 29 December 2004. The STCA 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–United States land border. It also outlines procedures for processing refugee claims made by individuals who, during removal, are in transit by air through Canada or the United States.

UNHCR/J. Rae/December 2007

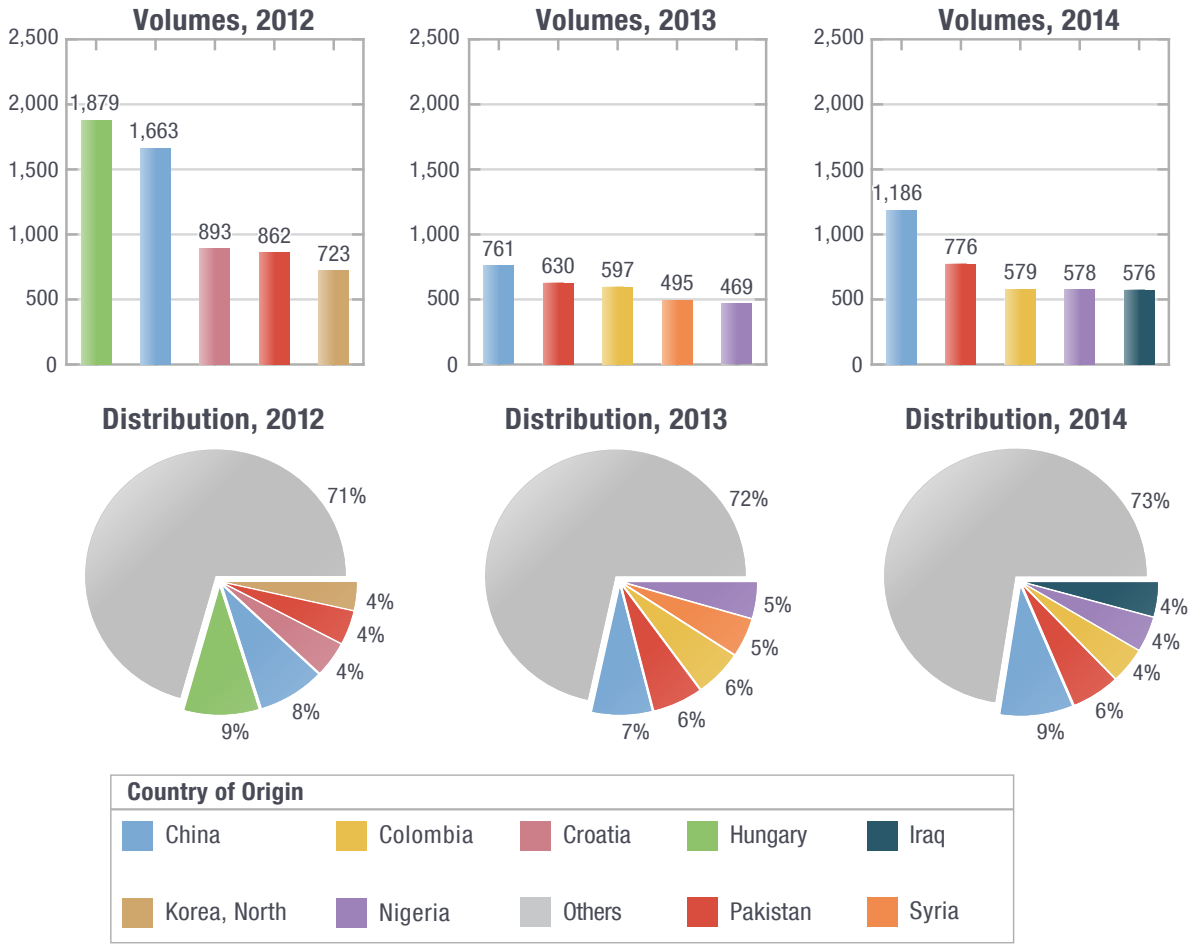
Recent Developments

On 15 December 2012, major legislative changes to Canada's asylum system came into force through the passage of the Balanced Refugee Reform Act and the Protecting Canada's Immigration System Act. Under the new asylum system, claimants receive a decision much faster, enabling those in need of protection to receive it more quickly, while those who do not need Canada's protection are removed sooner. With respect to reforms to Canada's asylum system, the key measures introduced include:

- The Designated Country of Origin (DCO) concept, which denotes countries that do not generally produce refugees
- Faster processing of claims for all claimants, particularly those from a DCO
- New processing timelines of 30 or 45 days for DCO claimants (inland or at a port of entry) and 60 days for non-DCO claimants
- Barring access to the new Refugee Appeal Division (RAD) for certain groups of claimants such as those from DCOs
- Limiting recourses to delay removals.

Further details on the new system are outlined below.

CAN. Fig. 2 | Asylum Applications Received from Top Five Countries of Origin in 2012, 2013 and 2014



2 NATIONAL LEGAL FRAMEWORK

2.1 Legal Basis for Granting Protection

Refugee Protection

IRPA is the primary legal document concerning immigration to Canada and the granting of refugee protection. A number of provisions of the 1951 Convention, including the definition of a Convention refugee, are incorporated into IRPA.

Complementary Protection

Under IRPA, section 97 was adopted to give effect to Canada's obligations as a signatory to the Convention against Torture. Persons identified as facing a danger of torture, a risk to life or a risk of cruel or unusual treatment or punishment are recognized as "persons in need of protection". Such persons are granted the same rights and status as those found to be Convention refugees and may apply for permanent residence. The legislation also stipulates that persons may obtain protected person status on the basis of a positive PRRA. Those who would be at risk if returned to their country of origin are granted protected person status and may obtain 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 (H&C) grounds.

Noteworthy Court Decisions

In *Singh v. Minister of Employment and Immigration [1985]* 1 SCR 177, the Supreme Court of Canada 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 refugee claimants are afforded an opportunity to make their case at an oral hearing. In *Suresh v. Canada (Minister of Citizenship and Immigration), [2002]* 1 SCC, the Supreme Court of Canada left open the possibility of removal to a risk of torture in "exceptional circumstances". The Supreme Court of Canada found that, although deportation to torture was contrary to international law, and generally contrary to section 7 of the Charter, it may be justified in exceptional circumstances (paragraph 78).

In *Ezokola v. Canada (Minister of Citizenship and Immigration), [2013]* CSC 40, Mr. Ezokola was a diplomat at the Permanent Mission of the Democratic Republic of the Congo to the United Nations from 2004 to 2008 when the Government of the Democratic Republic of the Congo was committing international crimes. RPD excluded the appellant from refugee status under article 1F(a) of the 1951 Convention, being of the view that there were serious reasons for considering that the claimant was complicit in the commission of crimes against humanity and war crimes. The Supreme Court clarified the applicable test in Canada for complicity under article 1F(a). As such, an individual will be excluded from refugee protection under article 1F(a) for complicity in international crimes if there are serious reasons for considering that he or she voluntarily made a knowing and significant contribution to the crime or criminal purpose of the group alleged to have committed the crime. The decision of the Supreme Court is important in that it will provide guidance on the test which should be applied, in the future, by RPD when dealing with the issue of whether a claimant is complicit in the commission of international crimes under article 1F(a) of the 1951 Convention. As such, the Government of Canada (that is, the Minister of Citizenship and Immigration Canada or the Minister of Public Safety) will need to establish serious reasons for considering that a claimant made a knowing and significant contribution to the crime or criminal purpose of the group alleged to have committed the crime.

2.2 Recent Reforms

In-Canada Asylum System

On 15 December 2012, the Government of Canada implemented the new asylum system. A key principle guiding this reform was to ensure that every eligible claimant will continue to have a fair hearing before the independent IRB, irrespective of the country from which they come. Through these reforms, the Government:

- Introduced the ability to designate countries of origin
  - A DCO is a country that is not normally refugee-producing and does respect human rights and offer state protection (see section 5.2).

- Accelerated the timelines for determining refugee claims, which are outlined in the Immigration and Refugee Protection Regulations
  - Upon determination of refugee claim eligibility, hearings are to be held within:
    - 30 days for inland DCO claimants
    - 45 days for DCO claimants at ports of entry
    - 60 days for non-DCO claimants.
  - Timelines for finalization of decisions at RAD are also set in the Regulations. The Regulations require that an appeal decision be made within 90 days of the date of the perfection of the appeal in cases where no oral hearing is held.

- Implemented RAD, which considers appeals against decisions of RPD to allow or reject claims for refugee protection. Appellants to RAD must establish that RPD made an error of fact, of law or of mixed fact and law. While certain groups of claimants do not have access to RAD, all failed refugee claimants continue to have the option of asking the Federal Court to review a negative decision (sections 3 and 5.1.3 provide further details on the role of this new division of IRB).

- Limited access to other measures that could be used to delay removal from Canada
  - Non-DCO claimants face a one-year bar on access to a PRRA following a final decision by IRB or a previous PRRA decision; DCO claimants face a three-year bar.
    - Exemptions to the bar can be made based on significant changes in country conditions that are specified in the Regulations.
  - Failed asylum claimants cannot apply for H&C consideration for one year following a final negative decision by IRB.
    - Exceptions are made to consider applications where removal of the applicant would have an adverse effect on the best interests of a child directly affected or where there is risk to life caused by a health or medical condition for which no adequate care is available in the country of origin.

- Introduced measures to ensure, claimants are no longer able to submit an H&C application while their refugee claim is pending. Claimants have the option of withdrawing their refugee claim in order to apply for H&C, but this has to be done prior to substantive evidence being heard at the hearing before IRB.

- Implemented measures to ensure that delays in removals are minimized
  - Establishing the authority to make regulations that would outline the factors that may or must not be considered when a request to defer a removal is received by the Canada Border Services Agency (CBSA).
  - Removing the automatic stay of removal for certain groups of failed refugee claimants

upon filing an application for leave for judicial review at the Federal Court. This includes: DCO claimants; those determined by RPD to have a manifestly unfounded claim or a claim with no credible basis; those who were able to make a refugee claim based on an exception to the STCA; those who arrive as part of a designated irregular arrival; those whose refugee claims have been ceased or vacated; and those whose refugee claims have been abandoned or withdrawn. This means that these failed refugee claimants could be removed from Canada pending the Federal Court's review of a negative decision unless they receive a judicial stay of removal upon application to the Federal Court.

- Implemented measures to further improve programme integrity and deter abuse
  - Preventing the reopening of decisions at IRB if a final decision has been made at a higher level (RAD or the Federal Court).
  - Automatic loss of permanent resident status in cases where the individual is stripped of protected person's status, except in cases where protection ceases due to a change in country conditions.
  - Refugee claimants from a DCO are ineligible to apply for a work permit until their claim is accepted by IRB or until their claim has been in the system for 180 days and no IRB decision has been made.

- Implemented measures to combat human smuggling
  - These measures:
    - Strengthen the ability to revoke the refugee status of individuals who no longer require Canada's protection
    - Enable the Minister of Public Safety to designate an arrival as an "irregular arrival"; individuals who were part of an irregular arrival become "designated foreign nationals" who are subject to certain measures, including a bar on applying for permanent resident status for a period of five years
    - Facilitate the prosecution of human smugglers
    - Impose mandatory minimum prison sentences on convicted smugglers
    - Hold ship owners and operators to account for use of their ships in human smuggling operations
    - Establish the mandatory detention of individuals aged 16 years or older if they arrive by way of an irregular arrival.
  - Designated foreign nationals will be released from detention if:
    - They receive a positive determination on their refugee claim by IRB
    - They apply for, and receive, release from the Minister of Public Safety based on "exceptional circumstances"
    - They are released on the Minister's own initiative if reasons for detention no longer exist (for example, identity and admissibility requirements have been met)
    - They are ordered to be released by IRB after the first or subsequent detention reviews.
  - For those who become designated foreign nationals, the amendments also include the following measures:
    - A bar on applying for permanent residence, including applications on H&C grounds, and TRPs, for five years following the final determination on their claim or application for protection
    - A restriction on applying for a Refugee Travel Document from Passport Canada
    - A requirement to report regularly to CBSA following a positive decision by RPD
    - A bar on appealing a negative decision at RPD to RAD
    - No automatic stay of removal in case of filing leave at the Federal Court of Canada for judicial review of a decision made by RPD.

Assisted Voluntary Return and Reintegration Pilot Programme

The Assisted Voluntary Return and Reintegration (AVRR) Pilot Programme was implemented in the Greater Toronto Area from 29 June 2012 to 31 March 2015, and was intended to support the CBSA's removals programme by providing a mechanism to facilitate the voluntary removal to the country of origin of failed refugee claimants. The programme was planned to contribute directly in two ways:

- Providing added incentives and a clear framework for failed refugee claimants to leave Canada voluntarily within a shorter time frame
- Alleviating pressure on CBSA's regular removals programme by working with an independent service partner to facilitate low-risk removals.

The International Organization for Migration, an intergovernmental organization, delivered the programme as an independent service partner on behalf of CBSA.

Since the introduction of the pilot programme, CBSA has assisted approximately 4,000 individuals in returning to their home countries.

The AVRR programme ended in March 2015.

Ministerial Reviews and Interventions Pilot
In October 2012, the Ministerial Reviews and Interventions Pilot was undertaken by the Department of Citizenship and Immigration Canada (CIC) to support the objectives of deterring abuse and protecting the integrity of Canada's refugee determination system. Under the pilot, CIC has the capacity to intervene in cases at RPD and at RAD where concerns of fraud, credibility and system integrity are identified. The programme complements the existing reviews and interventions function at CBSA, which focuses on cases of criminality, security, war crimes and crimes against humanity.

Royal Canadian Mounted Police Enhanced Security Screening Pilot Programme
The Royal Canadian Mounted Police Enhanced Security Screening Pilot Programme supports the objective of protecting system integrity by enhancing the current security screening of refugee claimants for inadmissibility criteria under IRPA. CBSA may then use these findings to assess the admissibility or determination of the refugee claim's eligibility.

Serious Criminality
The refugee reform measures also further restrict access to the refugee system for those who have committed a serious crime. These changes mean that a person who was convicted of a serious crime in or outside Canada is now denied access to RPD, regardless of the length of their sentence.

Early Impact of Asylum System Reform
In the year following the implementation of refugee reform, intake levels dropped significantly, reaching historically low levels. The average yearly intake for the three years prior to refugee reform was approximately 23,000, whereas Canada received 10,400 asylum claims in 2013.

DCO is a main component of the new legislation. Claimants from countries on this list, which are not normally refugee-producing, are processed under shorter timelines and do not have access to RAD. There are currently 42 countries on the DCO list. In the year following the implementation of the new legislation, claims from DCO countries fell by 87 per cent when compared to the average volumes over the three previous years. This has allowed the system to focus resources on providing timely protection to those in need, including claimants from countries in distress. In fact, since the implementation of the reforms to Canada's asylum system, there has been a change in the top source countries. In 2013, the top source countries included Afghanistan, the Democratic Republic of the Congo, Somalia and Syria, all non-DCO countries in distress.

Under the new system, refugee claimants receive a decision much faster. On average, it now takes approximately three months for claimants to receive a decision from IRB, compared to approximately 20 months under the previous system. With fewer claims to process, IRB is now able to focus additional resources on reducing the backlog of pending claims. At its peak in October 2009, the backlog totalled approximately 62,000 claims. As of September 2014, the backlog had been decreased to fewer than 11,500 claims.

In addition to shorter processing timelines, the claimant acceptance rate has increased from 37 per cent during the three years pre-reform, to 55 per cent in the first year after the reform. Acceptance rates for claimants from non-DCO countries are greater than those for claimants from DCO countries (61 per cent and 10 per cent, respectively). The compositional change in asylum intake under the Protecting Canada's Immigration System Act, where the majority of claimants are from non-DCO countries, has contributed to an overall increase in acceptance rates at IRB.

Removals of failed refugee claimants – those people who have been found not to be in need of protection – are also occurring much faster. With shorter processing times, it now means that it takes just over five months from the time a claim is made until a failed refugee claimant voluntary departs Canada or is removed from Canada by CBSA. Under the old system, it took about 4.5 years to remove a failed claimant from Canada, often after a number of unsuccessful appeals.

From December 2012 to March 2015, combined with AVRR, CBSA removed more than 20,000 failed asylum claimants. It should be noted that removals include both those removed by CBSA and those who leave voluntarily. The more than 15,000 failed asylum claimants removed since December 2012 includes those who made claims under both the old and the new systems.

Resettlement

In 2012, CIC implemented an intake management strategy to manage the Private Sponsorship of Refugees Programme and to deal with large backlogs in some missions. This strategy included such measures as a cap (limit), beginning in 2012, on the number of new applications to the programme that could be submitted by Sponsorship Agreement Holders in any given calendar year. It also included caps on the number of new programme applications that could be submitted at the four missions with particularly high inventories and processing times. Sponsorship Agreement Holders are organizations that have signed ongoing sponsorship agreements with the Government of Canada to help to support refugees from abroad when they resettle in Canada.

The intake management strategy for the Private Sponsorship of Refugees Programme also included two other aspects achieved through regulatory amendments that became effective in October 2012. The first aspect restricted Groups

of Five and Community Sponsors (that is, small sponsorship groups without ongoing agreements with the Government) to sponsoring refugees who are recognized by the United Nations High Commissioner for Refugees (UNHCR) or a foreign State. The second aspect required that the permanent resident application for the refugee and the sponsorship undertaking be submitted together to a designated CIC office in Canada. Both these measures were intended to streamline processing.

In 2013, Canada shifted to an approach for government-assisted refugees that focuses on multi-year commitments to refugee populations, thereby enabling better forward planning for specific refugee populations. Canada also introduced a Blended Visa Office-Referred (BVOR) Programme in 2013, which matches refugees identified for resettlement by UNHCR with private sponsors in Canada. Under this programme, the Government of Canada provides six months of income support through the Resettlement Assistance Programme (RAP), while private sponsors provide another six months of financial support and up to a year of social and emotional support.

3 INSTITUTIONAL FRAMEWORK

3.1 Principal Institutions

Department of Citizenship and Immigration Canada (CIC)

The Minister of Citizenship and Immigration Canada has overall responsibility for refugee policies and programmes that support Canada's commitment and protection obligations to refugees, both domestically and internationally. To support this mandate, CIC designs policy and programmes for the refugee determination process in areas that include access to IRB, the management of undocumented refugee claimants, improvements in case management and processing times, and the implementation of post-determination procedures for unsuccessful claimants. CIC also makes specific determinations through which foreign nationals may be referred to IRB to apply for refugee protection, and claimants granted refugee protection may apply for permanent residence status from CIC. Research, monitoring, data analysis and reporting activities support evidence-based policy and programme design.

CIC is also responsible for designing policies and programmes related to the settlement and integration of refugees. The Integration/Foreign Credentials Referral Office of CIC is responsible for policy and programme development for both RAP and the Settlement Programme. These programmes jointly support the settlement and integration of newcomers to Canada – including protected persons – through a broad range of interventions delivered both pre- and post-arrival.

Immigration and Refugee Board of Canada (IRB)

As a result of the new legislation that came into force in December 2012, IRB issued new Chairperson's Rules, which provide decision-makers with direction and serve to direct users of the tribunals in their presentation of cases before IRB. IRB also significantly modified its operations and procedures to meet these new legislative changes, including making significant reforms to the existing RPD and the creation of the new RAD. Notwithstanding the multitude of changes, the IRB mandate remains unchanged: to decide immigration and refugee cases efficiently, fairly and in accordance with the law.

RPD is responsible for processing in-Canada refugee protection claims. With the coming into force of the new system, refugee claims are heard and decided by public servant decision-makers. The RPD decision-makers hear refugee protection claims and render decisions based on the evidence and arguments presented and on the applicable law. RPD determines whether a claimant is either a Convention refugee or a person in need of protection. Having public servant decision-makers as opposed to Governor in Council appointees at the first-level hearing allows for a more consistent and flexible complement at IRB, which in turn allows for an initial decision on large volumes of claims to be made more quickly.

RAD is responsible for reviewing first instance RPD decisions and, in certain cases, evidence that was not before the RPD decision-maker at the time of the RPD decision. RAD, which is staffed by Governor in Council decision-makers, provides claimants with an opportunity to establish that the RPD decision was wrong in fact, law, or mixed fact and law, and allows for the claimant to introduce new evidence that was not reasonably available at the time of the RPD decision, or for the Minister to introduce evidence that was not before the RPD decision-maker. RAD is a paper-based process, based on the record of the proceedings of RPD. RAD also has the discretion, in limited circumstances, to hold an oral hearing when new evidence is accepted. After considering the appeal, RAD will confirm the determination of RPD, set it aside or substitute the decision, or in certain circumstances refer the matter back to RPD for re-determination.

Federal Court of Canada

Upon application, the Federal Court of Canada may judicially review IRB decisions to assess whether errors of law or of fact have been made, or to determine whether a principle of natural justice has been breached. It should be noted that the Federal Court cannot substitute an IRB decision with its own, as RAD can.

Canada Border Services Agency (CBSA)

CBSA refers refugee claims made at ports of entry to IRB. In addition, CBSA is responsible for (a) the security screening

of refugee claimants, temporary residents and visitors, and permanent resident and citizenship applicants, (b) the detention of foreign nationals in accordance with provisions in IRPA, and (c) the removal of persons who are inadmissible to Canada.

3.2 Cooperation between Government Authorities

All three institutions involved in the area of asylum (CIC, IRB and CBSA) work both individually and in concert with each other. In addition to referring asylum claims to IRB for adjudication, CIC formulates refugee policy and grants permanent residence to recognized refugees and other protected persons. While IRB reports to Parliament through the Minister of Citizenship and Immigration Canada, it retains its independence with respect to the consideration of specific cases. 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, or purpose of entry to Canada. The competent authority for Canadian visa policy and issuance is CIC.

4.2 Carrier Sanctions

Any carrier transporting persons 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, an administration fee (a fine) will be imposed for each foreign national it carried, and it will be obligated to arrange (or pay for) a medical examination (if applicable). It is compelled 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, a seizure of assets or criminal charges, as warranted.

4.3 Interception

Canadian law prescribes that any carrier seeking to transport persons into Canada comply with the Advance Passenger Information/Passenger Name Record programme. This programme helps CBSA to identify persons who may be subject to closer questioning or examination on arrival in Canada. Factors such as a potential relationship to terrorism or terrorism-related crimes, or other serious crimes that are transnational in nature (such as the smuggling of drugs or humans) may lead to a need for closer examination.

CBSA Liaison Officers

Canada has maintained its overseas presence of CBSA personnel through the deployment of liaison 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

A refugee claim can be made at any port of entry (at a border crossing, an airport or a seaport), or at any point inland at a CIC office, provided it is done prior to the issuance of a removal order. In addition, CIC has an administrative process to select refugees overseas for resettlement. Once a removal order is issued, the foreign national may not make a claim, but, if eligible, the individual may request a PRRA prior to removal (see section 9.2).

5.1.1 Outside the Country

Resettlement

CIC is responsible for managing Canada's resettlement programme. Both Convention refugees and persons in refugee-like situations, including members of the humanitarian-protected persons abroad class, are eligible for resettlement to Canada as permanent residents. Each year, a target is allocated for resettlement through programmes for government-assisted refugees, privately sponsored refugees and BVOR refugees. In 2014, the target ranges (quotas) for these programmes were as follows: 6,900–7,200 government-assisted refugees; 4,500–6,500 privately sponsored refugees; and 400–500 BVOR refugees.

The Private Sponsorship of Refugees Programme enables organizations and private individuals to participate in refugee identification and settlement. Regulations establish the two following classes of persons who are eligible for resettlement:

- Convention refugees abroad class: UNHCR, other referral organizations 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 and have been identified for resettlement by a private sponsorship group.

In all cases, processing is completed at Canadian diplomatic missions. A visa officer decides whether the person identified meets Canada's 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.

Through the Government-Assisted Refugee Programme, Canada is moving from a dispersed, global resettlement programme to one that is characterized by large, multi-year commitments to specific populations in different regions of the world. This approach will help Canada to strengthen refugee integration outcomes as settlement providers will be better able to prepare and welcome the refugees Canada resettles. This approach will also allow Canada to focus efforts and process cases quickly and efficiently.

There are multi-year commitments in place as follows:

- 900 Colombians out of Ecuador by 2017
- 4,000 Eritreans out of Sudan and Ethiopia by 2019
- 2,500 Congolese out of Tanzania and Burundi by 2018
- 20,000 Iraqis by 2015
- 6,500 Bhutanese by 2015
- 5,000 refugees based in Turkey by 2018.

In response to UNHCR's appeal for assistance with extremely vulnerable Syrian refugee cases, in July 2013 Canada committed to resettle 200 refugees through the Government-Assisted Refugee Programme and to accept 1,100 privately sponsored refugees by the end of 2014. In early January 2015, Canada announced that it would welcome an additional 10,000 Syrian refugees and 3,000 Iraqi refugees. Syrian refugees will be resettled in Canada over the next three years, while the additional Iraqi refugees are expected to arrive by the end of 2015.

5.1.2 At Ports of Entry

When foreign nationals seek to enter Canada, they must meet the requirements set out in IRPA. At the port of entry, CBSA officers assess the admissibility of a traveller based on the information presented to them by the traveller as well as the information made available to them in the systems to which they have access. If an officer becomes aware that a person is inadmissible, the person could be denied entry to Canada. If the person wishes to make a refugee claim, an officer will interview the claimant to determine whether the claim is eligible to be referred to IRB. A specialized refugee-processing unit at the Fort Erie land border, which is staffed by CBSA officers dedicated to processing refugee claims, helps to decrease the application processing time.

Undocumented refugee claimants 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 about 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, CBSA has the 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 time frame by the Immigration Division of IRB. If it is justifiable to do so, the Immigration Division may extend the detention for 7 days, and subsequently up to 30 days upon review if necessary. If the detention is deemed unwarranted, the person will be released and IRB may impose any conditions it considers necessary.

Once the claim is referred to RPD, refugee claimants are provided with a Basis of Claim form to complete so initial information can be gathered. For port of entry claims, this form must be submitted directly to IRB within 15 days following referral of the claim.

Responsibility for Processing the Claim

Safe Third Country Agreement (STCA)

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. The STCA is based on the fact that both Canada and the United States maintain refugee protection programmes that meet international standards and 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, the 1967 Protocol and the Convention against Torture.[2]

Application and Procedure

The STCA applies to refugee claimants entering Canada from the United States at a land border.

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

[2] The designation of the United States as a "safe third country" was challenged in the Federal Court of Canada by three non-governmental organizations and an anonymous asylum seeker in the United States. While the Federal Court ruled that the designation was invalid, the Federal Court of Appeal overturned that ruling, finding that the designation of the United States as a safe third country was not outside the authority of the Government and that the STCA was not illegal. On 5 February 2009, the Supreme Court of Canada declined to grant leave to the non-governmental organizations and the individual challenger to hear an appeal of the Federal Court of Appeal decision.

- Family members: persons may be exempted if they have a family member[3] 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 H&C grounds or a refugee claimant who is appearing before IRB.
- Unaccompanied minors: unaccompanied minors who are single and have no family member or legal guardian residing in the United States or Canada may be eligible to apply for asylum.
- Document holders: 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 visa issued by the United States to enter that country.
- Public interest: persons may be exempted if they have committed a crime that could subject them to the death penalty in the United States or a third country.

The STCA does not apply to Canadian or United States citizens or habitual residents of Canada or the United States who are stateless.

If the immigration officer examining the refugee claim at the Canada–United States land-border port of entry determines that the person does not fit any of the above-mentioned exceptions, the person is returned to the United States immediately.

Freedom of Movement and Detention
The grounds and procedures for the detention of individuals deemed ineligible under the STCA are the same as those for other inadmissible claimants. However, detention is not usually required since under the STCA those deemed ineligible do not have recourse to a PRRA and are generally returned to the United States the same day.

Conduct of Transfers
Transfers of ineligible cases back to the United States 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 found to be ineligible prior to the release of the person. Escorts are not usually required, and individuals return to the United States via their own means. UNHCR monitors the STCA 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 the transfer of persons deemed ineligible 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
When a refugee claimant disagrees with a Canadian officer's finding of ineligibility, the formal mechanism to correct errors is to file a request for leave to seek judicial review with the Federal Court of Canada. This mechanism is available for all decisions rendered by the Government of Canada.

Dispute Resolution Mechanism between Governments
As mandated under article 8.2 of the STCA and articulated in the statement of principles, a dispute resolution mechanism exists for resolving differences between the Government of Canada and the Government of the United States regarding the interpretation and implementation of the terms of the agreement. This mechanism is not an appeal process for claimants.

5.1.3 Inside the Territory

Application and Eligibility

When a person makes a claim at a local CIC office in Canada or at a CBSA office (at a port of entry or in Canada), the person is interviewed by an officer to assess their admissibility to Canada and to determine eligibility of their claim for referral to RPD. During the interview, the refugee claimant may be assisted by an interpreter. The claimant is also required to complete a form and to have his or her photograph taken. Persons 14 years of age or older are fingerprinted.

If the immigration officer determines that the claim is eligible, the claim is referred to RPD for determination. If the officer does not make an eligibility determination within three working days, the claim is deemed to have been referred to RPD. In certain circumstances, an officer may suspend eligibility determination of a refugee protection claim.

Once the claim is determined eligible for referral to RPD, the claimant is provided with a Basis of Claim form to complete in order to gather initial information. For inland claims, the Basis of Claim form is submitted to the officer at the time of the interview, to be sent to RPD. For claims at ports of entry, the claimant is provided with a Basis of Claim form to complete and submit to RPD within 15 days from the day he or she made a claim. The form, including its content, is described in the RPD rules. Claimants are required to provide documents to prove their identity (such as a passport, national identity card, birth certificate, school certificate, driver's licence, military document, or professional or religious membership card). Claimants can also provide any other document in support of their claim (such as proof of membership in a political organization, a medical or psychological report, police documents, business records, news clippings, visas, or an airplane, train or bus ticket).

In addition, the claimant must complete a medical examination. He or she is issued a removal order, which is conditional on the result of his or her refugee claim at RPD. In other words,

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

should the refugee claim be refused, the removal order becomes enforceable.

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.

Ineligible Claims

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

- Has already been granted protection/asylum in Canada or in another country to which he or she can be returned
- Has previously been refused protection in Canada or has withdrawn or abandoned his or her previous claim
- Has previously made a claim that was deemed ineligible for referral to IRB, or was rejected by IRB
- Came to Canada through a designated safe third country where a claim for protection could have been made (see section 5.1.2 for more information on the STCA)
- Is inadmissible on grounds of security, violating human or internationals rights, or serious or organized criminality.

Refugee Protection Determination Process

Once a claim for refugee protection is referred to RPD, the referring officer must, in accordance with IRP regulations and the RPD rules, fix the date on which the claimant is to attend a hearing before RPD. In cases where claimants are nationals of a DCO, the hearing date is to be fixed 30 days from the date the claims are referred from an inland office and 45 days for claims referred from a port of entry office (a land border crossing, airport or seaport). The hearing date is to be fixed 60 days from the date the claims are referred in all other claims. The referring officer is required to provide a Notice to Appear, which will contain the date, time and location of the hearing.

Claimants can be represented by counsel. Counsel can be a lawyer, an immigration consultant, a family member, a friend or a volunteer (section 8.1.1 provides further details on designating a representative).

Dependent children also claiming refugee protection must attend the hearing. In most cases, young children need to be present only at the beginning of the hearing in order to show evidence of who they are and to ensure they are properly represented by their parents, their legal guardian or another designated representative. After this, they may be allowed to leave the hearing, but in some situations older children will need to participate in the hearing. Hearings are held in private but UNHCR may observe.

In addition, once a claim has been referred to RPD, and before a decision has been made, CIC and CBSA have the authority to review claims to determine if there are reasonable grounds for intervention in a refugee claim hearing, on the basis of criminality/security or programme integrity/credibility concerns. Representatives may attend the hearing on behalf of the Minister of Public Safety or the Minister of Citizenship and Immigration Canada and present evidence as to why the claim should not be accepted by RPD. 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 benefit from Canada's protection. They also aim to protect the integrity of the refugee status determination system.

Review/Appeal of IRB Decisions

The IRB Chairperson may order that an appeal be decided by a three-member panel. Decisions by a three-member panel of RAD are binding on RPD panels and single-member panels of RAD. Processes and procedures for RPD and RAD are further articulated in their respective rules of practice and procedure, and other policy instruments, such as guidelines and practice notices.

A claimant whose case is rejected by RPD and who has access to RAD may appeal on the merits of his or her case before RAD. Appeals may be filed by the claimant or the Minister and can be based on questions of fact, of law or of mixed fact and law. At RAD, claimants also have the opportunity to introduce new evidence that was not previously available at this stage of the process. The Minister may also introduce new evidence. The procedure is paper-based, but in exceptional circumstances oral hearings may take place. If there is no oral hearing, decisions are to be rendered within 90 days.

Refugee claimants may choose to seek a Federal Court judicial review of determinations of eligibility, of a negative decision or of another decision along the in-Canada asylum programme continuum.

IRB cannot reopen previously decided claims or appeals once a final decision has been made at a higher instance.

Refugee claimants and the Minister of Citizenship and Immigration Canada or the Minister of Public Safety 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 for refugee matters. First, the refugee claimant 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 review IRB decisions for errors of law, or of fact, or if a principle of natural justice was breached. If the judicial review is allowed, the Federal Court usually returns the case back to IRB for a new hearing. New evidence may be presented at the new IRB hearing in accordance with

the relevant legislation. All claimants may apply for leave for judicial review.

A request for leave for judicial review has the effect of suspending the person's removal from Canada, with the exception of certain groups of failed refugee claimants. These include:

- Claimants from DCOs
- Those determined by RPD to have a manifestly unfounded claim or a claim with no credible basis
- Those who were able to make a refugee claim based on an exception to the STCA
- Those who arrive as part of a designated irregular arrival.

This means that these failed refugee claimants could be removed from Canada while the Federal Court reviews a negative decision, unless they receive a judicial stay of removal upon application to the Federal Court.

There are possibilities for further appeals before the Federal Court of Appeal and the Supreme Court of Canada; however, the Federal Court must certify a question of general importance on judicial review in order to access these avenues of appeal.

Freedom of Movement during the Asylum Procedure

Detention

Procedure

Canada does not have a policy directing officers to detain asylum claimants: decisions to detain are made based on the same criteria, regardless of whether or not the person concerned is an asylum claimant. CBSA has the legislative authority to arrest and detain foreign nationals, including refugee claimants 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 about the identity of the person in the course of any procedure under IRPA.

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, the case is referred to the Immigration Division of IRB. Once the case is before the Immigration Division, the decision-maker reviews the reasons for detention according to the following schedule: within 48 hours of the arrest or without delay afterwards; once in the following 7 days; and once every 30 days for as long as an individual remains detained. The Immigration Division has the authority to order continued detention or to release the person with or without conditions.

The Protecting Canada's Immigration System Act provides the authority to detain individuals who participated in an irregular arrival in order to allow for an investigation into identity, admissibility and illegal activity. Under this approach, claimants see a first detention review within 14 days and subsequent reviews after every 180 days. An individual is released earlier if they receive a positive decision on their refugee claim by IRB. The Minister of Public Safety may, under exceptional circumstances, order the release of a detained individual when grounds for detention no longer exist. Designated foreign nationals under 16 years of age are excluded from mandatory detention.

Detention Facilities

CBSA operates three immigration holding centres located in Toronto (Ontario), Vancouver (British Columbia) and Laval (Quebec), all of which are for lower-risk detainees. CBSA relies on provincial correctional facilities to detain higher-risk detainees (such as criminals or persons suffering serious medical or psychological problems) and lower-risk detainees in areas not served by a CBSA immigration holding centre. A person detained in a provincial facility for immigration reasons is required to follow the rules of the 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 a person.

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, and alternatives to detention are considered. For unaccompanied minors seeking asylum, the preferred option is to release them with conditions to the care of child welfare agencies, if those agencies are able to provide an adequate guarantee that the child will report to the immigration authorities as requested. In 2010 and 2011, the average length of detention of minors was 6.1 days. In 2013 and 2014, it was 10.8 days. 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

In cases where claimants did not provide their contact information to the referring officer when they made their

claims, they must provide it in writing to IRB and to the Minister. The contact information must be received by IRB and by the Minister no later than 10 days after the claimant received the Notice to Appear from the referring officer. Claimants must provide IRB and the Minister in writing any subsequent changes to contact information without delay. Failure to provide contact information and any changes to contact information may result in the claim being declared abandoned.

RPD may declare that a claim has been abandoned if the claimant does not:

- provide a completed Basis of Claim form on time
- provide his or her current and correct contact information
- appear at his or her refugee protection claim hearing
- appear at his or her special hearing on the abandonment of the claim.

Repeat/Subsequent Applications

An asylum seeker in Canada may make only one claim for refugee protection. A reapplication for protection is ineligible for referral to IRB if an asylum claim by the person had previously been rejected by IRB, had been deemed ineligible for referral to IRB, or the claim had been withdrawn or abandoned.

IRPA, however, allows failed refugee claimants under removal procedures to apply for a PRRA. Rejected asylum seekers from non-DCO countries are restricted from applying for a PRRA for a period of one year following the last IRB decision. For DCO claims, access to a PRRA is restricted for three years following the last IRB decision. For most PRRA applicants, a positive determination results in the granting of protected person status (section 9.2 provides further details on the PRRA process).

Under the amended IRPA, RPD cannot reopen previously decided refugee protection claims once a final decision has been made at a higher level (for example, a claim cannot be reopened once RAD or the Federal Court has made a final decision). RAD cannot reopen an appeal once the Federal Court has made a final decision.

5.2 Safe Country Concepts

Canada's recent reforms include a DCO policy. DCOs are countries that do not normally produce refugees, but respect human rights and offer state protection. The DCO policy allows for the faster processing of refugee claims from nationals of these countries. No countries are automatically designated; they are triggered according to objective criteria and then reviewed for potential designation.

All eligible claimants from a DCO continue to receive a full and fair hearing on the individual merits of their claim at RPD. DCO claimants continue to be able to ask the Federal Court to review a negative decision. However, they do not have access to RAD at IRB, and there is no automatic stay of removal for DCO claimants should they ask the Federal Court to review a negative decision.

DCO claimants are also ineligible to apply for a work permit and associated benefits until their claim is accepted by IRB or their claim has been in the system for more than 180 days and no decision has been made. Finally, while most claimants face a one-year bar on accessing a PRRA, DCO claimants must wait three years.

DCO Designation Criteria

There is a two-step process for a country to be considered for designation. First, a country must meet one of two quantitative thresholds or limits set out in a ministerial order. Quantitative thresholds are stipulated as one of the following:

- A combined rejection, abandonment and withdrawal rate of asylum claims at IRB of 75 per cent or higher
- A combined withdrawal and abandonment rate of asylum claims at IRB of 60 per cent or higher.

Quantitative triggers apply for countries having at least 30 finalized claims in any consecutive 12-month period in the three years preceding designation.

For claimants from countries with a low number of claims, a qualitative checklist is applied and includes:

- The existence of an independent judicial system
- The recognition of basic democratic rights and freedoms, including mechanisms for redress if those rights or freedoms are infringed
- The existence of civil society organizations.

Once a country is triggered for a review, CIC conducts the assessment in consultation with other government departments. The review examines a select set of criteria. The Minister of Citizenship and Immigration Canada makes the final decision on whether to designate a country.

There are currently 42 countries on the DCO list.[4]

De-designation

CIC monitors country conditions in all DCOs in collaboration with other government department partners and by using information from international sources such as the United Nations, the United States Department of State and human rights organizations.

CIC assesses all DCOs to determine whether, on balance, conditions remain similar to those at the time they were designated. DCOs are monitored for significant deterioration

[4] The list is available at http://www.cic.gc.ca/english/refugees/reform-safe.asp.

in country conditions, and may be removed from the list by the Minister.

5.2.1 First Country of Asylum

There is no legal requirement for an asylum seeker to have applied for protection 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. That said, there exist authorities in IRPA to designate safe third countries.

5.2.2 Safe Third Country

According to IRPA, a country can be designated a safe third country by considering the following criteria:

- Whether the country is party to the 1951 Convention and the Convention against Torture
- The policies and practices of the country with respect to the 1951 Convention and the Convention against Torture
- The human rights record of the country
- Whether the country is party to an agreement with Canada on sharing responsibility for refugee claims.

To date, the United States of America is the only country that has been designated a safe third country by Canada.

5.3 Special Procedures

5.3.1 Unaccompanied Minors

Eligibility Stage

As is the case with 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 for referral to RPD.

IN FOCUS

AGE- AND GENDER-SENSITIVE GUIDELINES

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 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 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 IRB

IRB appoints a designated representative if the person who is the subject of the proceedings is a child under 18 years of age (a minor) or an adult who is unable to appreciate the nature of the proceedings.

The designated representative is responsible for protecting the interests of the minor or the person who is unable to appreciate the nature of the proceedings, as well as explaining the process to him or her.

UNHCR/A.Greco/February 2014

In the case of a minor, the designated representative is usually the child's parent, although another family member, a legal guardian, a friend or a worker from an agency that provides such services can also act as a designated representative. In the case of a person who is unable to appreciate the nature of the proceedings, the designated representative can also be a family member, a friend or a worker from an agency that provides such services.

Designated representatives must be 18 years of age or older, understand the nature of the proceedings before IRB, be willing and able to act in the best interests of the minor or the person who is unable to appreciate the nature of the proceedings, and not have interests that conflict with those of the person they represent.

The role of a designated representative for a minor or a person unable to appreciate the nature of the proceedings includes:

- Deciding whether to retain counsel and, if counsel is retained, instructing counsel or assisting the represented person in instructing counsel
- Making other decisions regarding the case or assisting the represented person in making those decisions
- Informing the represented person about the various stages and procedures in the processing of his or her case
- Assisting in gathering evidence to support the case, and providing evidence and being a witness at his or her hearing if necessary
- Protecting the interests of the represented person and putting forward the best possible case to the Division
- Informing and consulting with the represented person to the extent possible when making decisions about his or her case.

A designated representative is not the same as counsel, and the Division must designate a representative even when the minor or the person who is unable to appreciate the nature of the proceedings has legal or other counsel.

CAN. Fig. 3 | Asylum Applications by Unaccompanied Minors

No data available.

Best Interests of the Child

When determining the procedure to be followed for the claim of an unaccompanied minor, the best interests of the child are given primary consideration. This principle is articulated in IRB Chairperson Guideline 3 – Child Refugee Claimants: Procedural and Evidentiary Issues[5] and in the Protected Persons Manual.

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. Canada's asylum system provides protection to refugees, including stateless persons who are in need of protection. Those who are stateless may declare that they have no citizenship or no nationality, or simply that they are stateless. Their case will be treated individually on its own merits. Existing Canadian legislation provides protection for those in need of it, whether an individual is stateless or not.

5.3.3 Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Persons

On 15 December 2012, IRB updated Chairperson Guideline 8 – Concerning Procedures with Respect to Vulnerable Persons Appearing before the Immigration and Refugee Board of Canada with the addition of paragraph 16.1 on LGBTI individuals:

16.1 "Lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals may have suffered negative experiences due to homophobia in their respective countries of origin, most specifically discrimination, bullying, ostracism, violence, sexual assault, and so on. The IRB has been sensitive and will continue to be sensitive and alert to the impact that these particular circumstances may have on some LGBTI individuals; it will also ensure that when identified as vulnerable, those individuals, like other persons identified as vulnerable, are not disadvantaged in presenting their cases to the IRB."

The scope of Guideline 8 was also extended to include RAD.

6 DECISION-MAKING AND STATUS

RPD makes decisions on claims for refugee protection made by persons in Canada, as well as on ministerial applications for the vacation and cessation of refugee protection.

6.1 Inclusion Criteria

6.1.1 Convention Refugee

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.

6.1.2 Persons in Need of Protection

Section 97 of IRPA affords complementary protection to persons who on a balance of probabilities, if removed, would be personally subject to:

[5] The guidelines can be found at http://www.irb-cisr.gc.ca/Eng/BoaCom/references/pol/GuiDir/Pages/GuideDir03.aspx.

- A danger of torture, believed on substantial grounds
- 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".

6.1.3 Single Procedure

Prior to the coming into force of IRPA, refugee status was determined solely on the grounds outlined in the 1951 Convention and its 1967 Protocol. Since the coming into force of IRPA in June 2002, protection is allowed on the grounds of the 1951 Convention (section 96 of IRPA) and the Convention against Torture (section 97 of IRPA). Refugee claimants need to make only one application in order to obtain refugee protection under either ground. The combination of Convention refugee and additional grounds for protection has been referred to as "consolidated grounds". Both sets of protection afford the same benefits to those determined to be in need of protection.

6.2 The Decision

Under IRPA, members of RPD assess whether claimants are Convention refugees or persons in need of protection. Decisions are made based on the evidence provided and the law, following a full hearing. Decisions and the reasons for the decisions, whether positive or negative, can be given orally at the end of the hearing or provided in writing. Written reasons must be provided in the case of negative decisions and in certain other circumstances, such as when the claimant or the Minister's counsel requests written reasons. If the decision is given orally, a transcript of the reasons is provided as written reasons.

6.3 Types of Decisions, Statuses and Benefits Granted

Convention refugees and persons in need of protection both acquire the status of a protected person. Thus, both groups are protected against refoulement and are entitled to the same set of benefits. Protected persons may apply for permanent resident status from CIC following a positive IRB decision and then for citizenship if they have, among other requirements, resided in Canada for 1,095 days during the four years prior to applying. It should be noted that Canada has recently amended its Citizenship Act.[6]

As such, residency requirements to acquire citizenship will change in 2015 (the date on which it will come into force is to be determined). It will be necessary that, among other things, a person has been physically present in Canada for 1,460 days during the six years prior to applying and has been physically present in Canada for at least 183 days during each of the four calendar years within the six years.

As permanent residents, protected persons have access to the following benefits:

- Most of the social benefits that Canadian citizens receive, including health care coverage and social assistance
- 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.

Claimants who are part of a designated irregular arrival are prevented from applying for permanent resident status for a period of five years should they be found in need of protection. They are also prevented from sponsoring family members for five years.

6.4 Exclusion

RPD and RAD apply articles 1F and 1E of the 1951 Convention in the assessment of protection claims. If RPD believes, before a hearing, that there is a possibility that sections of the exclusion clauses apply to the claim, RPD 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 indicating it in writing.

Persons excluded from protected person status under the IRPA guidelines outlined above have recourse through the PRRA process. Excluded persons may request a PRRA prior to removal (section 9.2 provides further details on the PRRA process).

6.5 Cessation

The cessation clauses of the 1951 Convention are reflected in section 108 of IRPA. The grounds for cessation include:

- The person has voluntarily re-availed himself or herself of the protection of the country of nationality.
- The person has voluntarily reacquired his or her nationality.
- The person has acquired a new nationality and enjoys the protection of that new country of nationality.

[6] On 19 June 2014, the Strengthening Canadian Citizenship Act received Royal Assent.

- The person has voluntarily become re-established in the country in respect of which the person claimed refugee protection.
- The reasons for which the person sought refugee protection cease to exist.

The Minister may make an application to cease refugee protection after the person has been granted refugee status. However, RPD may reject the application if it is satisfied that the evidence did not lead to the above-mentioned grounds.

In addition, the Protecting Canada's Immigration System Act included changes to the effects resulting from applying cessation provisions of IRPA. Under the new system, unlike in previous systems, a ceased protection status will result in the loss of permanent resident status, which makes the person subject to removal from Canada. An application to cease refugee protection will suspend the processing of permanent resident status.

Persons who have been the subject of a cessation of their refugee status may ask the Federal Court for leave for judicial review of IRB's decision.

6.6 Revocation

IRPA includes provisions that allow for the vacation of refugee status. A person can have his or her refugee status vacated if he or she obtained that status by directly or indirectly misrepresenting or withholding material facts relating to a relevant matter. However, 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 claim is deemed to be rejected and the decision granting refugee protection is nullified.

A person whose status is vacated may seek leave at the Federal Court for a judicial review of RPD's decision.

6.7 Support and Tools for Decision-Makers

6.7.1 Country of Origin Information

The IRB Research Directorate provides a range of services in support of the in-Canada refugee determination system. In response to questions posed by decision-makers, research officers and research analysts prepare Responses to Information Requests that report on human rights, politics, access to justice and other legal remedies in the refugee claimants' countries of origin. Claimant-specific information is gathered through the research programme. A dedicated unit creates, maintains and updates databases on country information, including National Documentation Packages. These packages contain 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 information is accessible via the IRB's internal and external websites. Other databases are maintained to gather recently published reports of governments and of intergovernmental and non-governmental organizations so decision-makers can be aware of recently published information. Most recently, a protocol was developed through the research programme to guide its researching of social media on behalf of decision-makers. On a regular basis, the research programme offers presentations on country conditions as part of learning and professional development sessions.

The Monitoring, Analysis and Country Assessment Division of the Refugee Affairs Branch at CIC undertakes comprehensive assessments of countries of origin. This division conducts research, carries out analyses and publishes reports on country conditions related to democracy, human rights, at-risk populations and state protection in order to support the implementation of asylum policy, particularly in relation to the DCO list and the PRRA bar exemption policy. The division also monitors the implementation of refugee reform legislation, enabling CIC and its partners to monitor each step of the asylum process and to identify challenges as the system continues to roll out.

6.7.2 Chairperson's Guidelines

The Chairperson's Guidelines provide guiding principles for adjudicating and managing cases. They serve primarily as a source of guidance for decision-makers, but also for the personnel supporting adjudicative functions. They may have adjudicative or operational content. While it is not mandatory to follow them, decision-makers are expected to apply them or provide a reasoned justification for not doing so. Within IRB, the Chairperson's Guidelines have generally been employed to achieve strategic objectives, as opposed to simply managing daily operations. Section 159(1)(h) of IRPA provides statutory authority for the Chairperson's Guidelines.

6.7.3 Jurisprudential Guides

Jurisprudential Guides are policy instruments that support consistency in adjudicating cases that share essential similarities. A Jurisprudential Guide serves to build a division's jurisprudence upon well-reasoned decisions.

Drawing on the common law tradition of precedent and the tribunal tradition of policymaking through adjudication, Jurisprudential Guides articulate policy through the application of the law set out in a decision of IRB to the specific facts of another individual case before a decision-maker. This is to be contrasted with the Chairperson's Guidelines, which are general statements, not incorporated in any decision of IRB. The application of a Jurisprudential Guide is not

mandatory. However, decision-makers are expected to apply Jurisprudential Guides in cases with similar facts or provide reasoned justifications for not doing so.

Section 159(1)(h) of IRPA provides statutory authority for the use of Jurisprudential Guides.

6.7.4 Persuasive Decisions

Persuasive decisions are decisions that have been identified by a division head (such as the Deputy Chairperson of RPD) as being of persuasive value in developing the jurisprudence of a particular division. These decisions are well written and provide clear, complete and concise reasons with respect to the particular element that is considered to have persuasive value. They consider all of the relevant issues in a case. Accordingly, IRB members are encouraged to rely on persuasive decisions in the interests of consistency and effective decision-making. This consistency also helps parties and counsel to prepare for proceedings before IRB, and may encourage early resolution without a hearing, where appropriate.

The use of persuasive decisions enables IRB to move toward a consistent application of the law in a transparent manner. Their designation promotes efficiency in the hearing and the reasons writing process by making use of quality work done by colleagues.

Unlike for the Jurisprudential Guides, decision-makers are not required to explain their decision not to apply a persuasive decision.

6.7.5 Policies

Policies are formal statements that explain the purpose and the mechanics of operational initiatives at IRB. Policies set 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 the content of the policy. 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 organizational concerns (such as relations between decision-makers and refugee protection officers) that define roles and responsibilities consistent with the principle of adjudicative independence and impartiality.

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, and as part of their permanent residence applications, they may include family members, including dependent children. When documentary submissions are not satisfactory evidence of a bona fide relationship with children abroad, immigration officers may request a DNA test to provide proof of relationship. DNA testing is undertaken at the applicant's own expense and in accordance with the established procedures.

7.1.3 Forensic Testing of Documents

CIC, CBSA and RPD decision-makers may request the forensic testing of documents for the purpose of verifying the authenticity of the document in question.

7.1.4 Database of Asylum Applications/Applicants

CIC maintains a database of all clients, including refugee claimants. In the case of refugee claimants' fingerprint records, the Royal Canadian Mounted Police maintains fingerprint records on behalf of CIC.

7.1.5 Video Conferencing of Asylum Hearings

Section 164 of IRPA provides that "where a hearing is held by a Division [of IRB], it may, at the Division's discretion, be conducted in the presence of, or by means of, live telecommunication with, the person who is the subject of the proceedings". Furthermore, section 162(2) of IRPA provides that "Each Division [of IRB] shall deal with all proceedings before it as informally and quickly as the circumstances and the considerations of fairness and natural justice permit."

Videoconferencing is an accepted technology that has been in use for many years in legal institutions throughout Canada, including courts and administrative tribunals. All divisions have acquired experience conducting proceedings by videoconference and this technology has proven to be beneficial in allowing IRB to make well-reasoned decisions on immigration and refugee matters efficiently, fairly and in accordance with the law.

IRB remains committed to ensuring that satisfactory technological standards and procedural safeguards are in place and observed through the continuous review and

improvement of videoconferencing technology and ongoing training and monitoring.

IN FOCUS

PROCESSING TIMELINES

To accommodate the introduction of regulatory time limits for the scheduling of refugee protection claims, procedures to schedule and reschedule claims were revised. Many of these procedures required significant operational coordination across immigration and refugee portfolio agencies, including revised and new IT system interfaces. Internally, RPD employed a "business process improvement" approach to help to maximize efficiencies regarding file movement and registry procedures. An example includes physically locating the decision-makers with their registry support in a team concept, thus reducing the physical movement of the file. Accordingly, since legislative change, the average processing time per claim has dropped dramatically. While 100 per cent of the claims were scheduled within the legislated time frames, not all hearings have proceeded within these time limits. As allowed for by the regulations, some are delayed for considerations of fairness and natural justice, operational requirements or pending security screening.

7.2 Pending Cases

Governor in Council appointed decision-makers whose mandates extended past December 2012 were authorized under the Protecting Canada's Immigration System Act to continue hearing legacy (backlog) cases, and they therefore assisted in reducing the inventory. As a result of the decrease in refugee claims under the new system, IRB has been able to commit additional resources to reducing the number of legacy cases.

As a result, IRB has made significant strides in reducing the number of backlog cases to 10,305 as of November 2014, which is a significant decrease from a high of 62,000 claims in October 2009. Based on the current rate of backlog reduction, it is anticipated that the IRB backlog will be eliminated by 2016/17.

7.3 Information Sharing

Canada–United States Biometric Information Sharing

Canada exchanges information on refugee claimants with the United States on a bilateral basis, in accordance with legal and privacy considerations of both countries. The Canada–U.S. Statement of Mutual Understanding on Information Sharing, and the Annex Regarding the Sharing of Information on Asylum and Refugee Status Claims (the Asylum Annex) to the Statement allows for the systematic or case-by-case sharing of information on asylum claimants in Canada or the United States.

As part of the Perimeter Security and Economic Competitiveness Action Plan (the Perimeter Action Plan), Canada and the United States also signed the Agreement between the Government of Canada and the Government of the United States of America for the Sharing of Visa and Immigration Information (the Treaty) to support the systematic sharing of biographic and biometric information on third country nationals. In 2013, Canada put in place regulations concerning the implementation of enhanced immigration information sharing with the United States pursuant to the Treaty and the Asylum Annex. The regulations set out the scope and purpose of immigration information sharing which, consistent with the Treaty and the Asylum Annex, outline what information could be shared, whose information may be shared, and the circumstances surrounding how the information may be shared.

The Asylum Information Sharing Ramp-Up between Canada and the United States is one of the initiatives under the Perimeter Action Plan announced by the President of the United States and the Prime Minister of Canada. This Action Plan will see a gradual increase of biometric (fingerprints) exchange on asylum claimants leading up to systematic biometric information exchange between Canada and the United States on temporary visitors, resettled refugees and asylum seekers.

Since the start of the ramp-up project in August 2012, Canada and the United States have increased the number of records shared from 3,000 records per year to over 9,000 in 2014, and the number is expected to reach up to 12,000 records per year in the coming years. This level of sharing will be maintained until systematic and automated biometric information sharing is put in place.

In November 2014, as part of the Perimeter Action Plan, Canada began to collect biometric information from refugee resettlement applicants at certain diplomatic missions. The collection of biometrics from refugee resettlement applicants will gradually be expanded to other missions, with full implementation expected by April 2015.

Five Country Conference on Biometric Information Sharing

In April 2007, Australia, Canada, the United Kingdom and the United States signed the Hunter Valley Declaration. Under this agreement, CIC and CBSA agreed to work towards the systematic exchange of biometric data (fingerprint records) with the four other countries. The High Value Data Sharing Protocol that has subsequently been implemented allows biometric data to be cross-checked between the four above-mentioned countries, as well as New Zealand.

CIC has a centralized information sharing unit, operating 24 hours per day, that acts as a liaison with the United States and the three other countries on facilitating requests for additional information resulting from the systematic and automated exchanges. With the move towards systematic information sharing, this unit will be the single point of contact for any requests for additional information further to automated exchanges.

IN FOCUS

MONITORING AND ANALYSIS UNIT

The Monitoring, Analysis and Country Assessment Division of the Refugee Affairs Branch at CIC conducts ongoing monitoring and reporting of the asylum system via the "metrics of success" in order to assess the performance of Canada's new asylum system. These metrics were designed to capture claimants moving through each stage of the asylum system. Monitoring and reporting on these metrics enable policymakers and programme managers to ensure that the new system is working as anticipated (that is, enhancing the integrity of the system, streamlining the process and improving the timely removals of failed claimants). Quarterly metrics of success reports provide policymakers and programme managers with a complete overview of the asylum system, while simultaneously offering a detailed analysis of each component of the full system.

8 ASSISTANCE AND RECEPTION BENEFITS FOR ASYLUM SEEKERS

8.1 Procedural Support and Safeguards

8.1.1 Legal Assistance

Refugee claimants appearing before IRB may represent themselves or have the assistance of counsel throughout the process at their own expense.

Counsel may be:

- A member in good standing of a provincial law society (lawyer, or paralegal in a province that allows paralegals to be members of the law society)
- A member in good standing of the Chambre des notaires du Québec
- An immigration consultant who is a member in good standing of the Immigration Consultants of Canada Regulatory Council.

Only counsel as described above may represent claimants at IRB and charge a fee. Counsel must provide IRB with the name of the organization they belong to, as well as his or her membership identification number.

Counsel can also be a family member, a friend or a volunteer who may represent claimants without charging a fee.

Provinces and territories are responsible for the delivery of immigration and refugee legal aid services, with partial funding from the federal Government. As such, refugee claimants may contact the legal aid office in the province where they reside for assistance during their claim before 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

In accordance with RPD rules, if a claimant requires an interpreter for the proceedings, the claimant must notify an officer at the time of the referral to RPD and specify the language. A claimant may change the language or dialect, or if he or she had not previously indicated that an interpreter was required, he or she may notify RPD in writing. This notice must be received by RPD no later than 10 days before the date of the proceedings.

8.1.3 UNHCR

In accordance with IRPA, representatives from UNHCR monitor the process relating to refugee protection in Canada and observe RPD hearings without limitation, consistent with UNHCR's duty and right to observe and monitor the refugee status determination process. Also as part of its supervisory responsibility, UNHCR consults with CIC on legislative and procedural developments, and comments on policy and practice when necessary and appropriate. Canada's cooperation with UNHCR in its supervisory role is consistent with its international obligations under article 35 of the 1951 Convention.

When Canada and the United States signed the STCA, UNHCR was invited to monitor its implementation. UNHCR accepted this invitation, and submitted a written report on the first year's implementation to both Canada and the United States and subsequently undertook regular visits to assess access to territory and procedures. The operations of UNHCR in relation to the STCA involve close cooperation with CBSA officials who provide UNHCR staff with unhindered access to ports of entry and to refugee claimants.

UNHCR conducts regular monitoring of detention facilities where persons of concern, including refugee claimants, are detained. In addition, UNHCR maintains the right to make written submissions to three-member-panel appeal hearings at RAD.

8.1.4 Non-governmental organizations

Non-governmental organizations do not have a formal role in the refugee determination process. They may, however, provide the refugee claimant with information and orientation on a voluntary basis or according to the level of funding from non-federal sources.

8.2 Reception Benefits

Persons who make a refugee claim are issued a Refugee Protection Claimant Document, which identifies them as a client of the in-Canada asylum system. Refugee claimants may be asked to provide this document to be entitled to apply for a variety of services, such as those detailed in the sections below.

8.2.1 Social Assistance

Recent legislative amendments now permit provinces and territories the flexibility to implement (if they choose to do so) a residency requirement before most foreign nationals, including asylum claimants, can access social assistance. The provision of social assistance is fully under provincial and territorial jurisdiction. Prior to the amendments, provinces and territories could not impose a minimum period of residence without the risk of incurring a financial penalty from the Government. The amendments became law in December 2014.

8.2.2 Accommodation

Low-income accommodation is a provincial responsibility and programmes may therefore vary depending on the province in which the claim is made. There is no federal programme in place to provide asylum seekers in Canada with accommodation.

While accommodation under provincial programmes is not free of charge, the rental cost is heavily subsidized. In addition, asylum seekers may apply for social assistance, which generally covers living costs in accordance with provincial guidelines.

8.2.3 Health Care

The Interim Federal Health Programme (IFHP) offers limited, temporary coverage of health care benefits to protected persons (including resettled refugees), refugee claimants, rejected refugee claimants and other specified groups who are not eligible for provincial or territorial health insurance. IFHP does not cover services or products that a person may claim under a private insurance plan.

On 4 July 2014, the Federal Court of Canada declared the 2012 IFHP Orders in Council to be of no force or effect as they were found to be inconsistent with sections 12 and 15 of the Canadian Charter of Rights and Freedoms.[7] The effects of this decision were suspended for four months, until 4 November 2014. The Government of Canada submitted an appeal of the Federal Court ruling on 30 September 2014. On 5 November 2014, the Government implemented temporary health care measures that address the Court's ruling while the appeal of that decision was pursued. Under the temporary measures for IFHP, the vast majority of beneficiaries receive coverage for hospital, medical and laboratory services, including pre- and post-natal care and laboratory and diagnostic services. This coverage is similar to what Canadians receive under provincial and territorial health care.[8]

8.2.4 Education

School-aged children are eligible to attend school. Adult refugee claimants may apply and obtain (free of charge) a study permit to allow them to attend language training or a school for adults.

8.2.5 Access to the Labour Market

Refugee claimants from non-DCOs may apply for authorization to work. Work permits are granted for a period of 24 months to claimants who have passed a medical examination. CIC provides refugee claimants with open work permits so that they might support themselves as they await the finalization of their claim. Claimants from DCOs are ineligible to apply for a work permit until their claim is approved by IRB or their claim has been in the system for more than 180 days and no decision has been made.

8.2.6 Family Reunification

There is no programme to facilitate family reunification while refugee claimants await a hearing. However, persons who have been determined to be Convention refugees or in need of protection (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. Processing permanent-resident status applications of family members overseas occurs concurrently with the application of the protected person in Canada. Protected persons who arrived as part of a designated irregular arrival are restricted from applying for permanent resident status and family reunification for a period of five years following their recognition as a protected person.

8.2.7 Access to Benefits by Rejected Asylum Seekers

Rejected asylum seekers under an enforceable removal order are expected to leave Canada within 30 days or they will then be deported as soon as possible.

Provincial/territorial legislation stipulates that failed refugee claimants are ineligible for social assistance once they are under an enforceable removal order, though some may be able to access it until they depart or are removed from Canada. Those with a work permit may also continue to work granted their work permit is still valid, while school-aged children are eligible to receive education up until their departure. Currently, failed refugee claimants – those whose claims have been

[7] Section 12 refers to the right not to be subjected to any cruel and unusual treatment or punishment. Section 15 speaks to equality before and under the law and equal protection and benefit of the law.

[8] For more details see http://www.cic.gc.ca/english/refugees/outside/arriving-healthcare.asp.

rejected by IRB, and whose right to judicial review or any appeal of that judicial review has been exhausted, other than persons who receive a negative decision from RPD with a deferral of removal for generalized risk (a temporary suspension of removal or an administrative deferral of removal) – are eligible for limited health services (IFHP type 4 coverage, which includes public health or public safety basic coverage and public health or public safety prescription drug coverage) until they are removed from Canada or become eligible for provincial/territorial health insurance. As part of the temporary measures, effective as of 5 November 2014, rejected refugee claimants with a temporary suspension of removal or an administrative deferral of removal are eligible for IFHP type 2 coverage, which includes basic and prescription drug coverage for as long as there is a stay of removal in place.

9 STATUS AND PERMITS GRANTED OUTSIDE THE ASYLUM PROCEDURE

9.1 Humanitarian and Compassionate Grounds

According to sections 25 and 25(1) of IRPA, the Minister and his or her delegates have the authority to grant permanent resident status, or exemptions from certain requirements of the Act, to foreign nationals who are otherwise inadmissible, where doing so is justified on H&C grounds.

Foreign nationals who are inadmissible to Canada, who are ineligible to apply in an immigration class or who do not meet the requirements of IRPA may apply for H&C consideration under section 25 of IRPA. However, legislative changes in effect since 19 June 2013, as included in the Faster Removal of Foreign Criminals Act, prevent foreign nationals inadmissible on security grounds (section 34 of IRPA), for human or international rights violations (section 35 of IRPA), or on grounds of organized criminality (section 37 of IRPA) from requesting H&C consideration.

H&C consideration 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, the hardship of having to apply for permanent residence from abroad (if the applicant is in Canada), and any other relevant issue raised by the applicant. While all facts brought forward by the applicant must be considered, for applications made from within Canada, H&C decision-makers may not conduct a risk assessment such as would be done by IRB or in a PRRA, which consider risks contained in section 96 of IRPA (Convention refugee) and section 97 of IRPA (person in need of protection).

An application for permanent residence on H&C grounds does not put into effect a stay of removal, though in practice most applications are examined prior to the applicant's removal. Foreign nationals may also apply to the Federal Court for a stay of removal until such time as their H&C application is examined. Procedurally, it is possible to submit only one H&C application at a time, subject to payment of the required fee. A negative H&C decision cannot be appealed; however, applicants may apply to the Federal Court for leave to review the decision.

Failed refugee claimants are restricted from accessing H&C consideration for one year following a final negative decision from IRB. Exceptions are made to consider applications where removal of the applicant would have an adverse effect on the best interests of a child directly affected or where there is risk to life caused by a health or medical condition for which no adequate care is available in the country of origin. Refugee claimants may not submit an H&C application while their refugee claim is pending; however, they can withdraw their refugee claim in order to apply for H&C consideration prior to substantive evidence being heard before IRB.

Under section 25(1) of IRPA, the Minister or his or her delegates may initiate H&C consideration in the absence of a formal request by the foreign national. This is generally done in the context of a pending application in another immigration class. As is the case with requests for H&C consideration under section 25, H&C consideration cannot be initiated by the Minister or his or her delegates in cases where the foreign national is inadmissible on security grounds, for human or international rights violations, or on grounds of organized criminality.

9.2 Pre-removal Risk Assessment

The PRRA process was put in place to respect Canada's domestic and international commitments to comply with the principle of non-refoulement. Individuals facing removal from Canada may, in accordance with IRPA and its regulations, apply to the Minister of Citizenship and Immigration Canada for protection. This includes individuals who are ineligible to make a refugee claim and failed refugee claimants with a dated decision.

As part of the reforms to the asylum system, foreign nationals receiving a negative decision on their refugee claim or PRRA application are not eligible to apply for a PRRA for one year (individuals not from a DCO) or three years (individuals from a DCO).

This primarily paper-based assessment helps to ensure that individuals who are subject to removal from Canada are not removed to a country where there is risk of persecution as defined in the 1951 Convention and its Protocol, or where

they would be in danger of torture or at risk of cruel and unusual treatment or punishment, in accordance with IRPA and its Regulations. Each PRRA is performed using risk-related information put forth by the applicants themselves. Currently, CIC officers, on behalf of the Minister of Citizenship and Immigration Canada, undertake PRRAs.

A PRRA is not an appeal of a negative refugee claim decision. Officers assessing applications from failed refugee claimants consider only new or newly obtained evidence of risk, that is, evidence that arose since the time of the negative refugee claim decision or that was not reasonably available for presentation at the time of the hearing of a refugee claimant.

An application for protection suspends the person's removal order, in accordance with the Regulations in this regard. Only in some cases are applicants asked to appear at an interview with the PRRA officer, generally for reasons of credibility.

With the exception of cases involving serious inadmissibilities (such as grounds involving serious criminality, security, organized crime, or a violation of human or international rights, as described under section 112(3) of IRPA), if an individual's application for protection is allowed, he or she becomes a protected person who may apply for permanent residence. Foreign nationals with serious inadmissibilities whose application for protection is allowed are afforded only a stay of removal, which can be lifted once circumstances in the destination country change. If the application is rejected, the removal order comes into effect again, at which time removal procedures begin. Applicants whose application for protection is not allowed may apply to the Federal Court for a review of the decision.

Persons who are not eligible for a PRRA include:

- Persons whose claims have been determined ineligible for arriving in Canada from a designated safe third country in accordance with IRPA and its Regulations
- Individuals who are subject to an authority to proceed under the Extradition Act
- Rejected refugee claimants, unless exempted, within one year of an IRB/PRRA decision with respect to an individual from a non-DCO, or within three years for an individual from a DCO.

The Minister of Citizenship and Immigration Canada may exempt habitual residents of certain countries, or particular groups within those countries, from the one-year bar on access to a PRRA should circumstances in their country of origin change significantly. This is intended to offer a safety net for failed claimants who face renewed risks due to a change in country conditions.

9.3 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". To ensure the safety and security of Canadians, this stay of removal does not apply to individuals who pose a security threat to Canada, are criminals, or have been convicted of war crimes or crimes against humanity. The stay also does not apply to persons who want to return to their country voluntarily.

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 consideration, based on H&C grounds, to remain in Canada permanently if they meet certain eligibility criteria, otherwise CBSA will take action to effect removal.

9.4 Regularization of Status Over Time

While there is no programme in Canada that results in automatic regularization over time, there are other avenues outside the asylum process that allow for individuals who are inadmissible to apply for permanent residence. These avenues are a PRRA (see section 9.2), a TRP (see section 9.6) and H&C processes (see section 9.1).

9.5 Regularization of Status of Stateless Persons

Stateless persons whose application for refugee protection has been rejected have access to H&C consideration and to a PRRA, as do other unsuccessful claimants. Inadmissible foreign nationals, regardless of whether they are stateless, may also be eligible for a TRP. TRP holders may eventually become permanent residents if they have not become inadmissible on any grounds other than those for which the original permit was issued.

Permanent residence may also be granted to stateless persons through other immigration programmes, for example as skilled workers and their dependents, or as family members sponsored by a Canadian citizen or a permanent resident.

A stateless person for whom a removal order is in effect may, under IRPA, be removed by 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 of that country.

In the event that sufficient travel documents cannot be procured, the removal is de facto suspended until either they can be provided or the individual's status in Canada is regularized.

9.6 Temporary Resident Permit

Under section 24 of IRPA, a CIC or CBSA officer may issue a temporary resident permit (TRP) if the officer is of the opinion that a foreign national is inadmissible and that issuing the permit is justified under the circumstances. A TRP, however, can be cancelled at any time and does not stay a removal order. In addition, failed asylum claimants cannot submit a TRP application until one year following a negative decision made by IRB.

Foreign nationals who have been on a TRP continuously for three years (due to a medical inadmissibility) or for five years (for any other inadmissibility) will become eligible for permanent residence under the permit holder class unless they become inadmissible on any other grounds after the TRP was issued, or they are inadmissible for security, human or international rights violations, or organized criminality.

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. The TRP facilitates early admission to Canada and the individual completes the permanent residence application process from within Canada.

10 RETURN

In most instances, refugee claimants are issued a departure order at the time they make their refugee claim. Persons for whom a departure order is in effect are required to leave the country within 30 days of its coming into force. CBSA is responsible for enforcing the removal order should the person fail to leave Canada voluntarily within the 30-day timeline.

10.1 Removal Orders Following a Negative Decision

A removal order issued to a refugee claimant comes into force when RPD rejects an application for refugee protection from a claimant who does not have a right of appeal to RAD or the claimant fails to file an appeal to RAD within the specified time frames. If the claimant files an appeal to RAD, the removal order comes into force 15 days after RAD notifies the claimant of a negative decision. A failed refugee claimant must leave Canada within 30 days of the coming into force of the removal order. In most cases, a failed refugee claimant who applies to the Federal Court for leave and judicial review of an RAD decision receives a stay of removal until the outcome of the hearing.

10.2 Pre-departure Considerations

When an individual has exhausted the appeals process, he or she is informed of the decision to affect 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 in medical cases.

10.3 Procedure

Assisted Voluntary Return and Reintegration

AVRR encourages voluntary departure, providing incentives to return. Under this scheme, claimants are provided with counselling and education on their rights and obligations, particularly with a view to ensuring the claimant appears for removal. They are offered a plane ticket back to their country of origin, and in-kind funding of up to CAD 2,000 is furnished by service providers in the claimant's country of origin in order to facilitate reintegration. This may be through employment or education assistance.

Participation in the AVRR programme is subject to conditions such as not participating in criminal activities, cooperating in obtaining travel documents, and complying with reporting requirements and limits on when the individual may return to Canada. This programme is intended to help to achieve more removals within one year from a final decision by IRB, as well as reduce the cost of enforcement related to removal. Applicants determined to have manifestly unfounded or fraudulent claims do not have access to the AVRR programme.

The AVRR programme ended in March 2015.

10.4 Freedom of Movement and 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 and who does not pose either a flight risk or a safety risk is not subject to significant movement restrictions or provided with escorts. However, where there are concerns

regarding compliance, measures such as detention and the provision of escorts to the final destination may be taken to ensure that the individual is returned.

10.5 Readmission Arrangements

Canada has readmission arrangements in place with the Czech Republic, Hong Kong (China), Jamaica, Lebanon, Portugal, Serbia, Slovenia and Viet Nam. Notably, Canada recently ratified a readmission arrangement with Guyana. This is the first readmission arrangement to be ratified by CBSA with a foreign government in 10 years. Readmission arrangements with China, Jordan (which will take the form of a memorandum of understanding) and Cuba are currently in the consultation or negotiation phase. As detailed above, Canada has an STCA in place with the United States, although these returns are for asylum claimants to make their claim in the United States as they entered that country before coming to Canada.

11 INTEGRATION

Settlement Programme

Through its Settlement Programme, CIC provides close to CAD 600 million annually to fund settlement services (outside of Quebec) that address barriers to integration and that support the full participation of all permanent residents, including protected persons, in the economic, social, cultural and political life of Canada.

These services are available to all permanent residents of Canada, including protected persons, Convention refugees and protected persons outside of Canada who have been selected for resettlement to Canada by CIC. Canadian citizens and non-permanent residents (such as refugee claimants) are not eligible to receive federally funded settlement services.

Settlement Programme funds were transferred by CIC to approximately 700 service provider organizations who furnished direct services to over 260,000 permanent residents in 2013/14. Delivered pre- and post-arrival, these settlement services aim to provide newcomers with the information they require to make informed decisions, language skills to achieve their integration goals, labour market services to find and retain employment, and community supports to build professional and personal networks. CIC also funds a variety of support services that play an essential role in enabling all clients to access the direct service components outlined above. These support services include childcare, translation and interpretation services, short-term crisis counselling, transportation assistance, and provisions for persons with a disability.

It should be noted that the province of Quebec maintains full responsibility for the administration of settlement and resettlement services for newcomers in its jurisdiction, in accordance with the 1991 Canada-Quebec Accord relating to the Immigration and Temporary Admission of Aliens.

CIC resumed administration of federally funded settlement services in the provinces of Manitoba and British Columbia in April 2013 and April 2014, respectively. This will support CIC in its provision of consistent, effective and efficient settlement services across the country, as well as strengthen federal leadership for ensuring comparable results for newcomers.

Settlement Programme: Pre-arrival Services for Protected Persons Selected for Resettlement to Canada

Since 1998, CIC has engaged the International Organization for Migration to organize, deliver, manage and monitor ongoing Canadian Orientation Abroad sessions. These sessions offer information and orientation content to protected persons outside of Canada who have been selected for resettlement to Canada. Orientation sessions aim to provide these clients with more realistic expectations of life in Canada, dispelling any myths or rumours while equipping participants with information and resources that will support their initial settlement.

Resettlement Assistance Programme

RAP, which is administered under CIC, supports government-assisted refugees and other eligible clients when they first arrive in Canada by providing direct financial support and by funding the provision of immediate and essential services, which respond to the complex needs that set them apart from other newcomers in Canada.

In compelling cases, other clients eligible for RAP can include those admitted to Canada as permanent residents under section 25(1) of IRPA (H&C grounds) or section 25(2) of IRPA (public policy established by the Minister in unique and compelling humanitarian situations).

Privately sponsored refugees typically receive only limited port of entry services, and may only be considered for income support as part of a blended initiative such as the BVOR Programme, or under exceptional circumstances. BVOR refugees are eligible to receive up to six months of RAP income support, with private sponsors providing another six months of financial support, and up to one year of social and emotional support.

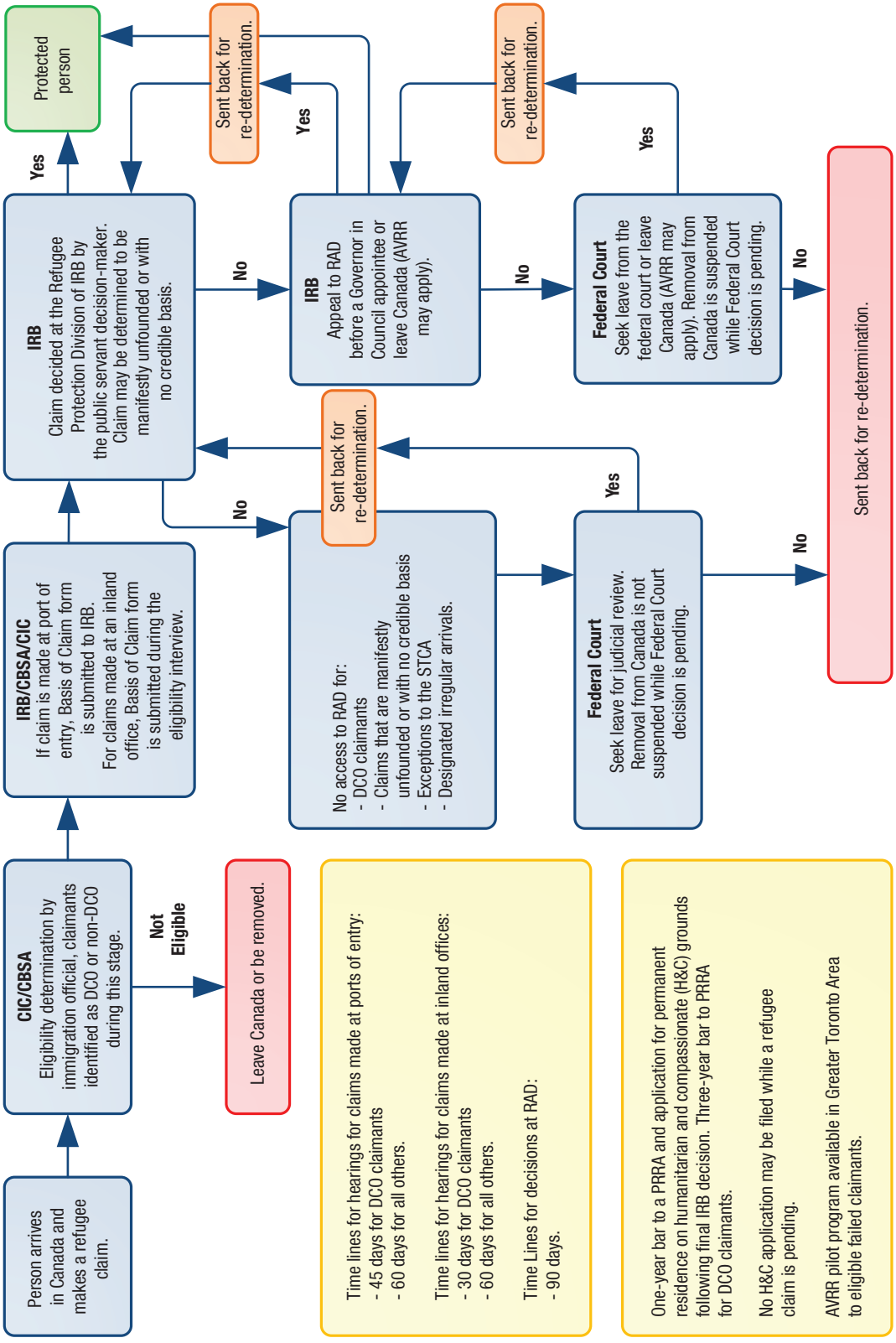
The majority of RAP funds are delivered directly to clients (outside of Quebec) in the form of start-up and monthly income support. This assistance is typically provided for up to one year or until the client becomes self-sufficient, whichever comes first. In exceptional cases for high-needs government-assisted refugees, this support may be extended for an additional 12 months. Monthly income support levels for shelter, food and incidentals are guided by the prevailing provincial/territorial basic social assistance rates in the client's province/territory of residence.

Most of the remaining RAP funds are delivered to service provider organizations in communities across the country (except in Quebec) to fund the provision of immediate and essential services to RAP clients (such as port of entry and reception services, winter clothing, temporary accommodation, assistance in locating permanent accommodation, needs assessments and referrals, information and orientation, and life skills training). These services are typically delivered during the first four to six weeks following a client's arrival in Canada, before a client transitions to the support through the CIC Settlement Programme.

RAP is a national programme operating in all provinces and territories with the exception of Quebec. The province of Quebec receives a separate funding allocation as part of the 1991 Canada-Quebec Accord relating to the Immigration and Temporary Admission of Aliens, in order to deliver similar services to eligible refugees destined for that province.

12 ANNEX

12.1 Asylum Procedure Flow Chart



12.2 Additional Statistical Information

CAN. Fig. 4 | Asylum Applications from Top 10 Countries of Origin in 2012, 2013 and 2014

	2012		2013		2014	
1	Hungary	1,879	China	761	China	1,186
2	China	1,663	Pakistan	630	Pakistan	776
3	Croatia	893	Colombia	597	Colombia	579
4	Pakistan	862	Syria	495	Nigeria	578
5	North Korea	723	Nigeria	469	Iraq	576
6	Nigeria	707	Afghanistan	386	Syria	558
7	Colombia	695	Haiti	329	Slovakia	469
8	India	684	D.R. Congo	310	Afghanistan	461
9	Slovakia	443	Somalia	291	Hungary	390
10	Somalia	432	Egypt	255	Haiti	364

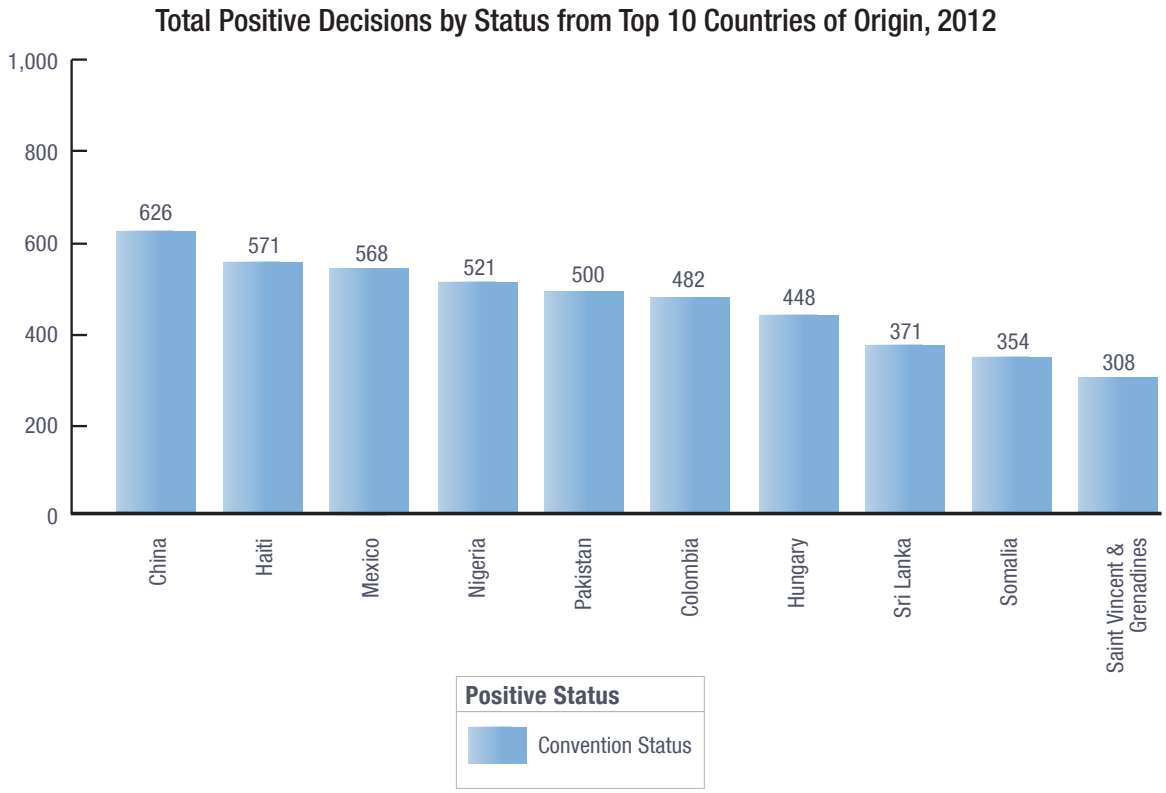
CAN. Fig. 5 | Decisions Taken at the First Instance in 2012, 2013 and 2014

	Convention Status		Humanitarian Status and Subsidiary/Complementary Protection		Rejections		Withdrawn, Closed and Abandoned Cases		
Year	Number	%	Number	%	Number	%	Number	%	Grand Total
2012	10,294	35%	0	0%	14,448	49%	4,697	16%	29,439
2013	7,817	38%	0	0%	9,897	48%	2,920	14%	20,634
2014	9,869	49%	0	0%	7,756	39%	2,335	12%	19,960

CANADA

CAN. Fig. 6.a Positive First-Instance Decisions, Top 10 Countries of Origin in 2012[9]

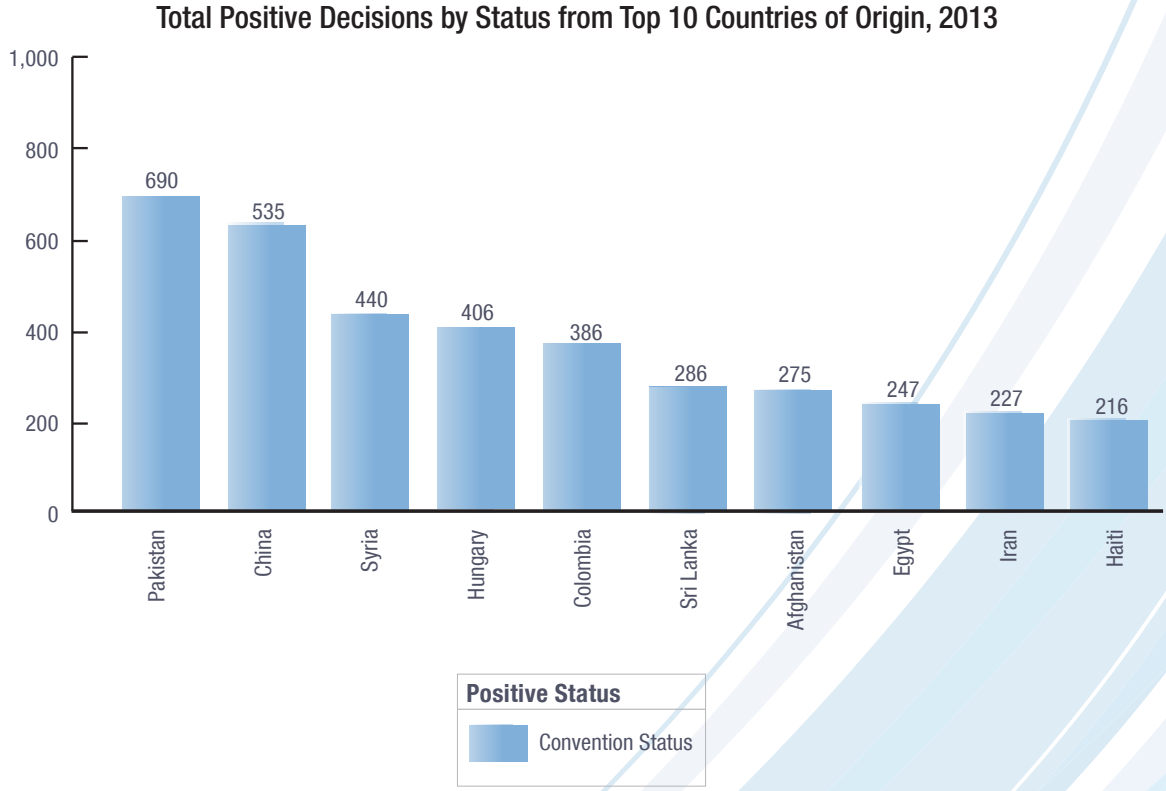
	Country of Origin	Total Positive	Total Decisions	Rate
1	China	626	1,502	41.7%
2	Haiti	571	1,176	48.6%
3	Mexico	568	2,712	20.9%
4	Nigeria	521	909	57.3%
5	Pakistan	500	682	73.3%
6	Colombia	482	1,213	39.7%
7	Hungary	448	2,599	17.2%
8	Sri Lanka	371	640	58.0%
9	Somalia	354	382	92.7%
10	Saint Vincent & Grenadines	308	708	43.5%



[9] Excluding withdrawn, closed and abandoned claims.

CAN. Fig. 6.b Positive First-Instance Decisions, Top 10 Countries of Origin in 2013[10]

	Country of Origin	Total Positive	Total Decisions	Rate
1	Pakistan	690	918	75.2%
2	China	535	1,324	40.4%
3	Syria	440	475	92.6%
4	Hungary	406	1,507	26.9%
5	Colombia	386	965	40.0%
6	Sri Lanka	286	539	53.1%
7	Afghanistan	275	342	80.4%
8	Egypt	247	269	91.8%
9	Iran	227	287	79.1%
10	Haiti	216	517	41.8%

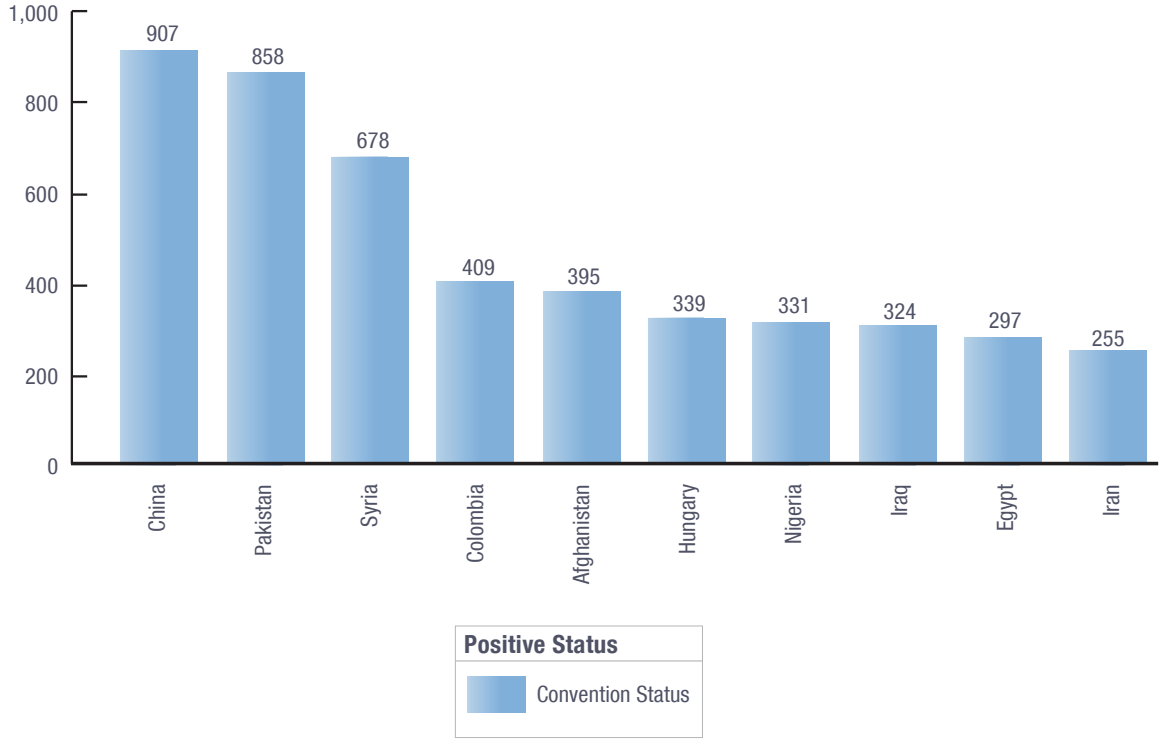


[10] Excluding withdrawn, closed and abandoned claims.

CAN. Fig. 6.c Positive First-Instance Decisions, Top 10 Countries of Origin in 2014[11]

	Country of Origin	Total Positive	Total Decisions	Rate
1	China	907	1,956	46.4%
2	Pakistan	858	1,060	80.9%
3	Syria	678	712	95.2%
4	Colombia	409	734	55.7%
5	Afghanistan	395	460	85.9%
6	Hungary	339	669	50.7%
7	Nigeria	331	603	54.9%
8	Iraq	324	361	89.8%
9	Egypt	297	340	87.4%
10	Iran	255	348	73.3%

Total Positive Decisions by Status from Top 10 Countries of Origin, 2014



[11] Excluding withdrawn, closed and abandoned claims.

Resettlement to Denmark. Congolese child and his family depart Malawi for a new life in Denmark.

UNHCR/J. Redden/March 2007

DENMARK

igc

1 BACKGROUND: MAJOR ASYLUM TRENDS AND DEVELOPMENTS

Asylum Applications

In the early 1980s, Denmark was receiving fewer than 1,000 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 with some 14,000 annual claims, then decreased significantly to between 5,000 and 6,000 between 1994 and 1997. The numbers peaked again between 1999 and 2001. Since 2002, numbers have decreased significantly and in 2006, less than 2,000 claims were received. This was followed by a 27 per cent increase in applications in 2008, a significant 60 per cent increase in applications in 2009, and a 32 per cent increase in 2010. In 2011, the number dropped by 25 per cent, resulting in a total of 3,806 applications that year. In 2012, the number of applications increased to 6,184, and there was a further 22 per cent increase in 2013 to 7,557 applications. Applications almost doubled between 2013 and 2014 with a 96 per cent increase to 14,815 applications.

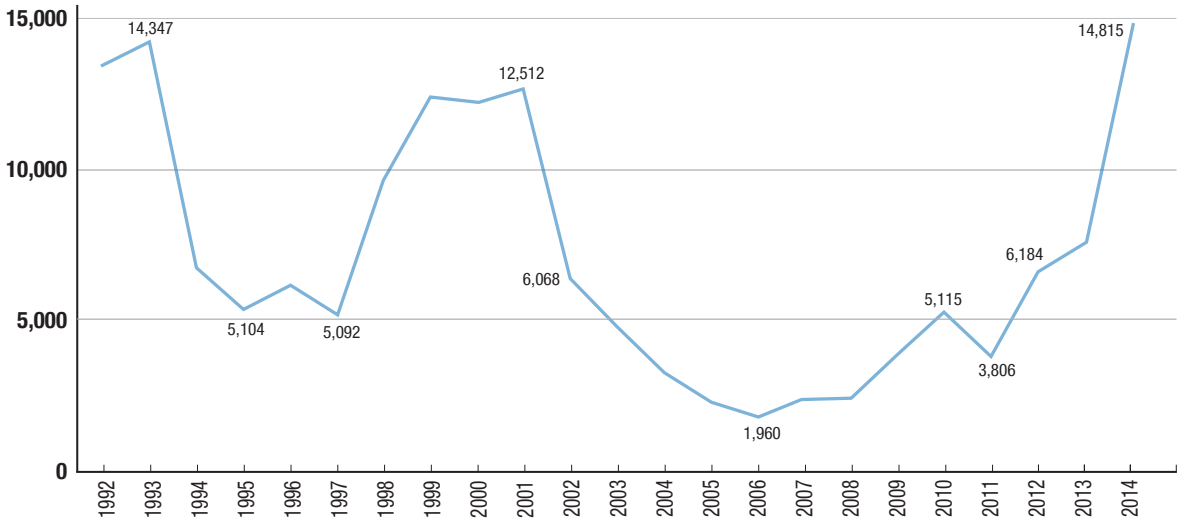
Important Reforms

On 17 January 2002, the Government presented its new "policy for foreigners" which, among other things, rested on the fundamental principle that the policy for foreigners 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 to the Marriage Act that were introduced in accordance with the Government's new policy for foreigners.

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 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).

DEN. Fig. 1 **Total Asylum Applications by Year, 1992–2014**[1]



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. From 2009 to 2011, there was little change in the top countries of origin. The majority of applicants came from Afghanistan, Iran, Syria and Serbia. During the following three years, the top three nationalities differed by quite a lot each year: in 2012, they were Somalia, Syria and Afghanistan; in 2013, they were Syria, Russia and Somalia; and in 2014, the top three were Syria, Eritrea and stateless persons.

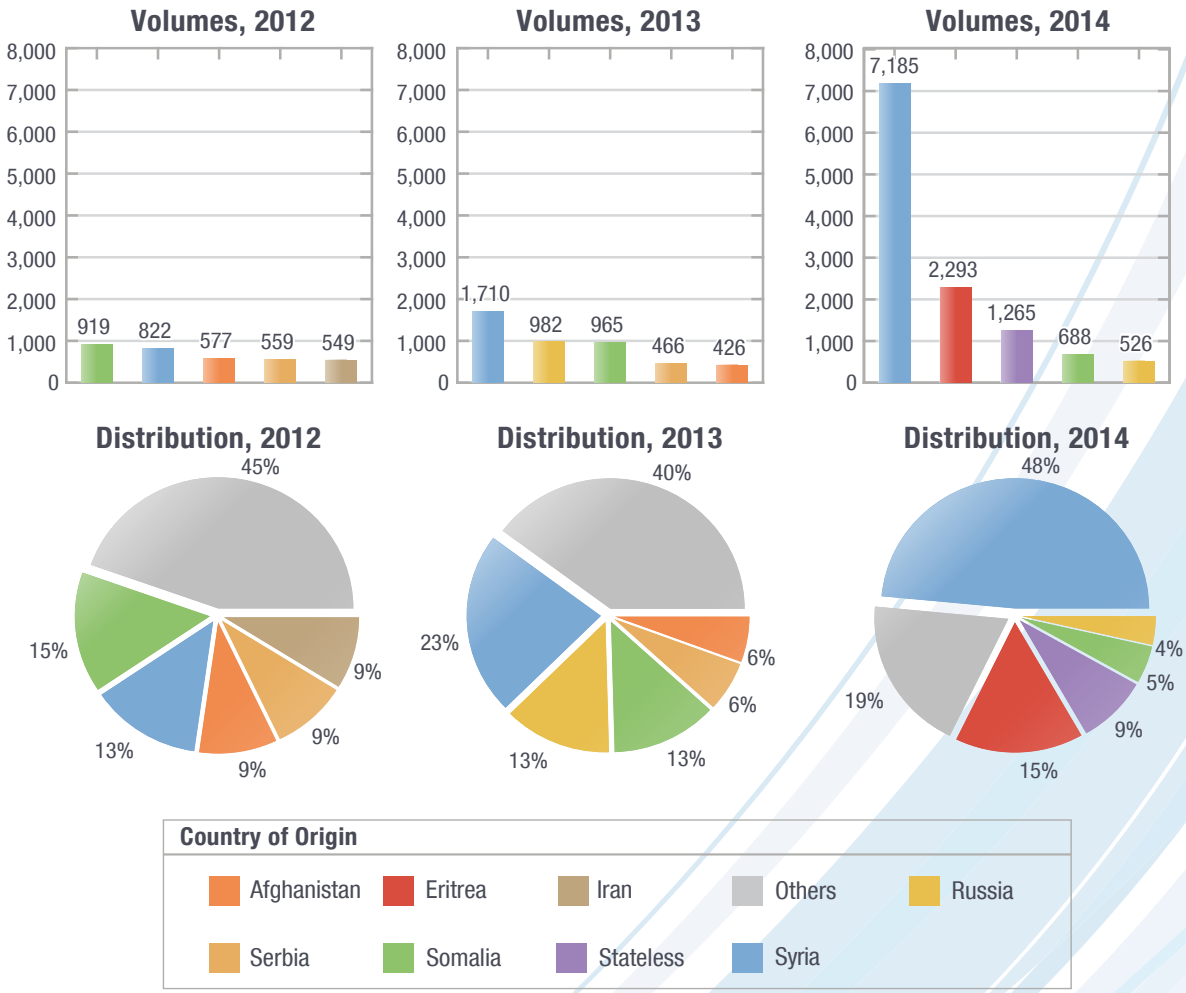
[1] Denmark changed the way of counting asylum applications in 2001 to be in line with other EU Member States. Data since 2001 include persons who are returned to a safe third country and persons who are transferred or re-transferred to another EU Member State. Data for 2014 are provisional.

The Act also abolished the possibility to apply for asylum in Denmark from a Danish diplomatic mission abroad.

Act No. 60 of 29 January 2003 (Bill No. L23 of 2 October 2002 regarding the processing of claims made by unaccompanied minors) includes an amendment that puts into law the usual administrative practice of granting residence permits to unaccompanied minors seeking asylum. 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, the Danish 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 and the system of periodic cash payments to asylum seekers) includes amendments stipulating that asylum seekers must carry out certain tasks at the accommodation centre and take part in relevant activities in order to maintain and strengthen their abilities. Furthermore, the amendment introduced various levels of periodic support payments to asylum seekers depending on their stage in the asylum process, the applicant's family relations and the applicant's fulfilment of his or her obligations at the accommodation centre.

DEN. Fig. 2 Asylum Applications Received from Top Five Countries of Origin in 2012, 2013 and 2014[2]



[2] Data for 2014 are provisional.

More recently, reforms made to the reception of asylum seekers have been aimed at preparing rejected asylum seekers to return to and reintegrate into 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.

Act No. 572 of 18 June 2012 changed the number of members of the Refugee Appeals Board. The board makes the final ruling on applications for asylum that are rejected by the Danish Immigration Service. Since 1 January 2013, the Refugee Appeals Board has consisted of five members while there were three in the past. The new members are appointed by the Danish Ministry of Foreign Affairs and the Danish Refugee Council.

Act No. 430 of 1 May 2013 (Bill No. L 130 of 25 April 2013) has made it possible for asylum seekers and failed asylum seekers who have stayed in Denmark as asylum seekers for six months, and who cooperate in relation to their return, to work and live outside the accommodation centres for asylum seekers. The Act focuses particularly on improved conditions for asylum seeking families with minor children. However, the objective is also to reduce the average time for processing cases within the asylum system.

Act No. 515 of 26 May 2014 (Bill No. L 141 of 20 May 2014) revoked the former integration potential criterion in relation to the selection of quota refugees and established that the selection should be based on an assessment of whether resettlement in Denmark is likely to result in a sustainable improvement of the refugee's life situation. Accordingly, the selection will focus on the capacity of the receiving communities and the needs and expectations of the refugee.

On 18 February 2015, Act No. 153 (Bill No. L72 of 3 February 2015) was enacted. It comprises rules on granting temporary protection status to asylum seekers in need of protection due to a critical situation in their home country, such as arbitrary violence and attacks on civilians. The temporary protection status will be granted for one year with a possibility for extension. A person who obtains said status will generally not be eligible for family reunification within the first years, and thereafter family reunification is conditioned upon the protection status being extended. The temporary protection status does not widen or affect the criteria for obtaining refugee status in Denmark.

Regions of Origin Initiative and the Solutions Alliance

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 to secure access to protection and durable solutions for refugees and internally displaced persons as close to their country of origin as possible. Enhanced protection in the regions of origin is believed to improve the protection and living conditions of refugees and internally displaced persons, thereby also diminishing 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 on aspects of the programme pertaining to Danish refugee and asylum policies.

At the moment, the Regions of Origin Initiative supports activities in Afghanistan, Ethiopia, Kenya, Somalia and South Sudan (which are all priority programme countries for Danish bilateral assistance), as well as Guinea, Iraq, Ivory Coast, Jordan, Liberia, Syria and Yemen.

By 2012, more than DKK 2 billion (about EUR 270 million) had been committed to the Regions of Origin Initiative. As of 2013, however, the initiative ceased to exist as an aid instrument in its own right as it was mainstreamed within Denmark's overall humanitarian assistance. Currently, assistance in support of protection and durable solutions for refugees and internally displaced persons, as well as affected local communities, is regarded as an overriding priority for Danish humanitarian action. This is reflected in the high proportion of Danish humanitarian assistance being spent on the victims of human-made disasters and in the fact that UNHCR and the Danish Refugee Council are among the largest partners.

In line with the overall focus on responding to displacement, Denmark is also a leading actor in international policy processes that seek to promote stronger approaches towards securing durable solutions for displaced people. For instance, Denmark is currently the co-chair of the Solutions Alliance, which is an international network of likeminded actors who seek to develop new, innovative partnerships that transcend the humanitarian-development divide in support of solutions. Other co-chairs include UNHCR, the United Nations Development Programme and the International Rescue Committee, along with the Government of Colombia. Membership also now includes a broad range of donors, affected governments, United Nations organizations, non-governmental organizations (NGOs) and academia. So far, the initiative has led to the establishment of national groups in Somalia and Zambia along with thematic groups focused on data and performance management and on engaging the private sector.

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. 863 of 25 June 2013). The 1951 Convention has been transposed into Danish law by reference. Relevant provisions of the European Convention on Human Rights 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 Treaties 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 the country to take part in Council Regulation (EC) No. 604/2013[3] and Council Regulation (EC) No. 2725/2000.[4]

As part of the implementation of Council Regulation (EC) No. 604/2013, the authority to process an appeal concerning the transfer of a refugee to the EU country responsible for the asylum application under the Regulation has been handed over from the Ministry of Justice to the Refugee Appeals Board, which is an independent quasi-judicial body. An appeal must be submitted within seven days of notification of the decision to transfer and has a suspensive effect.

3 INSTITUTIONAL FRAMEWORK

3.1 Principal Institutions

The Ministry of Justice is responsible for regulations concerning asylum and humanitarian permits, immigration, family reunification and citizenship. All integration matters are the responsibility of the Ministry of Employment and the Ministry of Children, Gender Equality, Integration and Social Affairs.

Under the Ministry of Justice, the Danish Immigration Service processes applications for asylum at the first instance. On 2 May 2013, the responsibility of the initial registration and clarification of the asylum motive was handed over from the National Police to the Danish Immigration Service. The Police continue to perform tasks that require police professionals (such as registering the name, date of birth and nationality, and obtaining fingerprints and photos).

The Refugee Appeals Board is an independent body responsible for hearing appeals of Danish Immigration Service decisions on asylum cases. It is the final avenue for appeal in asylum cases where the decision of the Danish Immigration Service may be contested. Under the manifestly unfounded procedure, the Danish Refugee Council, an NGO, cooperates with the Danish Immigration Service in helping to determine if a case is indeed manifestly unfounded.

The municipalities are responsible for ensuring the integration of refugees and other persons granted international protection in Denmark.

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 countries.

4.1 Visa Requirements

Denmark is party to the Schengen Agreement, which sets out the nationalities subject to visa requirements. Danish diplomatic and consular missions abroad have the jurisdiction to issue bona fide visas in cases that clearly merit approval, while all other cases are sent to the Danish Immigration Service for further investigation and processing. Negative decisions of the Danish Immigration Service on a visa application may be appealed to the Ministry of Justice.

An amendment to the Danish Aliens Act, which makes it possible to introduce a new model for the division of competences between the missions and the central authorities, was adopted by the Danish Parliament in December 2013. Hereunder, the Danish missions are given the competence to make negative decisions in visa cases where all relevant information can be obtained directly by the mission. Accordingly, cases will be forwarded to the Danish Immigration Service for decision-making only if there is a need for information that is available only to the Danish Immigration Service and not the missions.

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

Denmark has at various times posted immigration liaison officers abroad who have assisted the local authorities in, among other tasks, authenticating and verifying travel documents of persons travelling to Denmark.

[3] Council Regulation (EC) No. 604/2013 of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (Dublin III Regulation).

[4] 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).

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 enforcement activities carried out on 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 the border
- In person at a police station, including the police station located inside Copenhagen Airport
- At the Sandholm Accommodation Centre, run by the Danish Immigration Service, by submitting a written application, either personally or with the assistance of an attorney
- At the municipality, in which case the National Commissioner of Police will be contacted in order for the applicant to be channelled into the regular asylum procedure.

5.1.1 Outside the Country

Applications at Diplomatic Missions

Applications for asylum may not be made from outside Denmark.

Resettlement

Denmark has in place an annual resettlement programme with a flexible quota of 1,500 places to be filled over a three-year period.

Criteria for Resettlement

Quota refugees must fulfil the same conditions as asylum seekers 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 his or her country of origin and who meets one of the following criteria:

- The person falls within the provisions of the 1951 Convention.
- The person risks being subjected to the death penalty, torture, or inhuman or degrading treatment or punishment if returned to his or her country of origin.
- The person is in such a position that essential considerations of a humanitarian nature conclusively make it appropriate to grant the application.

The Danish Immigration Service is responsible for making final decisions on selection.

Procedures

At the beginning of each year, the Minister of Justice, upon recommendations made by the Danish Immigration Service, makes decisions on the overall allocation of approximately 500 quota places within different categories (geographical, emergency and medical) and on the destinations of selection missions for that year.

Of the 500 persons, approximately 400 are selected by the Danish Immigration Service following interviews with refugees identified by UNHCR. These interviews take place on resettlement missions. The remaining 100 persons are identified among the medical or urgent cases presented by UNHCR, usually on a dossier basis.

Family members of refugees are not generally included in the resettlement quota but once the refugee has been resettled in Denmark, he or she may apply for family reunification.

In 2014, Denmark planned to resettle approximately 140 persons from Syria.

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 Danish Immigration Service 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

As stated above, the Danish Immigration Service is responsible for determining the travel route of the asylum seeker when an asylum claim is made. It 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 Danish Immigration Service will request that the country assume responsibility for processing the asylum claim. If the State in question agrees to do so, the asylum seeker is transferred to that State for processing.

The initial process of determining whether an application for asylum should be processed in Denmark or in another country takes up to three months to complete, although it may in some cases take as long as six months.

Freedom of Movement and Detention
The freedom of movement of an asylum seeker is not restricted during the asylum procedure. However, he or she 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 documents are deemed to be insufficient.

Conduct of Transfers
Transfers are carried out either voluntarily or with police escort.

Suspension of Dublin Transfers
The Danish Immigration Service and the Ministry of Justice may make a decision to suspend transfers to another State party to the Dublin II Regulation. On 23 January 2011, Denmark decided to implement a temporary suspension on the transfer of asylum seekers to Greece and vulnerable people to Italy. the transfer of asylum seekers to Bulgaria was also temporarily suspended in 2014.

Review/Appeal
A decision by the Danish Immigration Service on a transfer under the Dublin II Regulation may be appealed to the Refugee Appeals Board. The appeal automatically suspends the enforcement of the decision.

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 Danish Immigration Service to complete an application form stating the reasons for his or her asylum request. For illiterate persons, this application form can be replaced by a short "asylum motive interview", which would then be scheduled with the Danish Immigration Service.

Applications for asylum under the 1951 Convention are treated in the same way as applications for subsidiary protection (protection status) and examined using the same procedure.

Admissibility
If the Danish Immigration Service decides, under the Dublin II Regulation, that an asylum application may be processed in Denmark, it will interview the applicant and proceed with making a determination on the claim.

In addition to applying the Dublin II Regulation, Denmark maintains a list of safe third countries. The Danish 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.[5]

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 comes from a country where, according to background information, 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 Danish Immigration Service. The Danish Refugee Council also interviews the asylum seeker and then gives a statement on the case, and the Danish Immigration Service will aim to come to a decision within a few days. If the Danish Refugee Council agrees with the Danish Immigration Service that the application is manifestly unfounded, the decision of the Danish Immigration Service to reject the claim for asylum may not be appealed.

If the Danish Refugee Council disagrees with the decision of the Danish Immigration Service, the Danish 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 Danish Immigration Service interviews the asylum seeker with the assistance of an interpreter. Following the interview, the Danish 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.

[5] See the section on safe third countries for more information on the application of this policy.

IN FOCUS

THE HANDHELD PROCEDURE

The "handheld procedure" aims to achieve a maximum processing time of two months for determining the asylum seeker's identity and travel route and whether another State is responsible under the Dublin II Regulation for processing the claim. It also aims to reduce the first phase of interviewing and decision-making to two months. In order to achieve this, the applicant is led from one step of the procedure to the next, without waiting periods between steps. This is further facilitated by close cooperation between the Danish National Police and the Danish Immigration Service. The Police and the Danish Immigration Service have an office in the same building next to the Sandholm Accommodation Centre.

Manifestly Unfounded Procedure

In a small number of cases, the Danish 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 53b(1) of the Aliens Act, the Danish 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 Act.[6]
- 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 cited by the applicant are in manifest disagreement with other specific information on the applicant's situation.
- The circumstances cited by the applicant are found 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 a separate interview of the applicant with the Refugee Council. If it agrees with the Danish Immigration Service that the application is manifestly unfounded, the application will be rejected by the Danish Immigration Service without a right of appeal. If the Refugee Council does not agree that the claim is manifestly unfounded, the Danish 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 Danish Refugee Council, are not manifestly unfounded are examined by only the Chairman of the Refugee Appeals Board or a Deputy Chairman using a written procedure (without a hearing), unless there is reason to believe that the board will change the decision made by the Danish Immigration Service. If there is a possibility that the Refugee Appeals Board will reverse the decision, the case is examined by the full member board with a personal appearance by the applicant.

The Danish Immigration Service will reject an application only after the 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 be given the opportunity to appear before the Refugee Appeals Board and present his or her asylum claim at an oral 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, which implies that no appeal of the board's decisions can be made to the Danish courts, except for questions concerning points of law.

If the Refugee Appeals Board agrees with the decision of the Danish Immigration Service, the asylum seeker must leave Denmark within 15 days, or in some cases immediately.

If the Refugee Appeals Board does not agree with the decision of the Danish Immigration Service, the asylum seeker is normally granted a residence permit either as a Convention refugee or as a person granted protection status (subsidiary protection).

Freedom of Movement during the Asylum Procedure

Detention

If imposing reporting obligations or other measures is not enough to ensure the asylum seeker's cooperation with the efficient examination of the asylum application or removal from Denmark, an asylum seeker may be detained during the procedure. Detention is possible if the asylum seeker, through his or her behaviour, essentially obstructs the procuring of information for the case by:

[6] Section 7 of the Aliens Act describes the criteria for granting refugee status.

- Without reasonable cause, repeatedly failing to appear for interviews with the National Police or the Danish Immigration Service, to which he or she has been summoned
- Failing to disclose information on his or her identity, nationality or travel route
- Making obvious misrepresentations thereon
- Otherwise not assisting in 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 Danish Immigration Service or Police to which the person in question has been summoned.

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 there are reasons to reopen the claim (such as developments in the country of origin or sur place considerations).

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 to 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 Danish 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 may be applied.[7]

Asylum Claims Made by EU Nationals

Asylum claims lodged 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 protection 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 Danish 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 Danish Immigration Service.

5.2.3 Safe Third Country

After a hearing with the Danish Immigration Service and the National Police, the Ministry 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 Danish Immigration Service. In practice, it is often the Police that will present the decision to the asylum seeker at the airport after having consulted with the Danish Immigration Service.

If the decision is immediately enforceable, the alien 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 Danish 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. Alternatively, a reporting requirement may be imposed.

A decision by the Danish Immigration Service to return an asylum seeker to a safe third country may be appealed to the Ministry of Justice. The appeal does not automatically have a suspensive effect.

[7] See the section on the accelerated procedure.

5.3 Special Procedures

5.3.1 Unaccompanied Minors

Procedures

Unaccompanied minors must meet the same conditions as other asylum seekers in order to have their application processed. However, unaccompanied minors are considered as a particularly vulnerable group and they will be put through the normal asylum procedure only if they are deemed mature enough to understand the procedure. Unaccompanied minors over 15 years of age are generally considered to have the required level of maturity, but the decision on maturity is taken on a case-by-case basis.

Special guidelines have been devised for processing cases involving unaccompanied minors. This means that their application will be processed quickly, and that they will be housed in special accommodation centres with specially trained staff.

Every unaccompanied minor who makes an asylum claim is appointed 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 Danish Immigration Service appoints an attorney to represent the minor. Upon consent by the minor, a search for his or her family may be conducted.

Age Assessment

If there is any doubt about the age of the minor, a voluntary medical examination may be carried out by the Department of Forensic Medicine. The examination consists of dental x-rays, x-rays of the left hand and a general medical examination. The department gathers the relevant information and provides a statement on the minor's age.

Decisions

If the Danish Immigration Service assesses that an unaccompanied minor 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 asylum application being processed.

If the asylum claim is refused, the minor may still be granted a residence permit if it is determined that the minor would 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. Minors granted permission to stay on these grounds rather than having been granted refugee status will have their permit revoked once they turn 18 years of age.

If an unaccompanied minor is granted asylum, he or she receives a residence permit valid initially for a period of seven years. The permit is renewable. If an unaccompanied minor under 15 years of age is granted any other type of residence permit, the permit is valid until he or she turns 15. For those aged 15 years or older, this permit is initially valid for a period of one year and is renewable.

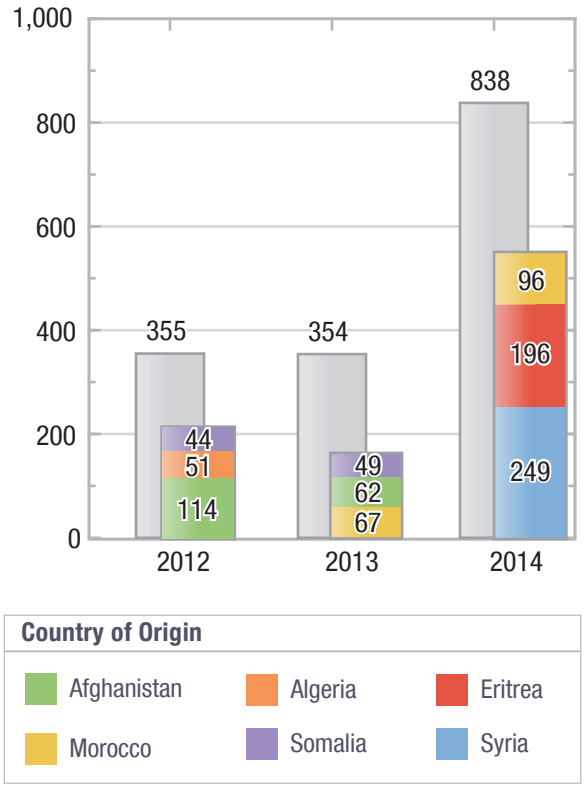
Appeal

If the appeal against the decision not to grant a residence permit under section 9c(3) of the Aliens Act is submitted less than seven days after the decision of the Danish Immigration Service, the unaccompanied minor may remain in Denmark during the appeal procedure. If the appeal is submitted after this time period has elapsed, it will be processed accordingly but the date of removal will not be affected.

UNHCR/G.M.B. Akash/June 2006

DEN. Fig. 3 | Asylum Applications by Unaccompanied Minors in 2012, 2013 and 2014[8]

	2012	2013	2014
Total Asylum Applications	6,184	7,557	14,815
Applications by Unaccompanied Minors	355	354	838
Percentage	6%	5%	6%



5.3.2 Temporary Protection

Denmark does not have in place a regime for granting temporary protection.

5.3.3 Stateless Persons and Other Vulnerable Groups

The risk of persecution facing stateless asylum applicants is determined by an assessment of whether the applicant is indeed stateless, followed by an assessment of 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.

The Danish Immigration Service also focuses on other vulnerable groups, including by providing caseworkers with special training on these issues (such as gender-based claims or claims by lesbian, gay, bisexual or transgender (LGBT) persons). The applicants who base their asylum claims on sexual orientation or gender identity are considered on a case-by-case basis. The mere fact of being an LGBT person may be sufficient to grant protection. However, the Danish Immigration Service has, so far, only considered applications from LGBT persons that have referred to actual conflicts with authorities, private persons or groups due to the person's sexual orientation or gender identity. If the merits of the cases are substantiated, LGBT applicants are granted Convention status under "membership of a particular social group" grounds.

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 Protection Status

In compliance with its international obligations under the European Convention on Human Rights and the Convention against Torture, Denmark grants protection status to persons who are at risk of the following if returned to the country of origin:

- 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, the asylum seeker is notified of the decision orally by the Danish Immigration Service or by the Police with the assistance of an interpreter.

The decision of the Refugee Appeals Board is normally served to the applicant immediately after the hearing.

[8] Data for 2014 are provisional.

6.3 Types of Decisions, Statuses and Benefits Granted

The Danish Immigration Service may take one of the following decisions on an asylum claim:

- Grant Convention refugee status
- Grant protection status
- Refuse to grant Convention refugee status and/or refuse to grant other types of protection
- Refuse to consider asylum claims lodged by a person who can be refused entry and removed to a safe third country
- Refuse to consider an application lodged 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 obligations (as per section 31 of the Aliens Act) – 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 protection 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.

6.4 Exclusion

An asylum seeker cannot be issued a residence permit as a refugee or as a person with protection 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.

As a rule, unless particular reasons make it appropriate (including regard for family unity), a foreign national cannot be issued a residence permit as a refugee or as a person with protection status, if:

- The person has been convicted abroad of an offence that could lead to expulsion (for example, in accordance with the provisions on expulsion for crimes) if his or her case had been heard in Denmark.
- There are serious reasons for assuming that the person has committed an offence abroad that could lead to expulsion (for example, in accordance with the provisions on expulsion for crimes).
- 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 an EU Member State, and an alert has been entered into the Schengen Information System in respect of the person for the purpose of refusal of entry pursuant to the Schengen Agreement.
- Because of a communicable disease or serious mental disorder, the person must be deemed potentially to represent a threat or to cause substantial inconvenience to those around him or her.

Decisions to exclude a person from refugee or protection status are taken by the Danish Immigration Service and may be appealed to the Refugee Appeals Board. While the Danish 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 the country.

6.5 Cessation

A residence permit issued to a refugee or person with protection 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 alien has resided outside of Denmark for 6 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 above-mentioned reasons may make an application to the Danish Immigration Service to retain his or her residence permit. The Danish Immigration Service may make a determination in favour of the person, depending on the individual circumstances.

Decisions regarding cessation are taken by the Danish Immigration Service and may be appealed to the Refugee Appeals Board.

6.6 Revocation

The Danish Immigration Service may revoke or refuse to extend a residence permit granted to a recognized refugee or person with protection 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, or 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.
- The person has returned to his or her country of origin.

When assessing whether a residence permit should be revoked, the Danish 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 Danish Immigration Service is supported in his or her task by a number of tools, including the UNHCR Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status,[9] country of origin information (COI) services, the jurisprudence of the Refugee Appeals Board, reports on human rights case law produced jointly by the Refugee Appeals Board and the Danish Immigration Service, and, where required, language analysis, age determination tests and medical reports. COI support services and language analysis tools are highlighted below.

6.7.1 Country of Origin Information

The Country of Origin Information Division of the Danish Immigration Service is responsible for collecting information on conditions in asylum seekers' countries of origin or countries of habitual residence. The division consists of country advisers responsible for various geographical regions.

As part of its research methodology, the Country of Origin Information Division undertakes several fact-finding missions every year. The purpose of these 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 organizations in other countries.

During fact-finding missions, the country advisers consult a wide range of sources, including national and international NGOs, international organizations and national authorities. Every effort is made to ensure that the information gathered on these 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 decision-makers with balanced COI. The fact-finding reports consist of statements from sources which have been given the opportunity to comment on, correct and approve the information they provided before publication.[10]

6.7.2 Language Analysis

Language analysis is a service provided by external consultants to decision-makers at the National Commissioner of Police or at the Danish Immigration Service who may decide that it is necessary to use language analysis in order to assist in determining an asylum seeker's nationality or region of origin.

7 EFFICIENCY AND INTEGRITY MEASURES

7.1 Technological Tools

7.1.1 Fingerprinting

Asylum seekers 14 years of age or older are always fingerprinted.

The fingerprints are stored in a particular database under the responsibility of the National Police. The purpose of taking fingerprints is first and foremost 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, they are used in connection with applications for travel documents (for example, 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 Danish Immigration Service decision-makers 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 Danish Immigration Service or Refugee Appeals Board decision-makers believe doing so would assist in authenticating

[9] UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status* (Geneva, 2011).
[10] Reports drawn up on the basis of fact-finding missions are published on the website www.nyidanmark.dk. Most reports are available in English.

documents submitted by asylum seekers in support of their claims. Forensic testing can also be done by the Ministry of Foreign Affairs.

7.1.4 Database of Asylum Applications/Applicants

The Danish immigration authorities have in place a database, called the ESDH system, that contains 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 ESDH system) and through those systems may be able to determine whether an applicant has lodged a visa application at a Danish consular post beforehand. With the roll-out 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 countries through access to the central VIS database (C-VIS).

7.2 Length of Procedures

There is no time limit imposed on persons to make an application for asylum after their arrival in Denmark.

The length of the asylum procedure is not regulated by law and often varies according to the number of applicants and other factors. In 2011, the average length of the asylum procedure for all cases (normal and expedited procedure) was approximately 90 days.

IN FOCUS

ADOPTING "LEAN" PRODUCTION PRINCIPLES

Lean production adheres to the notion of achieving "greater value with less work". It is a generic process-management philosophy derived mostly from the Toyota Production System, which came to prominence under the term "lean" in the 1990s. The adoption of this and other measures has assisted the Danish Immigration Service in meeting its goal of processing asylum claims more efficiently.

The "handheld procedure", as described in In Focus in section 5.1.3, is a practical example of how lean principles can lead to shorter processing times.

7.3 Pending Cases

As of the end of 2014, there were 7,692 pending cases at the Danish Immigration Service.[11]

Each year, the Danish Immigration Service and the Ministry of Justice enter into an agreement in which certain goals and objectives are specified. The agreement also includes specific goals in relation to the number of asylum cases to be processed and the quality standard to be achieved.

7.4 Information Sharing

The National Commissioner of Police and the Danish 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 the claim under the Dublin II Regulation. Moreover, specific information may be requested from other third countries, including copies of the file of an asylum seeker who had previously made an asylum application in a third country.

Such sharing of information with other organizations 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 (protection status) and are examined in the same procedure.

[11] This number includes only spontaneous asylum applications at the first instance; it does not include pending applications for a permit on humanitarian grounds.

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, it is offered to those appearing before the Refugee Appeals Board. Legal aid is also offered to unaccompanied minors seeking asylum as soon as the Danish Immigration Service channels the application into the manifestly unfounded procedure.

IN FOCUS

ASYLUM INFORMATION FILM

The Danish Immigration Service and the National Police developed a film to inform asylum seekers about the asylum procedure and about the rights and duties they have as an asylum seeker in Denmark.

The film is divided into segments so that the relevant segment can be shown before each step of the asylum procedure. With this tool, the asylum seeker receives a limited amount of targeted information at the right time, which helps him or her to process all the information. The film has been recorded in 25 languages.

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, which is located in Stockholm, may respond to inquiries from asylum seekers during the procedure and may be of assistance by providing information on the procedure, on attaining legal counsel and on any organizations that may be of further assistance.

The UNHCR Regional Office plays no formal role in refugee status determination in Denmark. However, upon the request of a party in the procedure, UNHCR may provide updated COI, legal advice or UNHCR's recommendations and guidelines. In exceptional precedent-setting cases, UNHCR may submit amicus curiae to the last instance body. The UNHCR Regional Office may request access to a particular asylum application, usually for advocacy purposes.

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, which includes the possibility of contacting the implementing partner of UNHCR in Denmark, namely the Danish Refugee Council. This information is provided in the context of an asylum seeker "course", through leaflets at the reception centre and with the presence of representatives of the Danish Refugee Council at the reception centre.

The Danish Refugee Council is a private, independent humanitarian organization, which may take on an advocacy role on behalf of asylum seekers.

As previously mentioned, decisions on applications considered to be manifestly unfounded are transferred by the Danish Immigration Service to the Danish Refugee Council for review. If the Danish Refugee Council disagrees with the Danish 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.

8.2 Reception Benefits

8.2.1 Accommodation

Asylum seekers in Denmark typically reside at an accommodation centre while their case is being processed.

It is the responsibility of the Danish 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. Other accommodation centre operators include the municipalities of Thisted, Langeland and Jammerbugt.

Upon entry, asylum seekers reside first at a reception centre, and are then moved to an accommodation centre where they reside until a final decision has been taken.

In certain cases, the Danish Immigration Service will grant applicants permission to stay outside the accommodation centre. This is of particular relevance to asylum seekers who have family or friends living in Denmark with whom they would like to stay during the application process.

According to the Aliens (Consolidated) Act No. 863 of 25 June 2013, the Danish Immigration Service can decide that an asylum seeker may accept private accommodation or be offered an independent residence affiliated with an accommodation centre provided that the alien has stayed in Denmark for at least six months from the time of his or her submission of the asylum application. Furthermore, the Danish Immigration Service must have decided that the alien may stay in Denmark during the asylum proceedings

and the alien must conclude a contract with the Danish Immigration Service regarding the conditions for accommodation outside the accommodation centre. In this regard, it must be made a condition of the contract that the alien cooperates in obtaining information for the assessment of the asylum application and that the alien upon refusal or waiver of the asylum application cooperates in his or her departure without undue delay.

Asylum seekers who conclude contracts with the Danish Immigration Service regarding private accommodation or an independent residence affiliated with an accommodation centre will still receive their cash allowance and necessary health care from the nearest accommodation centre.

Asylum seekers who meet the above-mentioned conditions can also submit an application to move into his or her own self-financed residence, provided that the alien is able to maintain his or her household. In this regard the alien will not receive a cash allowance from the Danish Immigration Service and will therefore have to pay for the self-financed residence with his or her own money.[12]

Asylum seekers who are married to a Danish citizen or a person holding a Danish residence permit can also submit an application to reside privately with their spouse while the asylum application is being processed. The Danish Immigration Service will grant permission provided the applicant concludes a contract with the above-mentioned conditions on cooperation. Asylum seekers who conclude a contract with the Danish Immigration Service on staying in private accommodation with a spouse residing in Denmark will not receive a cash allowance or health care from the Danish Immigration Service, as the spouse is expected to support the applicant.

Unaccompanied minors are placed in the unaccompanied minors centre run by the Danish Red Cross and the Thisted Municipality.

8.2.2 Social Assistance

Asylum seekers receive a cash allowance from the Danish Immigration Service to cover their expenses. This does not apply, however, to applicants who are married to a Danish citizen or a person holding a Danish residence permit. In such cases, the spouse is expected to support the applicant.

The basic allowance is DKK 53.24 (about EUR 7.10) per day per adult. If an applicant is living with his or her spouse, registered partner or cohabitating partner, each will receive DKK 42.16 (about EUR 5.60) per day. 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 8.89 (about EUR 1.20) per day. If it is decided that the application is to be processed in Denmark, the supplementary allowance will be increased to DKK 31.07 (about EUR 4.15) per day. The supplementary allowance is paid every other Thursday, at the end of each 14-day period.

During the initial phase, the caregiver allowance for the first and second child is DKK 62.13 (about EUR 8.30) 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 84.31 (about EUR 11.30) per child per day. For asylum seekers living at centres where free meals are served, the caregiver allowance is DKK 8.89 (about EUR 1.20) per child per day for asylum seekers in the initial phase and DKK 31.07 (about EUR 4.15) per child per day for asylum seekers who have their application processed in Denmark. The reduced caregiver allowance for the third child and fourth child is DKK 44.38 (about EUR 5.94) 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 if they are staying in an accommodation centre where free meals are served.

8.2.3 Health Care

Asylum seekers are not covered by the Danish National Health Insurance System. Instead, expenses for their health care and dental care are covered by the Danish Immigration Service.

Asylum seekers under 18 years of age are entitled to the same health care as children who are Danish residents. In the case of adult asylum seekers, the Danish Immigration Service covers health care expenses, provided the health care services are necessary, urgent or pain-relieving. Furthermore, an asylum seeker may be referred by the health care staff at the accommodation centre to a general practitioner, a psychologist or psychiatrist, or medical specialists.

8.2.4 Education and activities

Asylum seekers over 18 years of age must sign a contract with the accommodation centre regarding where they are accommodated. The contract states which courses and activities the asylum seeker is to participate in and which tasks he or she will be responsible for at the centre. If the asylum seeker refuses to comply with the terms of the contract, the Danish Immigration Service can decide to impose sanctions such as reducing the cash allowance.

[12] See section 8.2.5 on access to the labour market.

Education

Asylum seekers who have not received a final rejection of their application for asylum must participate in courses designed to maintain and improve both their general skills and their entrepreneurial or professional skills. The courses are held at, or in association with, the accommodation centre.

Newly arrived asylum seekers take part in an introductory course at the centre. When the initial case review is completed and it has been decided that the asylum application is to be processed in Denmark, the applicant will be offered courses that will prepare him or her for reintegration into his or her country of origin, such as English language courses, language courses in his or her own mother tongue, or vocational training to help him or her find employment or start a business in the country of origin.

Children between 6 and 17 years of age will be offered special courses either at, or in affiliation with, the accommodation centre. Children will be taught Danish, English and other subjects taught at Danish primary school. The number of class hours per week will correspond to that of the equivalent class in the Danish primary school. Children who possess the necessary academic and language skills may be enrolled in regular public or private schools.

Activities inside Reception Centres

All asylum seekers aged 18 years or older are obliged to assist in 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 such tasks have not been performed.

Activities outside Reception Centres

Applicants may participate in unpaid job training programmes at an organization that is not affiliated with the reception centre. They may also participate in unpaid humanitarian work or any other form of volunteer work. However, rejected asylum seekers who do not cooperate on their departure may not participate in job training activities or volunteer work outside of the reception centre.

8.2.5 Access to the Labour Market

If an asylum seeker is over 18 years of age and meets certain conditions, he or she can apply to the Danish Immigration Service for an approval of an offer of employment while the asylum application is being processed.

Before concluding a contract with the Danish Immigration Service on the conditions under which the asylum seeker is approved to work, he or she must have had his or her identity established. Furthermore, the asylum seeker must have stayed in Denmark for at least six months from the date of submission of the asylum application, and the Danish Immigration Service must have decided that the asylum seeker may stay in Denmark during the asylum proceedings.

As mentioned above, the asylum seeker must conclude a contract with the Danish Immigration Service and it must be made a condition of the contract that the asylum seeker cooperates in obtaining information for the assessment of the asylum application and that the asylum seeker, upon refusal or waiver of the asylum application, cooperates in his or her departure without undue delay.

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An asylum seeker can be employed in any ordinary job without public subsidy. The employment can be full-time or part-time and must be offered under terms of standard salary and terms of employment that apply to the Danish labour market. An asylum seeker will not be permitted to run his or her own business.

The asylum seeker will be required to pay labour market contributions and gross tax on his or her income, and the income after tax will be deducted from the cash allowances the asylum seeker receives from the Danish Immigration Service. For every Danish krone earned in salary the cash allowance will be reduced by the same amount. The asylum seeker can also be required to support his or her spouse and children under 18 years of age. In addition, an asylum seeker may be required to pay rent if he or she is accommodated in an accommodation centre for asylum seekers or in an independent residence affiliated with an accommodation centre, or if the asylum seeker's wage is higher than the level of cash allowance.

If an asylum seeker is offered employment within an area of work covered by the "positive list" – a list of professions and job categories currently experiencing a shortage of qualified workers – he or she can also apply for a residence permit on these grounds. If the asylum seeker is offered a highly paid job, he or she can also apply for a residence permit under the Pay Limit Scheme.

8.2.6 Food Allowance Programme for Asylum Seekers

If an asylum seeker does not live up to the obligations specified in the Aliens Act, the Danish Immigration Service can place him or her, as well as his or her family members, on the food allowance programme.

This programme is intended primarily for cases where an asylum seeker has received the final rejection of his or her application for asylum, has not left the country by the set deadline, and is refusing to cooperate with the Police regarding his or her departure.

Being placed on the programme means that supplementary allowances earned through such activities as educational courses or job training will cease to be paid. The caregiver allowance for asylum seekers with children will also be reduced. This means that applicants will receive only the basic allowance for food.

Families with children under 18 years of age will receive a child package every 14 days per child, regardless of the child's age. The child package contains fruit, soft drinks and a few sweets.

The Danish 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 reopened. In such cases, the asylum seekers once again receive the benefits and allowances to which they were entitled during the procedure, until the date of departure or resolution of the reopened claim.

9 STATUS AND PERMITS GRANTED OUTSIDE THE ASYLUM PROCEDURE

9.1 Humanitarian Grounds

A residence permit can be issued on humanitarian grounds to a foreign national who is registered by the Danish Immigration Service as an asylum seeker in Denmark and who finds himself or herself in a situation in which significant humanitarian considerations warrant a residence permit.

Every case is decided upon based on its own merits. Possible situations that could lead to a residence permit being granted for humanitarian reasons are:

- 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 under 18 years of age faces the possibility of returning to a country in a state of war.

Decisions on applications for protection status based on humanitarian grounds are final and cannot be appealed to a higher administrative board. Such decisions are always subject to judicial review upon claim from the applicant.

It is expected that, in 2015, the Government of Denmark will put forward a legislative proposal making it possible to appeal the administrative decision to a higher administrative board. This will not affect the opportunity for judicial review, although all other forms of appeal must be sought prior to an appeal for judicial review.

Furthermore, the applicant can present the decision on his or her case to the Danish Parliamentary Ombudsman, who can choose to review the case. The Danish Parliamentary Ombudsman is an independent institution with no obligation to review a case put before it.

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 Danish 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 9c(2) of the Aliens Act):

- The Police have attempted without success to remove the rejected asylum seeker for at least 18 months.
- The asylum seeker has been continuously 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 return remains improbable.

9.3 Consequence Status

Where persons are not eligible for refugee status or protection status (subsidiary protection), a residence permit may be granted if close family ties exist with a person who has been granted refugee status. The Danish 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 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 regularize 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. When the Danish Immigration Service, the Refugee Appeals Board or the Ministry of Justice hands down a final negative decision, they forward 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. In general, a failed claimant has to inform the National Police at the first meeting concerning the failed claimant's return that he or she would return voluntarily to get access to the assistance described below.

A new return facility centre was set up near Copenhagen in early 2015.

Assistance with Return: Pending Applications

A person with a pending asylum application in Denmark who has been refused a residence permit or has waived an application for such a permit in Denmark may be granted assistance if he or she does not have sufficient means himself or herself to travel to a third country. However, it is necessary that, after entry into Denmark and before expiry of the time limit for departure, the person had been issued an entry and residence permit by the third country.

This assistance covers the following costs:

- Transportation tickets
- Expenses necessary for transportation of personal belongings
- No more than DKK 5,000 (about EUR 665) 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 Danish 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.

This assistance covers the following costs:

- Transportation tickets
- Expenses necessary for transportation of personal belongings
- No more than DKK 5,000 (EUR 665) 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.

Additional assisted voluntary return schemes have been set up on a temporarily basis for certain groups of asylum seekers. Since 1 August 2012, an assisted voluntary return programme has been available for Afghans returning voluntarily. This programme is organized in cooperation with the International Organization for Migration. The assisted voluntary return programme in Afghanistan is expected to continue until at least the end of 2015 and may be expanded to include similar programmes in Iraq and Somalia.

10.3 Freedom of Movement and Detention

Asylum seekers who have received a final negative decision on their claim and who are uncooperative in the implementation of their return are placed in one of two departure centres run by the Danish Red Cross and the Danish Immigration Service.

A number of conditions apply at the departure centres:

- Residents on the food allowance programme are given money only to buy food.[13]
- There are extra guards and police officers to ensure order is maintained.
- Adult residents do not have access to training courses or work activities.
- Residents may not relocate unless the Danish 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, the former Yugoslav Republic of Macedonia, Iraq, Kosovo, Moldova, Montenegro, Russia, Serbia, Somaliland, Sri Lanka and Ukraine. 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 reservation applicable to the area of Justice and Home Affairs.

11 INTEGRATION

According to the Danish Integration Act, recognized refugees and newly arrived foreigners reunited with a family member must be offered an integration programme.[14] Persons eligible for this programme must be 18 years of age or older. The programme is aimed at immigrants becoming financially self-supporting, learning the language and constructively exercising their citizenship. A key objective is to facilitate access to the labour market and to relevant education.

The expected duration of the integration programme is three years. The scope and contents of the integration programme for the individual foreigner are outlined in an integration contract, which remains valid until the foreigner obtains a permanent residence permit.

The integration contract is to be prepared by the local authority in cooperation with the immigrant or refugee in question within one month of the date when the local authority takes over responsibility for the integration of the person in question. The contract must be elaborated taking into account the individual's abilities and background.

The full programme is 37 hours per week, preparation included. The programme consists of:

- Danish language courses, which the local authority must offer within one month of taking over responsibility for the integration of the person in question. Adult foreigners are entitled to up to three years of Danish language education.
- A course on Danish society, culture and history, which the local authority must offer within four months of taking responsibility for the integration of the person in question. The course includes 40 lessons of 45 minutes each.
- "Offers of active involvement", including counselling sessions, job training, employment with a wage supplement and other measures aimed at participation in the labour market.

As a rule, foreigners receiving social assistance must be offered a full, compulsory integration programme. However, local authorities are obliged to provide the "offers of active involvement" also to foreigners who are self-sufficient (and hence do not receive social assistance) if they request it. This initiative is aimed at strengthening the integration of migrants, and especially migrant women, into the labour market, and it is expected – as a positive side effect – to contribute to the enlargement of the workforce as a whole.

Apart from the above-mentioned integration programme for refugees and foreigners reunited with a family member, local authorities are also obliged to offer an introduction course to other newly arrived foreigners, that is labour migrants and EU nationals. The introduction course is a lighter version of the integration programme; it contains the same elements, but there is no integration contract. In order to facilitate the integration of immigrants into the labour market, the municipality must provide those persons who are supported by their spouses with employment support.

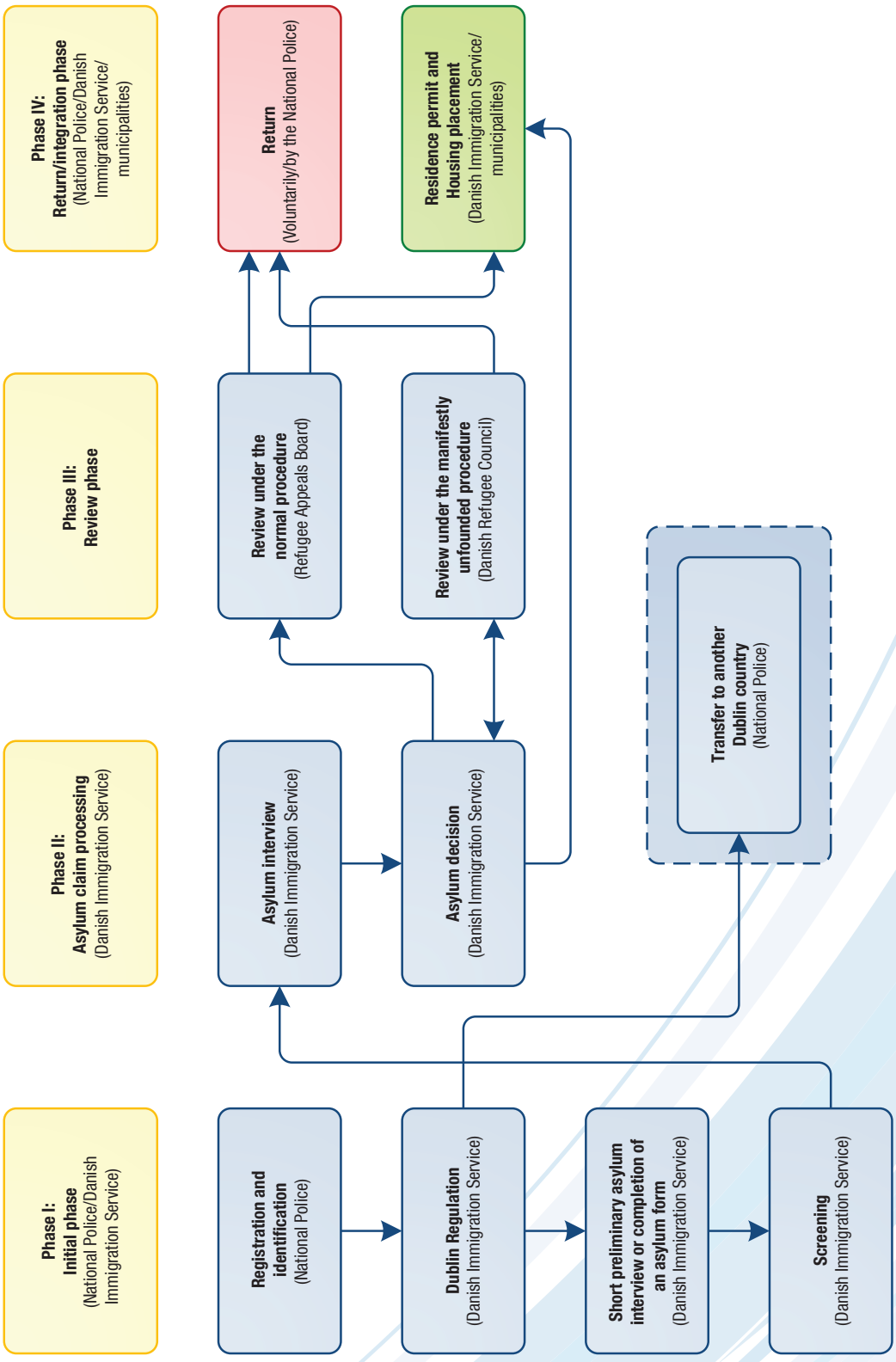
In order to receive a permanent residence permit, the refugee or immigrant must pass a Danish language test and, as a rule, sign an integration declaration.

[13] See the section on reception benefits for information on the food allowance programme and the general conditions in regular accommodation centres for asylum seekers.

[14] Since August 2010, the target group of the Danish Integration Act covers all foreigners with a residence permit, nationals of other Nordic countries, and nationals of the EU and European Economic Area countries benefiting from the rules on free movement of persons in the EU.

12 ANNEX

12.1 Asylum Procedure Flow Chart



12.2 Additional Statistical Information

DEN. Fig. 4 Asylum Applications from Top 10 Countries of Origin in 2012, 2013 and 2014[15]

	2012		2013		2014	
1	Somalia	919	Syria	1,710	Syria	7,185
2	Syria	822	Russia	982	Eritrea	2,293
3	Afghanistan	577	Somalia	965	Stateless	1,265
4	Serbia	559	Serbia	466	Somalia	688
5	Iran	549	Afghanistan	426	Russia	526
6	Russia	525	Stateless	425	Afghanistan	321
7	Stateless	200	Iran	375	Iran	285
8	Belarus	148	Morocco	167	Morocco	226
9	Algeria	142	Nigeria	142	Iraq	150
10	Iraq	136	Iraq	113	Ukraine	133

DEN. Fig. 5 Decisions Taken at the First Instance in 2012, 2013 and 2014[16]

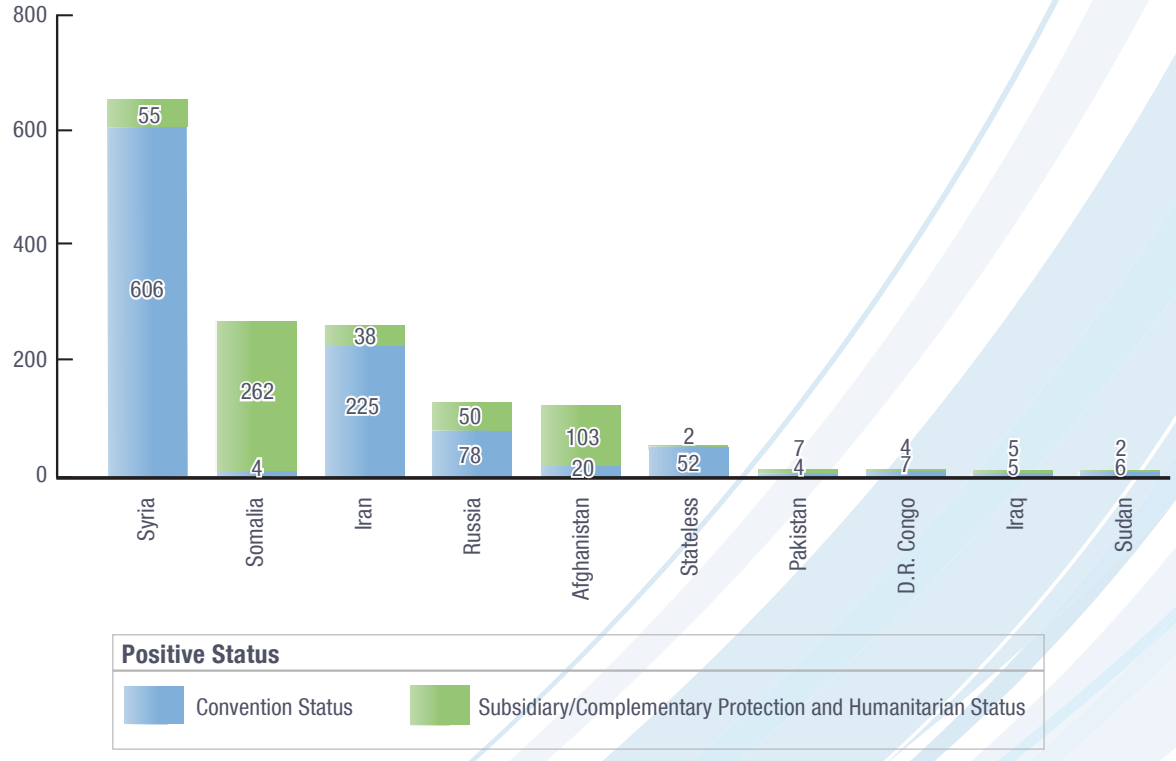
	Convention Status		Humanitarian Status and Subsidiary/Complementary Protection		Rejections		Withdrawn, Closed and Abandoned Cases		
Year	Number	%	Number	%	Number	%	Number	%	Grand Total
2012	1,037	30%	545	16%	1,892	54%	0	0%	3,474
2013	1,606	32%	1,136	23%	2,279	45%	0	0%	5,021
2014	3,749	51%	1,645	22%	1,942	26%	0	0%	7,336

[15] Data for 2014 are provisional.
[16] Data for 2014 are provisional.

DEN. Fig. 6.a Positive First-Instance Decisions, Top 10 Countries of Origin in 2012[17]

	Country of Origin	Total Positive	Total Decisions	Rate
1	Syria	661	742	89.1%
2	Somalia	266	287	92.7%
3	Iran	263	407	64.6%
4	Russia	128	231	55.4%
5	Afghanistan	123	469	26.2%
6	Stateless	54	106	50.9%
7	Pakistan	11	31	35.5%
8	D.R. Congo	11	23	47.8%
9	Iraq	10	66	15.2%
10	Sudan	8	8	100.0%

Total Positive Decisions by Status from Top 10 Countries of Origin, 2012

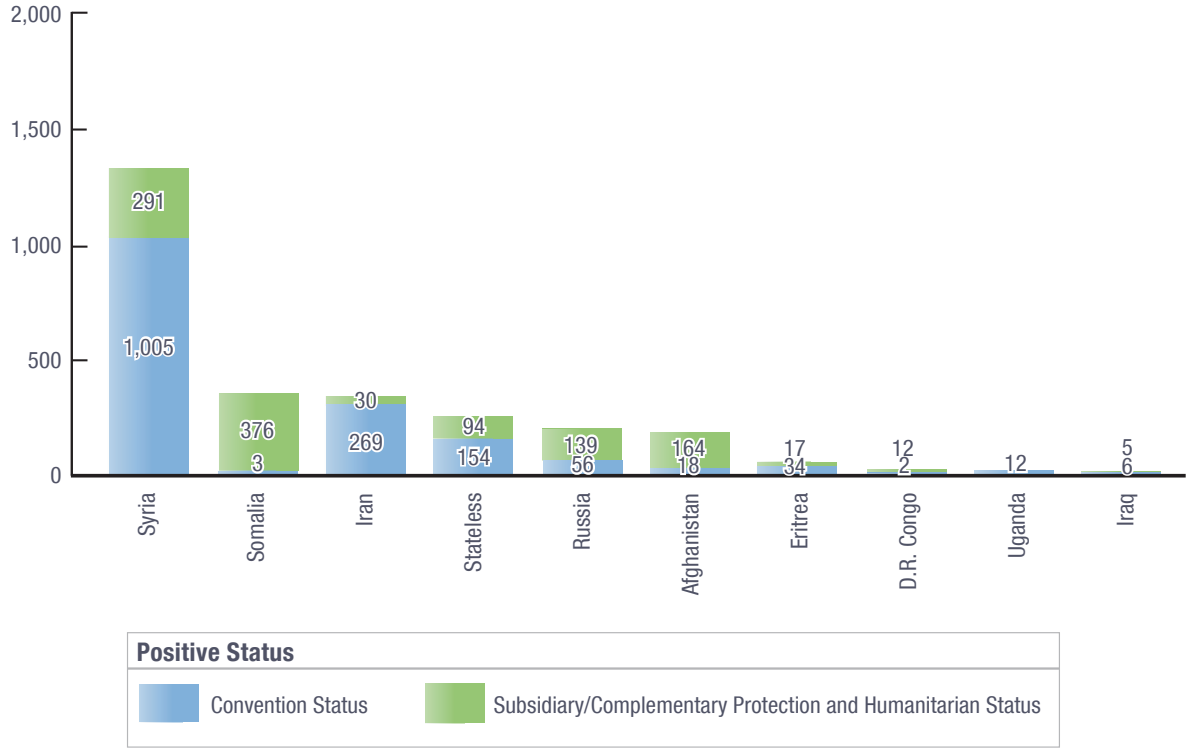


[17] For the purpose of this exercise, positive decisions include decisions to grant Convention status, subsidiary/complementary protection and other humanitarian statuses. Excluding withdrawn, closed and abandoned claims. Data for 2014 are provisional.

DEN. Fig. 6.b Positive First-Instance Decisions, Top 10 Countries of Origin in 2013[18]

	Country of Origin	Total Positive	Total Decisions	Rate
1	Syria	1,296	1,352	95.9%
2	Somalia	379	659	57.5%
3	Iran	299	407	73.5%
4	Stateless	248	326	76.1%
5	Russia	195	414	47.1%
6	Afghanistan	182	436	41.7%
7	Eritrea	51	59	86.4%
8	D.R. Congo	14	39	35.9%
9	Uganda	12	21	57.1%
10	Iraq	11	60	18.3%

Total Positive Decisions by Status from Top 10 Countries of Origin, 2013

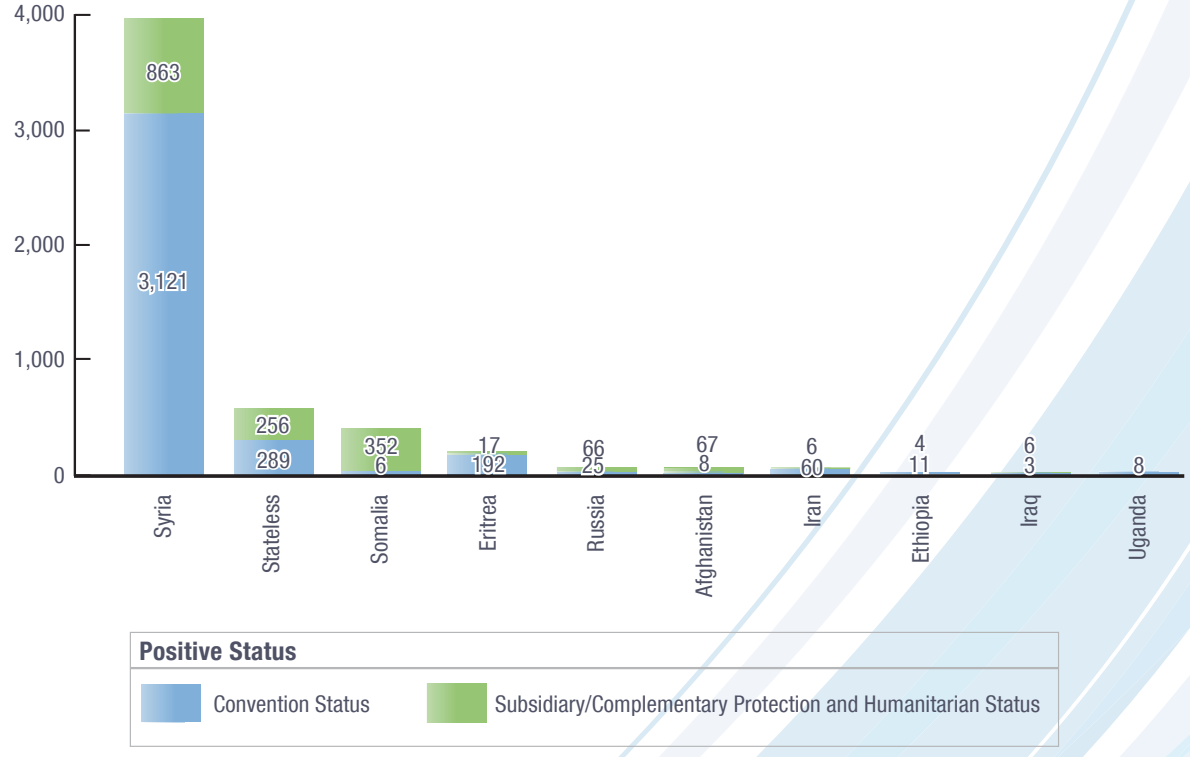


[18] For the purpose of this exercise, positive decisions include decisions to grant Convention status, subsidiary/complementary protection and other humanitarian statuses. Excluding withdrawn, closed and abandoned claims. Data for 2014 are provisional.

DEN. Fig. 6.c Positive First-Instance Decisions, Top 10 Countries of Origin in 2014[19]

	Country of Origin	Total Positive	Total Decisions	Rate
1	Syria	3,984	4,122	96.7%
2	Stateless	545	613	88.9%
3	Somalia	358	663	54.0%
4	Eritrea	209	218	95.9%
5	Russia	91	335	27.2%
6	Afghanistan	75	201	37.3%
7	Iran	66	159	41.5%
8	Ethiopia	15	52	28.8%
9	Iraq	9	82	11.0%
10	Uganda	8	22	36.4%

Total Positive Decisions by Status from Top 10 Countries of Origin, 2014



[19] For the purpose of this exercise, positive decisions include decisions to grant Convention status, subsidiary/complementary protection and other humanitarian statuses. Excluding withdrawn, closed and abandoned claims. Data for 2014 are provisional.

Refugee children from Colombia in a village in the Darlen province of Panama.

UNHCR/B. Heger/January 2006

FINLAND

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1 BACKGROUND: MAJOR ASYLUM TRENDS AND DEVELOPMENTS

Asylum Applications

Until the end of the 1980s, 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 applications. The following year, the number of claims decreased to about 2,000 and dropped even further between 1994 and 1996, 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, there were approximately 1,600 claims. Between 2002 and 2005, asylum applications numbered over 3,000 each year. Afterwards, the annual inflow decreased to about 2,000 in 2006 and to about 1,500 in 2007. Numbers increased in 2008 and in 2009 to 4,035 and 5,910, respectively. This was then followed by another decrease in 2010 to 4,018 and in 2011 to 3,088. For the next three years, numbers increased slightly to 3,129 in 2012, to 3,238 in 2013 and to 3,651 in 2014.

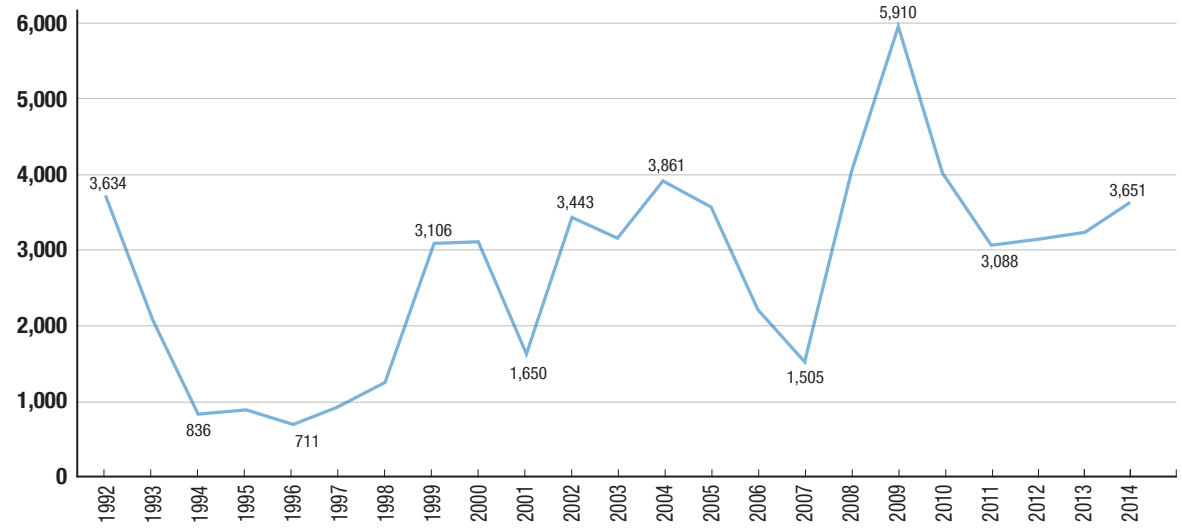
Important Reforms

A number of important legislative and institutional reforms were introduced after the 1980s:

- 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 Administrative Court of Helsinki 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 minors seeking asylum, undertaken in cooperation with the International Social Service.

While a new Aliens Act came into force in 2004, the asylum procedure remained largely unchanged.

FIN. Fig. 1 **Total Asylum Applications by Year, 1992–2014**

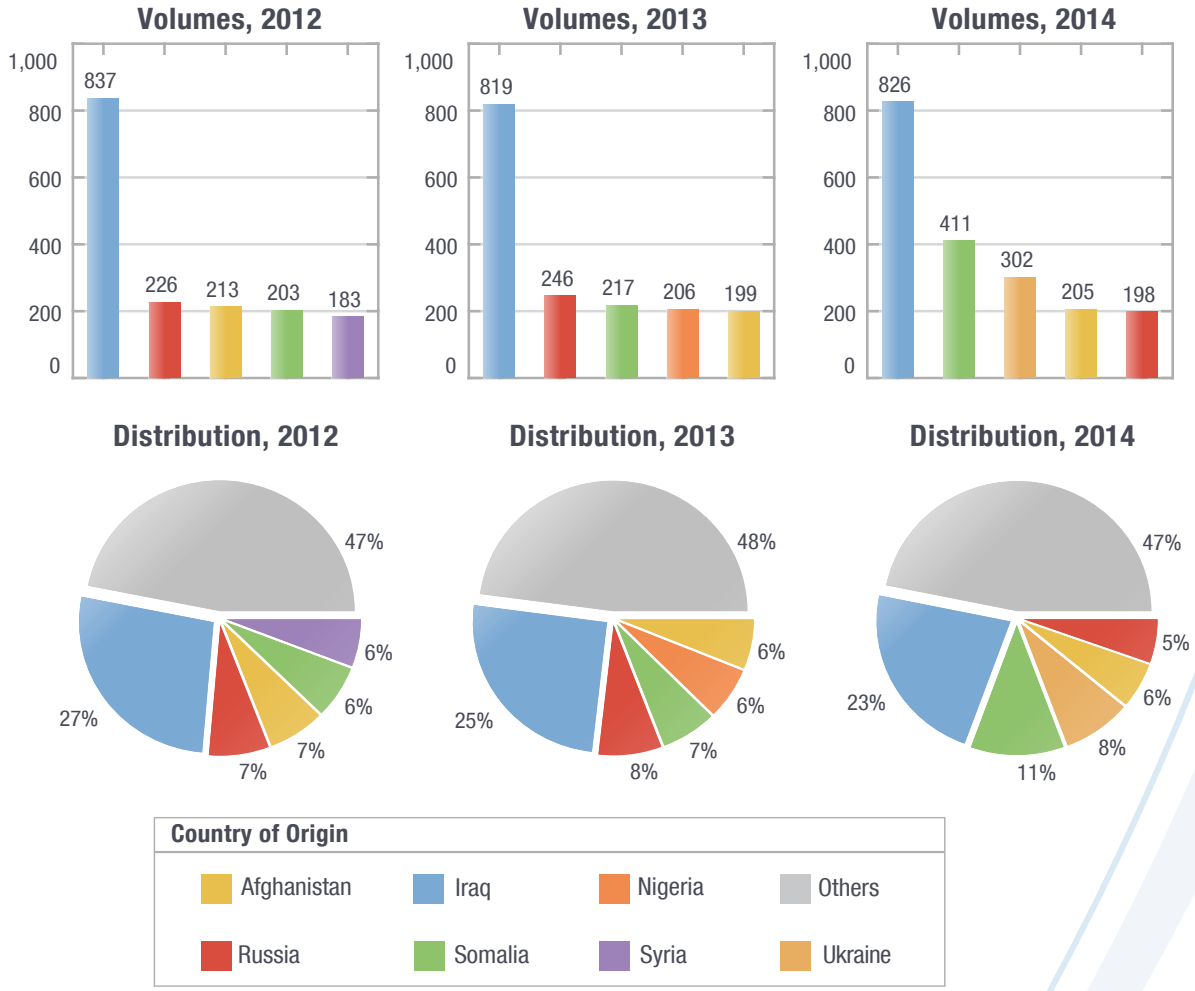


Top Nationalities

In the 1990s, the majority of asylum claims were made by nationals from Somalia, Russia and the former Yugoslavia. Towards the end of the 1990s, however, a large number of asylum seekers came to Finland from European Union (EU) candidate countries such as Poland, Slovakia and the Czech Republic. Since 2000, the majority of asylum seekers have originated from Iraq, Russia, Somalia, Afghanistan, the former Yugoslavia and, prior to their membership in the EU, from Bulgaria, Romania and Slovakia. In 2014, the top five nationalities were Iraq, Somalia, Ukraine, Afghanistan and Russia.

In 2008, the Directorate of Immigration was renamed the Finnish Immigration Service and an Advisory Board for the Service was established. From 2010 to 2012, the Advisory Board was composed of representatives from both authorities and organizations, for a total of 16 interest groups. The Chair of the Advisory Board is the Director-General of the Finnish Immigration Service.

FIN. Fig. 2 | Asylum Applications Received from Top Five Countries of Origin in 2012, 2013 and 2014



FIN

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 Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) have been transposed into Finnish law. In its asylum policy, the Government of Finland is committed to the full application of the 1951 Convention.

The requirements for granting asylum under the Aliens Act are virtually identical to those under the 1951 Convention. On 1 June 2009, the Asylum Procedures Directive (2005/85/EC)[1] came into effect and the Qualification Directive (2004/83/EC)[2] was transposed through a legislative amendment into the Finnish Aliens Act. In transposing the Qualification Directive, the scope of the previous national legal provision for granting subsidiary protection was 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") was introduced.

An overhaul of the Act on the Integration of Immigrants and Reception of Asylum Seekers took place, with the aim to differentiate integration from reception via two separate Acts.

The reception of asylum seekers is governed by the Act on the Reception of Persons Applying for International Protection, which came into effect on 1 September 2011. The Act entitles

[1] 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] 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).

asylum seekers to the safeguarding of basic needs such as accommodation, subsistence, social assistance and health care. The Act also stipulates that persons applying for international protection and beneficiaries of temporary protection are provided with information about reception services, rights and duties, legal aid and organizations providing assistance.

The new Integration Act entered into force on 1 September 2011 and now concerns all immigrants in Finland, not just refugees. The focus lies on the initial stages of integration. All immigrants are now provided with information about Finnish society, working life and citizens' rights and responsibilities.

2.2 Pending Reforms

A bill amending the Finnish Aliens Act on the basis of the EU Qualification Directive was given to Parliament in March 2014. The proposed amendments clarify certain provisions related to international protection but in practice they do not bring about any significant changes. The bill was passed and the changes came into force in July 2014.

In line with the Government of Finland programme presented in June 2012, the "Future of Immigration 2020" strategy was updated with the aim to ensure a managed labour market and equal rights for all employees. Work on the strategy was completed in late spring 2013, and it was adopted in the form of a government resolution on 13 June 2013. These two elements of the reform are particularly important considering the increasingly international character of the labour market. The Government endeavours to increase the employment rate of immigrants, to make integration policy more effective, to accelerate the processing of asylum applications and to intensify the prevention of discrimination.

A government proposal to prohibit the detention of unaccompanied minors seeking asylum was submitted in autumn 2014. Alternatives to detention have been explored in a project running until the end of 2014.

A government proposal has been drafted to establish an assisted voluntary return system in Finland. Amendments to the Act on the Reception of Persons Applying for International Protection and to the Aliens Act have been proposed, and the aim is to submit the proposal in autumn 2014.

A permanent cooperation structure has been established to accelerate cooperation between the Finnish Immigration Service, the Finnish Police and the Finnish Border Guard. The objective is to speed up the processing of applications for international protection and to intensify the prevention of illegal migration, trafficking in human beings and evasion of entry provisions.

A project has been set up to increase the profitability of migration management, aimed at maximizing the migration authorities' activities to achieve the savings required in the state administration's expenditure estimate.

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. Responsibility for integration affairs was transferred from the Ministry of the Interior to the Ministry of Employment and the Economy on 1 January 2012.

The Finnish Border Guard receives asylum applications for international protection at points of entry and establishes the identity, travel route and means of entry of asylum seekers. The District Police do the same for in-country applications for international protection. In addition, personal data on the applicant's family members and other relatives are collected. The Police or the Finnish Border Guard is responsible for enforcing the decisions on refusal of entry and on deportation, including the implementation of the decisions based on the application of the Dublin II Regulation.[3] The Border Guard is also mandated to make decisions on refusal of entry.

The District Police issues fixed-term and permanent residence permits to aliens, including beneficiaries of international protection or temporary protection.

The Finnish Immigration Service is the competent authority for examining and subsequently making a decision on asylum applications at the first instance, as well as granting residence permits to (resettled) quota refugees. The Finnish Immigration Service also determines refusals of entry and deportation and grants alien's passports and refugee travel documents. In January 2010, competence and responsibility for the steering of reception centres was handed over to the Immigration Service. Participation in international cooperation is also included in the Immigration Service's field of operation.

An appeal against a decision on international protection issued by the Finnish Immigration Service may be lodged before the Administrative Court of Helsinki.

The Supreme Administrative Court, provided it gives leave to appeal, hears appeals against decisions of the Administrative Court of Helsinki.

The Ombudsman for Minorities may offer 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

[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).

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. Furthermore, the Ombudsman must be notified, upon its request, of any other decision made under the Finnish Aliens Act.

4 PRE-ENTRY MEASURES

4.1 Visa Requirements

The entry of foreign nationals 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 (the obligation to report and the 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 has been made. Asylum seekers have the right to be heard during the procedure and to enjoy the basic legal guarantees, such as interpretation and legal assistance.[4]

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 by e-mail.

Resettlement

Finland has in place an annual resettlement programme to admit persons recognized 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 grounds for issuing a residence permit under the Finnish refugee quota are as follows:

- The person is in need of international protection with regard to the situation in his or her home country
- 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 (general requirements for issuing residence permits) to issuing a residence permit.

The selection of quota refugees is usually based on documentary information received from UNHCR and interviews carried out during selection missions conducted under the direction of the Finnish Immigration Service at refugee camps or local UNHCR offices. Integration experts and representatives from the Finnish Security Intelligence Service also participate in interviews. The Finnish Immigration Service grants residence permits to refugees under the refugee quota after the quota selection mission.

One tenth of the annual quota is reserved for emergency cases and persons whom UNHCR has assessed to be in need of urgent resettlement. Finland selects these emergency cases without a personal interview on the basis of UNHCR documents.

In recent years, Finland has accepted Congolese from Rwanda, Iraqis from Syria and Jordan, Burmese from Thailand and Afghans from Iran under the quota refugee scheme.

For 2014, Finland raised the quota to 1,050 refugees. The aim is to resettle 500 Syrian refugees.

5.1.2 At Ports of Entry

An application for international protection may be lodged in person with the Finnish Police or with the Finnish Border Guard upon entry into the country or at police stations inside the territory immediately after entry.

5.1.3 Inside the Territory

An application for international protection may be filed after the arrival in Finland under the following circumstances:

[4] Information on the procedures regarding international protection that is available to asylum seekers (and to the public at large) can be found in a number of languages on the Finnish Immigration Service website at www.migri.fi/asylum_in_finland.

- The circumstances in the foreign national's home country or country of permanent residence 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 for processing by another State party to the Dublin II Regulation.

Where another State party to the Dublin II Regulation is responsible for the examination of the asylum application, 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 and 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 carrying out 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.

Conduct of Transfers
The Finnish Police or the Finnish Border Guard is responsible for the enforcement of decisions on refusal of entry or deportation, including the implementation of the decisions based on the application of the Dublin II Regulation.

Suspension of Dublin Transfers
An asylum seeker who has received a decision on the transfer of his or her application to another Dublin State may appeal the decision before the Administrative Court of Helsinki to prevent the implementation of the decision to refuse entry. The Administrative Court can prevent the implementation of the decision or order that it be suspended.

In January 2011, the Finnish Immigration Service made a decision to stop returning asylum seekers to Greece for an indefinite period on the basis of the Dublin II Regulation. The decision was motivated by a ruling issued by the European Court of Human Rights on 21 January 2011 in the case of *M.S.S. versus Belgium and Greece*. According to the ruling, Belgium violated the European Convention on Human Rights by returning asylum seekers to Greece. The reasons given in this ruling included the deficiencies in the Greek asylum system, the country's poor reception conditions, and finally, inadequate detention and reception facilities.

Review/Appeal
Decisions on non-entry based on the Dublin II Regulation may be appealed before the Administrative Court of Helsinki. A decision on refusal of entry may be implemented regardless of whether an appeal has been made, unless otherwise ordered by the Administrative Court.

Application and Admissibility

According to section 103 of the Aliens Act, the Finnish Immigration Service may deem an asylum application to be inadmissible under either 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 returned.[6]
- The applicant may be sent to another State that, under the Dublin II Regulation, is responsible for processing the asylum application.

In such instances, the Finnish Immigration Service issues a decision on refusal of entry.

A Finnish Immigration Service decision on refusal of entry concerning an alien who has applied for a residence permit on the basis of international or temporary protection may not be enforced until a final decision has been issued on the matter, unless otherwise provided in the Aliens Act.

A decision on refusal of entry issued on the basis of the application of the Dublin II Regulation can be enforced as soon as the decision has been served to the applicant, unless otherwise ordered by the Administrative Court. This applies also to decisions made on a subsequent application or cancellation of an application for international protection.

A decision on refusal of entry concerning an alien who has arrived from a safe country of asylum or a safe country of origin, or a decision on refusal of entry concerning an alien whose application is considered manifestly unfounded may be enforced at the earliest on the eighth day from service of the decision on the applicant, unless otherwise ordered by an administrative court. Before the enforcement, it shall be ensured that the eight-day period contains at least five working days.

[5] Further information on grounds for detention can be found in the section on freedom of movement.
[6] The safe country of asylum principle is described in the section on safe country concepts.

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 in an urgent fashion.

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 returned[7]
- 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.

According to section 104 of the Aliens Act, 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 on which the minutes of the interview were completed and the information on their completion was entered into the Register of Aliens.

While asylum seekers whose applications are being examined under an accelerated procedure have the same rights and obligations as other asylum seekers, in the case of subsequent applications, a decision may be issued without organizing an asylum interview.[8]

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 with an obvious misuse of the asylum 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, among other things, 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 any 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, misleading or deficient 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, to prolong his or her unfounded residence in the country.

- The applicant comes from a safe country of asylum or origin where he or she may be returned, and the Finnish Immigration Service has, for serious reasons, 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 Finnish Police or Finnish 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 seeker.[9] The purpose of the interview is to determine whether there are protection-related or non-protection-related grounds for granting a residence permit. Thereafter, the applicant is provided with a written report of the interview.

The requirements for issuing a residence permit are assessed individually for each applicant by taking into account both the applicant's statements on his or her circumstances as well as the 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

Administrative Court of Helsinki

A decision of the Finnish Immigration Service may be appealed before the Administrative Court of Helsinki if the decision pertains to :

7 The safe country of origin principle is described in the section on safe country concepts.
8 See the section on subsequent applications.
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.

- Rejection of an application for a residence permit on the basis of asylum, subsidiary protection or humanitarian protection
- Rejection of an application for temporary protection
- Removal from the country, prohibition of entry or cancellation of a travel document issued in Finland, and the decision relates to a rejection under the asylum procedure or procedure related to temporary protection
- Withdrawal of refugee status and cancellation of refugee travel document or withdrawal of subsidiary protection status and cancellation of alien's passport
- Cancellation of refugee status and refugee travel document or cancellation of subsidiary protection status and alien's passport.

The time limit for making an appeal is 30 days following the initial decision served to the applicant. The decision becomes legally valid when the appeal period expires.

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 granted if the decision is important to other similar cases, either for the sake of consistency in legal practice or for another compelling reason to grant 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 has been 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 or paying a financial guarantee[10] equivalent to the cost of accommodation or return may be considered as valid alternatives.

The Finnish Police and the Finnish 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 received the notification of detention.

According to section 121 of the Aliens Act, a foreign national may be detained under one of the following circumstances:

- Taking into account 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 identity[11]
- 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 Finnish Police or Finnish Border Guard detention facilities, in accordance with the Aliens Act. Persons are detained in Police or Border Guard facilities[12] 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 18 years of age, the representative of the social welfare authorities may be heard before a decision on detention is made.

As described in section 2.2 on pending reforms, the detention of unaccompanied minors seeking asylum will be prohibited and alternatives for detention will be put in place.

On 1 April 2011, the Finnish Aliens Act was amended in accordance with the Return Directive.[13] The amendments stipulate that a foreigner may be kept in detention for a maximum of six months. This term may be extended up to 12 months in cases where the removal operation is likely

[10] 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 expenses related to accommodation or return.

[11] 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.

[12] Detention inside Police and Border Guard detention facilities is also governed by the Act on the Treatment of Persons in Police Detention (841/2006).

[13] Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

to last longer due to a lack of cooperation by the detained third-country national concerned or to delays in obtaining the necessary documentation from third countries.

Judicial Review
Judicial review of a decision to detain an asylum seeker is enshrined in the Aliens Act. If the release of a detained person has not been ordered, the District Court will, at its own initiative, always rehear the matter concerning the detention no later than two weeks after the initial decision made by the District Court to prolong the detention.

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 made.

Specific Reporting Requirements
A foreign national may be required to report to the Police or Finnish Border Guard at regular intervals in either 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 has been enforced, or the processing of the matter has otherwise ended. However, the reporting requirement must come to an end when it is no longer necessary for ensuring the issuing 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 subsequent application that does not contain any new grounds for remaining in Finland that would influence the decision on the matter may be processed in an accelerated procedure. A decision on refusal of entry may be enforced immediately, 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 – that is, he or she is not at risk of persecution or serious human rights violations in that particular country.

When assessing whether a country may be considered a safe country of origin, all of the following aspects must be taken 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.

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 regarding their completion was entered into the Register of Aliens.

A list of safe countries does not exist. 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 to the applicant. An appeal to the Administrative Court of Helsinki will not suspend the enforcement unless it is otherwise ordered by the Administrative Court.

Asylum Applications Made by EU Citizens

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 own 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 EU if it does not consider the State in question to be 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 criteria and procedure for the application of the notion of "safe country of asylum" are laid down in the Aliens Act. The notions of "first country of asylum" and "safe third country" are not found in the Act; however, the notion of "safe country of asylum" covers both since a reference is made in the definition of a country in which an asylum seeker enjoyed or could have enjoyed protection and where he or she may be returned.

When an application in the asylum procedure is being determined, a State may be considered to be a safe country of asylum for the applicant if it is a signatory, without geographical reservations, to the Convention relating to the Status of Refugees, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and it adheres to them.

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 make 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.

There is no list of safe countries. 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 to the applicant. An appeal to the Administrative Court of Helsinki will not suspend the enforcement unless otherwise ordered by the Administrative Court.

5.3 Special Procedures

5.3.1 Unaccompanied Minors

All unaccompanied minors seeking asylum have access to the asylum procedure.

In any decision issued under the Aliens Act that concerns a minor under 18 years of age, special attention must be paid to the best interests 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 of age, the child shall be heard unless such hearing is manifestly unnecessary. The child's views shall be taken into account in accordance with his or her age and level of development. A younger child may also be heard if he or she is sufficiently mature to have his or her views taken into account. Matters concerning minors shall be processed with urgency. The Act on the Reception of Persons Applying for International Protection also pays special attention to the best interests of the child and to matters concerning his or her development and health.

The Finnish Immigration Service has produced interview guidelines for unaccompanied minors seeking asylum. The minors are interviewed and their applications are investigated by specially trained personnel of the Finnish Immigration Service.

Since the legislative amendment of the Aliens Act in 2007, the Finnish Immigration Service aims to trace without delay the parents or legal guardians of unaccompanied minors seeking asylum.

Legal Representation

According to the Act on the Reception of Persons Applying for International Protection, a representative is appointed without delay for a child who is applying for international protection, for a child granted temporary protection status and for a child who is a victim of trafficking in human beings. The representative is appointed by the District Court in the judicial district of the reception centre where the child is registered.

The representative's task is to supervise the interests of the child during the asylum procedure. It is not the representative's function to look after the daily or other care

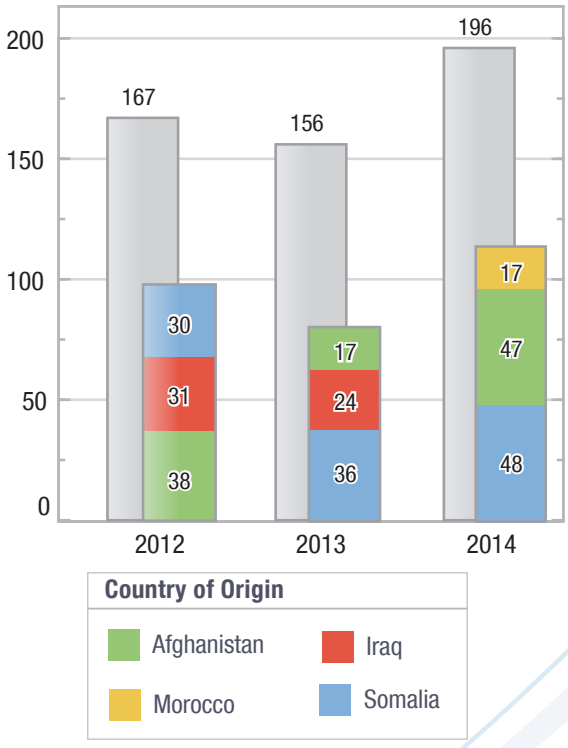
or upbringing of the child. A representative is always present at the interview of an unaccompanied minor seeking asylum.

Age Determination

If there are reasonable grounds for suspecting the reliability of the information the applicant provided on his or her age, a medical age assessment may be carried out at the request of the Police, Finnish Border Guard or Finnish Immigration Service to establish the age of the applicant. While participation is voluntary, anyone who refuses to undergo an examination is treated as an adult if there are no reasonable grounds for refusal. A refusal to undergo an examination may not as such constitute grounds for rejecting an application for international protection.

FIN. Fig. 3 | **Asylum Applications by Unaccompanied Minors in 2012, 2013 and 2014**

	2012	2013	2014
Total Asylum Applications	3,129	3,238	3,651
Applications by Unaccompanied Minors	167	156	196
Percentage	5%	5%	5%



5.3.2 Temporary Group-Based Protection

The Aliens Act was amended in 2002 in order to implement the essential provisions of the EU Temporary Protection Directive.[14] 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 a 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 Convention on the 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 the 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 an individual without citizenship. Stateless 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.

As defined in section 3 of the Aliens Act, asylum is granted when a refugee receives a residence permit. 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: either subsidiary protection or humanitarian protection.

Subsidiary protection may be granted where there are substantial grounds to believe that the person concerned, if returned to his or her country of origin or country of former habitual residence, would face a real risk of being subjected

[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).

to serious harm, and is unable, or owing to such risk, unwilling to avail himself or herself of the protection of that country. Serious harm is defined as:

- The death penalty or execution
- Torture or other inhuman or degrading treatment or punishment
- Serious and individual threat as a result of indiscriminate violence in situations of international or internal armed conflict.

An alien residing in Finland is issued a residence permit on the basis of humanitarian protection if there are no grounds for granting asylum or providing subsidiary protection, but he or she cannot return to his or her country of origin or country of former habitual residence as a result of an environmental catastrophe, a serious security situation that may be due to an international or internal armed conflict, or to a poor human rights situation.

6.1.3 Non-Protection-Related Statuses

As Finland applies a single procedure, all grounds (both protection-related and non-protection-related) are examined when determining whether an asylum seeker may be granted a residence permit. The most common non-protection-related grounds for the issuance of 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 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 (that is, there are practical impediments to the removal)
- Family ties in Finland
- Ongoing studies undertaken in Finland
- Ongoing employment or self-employment in Finland.

6.2 The Decision

The requirements for issuing a residence permit are assessed individually for each applicant by taking into account the applicant's statements regarding his or her circumstances in the State in question and of current COI obtained from various sources.

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, both in fact and in law, are stated in the decision. Furthermore, information on how to challenge a negative decision is given in writing. The decision is then sent to the Finnish Police in the asylum seeker's place of residence, who 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 enforcing 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, on refusing an applicant entry or on finally deporting the applicant.

6.3 Types of Decisions, Statuses and Benefits Granted

The Finnish Immigration Service may take one of the following decisions:

- Grant Convention refugee status (section 87 of the Aliens Act)
- Issue a residence permit on the basis of subsidiary protection or humanitarian protection (sections 88 and 88a of the Aliens Act)
- 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 for international protection
- The applicant cannot be granted a residence permit on any non-protection-related grounds.

Benefits

Persons who have been granted international 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. Finally, they also have the right to family reunification for nuclear family members.[15]

Duration of Residence Permits

Residence permits issued in Finland are either fixed-term or permanent. Fixed-term permits are further broken down into two categories: temporary and continuous. Initial fixed-term residence permits are in most cases issued for one year, although for no longer than the validity period of the travel document. In certain cases, an initial fixed-term residence permit may be issued for a period longer or shorter than one year. These situations are regulated in section 53 of the Aliens Act.

Recognized refugees and beneficiaries of complementary forms of protection are first issued a fixed-term continuous residence permit (type A). A residence permit on the basis of refugee status or subsidiary protection is issued for four years while a residence permit on the basis of humanitarian protection is issued for one year. A new fixed-term residence permit is issued if the grounds for issuing the initial fixed-term residence permit are still valid.

All foreign nationals 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 grounds for issuing a continuous residence permit remain valid and there are no obstacles to issuing a permanent residence permit under the Aliens Act.

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.

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. Exclusion clauses are included in sections 87(2), 88(2) and 88a(2) of the Aliens Act.

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 threat of the death penalty, torture, persecution or other treatment violating human dignity. The residence permit can be renewed and can become permanent.

6.5 Cessation

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 of the 1951 Convention. Subsidiary protection status may be withdrawn if circumstances that led to the granting of subsidiary protection have ceased or changed to such an extent that protection is no longer needed. Cessation requires that the change of circumstances be significant and non-temporary.

When considering a withdrawal of refugee status or subsidiary protection status, an individual investigation shall be conducted.

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 section 108 of the Aliens Act, 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 from the country permanently or has continuously resided outside Finland for two years for permanent purposes.

There is no time limit for the application of revocation.

6.7 Support and Tools for Decision-Makers

6.7.1 Country of Origin Information

The Country Information Service is a subunit of the Legal Service and Country Information Unit within the Finnish Immigration Service. The Country Information Service

[15] The notion of a family member is laid down in section 37 of the Aliens Act. According to section 115 of the Act, a residence permit is issued to other relatives of a refugee or an alien who has been granted a residence permit on the basis of subsidiary protection or humanitarian protection or enjoyed temporary protection, if refusing a 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. Issuing a residence permit does not require that the alien have secure means of support.

produces thematic reports and answers to individual country information requests, primarily for use by caseworkers but also by asylum policymakers and appeal bodies. In addition, the Country Information Service has 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. The information is compiled by impartial researchers who obtain the information independently of individual decisions concerning international protection.

The TELLUS COI database maintained by the Country Information Service is available to all decision-makers at the Finnish Immigration Service and to various external stakeholders, including local register offices, police departments across the country and administrative courts. A project co-sponsored by the European Refugee Fund intends to integrate the TELLUS COI database into the EU's COI portal by the end of 2012.

The Country Information Service manages the Migration Library collection, which is accessible to all Finnish Immigration Service staff, and keeps it up to date. It is also involved in training decision-makers and new Immigration Service staff on the use of 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. Their general recommendations are guidelines for decision-makers, but they must be checked in each situation to determine whether or not this general guidance is applicable to a particular case.

Training of decision-makers takes place on a variety of aspects of the work, including interview techniques and legal issues.

Decision-makers have access to an electronic database, Legis, where all key cases are stored. The UNHCR *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status* [16] is made available to every decision-maker, while the UNHCR Refworld website with asylum and refugee-related documentation also remains in general use.

If during the asylum process there are reasons to believe that the applicant originates from somewhere other than the claimed area of origin, a language analysis may be conducted. This can occur when, for example, the information the applicant gives on the claimed place of origin is insufficient or false. For the language analysis, external service providers from Sweden are contracted. These service providers employ qualified linguists, interpreters and mother-tongue speakers in their analysis. A few hundred analyses are conducted every year.

IN FOCUS

TRAINING ON VULNERABLE GROUPS

The officers of the Finnish Immigration Service's Asylum Unit are trained according to the European Asylum Support Office module Interviewing Vulnerable Persons. The module consists of about 20 hours of online studies, which give the trainees an idea of which groups are considered vulnerable and which symptoms may affect the asylum interview. During the face-to-face session, the trainees practice the dialogical communication method through role-play. The Finnish Association for Sexual Equality has trained immigration officers with regard to sexual orientation and gender identity, and the Finnish League for Human Rights has lectured on issues concerning female genital mutilation.

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, the Finnish Police or the Finnish Border Guard takes fingerprints and a photograph and records personal descriptions of each applicant.

7.1.2 DNA Tests

The Finnish Immigration Service may provide the person with an opportunity to undergo a DNA analysis, if no other adequate evidence of family ties is available. DNA testing is proposed only where there are no reliable documents to prove family ties. Usually, the applicant and the family member are first heard either in writing or in person. 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 on the authenticity of the documents.

7.1.4 Database of Asylum Applications/Applicants

Personal distinguishing marks (such as fingerprints) taken by the Finnish Police or Finnish Border Guard are registered in the Police identification register.

[16] UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status* (Geneva, 2011).

The Finnish Immigration Service maintains the Register of Aliens, which contains, among other things, the following information:

- Identification data regarding the applicant
- 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 Finnish Border Guard, the reception centres, the Customs authority, the employment and economic development centres, the employment offices, the Prison Administration Authority and the Ombudsman for Minorities.

The Register of Aliens has been integrated into the electronic case management system called UMA.

7.1.5 Other

Finland makes use of other pre-entry technology, including a system 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) possess 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 as possible after entry. Section 95(2) of the Aliens Act lays down situations in which an application may be filed at a later date.

Asylum applications may be processed under either the normal procedure or an accelerated procedure. 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 were completed and the information on their completion was entered into the Register of Aliens. Otherwise, there are no time limits for processing asylum applications laid down in the Aliens Act.[17]

IN FOCUS

"SUUNTAUS PROJECT": EXAMINING ASYLUM INTERVIEW RECORDS

An examination of asylum interview records provides more detailed COI. By analysing the interview records, the Country Information Service of the Finnish Immigration Service is able to gather additional useful information on the situation in the country of origin (for example, on the security and human rights situation) to complement the regular sources. Moreover, any information repeated in the records that does not match the COI acquired from other sources can be highlighted.

The European Refugee Fund provides funding for the Suuntaus development project.

Easier Decision-Making as the Goal

The project researchers review the interview records in a systematic manner. This helps the decision-makers to better identify any specific issues in a country, making the interviews and the decision-making process easier.

The purpose is to leverage the information gathered from the records to develop a system that anticipates the flows of asylum seekers, while also taking into consideration the asylum seeker's special needs during the asylum interview. This also benefits the asylum seeker, as more precise information means faster decisions.

Examined Countries among the Main Countries of Origin

For this project, COI will be gathered on at least Iran, Iraq, Nigeria and Russia. They are among the main countries of origin of asylum seekers entering Finland. COI is also gathered from the records of asylum seekers without a citizenship or with an unknown citizenship.

The information gathered is used, for example, in the assessment of the political situation and regions of origin in the countries, and the reasons for seeking asylum.

The records examined are from 2014, and random sampling (the size of which depends on the asylum applicant volumes from the respective countries) is used to gather information on all countries. In early 2015, the information gathered will be used for reports, which will be divided into different topics. The reports are anonymized and will therefore not reveal the identities of the asylum seekers or infringe upon their legal protection.

A part of the materials will be translated to English, depending on the needs of other EU and international colleague bodies.

[17] Statistics on the length of procedures are available on the website of the Finnish Immigration Service at www.migri.fi.

In 2011, the average time for processing an asylum application was 263 days. The average time for processing an asylum application under the normal procedure was 370 days and 97 days under the accelerated procedure. An asylum application lodged by an unaccompanied minor was processed in 298 days.

The Finnish Immigration Service prioritizes the examination of certain asylum applications (such as those from unaccompanied minors or other vulnerable persons) based on its internal instructions.

7.3 Pending Cases

Updated data on the number of pending cases are not available.

7.4 Information Sharing

According to the Act on the Openness of Government Activities, documents concerning a refugee or an asylum seeker are treated as secret, 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 in an Act, 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, as well as on officials' duty of non-disclosure, document secrecy and any other restrictions to access that are necessary for the protection of public or private interests. It also includes provisions on the duties of authorities to achieve the objectives of this Act. The Act does not include provisions concerning information exchange on asylum seekers. Instead, 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 with access to the file of an asylum seeker when the applicant has given consent.

7.5 Single Procedure

Finland applies a single asylum procedure. According to section 94 of the Aliens Act, granting the right of residence is also assessed and determined on other emerging grounds (complementary forms of protection or non-protection-related grounds) in conjunction with the asylum procedure.

UNHCR/G.M.B. Akash/June 2006

8 ASSISTANCE AND RECEPTION BENEFITS FOR ASYLUM SEEKERS

8.1 Procedural Support and Safeguards

8.1.1 Legal Assistance

Asylum seekers are permitted to use the services of legal counsel throughout the asylum process. However, there is no obligation under national legislation for legal counsel to be provided. In practice, authorities provide asylum seekers with assistance in contacting legal services. The reception centres inform asylum seekers about the possibility of using legal counsel and 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. According to the Act, applicants are eligible for free legal aid only at the appeal stage. Legal aid may be given if the person has a matter to be heard before a Finnish court of law. Legal aid is provided by Legal Aid Offices as well as by law firms and attorneys that are listed with the reception centre as sources 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.

8.1.2 Interpreters

The Aliens Act stipulates that interpretation or translation will be provided if the foreign national does not understand the Finnish or Swedish language, or if he or she, due to a disability or an illness, cannot be understood. Interpretation is provided at all stages of the asylum procedure. The person has the right to be notified of a decision concerning him or her in his or her mother tongue or in a language that, 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 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 COI, legal advice or UNHCR recommendations and guidelines. In exceptional precedent-setting cases, UNHCR may submit amicus curiae to the last instance body. In line with article 35 of the 1951 Convention, asylum seekers have access to 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.

8.1.4 Non-governmental organizations

The main non-governmental organization offering legal aid and advice to asylum seekers in Finland is the Finnish Refugee Advice Centre. Lawyers from the Refugee Advice Centre are available to provide asylum seekers with legal advice and assistance at different stages of the asylum procedure. They also offer asylum seekers information on the asylum procedure and their rights in Finland. They often assist asylum seekers at asylum interviews and represent the applicants at the appeal stage. Similar to UNHCR, this non-governmental organization is permitted to have access to asylum seekers, to have information on individual applications (based on the consent of the asylum seeker) and to present its views on individual applications.[18]

8.2 Reception Benefits

According to the Act on the Reception of Persons Seeking International Protection, reception services cover accommodation, a reception allowance, a spending allowance, social services, health services, interpretation and translation services, and work and study activities. Meals may also be included in the reception services.

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 expense. All reception centres are funded by the Government. Reception centres are run either by the State, the municipalities or the Finnish Red Cross.

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 minors seeking asylum are always initially placed in group homes established in connection with the reception centres. The group homes are responsible for the accommodation, daily care and upbringing of the minors they house.

The number of reception centres depends on the number of asylum seekers. In July 2012, there were a total of 20 reception centres and 12 units for minor asylum seekers.

Finland maintains only one dedicated facility for holding immigrants in administrative detention – the Metsälä Detention Unit for Aliens in Helsinki.

The Finnish Immigration Service reduced the number of reception centres and accommodation places from 1 July 2014. Two reception centres closed down completely.

[18] The Finnish Immigration Service may hear the views of UNHCR and of legal counsel from 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.

8.2.2 Social Assistance

According to 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 a reception allowance if he or she is in need of support and cannot secure his or her own means of support with gainful employment, with other income or assets, with the care provided by a person liable to support him or her, or in any other way.

The basic monthly amount of the reception allowance is as follows:

- For single persons and single parents, about EUR 290; at reception centres providing meal services, about EUR 85
- For persons over 18 years of age who are in need of support and cannot secure their own means of support, about EUR 245; at receptions centres providing meal services, about EUR 70
- For children living with their families, about EUR 185; at reception centres providing meal services, about EUR 55.

The basic amount of the reception allowance covers clothing expenses, minor health care expenses, expenses arising from the use of telephone and local public transport, and other similar expenses that are part of the daily means of support of a person and a family, and food expenses if the reception centre does not provide a meal service. The supplementary reception allowance thus covers expenses arising from the needs and conditions specific to a person or a family that are deemed necessary.

In the case of unaccompanied minors, if the reception centre provides full board and a reception allowance as described above, as well as significant health care coverage, unaccompanied minors are provided with a spending allowance instead of a reception allowance.

The monthly spending allowance of an unaccompanied minor under 16 years of age is roughly EUR 25 and the monthly spending allowance of an unaccompanied minor 16 years of age or older is about EUR 45. The spending allowance may be lower if this is justified in view of the age and development level of the child.

8.2.3 Health Care

According to the Act on Reception of Persons Seeking International Protection, individuals applying for international protection and victims of trafficking in human beings who do not have a municipality of residence in Finland are entitled to emergency health care services and to other health care services that are deemed necessary by health care professionals. Beneficiaries of temporary protection, children applying for international protection and victims of trafficking in human beings who have children and who do not have a municipality of residence in Finland are provided with health care services on the same basis as persons who have a municipality of residence in Finland.

8.2.4 Education

Asylum seekers older than 17 years of age can study in special classes for adults, at secondary schools for adults, in evening classes, at folk high schools or in classes organized by the reception centre. Study activities may include courses in Finnish or Swedish, familiarization with Finnish society and customs, as well as basic computer skills. However, there is no obligation for asylum seekers over 17 years of age to study. Studies can be replaced by work activities arranged by the reception centre.

Children below 17 Years of Age

According to the Finnish Constitution, everyone has the right to basic education free of charge. However, municipalities are not obliged to provide school-aged asylum seekers with education. Therefore, the practice regarding school-aged asylum seekers' access to primary or preparatory education varies to some extent depending on the location of the reception centre. However, apart from some exceptions, minor asylum seekers between 7 and 17 years of age usually receive basic compulsory education at primary schools.

Minor asylum seekers also 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 with children of their own age for certain subjects, such as music, drawing or sports. Children can also be taught their native language for two hours per week, if there are at least four pupils in the same group.

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.

8.2.5 Access to the Labour Market

An asylum seeker has a right to gainful employment without a residence permit three months after the date the asylum application was submitted, provided that he or she has a valid travel document. If the applicant is not in possession of such a document, he or she may engage in gainful employment six months after submitting the application. The right to work is granted to asylum seekers directly by law and is not subject to a separate application. Asylum seekers are entitled to gainful employment until a final decision on the application has been made and become legally valid. An employer must verify that a foreign employee has the required employee's residence permit or that he or she needs no residence permit. The employer may ask the

employee to provide a certificate stating the right of employment issued by the Finnish Immigration Service.

8.2.6 Family Reunification

Family reunification is not possible during the asylum procedure.

8.2.7 Access to Integration Programmes

Access to integration programmes is not possible during the asylum procedure.

8.2.8 Access to Benefits by Rejected Asylum Seekers

According to the Act on the Reception of Persons Applying for International Protection, reception services cover accommodation, a reception allowance, a spending allowance, social services, health care, interpretation and translation services, and work and study activities, as provided for in chapter 3 of the Act. Meals may also be included in reception services. Full board may be provided in group homes and supported housing units intended for unaccompanied minors. After the refusal of the applicant's residence permit or withdrawal of his or her temporary protection status, an alien who had access to reception services before this decision will continue to have access to these services until he or she has left the country.

Limitations on reception services for citizens of EU Member States, Iceland, Liechtenstein, Norway and Switzerland came into effect in July 2010. These persons are provided with reception services only until their application for international protection has been refused by the Finnish Immigration Service. If they agree to leave the country under supervision or if they agree to an arrangement under which the decision on the refusal of entry is enforced within 30 days of the serving of the decision, they may be provided with reception services for a maximum of 7 days until they leave the country. The director of the reception centre may decide that such persons will be provided with reception services for a reasonable period for a special personal reason.

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 and decided upon 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 (section 109 of the Aliens Act) or other humanitarian or immigration status (section 93 of the Aliens Act).

9.1 Humanitarian Grounds

Outside the asylum procedure, there is a system to admit foreign nationals into Finland on special humanitarian grounds or to fulfil international obligations. There is no application procedure. The decision-making process begins when the Ministry of the Interior, the Ministry for Foreign Affairs and the Ministry of Employment and the Economy prepare a joint proposal for a government decision on whether or not to grant a permit based 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, 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 a 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.

In a plenary session, the Government decides which population groups may be given temporary protection and the period during which residence permits may be issued on the basis of temporary protection.

9.3 Regularization of Status of Stateless Persons

There are no special procedures in place to regularize the status of stateless persons in Finland.

10 RETURN

10.1 Pre-departure Considerations

An asylum seeker who has received a negative decision on his or her claim from the Finnish Immigration Service has a right of appeal and may file a petition with the Administrative Court of Helsinki to suspend 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 Finnish Police and the Finnish Border Guard are responsible for the enforcement of decisions on refusal of entry or removal. The Immigration Police of Helsinki are responsible for coordinating the decisions on refusal of entry that are enforced by the Finnish Police.

According to the Aliens Act, a decision on refusal of entry or deportation sets out a time limit of at least 7 days and a maximum of 30 days within which the alien may leave the country voluntarily. The time limit for voluntary return is counted from the day the decision is enforceable. The time limit may be extended for certain reasons.

No time limit for voluntary return is set if the alien is refused entry immediately after crossing the border or if the alien is refused entry or deported because he or she is subject to a criminal penalty.

In addition, no time limit for voluntary return is set out if there is a risk of absconding, if the person is considered a danger to public order or security, if the residence permit application has been refused on the basis of an evasion of provisions on entry, or if, pursuant to section 103 of the Aliens Act, an application for international protection has been dismissed or an accelerated procedure has been applied.

10.3 Freedom of Movement and Detention

The same provisions regarding freedom of movement and detention apply to both asylum seekers and rejected asylum seekers, as described above in the section on asylum procedures.

10.4 Readmission Agreements

Finland has bilateral readmission agreements with Bulgaria, Estonia, Latvia, Lithuania, Romania and Switzerland. The EU has concluded readmission agreements with several third countries. The Nordic Passport Convention includes readmission clauses.

A readmission agreement with Kosovo was signed in November 2011 and entered into force in June 2013. A bilateral implementation protocol of the 2007 readmission agreement with Russia came into effect in March 2013.

IN FOCUS

DEVELOPING ASSISTED VOLUNTARY RETURN IN FINLAND

Since 1 January 2010, assisted voluntary return has been implemented mainly in the framework of IOM Helsinki coordinated projects. The project entitled "Voluntary Assisted Return and Reintegration Programme in Finland" was launched in January 2013. The project functions as a continuation of the previous project entitled "Developing Assisted Voluntary Return in Finland", which was implemented between 2010 and 2012. IOM Helsinki is responsible for the implementation of all activities. The work is carried out, however, in close partnership with the Finnish Immigration Service and other partners. The project provides information on return possibilities coupled with a financial incentive of a maximum of EUR 1,500 for adults and EUR 750 for children.

Within the framework of the project, the following persons are eligible:

- Asylum seekers withdrawing their asylum application
- Rejected asylum seekers
- Asylum seekers with a Eurodac hit who decide to cancel their procedure in Finland and return to the country of origin
- Persons with a valid residence status for protection reasons
- Victims of trafficking
- Certain groups of persons with an expired residence status.

However, the eligibility of a person is always based on an individual application. The eligibility rules for the project may change, so persons interested in assisted voluntary return are encouraged to check with IOM to see if they are eligible. Persons who do not want to return voluntarily are ineligible for support. If a person does not cooperate on the return arrangements, IOM may consider that the person is not voluntarily returning and thus reject the application.

Between 1 January 2010 and 31 December 2012, 858 persons returned to their country of origin within the framework of the Voluntary Assisted Return and Reintegration Programme. In the first part of the project – between 1 January 2013 and 28 February 2014 – 399 persons returned within the project's framework.

11 INTEGRATION

Provisions for integration support are laid down in the Act on the Promotion of Immigrant Integration.

Right to an Integration Plan

According to the Act on the Promotion of Immigrant Integration, an immigrant has the right to an integration plan if he or she is unemployed and registered as a jobseeker at an employment and economic development office under the Act on the Public Employment Service, or if he or she is receiving social assistance under the Act on Social Assistance on a non-temporary basis. An integration plan may also be drawn up for other immigrants if, on the basis of the initial assessment, they are deemed to be in need of a plan promoting their integration.
The integration plan is drawn up jointly by the municipality and/or the employment and economic development office, and the immigrant. The municipality prepares an integration plan with a minor if circumstances specific to the minor in question so require. An integration plan is always drawn up for an unaccompanied minor who has been issued a residence permit.

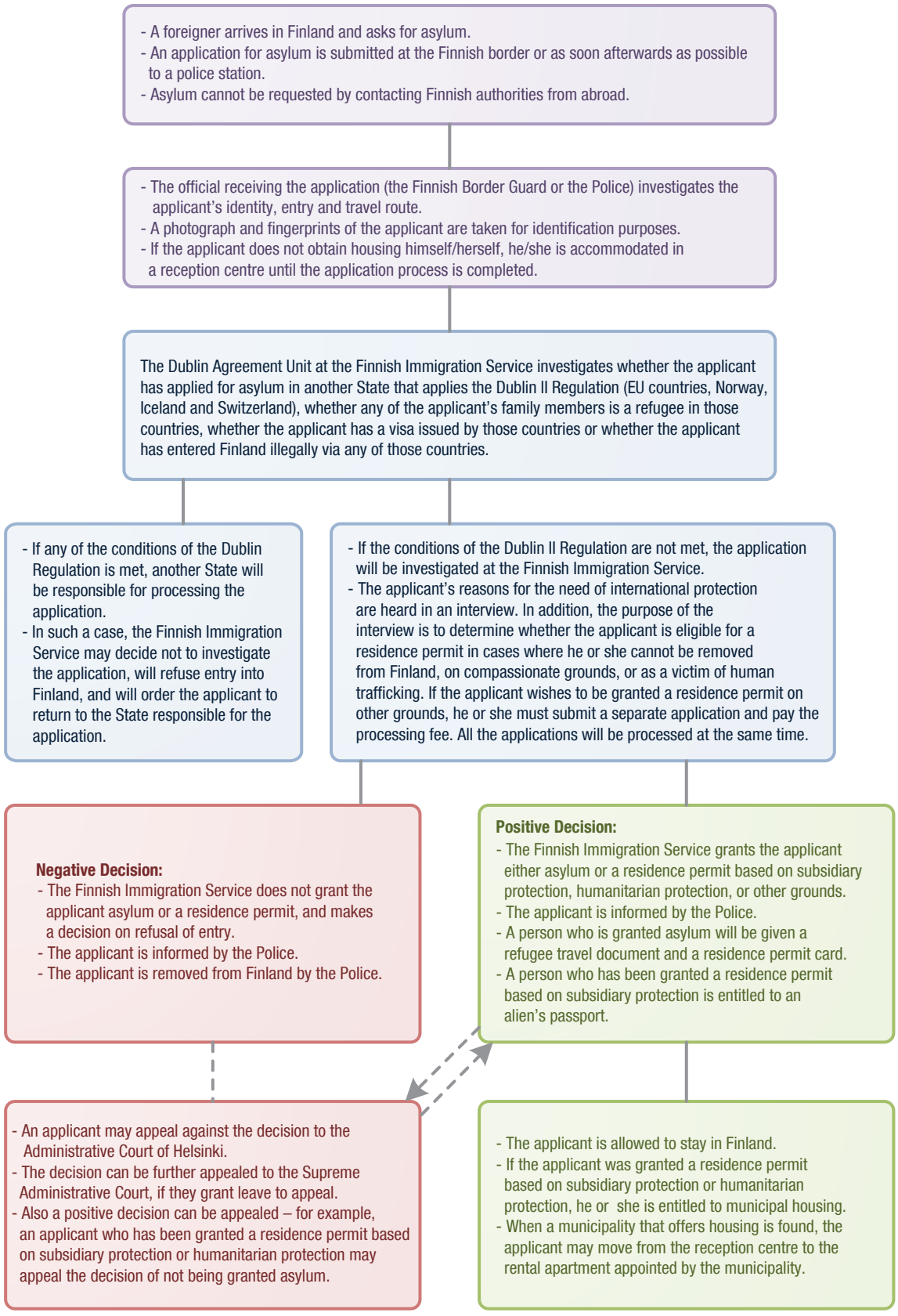
The first integration plan is drawn up no later than three years after issuing the first residence permit or residence card or the registration of the right of residence. The first integration plan is drawn up for a maximum period of three years. This plan, in turn, may be extended by a maximum of two years if there are grounds for doing so, because the immigrant needs special integration measures.

Integration Plan

An integration plan is a personalized plan drawn up for an immigrant covering measures and services aimed at supporting him or her in acquiring a sufficient command of the Finnish or Swedish language, and other skills and knowledge required in society and working life, as well as promoting his or her opportunities to play an active role as an equal member of society. In addition to Finnish or Swedish studies, it may also be agreed that the integration plan include teaching of the immigrant's mother tongue, studies familiarizing the immigrant with society, the teaching of reading and writing skills, studies complementing basic education, integration training and other personalized measures facilitating integration.

12 ANNEXES

12.1 Asylum Procedure Flow Chart



12.2 Additional Statistical Information

FIN. Fig. 4 | Asylum Applications from Top 10 Countries of Origin in 2012, 2013 and 2014

	2012		2013		2014	
1	Iraq	837	Iraq	819	Iraq	826
2	Russia	226	Russia	246	Somalia	411
3	Afghanistan	213	Somalia	217	Ukraine	302
4	Somalia	203	Nigeria	206	Afghanistan	205
5	Syria	183	Afghanistan	199	Russia	198
6	Iran	129	Iran	167	Nigeria	166
7	Nigeria	99	Syria	149	Syria	149
8	Bosnia and Herz.	91	Algeria	82	Albania	109
9	Serbia	86	Morocco	76	Iran	95
10	Kosovo	82	Kosovo	70	Algeria	91

FIN. Fig. 5 | Decisions Taken at the First Instance in 2012, 2013 and 2014

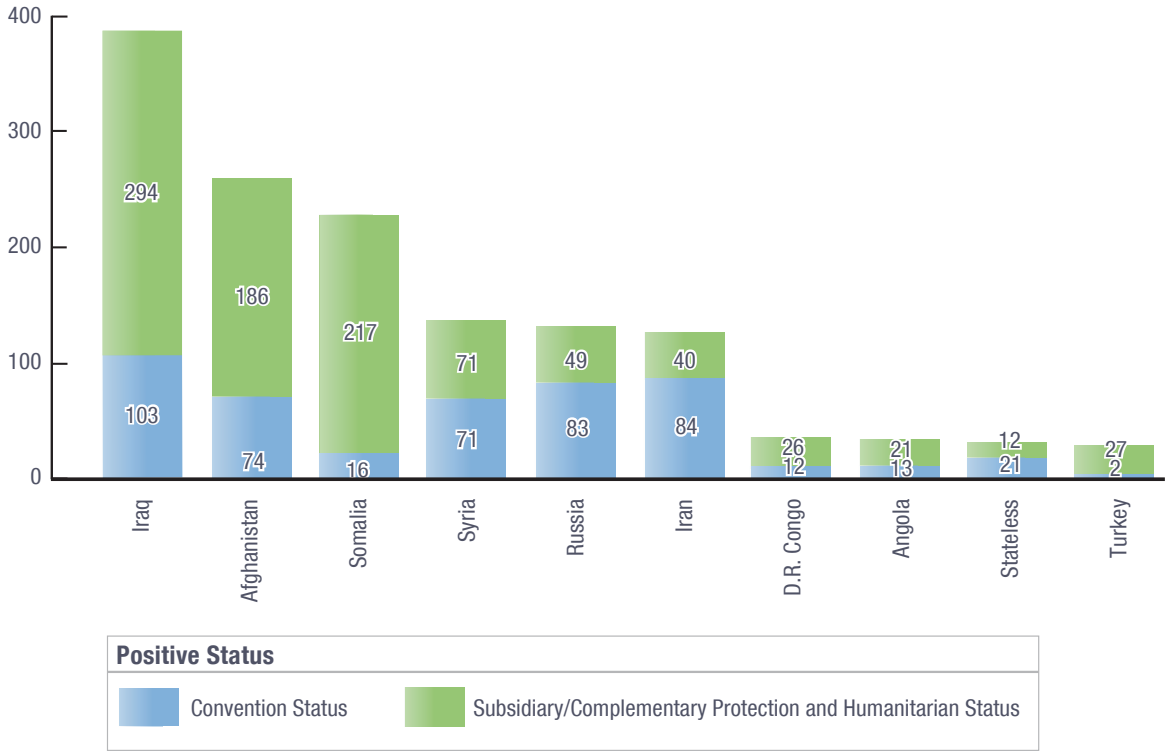
	Convention Status		Humanitarian Status and Subsidiary/Complementary Protection		Rejections		Withdrawn, Closed and Abandoned Cases		
Year	Number	%	Number	%	Number	%	Number	%	Grand Total
2012	553	15%	1,048	28%	1,738	46%	441	12%	3,780
2013	556	14%	1,271	31%	1,903	47%	325	8%	4,055
2014	501	14%	845	23%	2,050	55%	310	8%	3,706

FIN. Fig. 6.a

Positive First- and Second-Instance Decisions, Top 10 Countries of Origin in 2012[19]

	Country of Origin	Total Positive	Total Decisions	Rate
1	Iraq	397	646	61.5%
2	Afghanistan	260	375	69.3%
3	Somalia	233	366	63.7%
4	Syria	142	167	85.0%
5	Russia	132	351	37.6%
6	Iran	124	189	65.6%
7	D.R. Congo	38	70	54.3%
8	Angola	34	49	69.4%
9	Stateless	33	46	71.7%
10	Turkey	29	83	34.9%

Total Positive Decisions by Status from Top 10 Countries of Origin, 2012

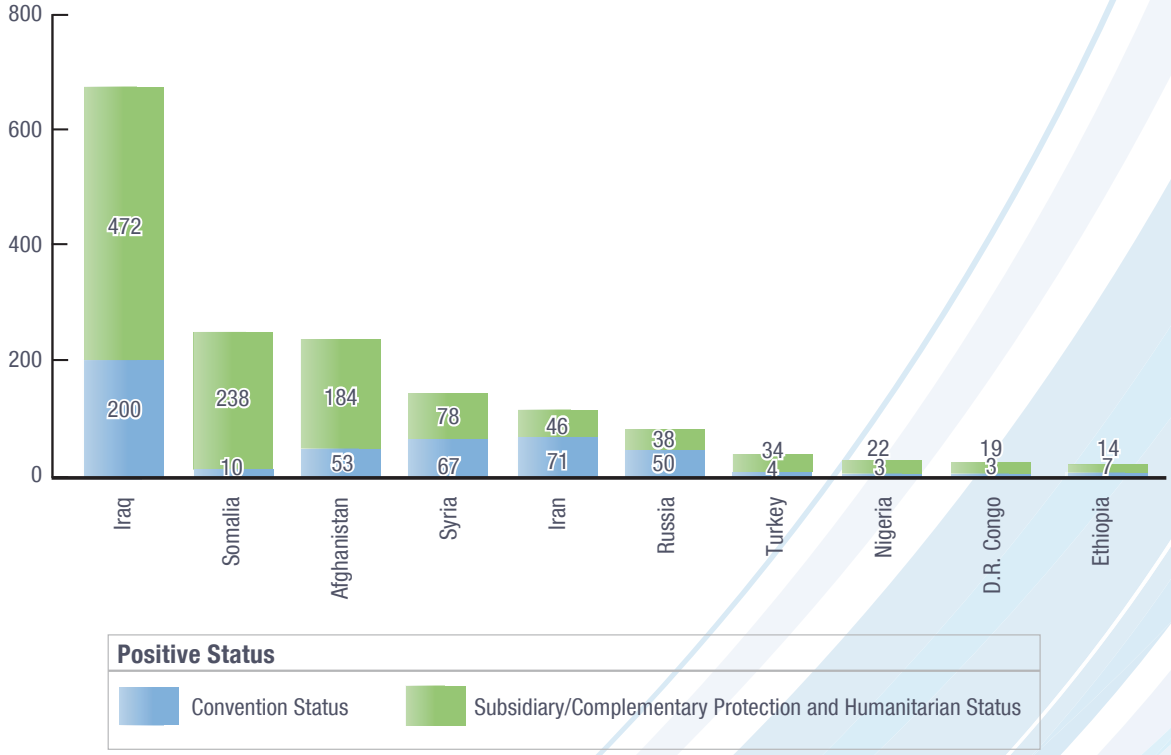


[19] For the purpose of this exercise, positive decisions include decisions to grant Convention status, subsidiary/complementary protection and other humanitarian statuses. Excluding withdrawn, closed and abandoned claims.

FIN. Fig. 6.b Positive First- and Second-Instance Decisions, Top 10 Countries of Origin in 2013[20]

	Country of Origin	Total Positive	Total Decisions	Rate
1	Iraq	672	1,035	64.9%
2	Somalia	248	310	80.0%
3	Afghanistan	237	347	68.3%
4	Syria	145	177	81.9%
5	Iran	117	222	52.7%
6	Russia	88	308	28.6%
7	Turkey	38	73	52.1%
8	Nigeria	25	179	14.0%
9	D.R. Congo	22	45	48.9%
10	Ethiopia	21	37	56.8%

Total Positive Decisions by Status from Top 10 Countries of Origin, 2013



[20] For the purpose of this exercise, positive decisions include decisions to grant Convention status, subsidiary/complementary protection and other humanitarian statuses. Excluding withdrawn, closed and abandoned claims.

FIN. Fig. 6.c | Positive First-and Second-Instance Decisions, Top 10 Countries of Origin in 2014[21]

	Country of Origin	Total Positive	Total Decisions	Rate
1	Iraq	366	717	51.0%
2	Somalia	158	239	66.1%
3	Afghanistan	119	201	59.2%
4	Russia	118	289	40.8%
5	Iran	109	167	65.3%
6	Syria	96	143	67.1%
7	Nigeria	66	231	28.6%
8	Stateless	32	44	72.7%
9	Turkey	30	68	44.1%
10	D.R. Congo	23	41	56.1%

Total Positive Decisions by Status from Top 10 Countries of Origin, 2014

[21] For the purpose of this exercise, positive decisions include decisions to grant Convention status, subsidiary/complementary protection and other humanitarian statuses. Excluding withdrawn, closed and abandoned claims.

Abdu and his family moved to Germany from Lebanon under the German Humanitarian Assistance Programme after fleeing the war in Syria.

UNHCR/G. Welters/November 2014

GERMANY

igc

1 BACKGROUND: MAJOR ASYLUM TRENDS AND DEVELOPMENTS

Asylum Applications

In 1980, for the first time in German history, the country registered more than 100,000 asylum seekers in a single year. Although figures decreased in the following years, there was a steady increase from the mid-1980s onward, culminating in a peak figure of 438,000 asylum seekers in 1992. The fall of the Iron Curtain on the 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 in 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 first half of 1993 and had an almost instant impact. They resulted in a significant and continuous decrease in the numbers of asylum seekers in the following years. Since 2008, however, numbers have been on the rise again.

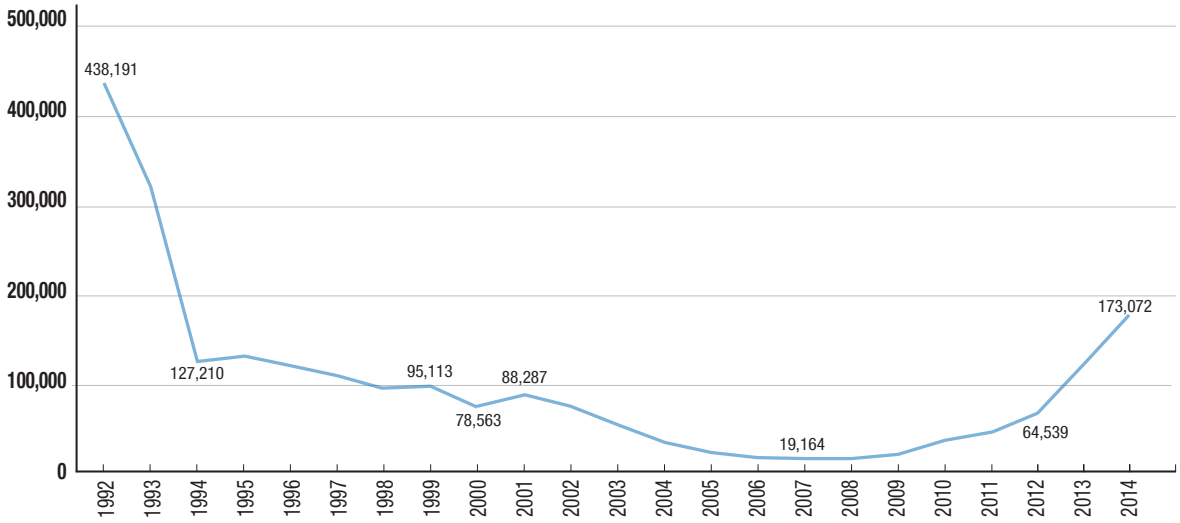
Top Nationalities

In the early 1990s, most claims 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, Viet Nam and Kosovo. In 2011, the top five countries of origin were Afghanistan, Iraq, Iran, Serbia and Syria. In 2012, the top five countries of origin were Serbia, Afghanistan, Syria, Iraq and the former Yugoslav Republic of Macedonia. In 2013, the top five countries of origin were Russia, Syria, Serbia, Afghanistan and the former Yugoslav Republic of Macedonia. In 2014, the top five countries of origin were Syria, with almost 40,000 first applications, Serbia, Eritrea, Afghanistan and Albania.

Important Reforms

The Asylum Procedure Act of 16 July 1982 introduced provisions aimed at accelerating the asylum procedure while safe guarding 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.

GER. Fig. 1 **Total Asylum Applications by Year, 1992–2014[1]**



While 22,085 first applications were filed in 2008, 41,332 applications for asylum were made in 2010 and 45,739 in 2011. During the next three years, numbers increased dramatically to 64,539 in 2012, to 109,580 in 2013 and finally to 173,072 in 2014. All these numbers refer to first applications and hence new inflows.

Throughout the 1990s, legislation governing asylum was the subject of important reforms, including the implementation of provisions in the Act on the Reorganization of Asylum Procedures between 1992 and 1993, the so-called "asylum compromise" or agreement of political parties on a joint concept regarding asylum and migration in 1992, and changes to the reception benefits regime for asylum seekers.

[1] Data refer to first applications only.

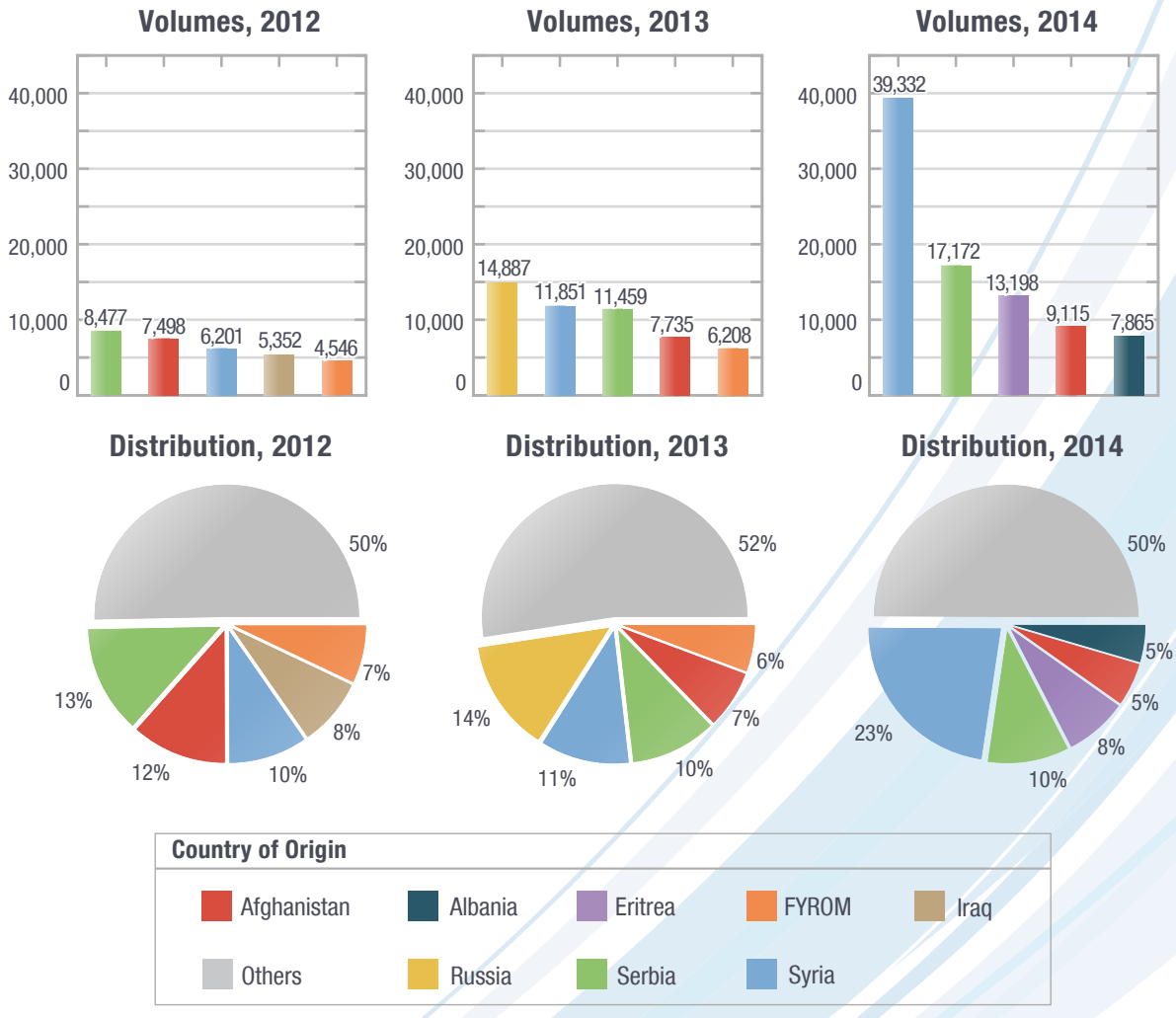
In 2005, the new Immigration Act, which included several important amendments to the asylum law, came into force, overhauling the immigration system in Germany. The Act provided for, among other things, improved status rights for Convention refugees and for beneficiaries of subsidiary protection. Under this Act, gender-related persecution and persecution by non-state agents were henceforth to be considered to constitute grounds for granting refugee status.

On 1 December 2013, the concept of international protection was introduced into German law with the implementation of the recast Qualification Directive (Directive 2011/95/EU). Accordingly, an asylum application is now defined as an application both for "asylum" – as defined in the German Constitution – and for international protection (refugee and subsidiary protection) – as defined in the Qualification Directive. Furthermore, both the refugee definition and the definition of subsidiary protection have been transposed into the Asylum Procedure Act. Persons with subsidiary protection status are now legally entitled to a residence permit (replacing a discretionary provision, according to which they "should" be granted a residence permit). Before, persons were entitled to a residence permit "as a rule", so it could be denied under certain circumstances. Individuals would then be left with a "tolerated" stay.

Visa liberalization in 2009 and 2010 with regard to Balkan countries has resulted in a large influx in applications from Serbia and the former Yugoslav Republic of Macedonia in recent years. One of the measures put in place to deal with this increase in applicants was to limit voluntary return assistance. Applicants predominantly consisted of members of the Roma ethnic group invoking precarious living conditions in their countries of origin. By mid-2011, the large majority of asylum seekers came from Syria, at nearly 13,000 persons. This number is three times higher than it was in the same period of the preceding year.

In order to manage the increase in asylum seekers, the Federal Office for Migration and Refugees (BAMF)[2] is recruiting more

GER. Fig. 2 Asylum Applications Received from Top Five Countries of Origin in 2012, 2013 and 2014[3]



[2] The acronym is based on the German name *Bundesamt für Migration und Flüchtlinge*.
[3] Data refer to first applications only.

staff. Furthermore, in an effort to deal with the pressure on the German asylum system by asylum seekers from Balkan countries, the German Parliament adopted an asylum law that declares Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia and Serbia as safe countries of origin. This law was adopted in September 2014 and it entered into force in November 2014.

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, paragraph 1, of the Constitution
- Refugee status granted under international protection in accordance with section 3 of the Asylum Procedure Act, which reproduces the 1951 Convention relating to the Status of Refugees (1951 Convention) inclusion criteria.

With the transposition of the Qualification Directive in December 2013, German law now includes in section 4 of the Asylum Procedure Act provisions for granting subsidiary protection as part of international protection.

The granting of asylum and of international protection is governed by the Asylum Procedure Act. Each asylum application now covers both the application for the recognition as a refugee as provided for in the Constitution, as well as the application for international protection (section 13(2) of the Asylum Procedure Act). Under the single procedure, a person who does not meet criteria for asylum or refugee status may be granted subsidiary protection.

On 1 December 2013, the Qualification Directive was transposed into national law. As a result:

- Refugee protection according to the 1951 Convention and subsidiary protection were implemented into German law. Each asylum application now includes the claim for asylum and international protection (that is, refugee protection and subsidiary protection). An application limited to subsidiary protection is no longer possible.
- The local Aliens Office remains responsible for an isolated application for a country-specific removal ban, based on national legislation (section 60(5) and (7) of the Residence Act).
- The exclusion grounds of article 17 of the Qualification Directive have been transposed into the Asylum Procedure Act. Exclusion grounds had been relevant before only during the procedure of issuing a residence permit in connection with status rights and benefits. Now the wording of the new section 4 of the Asylum Procedure Act corresponds to article 17 of the Qualification Directive and subsidiary protection is excluded under section 4(2) of the Asylum Procedure Act.
- Some regulations have been shifted from the Residence Act to the Asylum Procedure Act.
- As mentioned above, subsidiary protection, now governed in the Asylum Procedure Act, was laid down in sections 60(2), (3) and (7) of the Residence Act. The new section 3 of the Asylum Procedure Act, which includes rules for the interpretation of the refugee definition (transposed from the Qualification Directive), was formerly found in section 60(1) of the Residence Act.

2.2 Recent/Pending Reforms

The Act on Safe Countries of Origin, a new law, was adopted by the German Parliament on 19 September 2014 and it entered into force on 6 November 2014. The Act classifies the western Balkan countries of Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia and Serbia as safe countries of origin according to the definition in section 29a of the Asylum Procedure Act. This classification allows for the faster processing of asylum applications from nationals of these countries, and because these applications have little chance of success, it enables these applicants to be deported sooner. Applications of asylum seekers from countries that are deemed to be safe, which now also include Ghana and Senegal, are considered as manifestly unfounded on the assumption that, in these countries, persecution is unlikely to occur. Applicants from these countries must demonstrate that the presumption of safety does not apply in their individual case.

Moreover, the Act reduces to three months the length of time asylum seekers and foreigners whose deportation has been suspended must wait before being allowed to work. This provision is intended to give asylum seekers the chance to support themselves sooner by taking up employment.

On 1 January 2015, the Act to improve the legal status of asylum seekers and foreigners whose deportation has been suspended took effect. It regulates adjustments in the Asylum Procedure Act and the Residence Act regarding the geographic restrictions imposed on asylum seekers and other foreigners whose deportation has been suspended (that is, the requirement to live in an officially assigned area). Furthermore, the Act amends the Act on Benefits for Asylum Seekers. These provisions entered into force on 1 March

2015. They are based on other adjustments resulting from the implementation of a Federal Constitutional Court decision of 18 July 2012, which also took effect on 1 March 2015. In the future, asylum seekers and foreigners whose deportation has been suspended will receive only benefits in kind while accommodated in initial reception centres. Afterwards, they will be given cash benefits rather than in-kind benefits, though it will still be possible for them to receive benefits in kind.

3 INSTITUTIONAL FRAMEWORK

3.1 Principal Institutions

Located under the Federal Ministry of the Interior, BAMF is the competent authority for assessing asylum claims (article 16a of the Constitution) and claims for international protection. 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 limited to country-specific removal bans in consultation with BAMF. This is based on the Residence Act, which lists criteria such as illness or a lack of medical treatment in the country of origin.

The federal states are also responsible for the accommodation of asylum seekers. They must provide reception centres. In these facilities, the applicants are provided with in-kind livelihood support as well as a cash grant for daily personal needs. After a decision has been made by BAMF on the protection status, the granting of residence permits regulating the further stay of the alien lies in the competence of the federal states and the local immigration authorities.

The administrative courts (the Administrative Court, the High Administrative Court and the Federal Administrative Court) are responsible for hearing appeals of decisions made by BAMF or by the Aliens Offices.

The Federal Police receives requests for asylum at the border, and decides whether the asylum seeker should be transferred to a reception facility or denied entry. The Federal Police is also responsible for transferring persons under the Dublin procedures.

There have been organizational changes to some units within BAMF, and a new unit called Asylum Quality Assurance has been created.

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. Exemptions to the passport requirement may be granted by BAMF before entry or by the Federal Police upon entry. Both bodies are authorized by the Federal Ministry of the Interior (section 3, paragraph 2, of the Residence Act).

4.1 Visa Requirements

For the 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.

4.2 Carrier Sanctions

A carrier may transport foreign nationals into Germany only if they are in possession of a passport and a residence title (that is, a visa or a residence permit). Violations of this obligation will subject the carrier to a fine, ranging between EUR 1,000 and EUR 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 out of Germany. This obligation applies for a period of three years with regard to foreign nationals without a passport, passport substitute or 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, among other things, intercepting undocumented migrants at the border, within a 30 km area inside the German border, and at international airports and seaports. The Federal Police also ensures the security of borders on the country's railway systems and on trains. As a rule, the Police will return individuals who entered illegally to the State from where they came. 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 Federal Police, or at an Aliens Office. The authorities will refer the foreign national to a reception centre for asylum seekers.

BAMF is the authority responsible for determining asylum claims. It is composed of a central office located in Nuremberg and 24 branch offices nationwide. As a rule, the branch offices are responsible for accepting formal asylum applications and for processing the claims. As required by section 5(3) of the Asylum Procedure Act, the head of BAMF is to set up a branch office at each central reception facility for asylum seekers (reception centre) with a capacity to accommodate 500 persons or more. He or she may set up additional branch offices in consultation with the federal states.

Access to Information

BAMF instructs all asylum seekers 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.

BAMF recently produced a film, which has been translated into 10 languages, about the asylum procedure in Germany. This film will be shown in reception centres as part of the orientation presentations provided by non-governmental organizations (NGOs) working with refugees. Screenings in small groups will allow for interactive question and answer sessions. A brochure outlining the same information has also been developed in the 10 languages, all with the aim to better inform asylum seekers about the asylum process.

5.1.1 Outside the Country

Applications at Diplomatic Missions

It is not possible to apply for asylum from abroad.

Resettlement

Germany adopted a regular resettlement programme for a quota of 300 persons per year from 2012 to 2014. In 2012, 202 refugees were accepted from the Democratic Republic of the Congo, Eritrea, Ethiopia, Nigeria, Pakistan, Somalia and Sudan, while 105 refugees were from Iraq. In 2013, Germany resettled 293 refugees originating from Iraq, Iran and Syria out of Turkey. In 2014, through its regular resettlement programme, 200 non-Syrian refugees from Syria were expected to settle in Germany, and 100 refugees from a refugee camp in Indonesia. Before 2012, Germany engaged in the resettlement of refugees on an ad hoc basis. In 2009 and 2010, Germany resettled 2,501 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. In 2010 and 2011, Germany also admitted 255 refugees from Malta and 100 refugees from Iran.

Under its resettlement scheme, UNHCR submits cases to BAMF for consideration. Cases are accepted after interviews take place during a selection mission. In exceptional cases, acceptance can be based on a dossier. Decisions on eligibility for resettlement are taken by BAMF, and the refugees' transit is organized in cooperation with the International Organization for Migration (IOM). Upon arrival in Germany, 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.

In March 2013, as part of broader EU efforts to alleviate the refugee crisis in Syria and its neighbouring countries, Germany decided to admit 5,000 especially vulnerable Syrian refugees for the length of the conflict and its aftermath. The refugees are granted humanitarian status with benefits similar to those given to persons who obtain refugee status for a period of at least two years. After this time, the situation in Syria will be evaluated. In two further decisions (in December 2013 and July 2014), the quota was raised to 20,000 refugees. UNHCR submits cases and the decisions are file-based. The departures are organized partly in cooperation with IOM and partly by the refugees themselves.

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.

At Airports

In certain cases, asylum applications at international airports may be processed prior to the applicant's entry 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 seeker 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
- When an asylum seeker hails from a safe country of origin (an EU Member State, Albania, Kosovo, Montenegro, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Ghana, Senegal or Serbia).

Asylum seekers whose applications are streamed under the airport procedure are accommodated at a reception centre at the airport. The BAMF office located inside or close to the airport will examine the asylum seeker's claim. Immediately after the interview, the asylum seeker will be given the opportunity to contact a legal adviser of his or her choice.

If BAMF makes a negative determination on the claim on the basis that the application is manifestly unfounded, the asylum seeker is not entitled to enter Germany, and removal may be implemented. If 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. (See the section on the normal procedure below and section 6 on decision-making for information on grounds for rejecting an application as manifestly unfounded.)

If the asylum application and the application for entry are 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 court does not arrive at a decision within this time frame, the applicant will be allowed to enter Germany. The court decision cannot be appealed.

5.1.3 Inside the Territory

Requests for asylum inside the territory are usually lodged with the Police or at an Aliens Office. The authorities will refer the foreign national to the nearest reception centre for asylum seekers. This reception centre will receive the individual or refer him or her to the competent reception centre. Reception centres are always located near a branch office of 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 seeker.

Responsibility for Processing the Claim

The Dublin System

Application

There are two cases in which Council Regulation (EC) No 343/2003 (Dublin Regulation) applies. BAMF applies the Dublin Regulation in cases where a person has been arrested on the ground of an illegal stay in Germany and it is proven that he or she had already applied for asylum in another State. BAMF also applies the Dublin Regulation once an asylum claim has been registered and it considers that another State is responsible for examining the application.

Procedure

BAMF requests the responsible State to take charge of or to take back the applicant. After the responsible State has accepted the request, the application for asylum in Germany is deemed inadmissible (section 27a of the Asylum Procedure Act) and the transfer of the asylum seeker to the responsible State will be arranged (section 34a of the Asylum Procedure Act). He or she will be issued a laissez-passer in order to travel to the responsible State.

Freedom of Movement and Detention

Persons who lodge an asylum application in Germany are not usually detained during the asylum procedure. A person may be detained to secure the transfer procedures according to the Dublin Regulation on the basis of an individual assessment when there is a significant risk of absconding and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively (article 28, paragraph 1, of the Dublin III Regulation). The implementation of the definition of "risk of absconding" into national law is currently the subject of discussion.

Conduct of Transfers

As a rule, transfers are carried out on the basis of a mutual agreement between the States concerned. The German authorities (the Aliens Office or the Federal Police) will implement the transfer to the responsible State.

Review/Appeal

Transfer decisions under the Dublin Regulation may be appealed before the administrative courts. The person concerned can take legal action within two weeks of the notification of the transfer decision.

According to section 34(a), paragraph 2, of the Asylum Procedure Act, the person concerned has the opportunity to request, within one week of the notification of the decision, the administrative court to suspend the implementation of the transfer decision pending the outcome of his or her appeal or review. The transfer is suspended until the decision

on the suspension request is taken according to section 80, paragraph 5, of the Administrative Procedures Act (a suspensive effect).

In response to a decision of the European Court of Human Rights on 21 January 2011 (*M.S.S. v. Belgium and Greece*), all Member States have suspended transfers to Greece since January 2011. In this decision, the court determined that it is not permitted to transfer an applicant to a Member State if there is a risk of inhuman or degrading treatment. Dublin transfers from Germany to Greece was extended to 12 January 2016.

Application and Admissibility

Once an application for asylum has been registered with BAMF, the identity of the applicant will be established. The applicant is obliged to submit identity documents, if any exist. Fingerprints and photographs will be taken. This information is then compared against data contained in the Central Register of Aliens and identity records will be 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 under the Dublin Regulation for processing the claim.

Before interviewing the claimant, a branch office of 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 with a specific residence permit. The asylum seekers are also informed of their rights and obligations during the asylum procedure.

Accelerated Procedures

Except for the airport procedure (as described earlier), there are no accelerated asylum procedures in Germany.

Normal Procedure

A BAMF caseworker will interview the asylum seeker either on the same day or within a few days of the asylum seeker submitting the application. Caseworkers are specialized according to specific countries of origin. Some caseworkers are also specially trained in handling claims from specific vulnerable groups, such as unaccompanied minors, victims of gender-based persecution, victims of torture or traumatized applicants. The interview is not open to the public. It may be attended by representatives from the Government, the federal states or UNHCR. Other individuals may attend, if permitted by the head of 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 reports from the Federal Foreign Office and publications by NGOs or UNHCR.

Claims that are considered to be unfounded or manifestly unfounded are examined further by BAMF to detemine whether there exist grounds for granting subsidiary protection.

A claim may, for example, be deemed manifestly unfounded in 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 Normal Procedure

A negative decision on an asylum claim may be appealed before an administrative court. There are three stages of appeal, one each before 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 normally comprise an oral hearing. The court proceedings depend on whether a claim has been rejected as "unfounded" or "manifestly unfounded".

Unfounded Claims

Where 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 a suspensive effect.

If the court rules in favour of the asylum seeker, the BAMF decision will be annulled and BAMF will be requested to grant refugee status or any other protection status. If the court upholds the decision of BAMF, the asylum seeker will be required to leave Germany.

The asylum seeker and 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 any 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 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 BAMF, in order to stave off removal proceedings.

If the Administrative Court rules in favour of the applicant, the BAMF decision is entirely or partly reversed and BAMF is obliged to determine refugee status or any other protection status.

If the court rejects the appeal, determining it to be manifestly unfounded, the applicant will be required to leave Germany. The decision to reject an appeal on the basis of being 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. Some federal states have loosened this geographic restriction.

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.

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 BAMF has informed the local 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 to the applicant.

If, after the final conclusion of a previous procedure an applicant substantiates a subsequent application with facts or circumstances that the applicant has created by his or her own decision, as a rule refugee status cannot be given. Nevertheless, the granting of subsidiary protection will be considered. This interpretation of article 5, paragraph 3, of the Qualification Directive results from a decision of the Federal Administrative Court.

The applicant can appeal a negative decision on a repeat application before the Administrative Court. The appeal does not have a 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, which is 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 EU Member States, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Ghana, Senegal and Serbia (see section 2.2). 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 or she 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 a 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 on 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 EU Member States, Norway and Switzerland. Currently, the safe third country rule has practical effect in cases where the Dublin III Regulation is not applicable, since the applicant was granted international protection in another State.

The decision to apply the safe third country rule can be appealed to the Administrative Court. The appeal does not have a suspensive effect.

5.3 Special Procedures

5.3.1 Unaccompanied Minors

German asylum law distinguishes between minor asylum seekers below 16 years of age, and those 16 or 17 years of age.

Asylum seekers aged 16 years or 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.

According to German law, a guardian must be appointed to all unaccompanied minors. No asylum interview can be held before the guardian is appointed. The guardian may be a family member or, if the minor does not have relatives in Germany, a representative from the local Youth Office. The guardian will be given the opportunity to attend the interview. If the guardian does not attend the interview, it can be held in his or her absence. In this case, the minor can be accompanied by another adviser or counsellor.

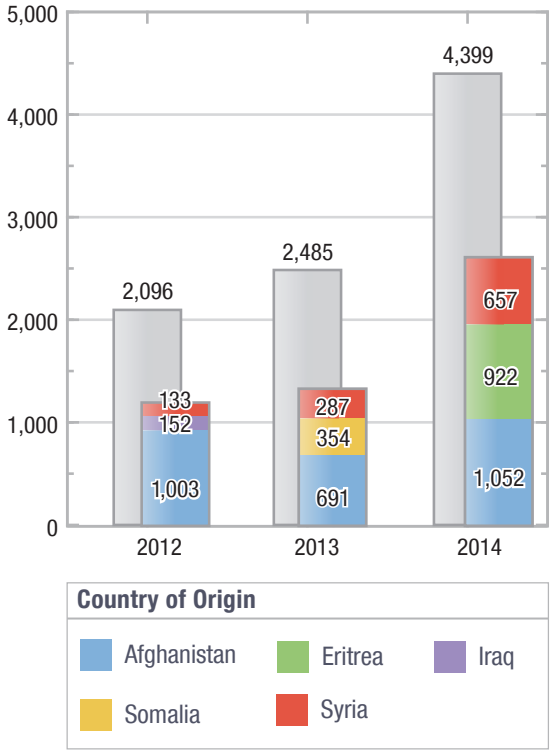
The branch offices of BAMF employ specially trained caseworkers to deal with unaccompanied minor asylum seekers in order to ensure that the child's level of maturity and development will be taken into account.

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.

UNHCR/A.McConnell/January 2014.

GER. Fig. 3 | Asylum Applications by Unaccompanied Minors in 2012, 2013 and 2014[4]

	2012	2013	2014
Total Asylum Applications	64,539	109,580	173,072
Applications by Unaccompanied Minors	2,096	2,485	4,399
Percentage	3%	2%	3%



IN FOCUS

GUIDELINES CONCERNING CLAIMS BASED ON SEXUAL ORIENTATION

There has been a change in the guidelines concerning the assessment of whether an applicant's fear of persecution on the grounds of her or his sexual orientation is well founded (see article 2(d) of Directive 2011/95):

> In assessing the application it is to be considered whether and how, in the light of the applicant's personal individual circumstances, the expression of her/his sexual orientation is of particular importance to the applicant's identity. The fact that the applicant could avoid the risk of persecution by concealing her/his sexual orientation is, in principle, irrelevant and cannot be reasonably expected. Therefore the applicant's fear of being persecuted shall be considered well-founded if, in the light of her/his personal circumstances, it may reasonably be thought that, upon her/his return to the country of origin, she/he will engage in a lifestyle that expresses her/his sexual orientation and thus exposes her/him to a real risk of persecution. In such cases refugee status shall be granted.

The change in the guidelines is based on the judgements of the Court of Justice of the European Union of 5 September 2012 in the joined cases *C-71/11* and *C-99/11*, and of 7 November 2013 in the joined cases *C-199/12*, *C-200/12* and *C-201/12*, and the judgement of the German Federal Administrative Court of 20 February 2013 concerning religion as grounds for persecution.

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.

[4] Data refer to first applications only.

6 DECISION-MAKING AND STATUS

6.1 Inclusion Criteria

Since the transposition of the Qualification Directive into national law, an application automatically contains a request for (political) asylum according to article 16 of the Constitution, as well as international protection instruments such as the 1951 Convention and subsidiary protection. An isolated application for subsidiary protection at an Aliens Office is no longer possible.

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 16(a), paragraph 1, of the Constitution
- Refugee status as part of international protection granted in accordance with section 3 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 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.

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:

- A risk of the death penalty or execution
- A risk of torture or inhuman or degrading treatment or punishment

IN FOCUS

ASYLUM CASE LAW – GRANTING SUBSIDIARY PROTECTION

In a 24 June 2008 decision in the case of *BVerwG 10 C 43.07*,[5] the Federal Administrative Court set out criteria that must be met in order to be granted 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 their 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.

In the decision of the Tenth Division of 14 July 2009 – case *BVerwG 10 C 9.08*[6] – the Federal Administrative Court developed this concept further. The headnote reads:

1. A substantial individual danger to life or limb within the meaning of Section 60 (7) Sentence 2 of the Residence Act that also satisfies the equivalent requirements of Article 15 (c) of Directive 2004/83/EC (Qualification Directive) may also arise from a general danger to a large body of civilians within a situation of armed conflict if the danger is concentrated in the person of the foreigner.

   a) Such a concentration, or individualisation, may result from circumstances specific to the foreigner's person that increase risk.

   b) By exception, it may also arise irrespectively of such an individualisation in an extraordinary situation that is characterised by such a high degree of risk that practically any civilian would be exposed to a serious individual threat solely on account of his or her presence on the relevant territory (concurring, European Court of Justice judgment of 17 February 2009 - *C 465/07 - Elgafaji*).

2. If an armed conflict with such a degree of risk does not exist nationwide, as a rule an individual threat will come under consideration only if the conflict extends to the foreigner's region of origin, to which he or she would typically return.

The Court of Justice of the European Union has improved access to subsidiary protection through its decision of 30 January 2014 in the case C-285/12. In its decision on this case, the court concluded that, in EU law (QD 2004/83), the interpretation to be given to the concept of "internal armed conflict" must be independent of the definition used in international humanitarian law. Thus, "an internal armed conflict must be found to exist where a State's armed forces confront one or more armed groups or where two or more armed groups confront each other, regardless of the intensity of the confrontations, the level of organization of the armed forces involved or the duration of the conflict".

[5] The full text of the decision, in English, can be found on the Federal Administrative Court website, at www.bundesverwaltungsgericht.de.
[6] See www.bundesverwaltungsgericht.de.

- 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 article 15 of the Qualification Directive was transposed into national law through section 4 of the Asylum Procedure Act.

National removal bans are based on any of the following legal criteria:

- A breach of rights under article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights)
- 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 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 to the asylum seeker or his or her representative.

6.3 Types of Decisions, Statuses and Benefits Granted

BAMF may make one of the following decisions on an asylum claim:

- Grant asylum status in line with article 16(a), paragraph 1, of the Constitution and refugee status in line with the 1951 Convention
- Grant only refugee status in line with the 1951 Convention
- Grant subsidiary protection
- Make a ruling on removal bans
- Deny asylum status, refugee status, subsidiary protection or removal bans
- 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 clear 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 in the following cases, among others:

- 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 the person 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 refugee status or asylum 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 (section 29, paragraph 2, of the Residence Act).

As a rule, a refugee becomes eligible for a permanent residence ("unlimited settlement") permit after three years, unless there are reasons for withdrawing his or her asylum or refugee status. To this end, all positive decisions will be re-examined by 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,

such as the degree of integration of the individual into German society, the length of stay on 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 one year (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.

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 (family reunification may be granted only for reasons of international law, on humanitarian grounds or to safeguard the interests of Germany).

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 (see the section on appeals). The appeal has a 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 a suspensive effect, unless the asylum seeker files an urgent motion to this end and the urgent motion is successful.

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. In accordance with a ruling by the Court of Justice of the European Union of 9 November 2010,[7] there is no automatic exclusion on the sole grounds of belonging to an organization that uses terrorist methods. Instead, an appraisal of the factual circumstances in each case must be made.

6.4.2 Complementary Protection

The conditions for being granted subsidiary protection as regulated by article 15 of the Qualification Directive have been incorporated independently in section 4 of the Asylum Procedure Act. At the same time and for the first time, the exclusion criteria in accordance with article 17 of the Qualification Directive were transposed into national law (section 4(2) of the Asylum Procedure Act). Up until then, such facts had to be taken into consideration only when a residence title was issued. Subsidiary protection is now excluded if serious grounds prevail justifying the following assumptions:

- The applicant 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 to such crimes.
- The applicant has committed a serious crime.
- The applicant 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.
- A danger to the public or the safety of Germany prevails.

If the removal cannot be executed, a prohibition of removal will be determined in accordance with section 60(5) of the Residence Act. This will, however, result in the applicant receiving neither a residence title nor any of the privileges linked to such a residence title, which means that the foreigner is issued with a temporary permit to remain (section 25(3) of the Residence Act).

[7] Joined Cases C-57/09 and C-101/09 *Germany v. B* and *Germany v. D*.

6.5 Cessation

Germany applies the cessation clauses of article 1C of the 1951 Convention.

The cessation of granting refugee protection status must be examined not later than three years after the decision has become non-appealable.

In cases pursuant to article 1C(5) and (6) of the 1951 Convention (ceased circumstances clauses), BAMF will inform the refugee in writing about the possibility of his or her status being withdrawn. The refugee will be given due process. 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 to the individual in writing. He or she can appeal the decision. As a rule, the appeal has a suspensive effect.

Subsidiary protection status or a removal ban may be withdrawn if the person no longer meets the 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 a 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, such as integration of the individual in Germany, the length of stay, any criminal record and family ties.

6.6 Revocation

Asylum status, refugee status, subsidiary protection status or a removal ban may be revoked if the granting of protection status was incorrect. This applies to cases where the decision was based on false information provided by the asylum seeker (such as 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 COI service and a language analysis tool, 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 of BAMF is responsible for storing and producing COI. The centre's COI collection comprises information from a wide range of sources, such as foreign service reports published by Germany and by other countries, as well as information from UNHCR, human rights organizations, NGOs, academics and liaison officers deployed in a number of EU Member States. There is intensive international cooperation between the centre and organizations such as the European Asylum Support Office (EASO) and the Intergovernmental Consultations on Migration, Asylum and Refugees (IGC). The information made available to asylum decision-makers is regularly updated.

The Information Centre for Asylum and Migration conducts research and produces reports on countries of origin as well as on specific subjects, such as political organizations or the situation of particular groups in countries of origin. The centre also compiles legal information, in particular decisions by courts.

All the research produced and gathered by the centre is made available on the database MILo (Migration-Information-Logistics), which is in principle accessible to BAMF staff as well as to administrative judges who deal with asylum and aliens law. Parts of MILo are available to the public on the Internet. The centre also operates a central reference desk, which responds to caseworkers' queries for COI, and edits an asylum gazette.

6.7.2 Language Analysis

If the reasons for the request for asylum or the knowledge of the claimed country of origin are doubtful, and if the applicant cannot provide personal documents, then speech and text analysis can be undertaken. To this end, the asylum seeker's oral statements will be audio recorded. Under the supervision of an asylum official, an interpreter will ask the applicant important questions about the claimed country of origin, regarding his or her social background, education, occupation and daily life. Recordings may be made only if the asylum seeker is informed beforehand. The audio records will be sent to the responsible section of BAMF, which will select the suitable linguist to check the quality of the recording and make an analysis.

While the analysis focuses mostly on the language, knowledge of the claimed country of origin will be considered. BAMF works with independent linguists who have the necessary qualifications (academic training which qualifies the linguists in certain areas of language) and expert country knowledge.

All language analysis proceedings are done anonymously. In accordance with German data protection legislation, the name of the applicant is never to be disclosed to the expert.

Likewise, the name of the expert will not appear on the report; only a coded ID and information on the expert's qualifications will be provided.

The goal of an expert report is to establish (with a certain degree of probability) a person's main socialization – not the citizenship. The result of this report is one element to be considered when a decision on the asylum application is being made.

The entire procedure of speech and text analysis undergoes regular reviews and improvements to meet the standards requested by the German administrative courts.

IN FOCUS

COOPERATION WITH UNHCR

UNHCR in Germany has a dedicated team working with BAMF in Nuremberg. The UNHCR regional office is located in the same building as BAMF Headquarters – greatly facilitating personal contact and shortening communication channels. As part of this close cooperation, UNHCR provides the Asylum Policy Unit of BAMF with feedback on individual files and specific caseloads. UNHCR and BAMF also cooperate in a number of quality-related initiatives at both the national and the European level. In addition, there is internal cooperation in auditing written decisions according to defined quality criteria.

7 EFFICIENCY AND INTEGRITY MEASURES

7.1 Technological Tools

The identity of any asylum seeker is established by means of identification measures unless he or she is under 14 years of age. Photographs and prints of all 10 fingers may be taken. Fingerprinting is crucial in identifying asylum seekers who have already applied for asylum in other EU countries, and for determining whether the application is a first or a repeat application.

7.1.1 Fingerprinting

Fingerprints are taken from all asylum seekers aged 14 years or older. They are stored in a central database of the Federal Criminal Police Office. The fingerprints will be compared with those of other asylum seekers included in the database in order to establish whether an asylum seeker is making a first, repeat or 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 stored in the Eurodac database are also used to compare the fingerprints of asylum seekers and persons without permits in Member States in order to determine the State responsible for processing a claim under the Dublin Regulation.

In response to the recent practice of fingertip mutilation in order to render identification by this means impossible, a procedure was put in place whereby applicants presenting such mutilations were instructed to reappear for identification, or risk having the application withdrawn and asylum procedure closed. This practice sharply decreased the number of applicants with mutilated fingertips.

The Federal Administrative Court determines an applicant's duty to cooperate by whether they provide their fingerprints for the purpose of establishing identity, and do not mutilate their fingertips. If applicants prevent such identification by distorting their fingertips, the procedure may be terminated for reasons of abandonment of the application, without deciding on the merits of the case.[8]

7.1.2 DNA Tests

No DNA tests are undertaken during the asylum procedure.

7.1.3 Forensic Testing of Documents

In order to check the authenticity of identity or other documents, forensic tests are used.

7.1.4 Database of Asylum Applications/Applicants

Data on the application of all asylum seekers are stored on the centralized database, called Maris, at BAMF.

In addition, the personal data on an asylum seeker are entered into the Central Aliens Register. This register is a centralized, national file containing personal data of foreign nationals who have been in Germany for longer than three months, including those who are in Germany on special residence grounds, such as asylum seekers. The Central Aliens Register is also maintained by 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 his or her 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

[8] The English version of the court's decision is available for download at www.bverwg.de/informationen/english/decisions/10_c_7_13.php.

must be lodged within three months of the day the individual becomes aware of the grounds for the new application. Otherwise the repeat application will be rejected.

7.3 Pending Cases

Updated data on the number of pending cases are not available.

7.4 Information Sharing

Information-sharing agreements exist with States under the Dublin II Regulation. UNHCR is provided with anonymized copies of all asylum decisions.

7.5 Single Procedure

If an asylum seeker requests asylum and/or refugee status, BAMF will automatically also decide on the granting of subsidiary protection and national removal bans in cases where asylum and refugee status were denied. In that sense, there is a single procedure.

However, if a foreign national applies for a national removal ban only, the decision rests with the Aliens Office. In order to ensure consistency in decision-making, the Aliens Office consults 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 through 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 to 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 the success of the appeal and the appellant is lacking in financial resources.

8.1.2 Interpreters

During the asylum procedure with BAMF, an interpreter, translator or other linguist is made available for 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 UNHCR. The office may present its views regarding individual applications for asylum to BAMF. UNHCR also has access to persons in detention and in airport transit zones.

8.1.4 NGOs

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.

8.2 Reception Benefits

The federal states have the overall responsibility for the reception of asylum seekers.

8.2.1 Accommodation

During the first three months of the procedure, asylum seekers are accommodated in asylum reception centres run by the federal states. Afterwards, they 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 reasons of public security and order, or for other compelling reasons, including humanitarian reasons.

Unaccompanied minor asylum seekers under 16 years of age are provided with 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, among other things, accommodation, heating, electricity, furniture and appliances. Everyday items can be purchased using coupons or credit cards loaded with fixed credit amounts.

Following a ruling of the Federal Constitutional Court on 18 July 2012, asylum seekers receive monthly financial aid based on one of six "requirement levels". The amounts are adjusted each year. Listed below are the amounts for 2014:

- Level 1: Single person or single parent – EUR 362 (EUR 222 standard benefit, EUR 140 pocket money)
- Level 2: Spouse or life partner – EUR 326 (EUR 200 standard benefit, EUR 126 pocket money)
- Level 3: Adult household members – EUR 290 (EUR 178 standard benefit, EUR 112 pocket money)

- Level 4: Children between 15 and 18 years of age – EUR 280 (EUR 197 standard benefit, EUR 83 pocket money)
- Level 5: Children between 7 and 14 years of age – EUR 247 (EUR 157 standard benefit, EUR 90 pocket money)
- Level 6: Children under 7 years of age – EUR 215 (EUR 133 standard benefit, EUR 82 pocket money).

Additional benefits may be granted in special circumstances; for example, additional benefits could be used to accommodate the special needs of children, infants or pregnant women, or to pay the extra costs of school materials or field trips.

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 if 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 six years of age can undergo special paediatric 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 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 rests with the federal states. Thus, there is no uniform policy regarding access to education. In some federal states, school attendance is compulsory for minor children of asylum seekers with pending asylum applications, while in other states minors have the possibility to attend school but are not obliged to do so.

8.2.5 Access to the Labour Market

Since November 2014, after having resided in Germany for three months 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 is no competing German or EU citizen 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 social programmes designed to assist asylum seekers in their everyday life. These cover a wide range of issues, including legal counselling and joint activities with local communities.

8.2.7 Access to Benefits by Rejected Asylum Seekers

Asylum seekers who have received 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 National Legislation on Prohibition of Removal

Applications for a removal ban to a specific State 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 application. The Aliens Office decides whether removal to a specific State is prohibited only after consulting BAMF.

The Aliens Office is also responsible for examining applications that raise issues related to the person's situation (such as health issues or a lack of fitness to travel). Such applications are usually made after a negative decision on an asylum claim by BAMF.

Any negative decision taken by the Aliens Office on an application for a removal ban may be appealed. The appeal has a suspensive effect.

Persons whose application for the prohibition of removal to a specific State was successful are entitled to the following benefits:

- A residence permit valid for at least one year and renewable (after seven years, a settlement permit for an unlimited period may be granted)
- Access to the labour market, subject to a labour market test[9]
- Access to the same core social welfare benefits as nationals (including housing)
- Access to the same core health care as nationals
- Family reunification of core family members may be granted under certain conditions (proof of sufficient resources to cover the cost of living – that is, subsistence – and sufficient living space).

[9] 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 and available for the job.

In the case of the prohibition of removal due to health issues, the person is normally granted benefits according to the Asylum Seekers Benefits Act, as previously outlined. Generally, the removal will only be temporarily suspended and residence will be tolerated. If the end of this suspension of removal is not foreseeable, then a residence permit is to be considered.

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 Commission for Hardship Cases

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. These commissions exist in each federal state. 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 makes recommendations, which are not binding on the 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 individual is entitled to the same rights as those of any other legally residing 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.[10] 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 settled in Germany on a voluntary basis. 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.

Beneficiaries of temporary protection are entitled to rights and benefits similar to those of beneficiaries of subsidiary 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, an individual applicant does not need to prove that he or she is specifically targeted for persecution but rather that he or she is a member of that particular group. This form of group-based protection is granted by the ministries of the interior 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 Federal Ministry of the Interior.

UNHCR/P. Wiggers/March 2009.

[10] 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).

In addition, the Federal Ministry of the Interior, in coordination with the federal states, has the discretion to accept a group of persons from specific States, if this is in the specific political interest of Germany.[11]

Decisions of the Supreme Federal State Authorities

Under German law, the supreme federal state authorities (ministries of the interior of the federal states) may, in consultation with the Federal Ministry of the Interior, grant residence permits to foreign nationals – both inside and outside Germany – who originate from specifically designated countries or who are members of a specifically designated group. 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") 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 Regularization of Status over Time

In the past, there have been temporary, ad hoc regularization programmes to grant residence permits to foreign nationals under tolerated status. The Act on the Implementation of Residence and Asylum-Related Directives of the European Union of 19 August 2007 includes a legal regularization programme for foreign nationals who, among other things, have continuously resided in the federal territory for a minimum of eight years on 1 July 2007 and fulfil certain integration requirements.

In the case of a suspension of a removal, an individual may – if a number of requirements are met – receive a residence permit after a period of time has elapsed, as described above.

9.7 Regularization 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 or asylum has been rejected and who cannot return to the country of habitual residence may have his or her stay in Germany regularized, providing certain conditions are met.

9.8 Victims of Trafficking

Should someone be identified as a victim of human trafficking, such a person is entitled to a reflection period of three months for stabilization reasons and to allow for the decision-making process regarding any future courses of action.

The Aliens Office may, on a discretionary basis, grant a temporary residence permit for 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.

By way of derogation from section 11(1), a foreigner who has been the victim of a criminal offence pursuant to sections 232 (Human Trafficking for the Purpose of Sexual Exploitation), 233 (Human Trafficking for the Purpose of Work Exploitation) or 233a (Assisting in Human Trafficking) of the Criminal Code may also be granted a residence permit for a temporary stay, even if he or she is required to leave the federal territory. The residence permit may be issued only if all of the following conditions are met:

- The public prosecutor's office or the criminal court considers his or her temporary presence in the federal territory to be appropriate in connection with criminal proceedings relating to the said criminal offence, because it would be more difficult to investigate the facts of the case without his or her information.
- He or she has broken off contact with the persons accused of having committed the criminal offence.
- He or she has declared his or her willingness to testify as a witness in the criminal proceedings relating to the offence.

The benefits and entitlements attached to this temporary permit are similar to those available to beneficiaries of subsidiary protection.

[11] This discretion has been exercised, for example, in the case of the Iraqi nationals currently being resettled from Jordan and Syria (see the section on resettlement). The resettled Iraqis are granted a renewable residence permit valid for three years.

IN FOCUS

IDENTIFICATION AND PROTECTION OF VICTIMS OF HUMAN TRAFFICKING IN THE ASYLUM SYSTEM

In cooperation with IOM and UNHCR, BAMF carried out a ground-breaking project entitled "*Identification and Protection of Victims of Human Trafficking in the Asylum System*", which was co-funded by the European Refugee Fund.

The project, which included an analysis of (particularly Nigerian) asylum cases, systematically assessed the links between the asylum procedure and the protection of trafficked persons. During regionally organized two-day seminars, adjudicators from all 22 branch offices of BAMF were sensitized on human trafficking issues. These training seminars highlighted the international commitments of the 1951 Convention and the European Convention on Human Rights regarding trafficked persons, as well as the international and national protection obligations towards trafficked persons. During the seminars, local support structures for trafficked persons, such as specialized counselling centres for trafficked persons and police units specializing in counter-trafficking of human beings, presented their work and responsibilities. The aim was to inform adjudicators about protection possibilities for trafficked persons not only within the framework of the asylum procedure, but also for persons whose asylum claim had been deemed unfounded. Workshops allowed participants to discuss procedural issues and to develop concrete courses of action for appropriately handling trafficked persons within the asylum procedure.

Based on the recommendations that resulted from the project, BAMF has taken various measures to improve the identification of trafficked persons in the asylum procedure and to safeguard their protection. All adjudicators have been sensitized to issues relating to trafficking in human beings and have been provided with concrete suggestions on how to proceed when a specific asylum case also appears to be a case of trafficking in human beings. They are advised to contact a specialized counselling centre for trafficked persons and to approach the specific section within BAMF dealing with security and safety issues. In addition, focal points for trafficking in human beings have been introduced within each BAMF branch office, who liaise with local support structures.

All parties involved evaluated the project positively, and considered it to be a real step forward in the protection of trafficked persons.[12] In the wake of the project, official instructions on "victims of human trafficking" were issued governing the proceedings for the submission of facts and/or if a pertinent presumption is the result of the interview.

These official instructions include, among other things, a list of indicators to assist caseworkers in detecting cases of human trafficking.

10 RETURN

10.1 Pre-departure Considerations

An unsuccessful asylum seeker will be requested to leave Germany within a specific time frame. The asylum seeker will be served the decision regarding the removal 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 Reintegration and Emigration Programme for Asylum Seekers in Germany and the Government Assisted Repatriation Programme are two programmes that have been combined to assist voluntary return and emigration. They are organized by IOM on behalf of the Federal Ministry of the Interior and the competent federal states ministries, in coordination with local authorities, welfare organizations and UNHCR. The programmes are conditional on returnees not having sufficient funds to meet the cost of return and emigration. Nationals of European countries that are not EU Member States and do not require a visa to enter Germany may have only their travel expenses covered, without additional financial incentives. BAMF has set up a database, ZIRF, which contains the data related to voluntary return, such as conditions in the country of origin and assistance programmes such as those mentioned above.

While the Reintegration and Emigration Programme for Asylum Seekers in Germany provides return assistance in the form of transport costs and travel subsidies, the Government Assisted Repatriation Programme grants reintegration assistance. Assistance through the programme is allocated to each person, with the amount adjusted according to the individual's age and destination country.

Assisted returns also take place under European Return Fund programmes.

Forced Return

Returns may be enforced if the person is not willing to leave Germany after the deadline for departure has passed. The execution of forced returns is the responsibility of the federal states.

[12] The documentation of this project is partly available in English at http://www.iom.int/germany/de/downloads/CT%20Asyl/12_06_05_IOM_Endpublikation_ansicht_GESAMT_FINAL.pdf.

10.3 Freedom of Movement and Detention

Detention pending removal 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, for example, if 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 these agreements are dedicated to specific groups of asylum seekers. An implementation protocol between Germany and Moldova is also in force in order to supplement the EU readmission agreement with Moldova.

11 INTEGRATION

Beneficiaries of asylum status or refugee status are entitled to participate in integration courses. Since December 2013, beneficiaries of subsidiary protection as defined in the Qualification Directive are entitled to integration courses.

Integration courses comprise basic and advanced language courses that provide an adequate knowledge of the German 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.

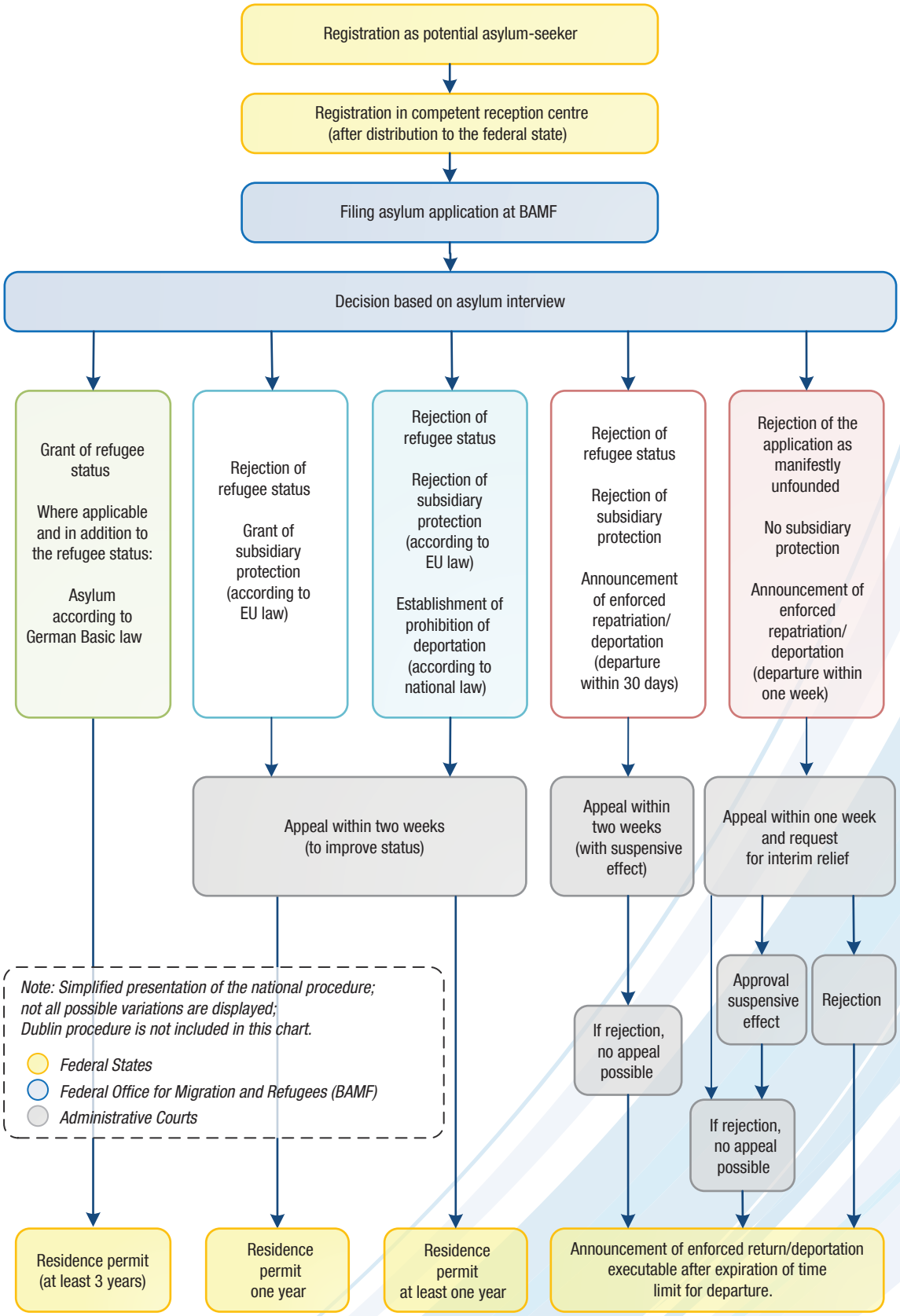
Integration courses are coordinated and implemented by BAMF. To this end, BAMF enlists the services of private or public organizations.

Integration courses are complemented by additional integration measures organized by the federal Government and the federal states, in particular social education and migration-specific counselling services. Federal-funded migration counselling for adults is aimed at new immigrants and immigrants already living in the country. The aim of the individual counselling, which takes place in more than 600 locations nationwide, is to initiate an autonomous integration process. In addition, the federal Government funds projects to integrate youth and adult immigrants.

Finally, there are many NGO-based integration programmes and private initiatives throughout Germany, which support refugees and others in their integration efforts.

12 ANNEX

12.1 Asylum Procedure Flow Chart



12.2 Additional Statistical Information

GER. Fig. 4 | Asylum Applications from Top 10 Countries of Origin in 2012, 2013 and 2014[13]

	2012		2013		2014	
1	Serbia	8,477	Russia	14,887	Syria	39,332
2	Afghanistan	7,498	Syria	11,851	Serbia	17,172
3	Syria	6,201	Serbia	11,459	Eritrea	13,198
4	Iraq	5,352	Afghanistan	7,735	Afghanistan	9,115
5	FYROM	4,546	FYROM	6,208	Albania	7,865
6	Iran	4,348	Iran	4,424	Kosovo	6,908
7	Pakistan	3,412	Pakistan	4,101	Bosnia and Herz.	5,705
8	Russia	3,202	Iraq	3,958	FYROM	5,614
9	Bosnia and Herz.	2,025	Somalia	3,786	Somalia	5,528
10	Kosovo	1,906	Eritrea	3,616	Iraq	5,345

Note: FYROM – former Yugoslav Republic of Macedonia.

GER. Fig. 5 | Decisions Taken at the First Instance in 2012, 2013 and 2014

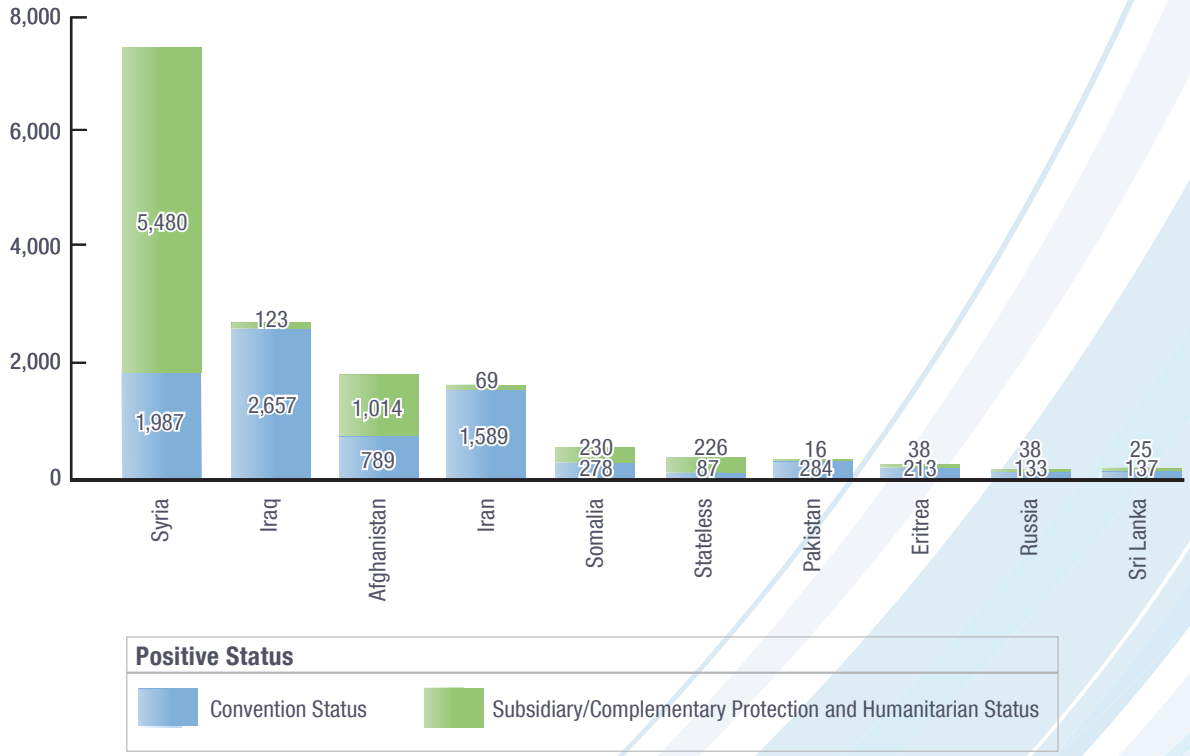
	Convention Status		Humanitarian Status and Subsidiary/Complementary Protection		Rejections		Withdrawn, Closed and Abandoned Cases		
Year	Number	%	Number	%	Number	%	Number	%	Grand Total
2012	8,764	14%	8,376	14%	30,700	50%	13,986	23%	61,826
2013	10,915	13%	9,213	11%	31,145	38%	29,705	37%	80,978
2014	33,310	26%	7,253	6%	43,018	33%	45,330	35%	128,911

[13] Data refer to first applications only.

GER. Fig. 6.a | Positive First-Instance Decisions, Top 10 Countries of Origin in 2012[14]

	Country of Origin	Total Positive	Total Decisions	Rate
1	Syria	7,467	7,486	99.7%
2	Iraq	2,780	4,217	65.9%
3	Afghanistan	1,803	4,077	44.2%
4	Iran	1,658	2,708	61.2%
5	Somalia	508	546	93.0%
6	Stateless	313	342	91.5%
7	Pakistan	300	1,463	20.5%
8	Eritrea	251	290	86.6%
9	Russia	171	714	23.3%
10	Sri Lanka	162	426	38.0%

Total Positive Decisions by Status from Top 10 Countries of Origin, 2012

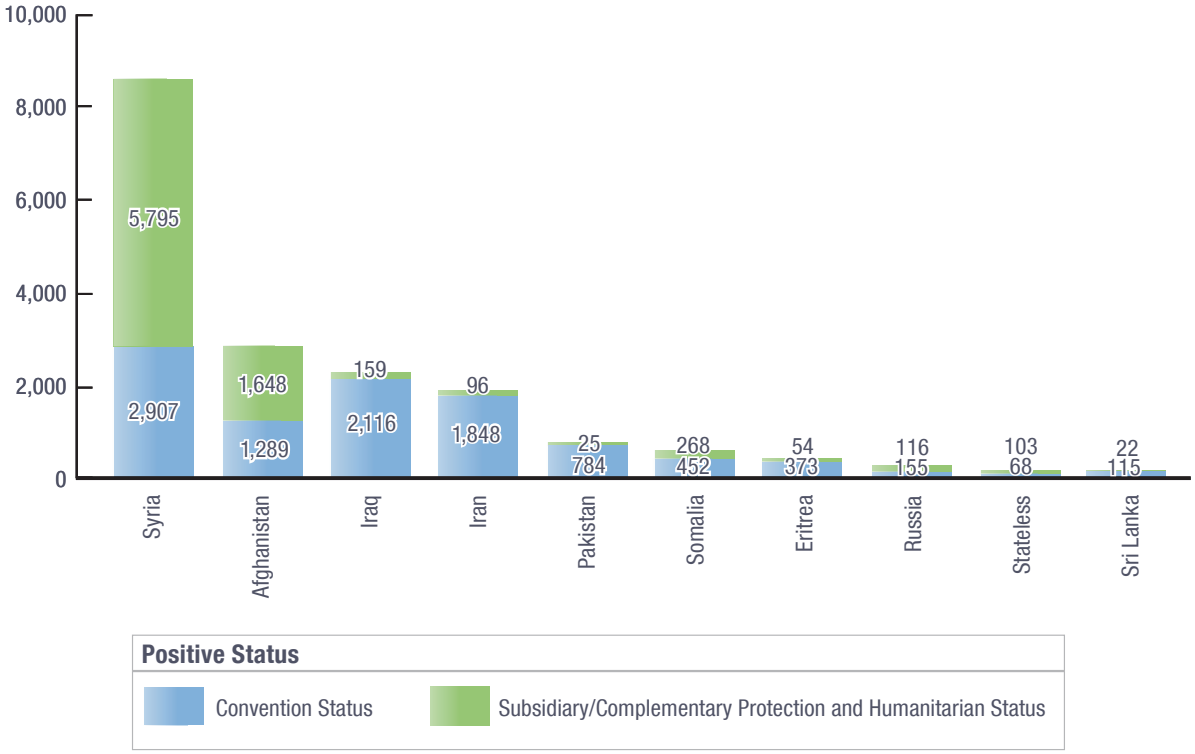


[14] For the purpose of this exercise, positive decisions include decisions to grant Convention status, subsidiary/complementary protection and other humanitarian statuses. Excluding withdrawn, closed and abandoned claims.

GER. Fig. 6.b | Positive First-Instance Decisions, Top 10 Countries of Origin in 2013[15]

	Country of Origin	Total Positive	Total Decisions	Rate
1	Syria	8,702	8,725	99.7%
2	Afghanistan	2,937	5,192	56.6%
3	Iraq	2,275	3,734	60.9%
4	Iran	1,944	2,956	65.8%
5	Pakistan	809	1,962	41.2%
6	Somalia	720	994	72.4%
7	Eritrea	427	447	95.5%
8	Russia	271	1,590	17.0%
9	Stateless	171	211	81.0%
10	Sri Lanka	137	362	37.8%

Total Positive Decisions by Status from Top 10 Countries of Origin, 2013

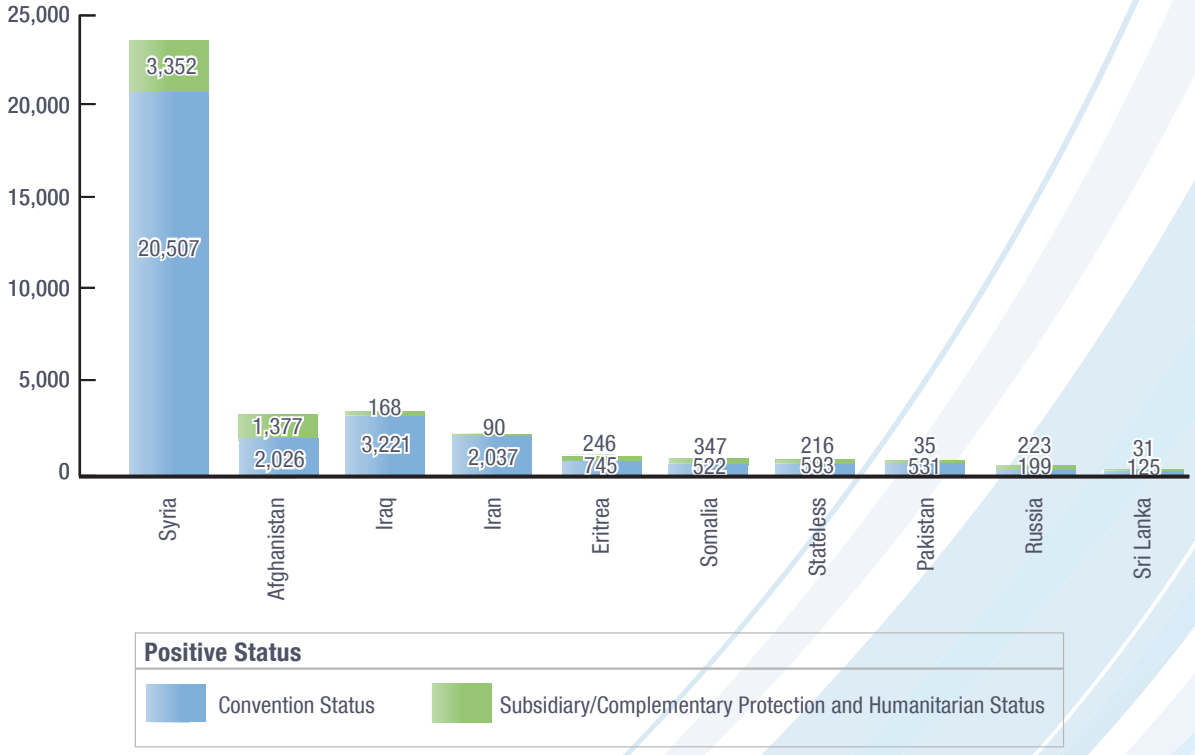


[15] For the purpose of this exercise, positive decisions include decisions to grant Convention status, subsidiary/complementary protection and other humanitarian statuses. Excluding withdrawn, closed and abandoned claims.

GER. Fig. 6.c Positive First-Instance Decisions, Top 10 Countries of Origin in 2014[16]

	Country of Origin	Total Positive	Total Decisions	Rate
1	Syria	23,859	23,878	99.9%
2	Afghanistan	3,403	4,972	68.4%
3	Iraq	3,389	3,821	88.7%
4	Iran	2,127	2,886	73.7%
5	Eritrea	991	1,007	98.4%
6	Somalia	869	1,172	74.1%
7	Stateless	809	847	95.5%
8	Pakistan	566	1,994	28.4%
9	Russia	422	1,763	23.9%
10	Sri Lanka	156	285	54.7%

Total Positive Decisions by Status from Top 10 Countries of Origin, 2014

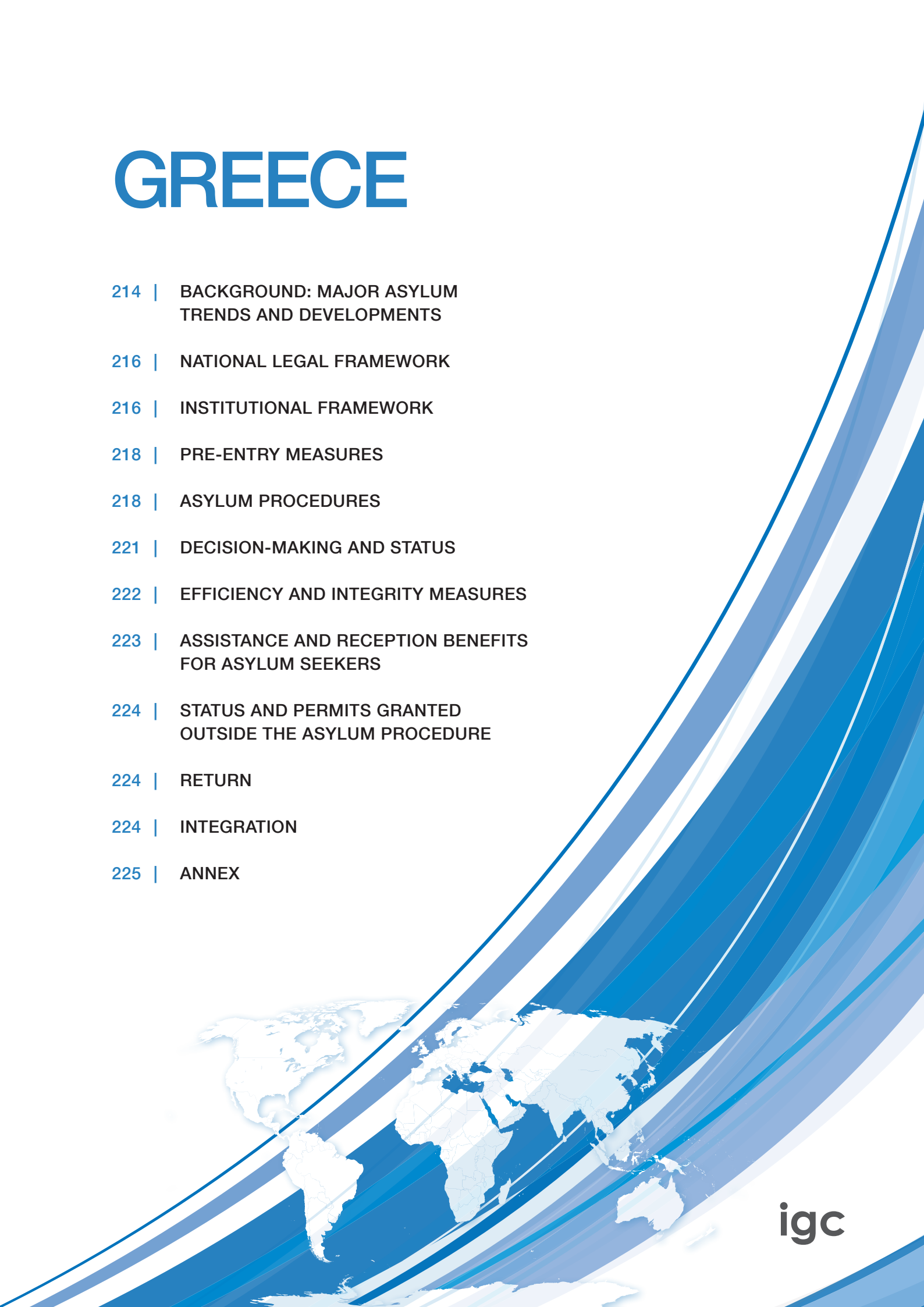


[16] For the purpose of this exercise, positive decisions include decisions to grant Convention status, subsidiary/complementary protection and other humanitarian statuses. Excluding withdrawn, closed and abandoned claims.

A young boy stands amidst grown men rescued at sea in the Mediterranean.

UNHCR/A. D'Amato/June 2014

GREECE



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1 BACKGROUND: MAJOR ASYLUM TRENDS AND DEVELOPMENTS

Asylum Applications

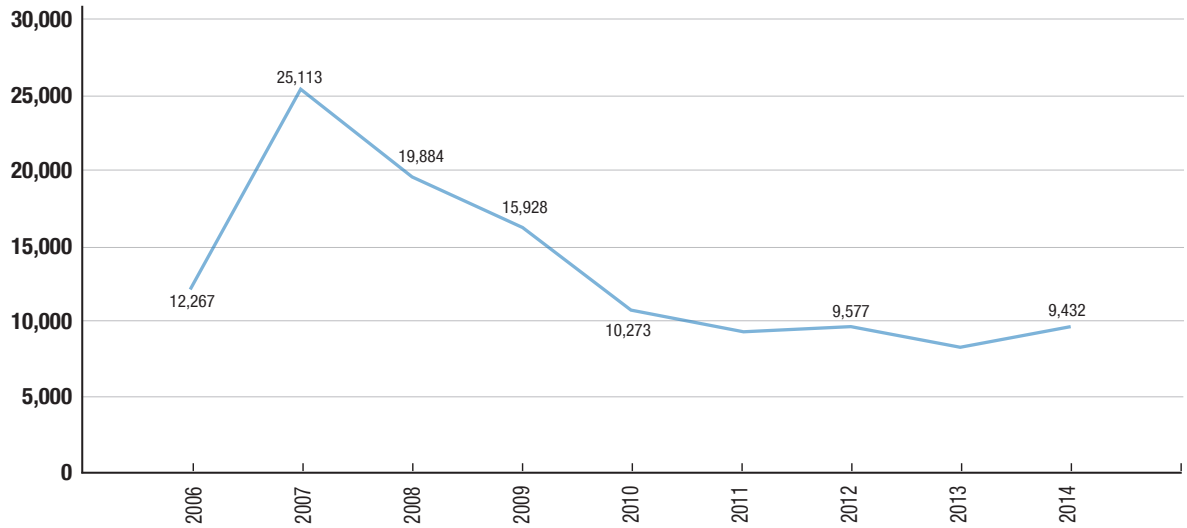
Data collection for Greece began in 2006, when 12,267 asylum applications were received. In 2007, the country received more applications than in any other year, with 25,113. The top five nationalities in this record year were Pakistan, Iraq, Bangladesh, Georgia and Afghanistan. From 2008 to 2013, the numbers of asylum seekers decreased each year, except in 2012. In 2014, asylum applications increased for the first time again, rising to 9,432.

addressing the unprecedented pressures posed on the asylum system in a holistic and effective manner, while at the same time it introduced a number of structural reforms in the field of international protection.

The key components of the Greek Action Plan are:

- The reform of asylum procedures
- The creation of the new Asylum Service, Appeals Authority and First Reception Service
- The enhancement of facilities in reception centres
- The improvement of available pre-removal centres and the creation of new ones
- The improvement of return policies.

GRE. Fig. 1 **Total Asylum Applications by Year, 2006–2014**



Top Nationalities

Bangladesh and Pakistan were among the top five nationalities each year from 2006 to 2014. At the beginning of this period, Iraq was in the top five, but was then replaced by countries such as Georgia and Albania. Syria has been in the top 10 since the beginning of the crisis in 2011 and ranked in the top 3 in 2014.

Important Reforms

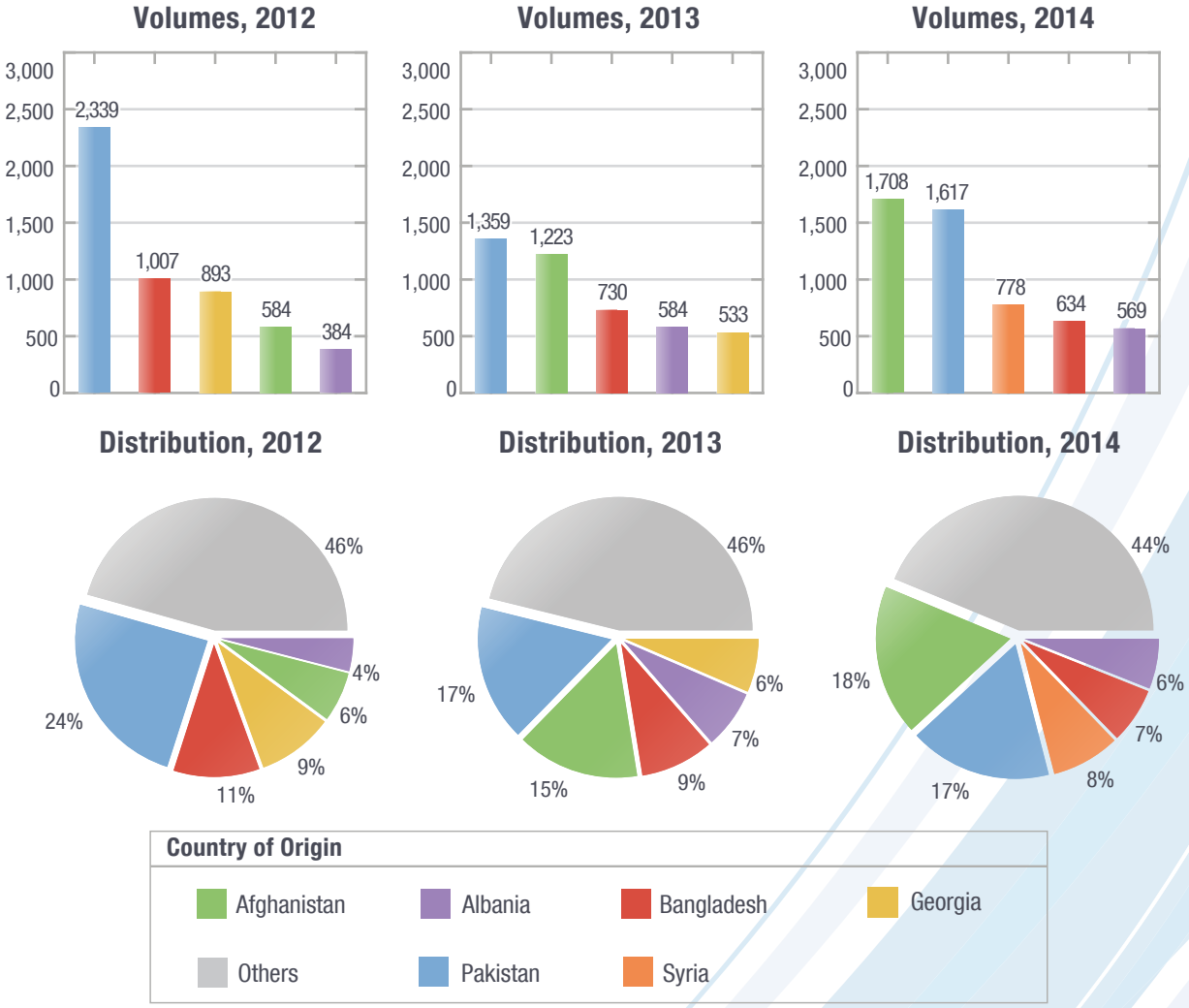
Due to its geographical position on the external borders of the European Union (EU) and partly due to the dynamics of mixed migration flows, Greece has become one of the main gateways for third country nationals in their attempt to enter EU territory. The increased pressure posed on the asylum system, in combination with a number of structural deficiencies led to the adoption of the Greek Action Plan on Migration Management and Asylum Reform in 2010. The Greek Action Plan was formulated for the purpose of

On 7 June 2013, the new Asylum Service became responsible for registering and examining all new applications for international protection in the first instance, and the new Appeals Authority became responsible for all appeals filed. The Hellenic Police remain responsible for examining the applications for international protection filed before that date (the so-called backlog). As of the end of September 2014, the Regional Asylum Offices of Attica (Athens), Northern Evros (Fylakio), Southern Evros, Rhodes and Lesvos, as well as the Mobile Asylum Units of Amygdaleza (Athens), Thessaloniki, Komotini, Patra and Chios, registered and processed asylum applications.

The following is a list of major developments:

- Law 3907/2011: establishment of the Asylum Service, the Appeals Authority and the First Reception Service
- Transposition of Asylum Procedures Directive 2005/85 (Presidential Decree 113/2013)
- Transposition of Qualification Directive 2011/95 (Presidential Decree 141/2013)
- The Asylum Service and the Appeals Authority are the authorities responsible for granting international protection status (operational since 7 June 2013)
- The Ministry of Interior is the authority responsible for granting protection on humanitarian grounds (as of June 2013).

GRE. Fig. 2 **Asylum Applications Received from Top Five Countries of Origin in 2012, 2013 and 2014**



2 NATIONAL LEGAL FRAMEWORK

2.1 Legal Basis for Granting Protection

The legal framework for international protection consists of:

- 1951 Convention relating to the Status of Refugees and its 1967 Protocol.
- Directive 2004/83/EC (Qualification Directive),[1] transposed into national law by Presidential Decree 96/2008. This has been replaced by Presidential Decree 141/2013, which was transposed into national law through Directive 2011/95/EU (Recast Qualification Directive).
- Directive 2003/9/EC (Reception Conditions Directive),[2] transposed into national law by Presidential Decree 220/2007.
- Directive 2005/85/EC (Asylum Procedures Directive),[3] transposed into national law by Presidential Decree 114/2010 (which regulates the procedures followed by the Hellenic Police and the "backlog" Appeal Committees) and by Presidential Decree 113/2013 (which regulates the procedures followed by the new Asylum Service and the new Appeal Committees).
- Directive 2003/86/EC (Family Reunification Directive), transposed into national law by Presidential Decree 131/2006 and Presidential Decree 167/2008.[4]
- Directive 2001/55/EC (Minimum Standards for Temporary Protection in Case of a Massive Influx of Displaced Persons),[5] transposed into national law by Presidential Decree 80/2006.

Greece has ratified the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

2.2 Recent Reforms

The Greek Action Plan on Migration Management and Asylum Reform includes major reforms concerning the legal framework of asylum procedures.

Presidential Decree 114/2010

This main legal instrument on international protection procedures in Greece repealed Presidential Decrees 61/1999, 90/2008 and 81/2009 and introduced a number of reforms in the asylum procedure for a transitional period. This transitional period will remain until the backlog of asylum cases (that is, applications for international protection submitted before 7 June 2013) is cleared and the Asylum Service and the Appeals Authority take over responsibility for all asylum procedures in their entirety.

Entry into Force of Law No. 3907/2011

With the entry into force of Law No. 3907/2011, the Asylum Service (first instance) and the Appeals Authority (second instance) were established. The mandate of these two new bodies is to develop and maintain high-quality procedures, in accordance with current legal requirements, in the field of international protection as delivered by the Government of Greece.

Presidential Decree 113/2013

This important legal instrument, which is transposed into national legislation Directive 2005/85/EC (Asylum Procedures Directive), governs and regulates the procedures followed by the Asylum Service and the Appeal Committees, in accordance with the minimum European standards.

Presidential Decree 141/2013

This legal instrument transposes into national legislation the Recast Qualification Directive (Directive 2011/95/EU) and is applied by both the Asylum Service and the Appeal Committees in their examination of and decisions on applications for international applications. Thus, through this instrument, the asylum system in Greece in general has been brought on a par with the common European standard.

3 INSTITUTIONAL FRAMEWORK

3.1 Principal Institutions

According to Presidential Decree 114/2010, the Ministry of Public Order and Citizen Protection is the authority responsible for the asylum procedure in Greece, as described below.

The new services (that is, the Asylum Service, the Appeals Authority and the First Reception Service) also fall under the competency of the Ministry of Public Order and Citizen Protection.

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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).
4 Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.
5 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).

As of 27 January 2015, and in accordance with Presidential Decree 24/2015, the Ministry of Public Order and Citizen Protection, together with all the agencies and administrative bodies under its competence, have been subsumed under the new Ministry of Interior and Administrative Reform.

The Hellenic Police were responsible for receiving and examining international protection claims and issuing all relevant decisions at the first instance during the transitional period, in other words until the new Asylum Service (Law No. 3907/2011) became operational on 7 June 2013.

Appeal Committees, based in Athens, are currently working on all pending second instance cases, in other words appeals lodged against the first instance decisions of the Hellenic Police before 7 June 2013.

Each of these 20 Appeal Committees consists of:

- A civil servant from the Ministry of Interior, or the Ministry of Justice, Transparency and Human Rights (President of the Committee)
- A member proposed by the United Nations High Commissioner for Refugees (UNHCR)
- A legal expert proposed by the National Commission for Human Rights.

The Second Instance Administrative Court is an independent judicial body that hears appeals in cassation (that is, appeals of the highest instance) of negative decisions on asylum claims taken by the Appeal Committees.

In July 2012, the competences relating to the reception of asylum seekers were transferred from the Ministry of Health and Social Solidarity to the Ministry of Labour. The First Reception Service has meanwhile acquired a mandate also to partly run reception facilities for asylum seekers.

IN FOCUS

THE NEW ASYLUM SERVICE

The Asylum Service was established under Law No. 3907/2011. It is the first state agency in Greece to deal exclusively with the examination of claims for international protection. As of 27 January 2015, the Asylum Service falls under the responsibility of the Ministry of Interior and Administrative Reform.

The Asylum Service, as part of its mission, is responsible for the following tasks:

- Supporting the planning and drafting of a national policy on granting asylum or other forms of international protection, as well as monitoring and evaluating the implementation of this policy
- Receiving, examining and deciding upon international protection claims in the first instance
- Informing international protection claimants on the examination process of their claims, as well as on their rights and obligations during that process
- Collecting and evaluating information regarding the economic, social and political situation in the countries of origin of asylum seekers, as well as continuously monitoring any developments occurring in these countries, in cooperation with national and other authorities, pursuant to international agreements
- Supplying international protection claimants and beneficiaries of international protection with all the necessary legal and travel documents as provided by law
- Processing refugee family reunification claims
- Facilitating the access of claimants to in-kind reception benefits, in collaboration with co-responsible actors
- Preparing legal texts and administrative acts on issues within competence
- Cooperating with local actors, independent authorities and non-governmental organizations (NGOs), EU bodies and organizations, and international organizations in order to accomplish its mission in the most efficient way.

Finally, the Asylum Service provides administrative support to the Appeals Authority, which was also established by Law No. 3907/2011.

According to the European Asylum Support Office, the new asylum procedure is a major improvement on all the relevant aspects, such as the provision of adequate information, the training of staff and the quality of the registration and decision-making process.

4 PRE-ENTRY MEASURES

To enter Greece, non-EU nationals must meet the following requirements:

- Possess a valid travel document
- Possess a valid visa (if required)
- Justify the purpose and conditions of their intended stay and show sufficient means of subsistence for the duration of the stay
- Not be registered on the National List of Undesired Aliens or in the Schengen Information System
- Not be considered a threat to public safety, internal security, public health or the international relations of any EU Member State.

4.1 Visa Requirements

Persons who are subject to a visa requirement to enter Greece (Schengen visa or national visa) may apply at the competent consular authority of his or her place of residence, or in exceptional cases with the competent border authorities upon arrival in Greece.

Holders of a Schengen visa are permitted to travel throughout the Schengen area for a period of three months within a time frame of six months.

4.2 Carrier Sanctions

Sanctions may be imposed on carriers transporting foreign nationals into Greece who are not in possession of valid travel documents.

According to Law No. 3386/2005 as it was amended by Law No. 3772/2009, carriers are liable for fines between EUR 10,000 and EUR 700,000 per person, and imprisonment from a minimum of five years to a life sentence.

5 ASYLUM PROCEDURES

5.1 Application Possibilities and Requirements, Procedures and Legal Remedies

As of 7 June 2013, the Asylum Service is responsible for registering, examining and deciding all applications for international protection. Applications for international protection have to be submitted by the asylum seekers in person at one of the Regional Asylum Offices or Mobile Asylum Units that operate on Greek territory, in accordance with their regional competence. All applicants for international protection are given a booklet with basic information, provided in 19 languages. In addition, the Asylum Service provides a helpline with pre-recorded messages in 9 languages. These messages provide a wide range of information on various topics of interest to the asylum seekers who come into contact with the Service. Much the same information, together with the relevant legislation, is given in Greek and English on the Asylum Service's website. Finally, during each stage of the procedure (such as registration of a claim, interview with a caseworker and notification of decision), applicants are informed in detail of their rights and obligations, always through the use of interpreters.

5.1.1 Outside the Country

Applications at Diplomatic Missions

Greece does not accept asylum applications from abroad.

Resettlement

Greece does not operate a resettlement programme.

5.1.2 At Ports of Entry

Foreign nationals who express their desire to seek international protection in Greece at official ports of entry into the country (airports, seaports and land border posts) are accompanied by the police, border guards or coast guards to the nearest Regional Asylum Office or Mobile Asylum Unit to submit in person their application for international protection.

In practice, however, the vast majority apply for international protection once they are in Greece, rather than at a port of entry.

5.1.3 Inside the Territory

Responsibility for Processing the Claim

The Dublin System

Application and Procedure
The Hellenic Dublin Unit of the Asylum Service bears the overall responsibility for the implementation of the provisions of the relevant Dublin Regulations.

Freedom of Movement and Detention
An asylum seeker may be detained during the Dublin procedure.

Conduct of Transfers
The Dublin Unit is responsible for all transfers conducted under the Dublin II and Dublin III Regulations.

Review/Appeal
A decision on the transfer of an asylum seeker may be appealed.

Application

Claimants are required to apply for international protection in person at one of the Regional Asylum Offices or Mobile Asylum Units that operate on Greek territory, in accordance with their regional competence.

The claimant may submit an application on behalf of his or her family members. Adult members are required to give their written consent and will be interviewed individually.

As soon as the registration of the asylum application is complete, an interview date is set. The Asylum Service issues an "international protection applicant card" which is valid for either three or four months, depending on the expected duration of the asylum procedure. The card may be renewed until the completion of the procedure at both first and second instance.

Accelerated Procedure

According to Presidential Decree 113/2013, which governs the procedures followed by the Asylum Service, a claim for international protection is dealt with in the accelerated procedure under one of the following circumstances:

- The applicant comes from a safe country of origin.
- The application is manifestly unfounded.
  An application is characterized as manifestly unfounded when the applicant, during the submission of the application and the conduct of the personal interview, invokes reasons that manifestly do not comply with the status of a refugee or of a subsidiary protection beneficiary.
- The applicant has presented inconsistent, contradictory, improbable or unsubstantiated information, which renders his or her statement of being a victim of persecution as clearly unconvincing.
- The applicant misled the examination authorities by presenting false information or documents or by withholding relevant information or documents regarding his or her identity or nationality that could adversely affect the decision.
- The applicant filed another application for international protection providing other personal data.
- The applicant has not provided information establishing, to a reasonable degree of certainty, his or her identity or nationality, or it is likely that he or she has destroyed or disposed in bad faith documents of identity or travel that would help to determine the applicant's identity or nationality.
- The applicant has submitted the application only to delay or impede the enforcement of an earlier or imminent deportation decision or removal by other means.
- The applicant refuses to comply with the obligation to have his or her fingerprints taken in accordance with the relevant legislation.
- The application was submitted by an unmarried minor for whom an application had already been submitted by the parents or parent (in accordance with the provisions of article 4, paragraph 2), which was rejected, and the applicant is not invoking new critical elements regarding his or her personal situation or the situation in his or her country of origin.

Normal Procedure

Under the normal procedure (as well as the accelerated procedure) followed by the Asylum Service, the claimant is interviewed by a caseworker under conditions that ensure confidentiality. Interviews are conducted in a language understood by the claimant, which means that they are almost always conducted with the assistance of interpreters. Sufficient time is given to the claimant to prepare himself or herself for the interview or to seek legal advice. Minors and vulnerable persons are interviewed by specially trained caseworkers. Claimants are also given the chance to express a preference as to whether the interview will be conducted by a female or male caseworker.

The claimant has the right to be accompanied by a legal representative or other counsellor during the interview. The person accompanying the claimant has the right to pose questions to the claimant at the end of the interview.

An interview may be omitted in cases where a decision can be reached by the caseworker on the basis of the available evidence from the file, or when an interview is objectively impossible.

The interview is audio-recorded and this recording is the official transcript of the interview. The caseworker also keeps detailed minutes of the interview, which are included in the case file. The caseworker is solely responsible for deciding in the first instance on claims for international protection.

Review/Appeal of the Normal Procedure

Appeal Committee: Transitional Period

A negative decision on a claim examined under the normal procedure may be appealed within 30 days of the notification of the decision. The appellant has the right to appear in person or with his or her lawyer or counsellor before the Appeal Committee to support his or her claim. The proceedings are recorded in writing. The decision of the Committee, taken by majority and properly reasoned, is notified to the applicant

and may be appealed before the Second Instance Administrative Courts.

Appeal Committee: Appeals Authority

The new Appeal Committees began receiving and examining appeals on 1 July 2013. A negative decision on a claim examined under the normal procedure may be appealed within 30 days of the notification of the decision. A negative claim examined under the accelerated procedure may be appealed within 15 days, while appeals by persons in detention may be submitted within 10 days. The appellant may be invited for an interview by the Appeal Committee examining his or her appeal. In the event of an interview, the appellant has the right to be accompanied by a legal representative or other counsellor. The proceedings are audio-recorded and a secretary also keeps detailed minutes. The decision of the Committee, taken by majority and properly reasoned, is notified to the applicant and may be appealed before the Second Instance Administrative Courts.

Freedom of Movement during the Asylum Procedure

Unless explicitly stated otherwise, applicants for international protection enjoy freedom of movement.

Detention

A claimant may be detained for one of the following reasons:

- He or she is deemed to be a threat to national security or public order.
- The application is examined under the accelerated procedure.
- The application is determined to be manifestly unfounded.
- It is necessary to identify the country of origin.

The length of detention may vary, but cannot exceed a period of one year.

Provisions are taken so that:

- Women are detained in facilities separate from those of men.
- Detention of minors and unaccompanied minors is avoided.
- Detention of pregnant women or nursing mothers is avoided.
- Detainees have access to legal aid.

Reporting

Asylum seekers have an obligation to report any change of residence to the Hellenic Police (during the transitional period) or to the Asylum Service (for international protection applications submitted after 7 June 2013).

Repeat/Subsequent Applications

An asylum seeker may submit a subsequent application.

A subsequent application is examined in connection with the former application (or appeal).

In the event that new substantial evidence is presented, the application is further examined.

5.2 Safe Country Concepts

5.2.1 Safe Country of Origin

Safe countries of origin can be those included in:

- The common list of safe countries of origin adopted by the Council of the EU
- A national list of safe countries of origin, kept for the purpose of examining applications for international protection. This list is to be reviewed on an annual basis, taking into account information from EU Member States and international organizations, such as UNHCR, and submitted to the European Commission.

As a general rule, a country is considered to be a safe country of origin if its citizens – in a general and consistent manner – are not subject to (a) persecution as defined in article 9 of Presidential Decree 96/2008, (b) torture, inhuman or degrading treatment or punishment, or (c) indiscriminate violence caused by an international or internal armed conflict.

Additionally, the following elements are taken into account:

- The extent of legal protection available against persecution or mistreatment
- Compliance with the European Convention on Human Rights (L.D. 53/74-A 256), the International Covenant on Civil and Political Rights and the Convention against Torture (Law No. 1782/1988 O.J A/116/1988)
- Respect of the principle of non-refoulement
- The provision of a system of effective remedies against violations of fundamental rights and freedoms.

Greece has not compiled a list of safe countries of origin.

5.2.2 First Country of Asylum

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 can still avail himself or herself of that protection or otherwise enjoys sufficient protection of that country, including protection from refoulement provided that he or she will be readmitted to that country.

5.2.3 Safe Third Country

According to Presidential Decree 114/2010, a country is considered a safe third country for an applicant when all the following conditions are fulfilled:

- The applicant's life or freedom are not threatened on account of race, religion or nationality, or on account of being a member of a particular social group or having a particular political opinion.
- The principle of non-refoulement is respected.
- The applicant is not at risk of suffering serious harm.
- The prohibition of removal to a third country, where he or she may be in danger of suffering torture and cruel, inhuman or degrading treatment, is respected.
- The applicant has access to asylum procedures and may be granted protection in accordance with the 1951 Convention.
- The applicant has a link to the safe third country that would reasonably allow him or her to move there.

5.3 Special Procedures

5.3.1 Unaccompanied Minors

In accordance with Presidential Decrees 220/2007 and 113/2013, an unaccompanied minor above 14 years of age can lodge an application on his or her own behalf. An unaccompanied minor who is 14 years of age or younger would lodge an application through a representative. The legal capacity to lodge the application belongs to the guardian (either the provisional guardian or his or her representative or the guardian appointed by the court). The Public Prosecutor is by law the provisional guardian of the minor. He or she can appoint a representative for the procedure before the Asylum Service (usually a lawyer but the representative can be any person having the legal capacity). The court can also appoint a permanent guardian. The representative must be appointed as soon as the unaccompanied minor approaches the Asylum Service. The Asylum Service is therefore obliged to inform the Public Prosecutor as soon as the unaccompanied minor is registered as an asylum seeker. However, the appointment of a representative is not a prerequisite for the examination procedure of the asylum application to commence. Special provisions are taken so that the interviews of unaccompanied minors are conducted by specially trained caseworkers.

GRE. Fig. 3 | **Asylum Applications by Unaccompanied Minors in 2012, 2013 and 2014**

No data available.

6 DECISION-MAKING AND STATUS

6.1 Inclusion Criteria

6.1.1 Convention Refugee

A person will be granted Convention refugee status if he or she meets the criteria outlined in the 1951 Convention and its 1967 Protocol.

6.1.2 Complementary Forms of Protection

Subsidiary Protection

If the criteria for refugee status are not met, subsidiary protection may be granted if the applicant would be subjected to "serious harm" upon return to his or her country of origin. "Serious harm" refers to the threat of the death penalty, torture or other inhuman 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

An asylum seeker who is not granted refugee status or subsidiary protection may be granted a residence permit on humanitarian grounds, as stated in article 3 of the European Convention on Human Rights and article 3 of the Convention against Torture, or if return is impossible due to "force majeure" (such as serious health problems, or a situation involving civil conflict or the violation of human rights in the country of origin). Residence permits based on humanitarian grounds could have been granted by the Appeal Committees in the transitional period. For applications submitted after 7 June 2013, this competence belongs to the Ministry of Interior acting on a recommendation from the Asylum Service or the relevant Appeal Committee.

6.2 The Decision

The decision on an asylum claim 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 in writing. Negative decisions include information on the right of appeal and the right to make a subsequent application.

6.3 Types of Decisions, Statuses and Benefits Granted

Types of Decisions

Examination of an asylum claim may lead to the following types of decisions:

- Granting of refugee status
- Granting of subsidiary protection
- Rejection of the asylum claim.

Asylum seekers whose claims are rejected and who do not exercise their right to appeal are required to leave Greece within a set time frame.

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.

Both Convention refugees and beneficiaries of subsidiary protection are granted a residence permit which is valid for three years and is renewable. They are issued a "residence card of a uniform type".

For reasons of family reunification, recognized refugees have the right to request, at any given time, the entry and residence of their family members.

6.4 Exclusion

Exclusion clauses, as stated in article 1F of the 1951 Convention and in Presidential Decree 141/2013, are taken into consideration during the examination of an international protection claim.

6.5 Cessation

Cessation clauses of the 1951 Convention and of Presidential Decree 141/2013 are taken into consideration at the time of renewal of the international protection beneficiary's residence permit.

6.6 Revocation

According to Presidential Decree 114/2010 (transitional period), international protection status may be revoked if new elements regarding the case contradict the grounds of the relevant provisions of Presidential Decree 96/2008. The person concerned is entitled to a hearing or a written statement. The decision is in writing, fully reasoned and provides information on the right to appeal.

For applications submitted after 7 June 2013, the grounds and procedure for the revocation of international protection status are regulated by Presidential Decrees 113/2013 (procedure) and 141/2013 (grounds).

6.7 Support and Tools for Decision-Makers

6.7.1 Country of Origin Information

A Country of Origin Information Unit, staffed partly by UNHCR-affiliated staff and partly by civil servants of the Asylum Service, serves the country of origin information needs of the first instance and the second instance of both asylum systems (the transitional period before 7 June 2013, and the Asylum Service and Appeal Committees from that date on).

6.7.2 Training

The staff of the Asylum Service and the Appeals Authority (that is, expert rapporteurs of the Appeal Committees) are trained in the modules of the European Asylum Support Office training curriculum. In addition, they receive in-house training, as well as training from UNHCR and NGOs.

7 EFFICIENCY AND INTEGRITY MEASURES

7.1 Technological Tools

7.1.1 Fingerprinting

For identification purposes and for inclusion in the Eurodac database, asylum seekers are fingerprinted by designated staff of the Asylum Service upon making an asylum claim.

Minor asylum seekers who are under 14 years of age are not fingerprinted.

7.1.2 Database of Asylum Applications/ Applicants

A nationwide electronic data-processing application system (referred to as "Alkyoni") was created in order to record all asylum applications and their progress through each stage of the procedure.

7.2 Length of Procedures

Accelerated Procedures

Decisions on asylum claims made at ports of entry should be reached within a period of four weeks.

Decisions on asylum claims determined as manifestly unfounded or made by applicants coming from a safe third country or a safe country of origin should be reached within a period of three months.

Normal Procedure

Decisions on an asylum claim processed under the normal procedure should be reached within a period of six months.

7.3 Pending Cases

An increase in the number of asylum applications over recent years has led to a significantly longer average processing period. In order to address the backlog in the transitional period, the number of caseworkers in the first instance was increased so that, as of September 2014, the backlog at the first instance level to be administered by the Hellenic Police has been eliminated and the number of Appeal Committees that work specifically on pending appeals has been increased to a total of 20.

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 have the right to consult a lawyer and/or to seek legal representation – at their own cost – during the asylum procedure. Legal aid is available for appeals before the courts, provided the appeal is not determined as manifestly inadmissible or groundless according to the judge's estimation. In practice, many asylum seekers benefit from the legal aid made available by NGOs.

8.1.2 Interpreters

The Asylum Service and the Appeal Committees cover the needs for interpretation at all stages of the procedure, in cooperation with NGOs.

8.1.3 UNHCR

According to Presidential Decree 114/2010, the UNHCR office in Greece must be notified of all decisions granting or revoking international protection (refugee status and subsidiary protection status).

Measures are taken to ensure that UNHCR has access to the asylum procedure, detention centres and all the relevant statistical data.

UNHCR provides asylum seekers in Greece with assistance primarily by funding implementing partners, such as the Greek Council for Refugees, and through cooperation with operational partners. UNHCR is also engaged in EU-funded projects aimed at addressing the reception of migrants at the border and facilitating access to asylum procedures.

UNHCR has an active role in providing training on international protection issues and offers operational support to the new Asylum Service.

8.1.4 NGOs

NGOs provide asylum seekers with legal assistance and interpretation services during the asylum procedure and are actively involved in the field of integration.

8.2 Reception Benefits

In July 2012, competences relating to the reception of asylum seekers were transferred from the Ministry of Health and Social Solidarity to the Ministry of Labour.

8.2.1 Accommodation

Asylum seekers may be accommodated in (open) refugee reception centres staffed by specially trained personnel, including doctors and social workers.

Unaccompanied minors may be accommodated in a reception centre or guest house specifically geared toward minors. Siblings are generally accommodated at 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.

8.2.3 Health Care

Asylum seekers have access to the public health care system, including medical, pharmaceutical and hospital care.

Vulnerable persons, such as victims of trauma, may seek the assistance of medical experts and specialized organizations for treatment.

8.2.4 Education

Children have access to public education under the same conditions that apply to Greek citizens.

Adults have the right to free language classes and vocational training.

8.2.5 Access to the Labour Market

Asylum seekers have access to the labour market and may be granted temporary work permits valid throughout the asylum procedure.

8.2.6 Access to Benefits by Rejected Asylum Seekers

Rejected asylum seekers continue to have access to benefits during the appeal procedure.

IN FOCUS

THE NEW FIRST RECEPTION SERVICE

The First Reception Service was established in January 2011 by Law 3907/11, in compliance with the Action Plan on Migration Management and Asylum Reform adopted by the Government of Greece in August 2010.

The main mission of the First Reception Service is:

- To register and screen all third country nationals who are arrested for illegal entry or residence in Greece.
- To guarantee that registering and screening will be done under conditions that ensure human rights and dignity, in accordance with Greece's international and EU obligations.
- To ensure the immediate needs of immigrants.

In order to carry out the above, the First Reception Service plans to build at least 14 new First Reception Centres throughout the country by the end of 2016.

The following procedures will be followed at the First Reception Centres:

- Arrival of the immigrants at the centre, where they will be transferred to a waiting area and provided with an immediate needs kit and all the information on the procedures to follow.
- Initial identification of vulnerable persons (to be given priority).
- Security check at the start of the registration procedure.
- Initial registration with the support of intercultural translators: all necessary personal data (such as name and age) will be recorded, a facial photo will be taken digitally and, finally, a unique number will be given as proof of registration.
- Fingerprinting and bio-data collection for the Eurodac/Dublin II System.
- Medical examination and, if necessary, vulnerable persons and all those in need are provided with psychosocial support.
- Clean clothing and linen provided by the Logistics Office, after which the asylum seekers are given beds in one of the appropriate wings of the centre, depending on their status (single men, single women, unaccompanied children or families).

9 STATUS AND PERMITS GRANTED OUTSIDE THE ASYLUM PROCEDURE

9.1 Humanitarian Grounds

If refugee status or subsidiary protection status cannot be granted, "force majeure" grounds and the application of article 3 of the European Convention on Human Rights and article 3 of the Convention against Torture are taken into consideration.

If such grounds are applicable, a residence permit valid for one year and renewable upon application is granted.

10 RETURN

10.1 Pre-departure Considerations

An asylum seeker is not subject to removal if the asylum procedure has not been completed. The principle of non-refoulement is respected.

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 and Detention

A decision to remove a third country national may or may not involve detention.

10.4 Readmission Agreements

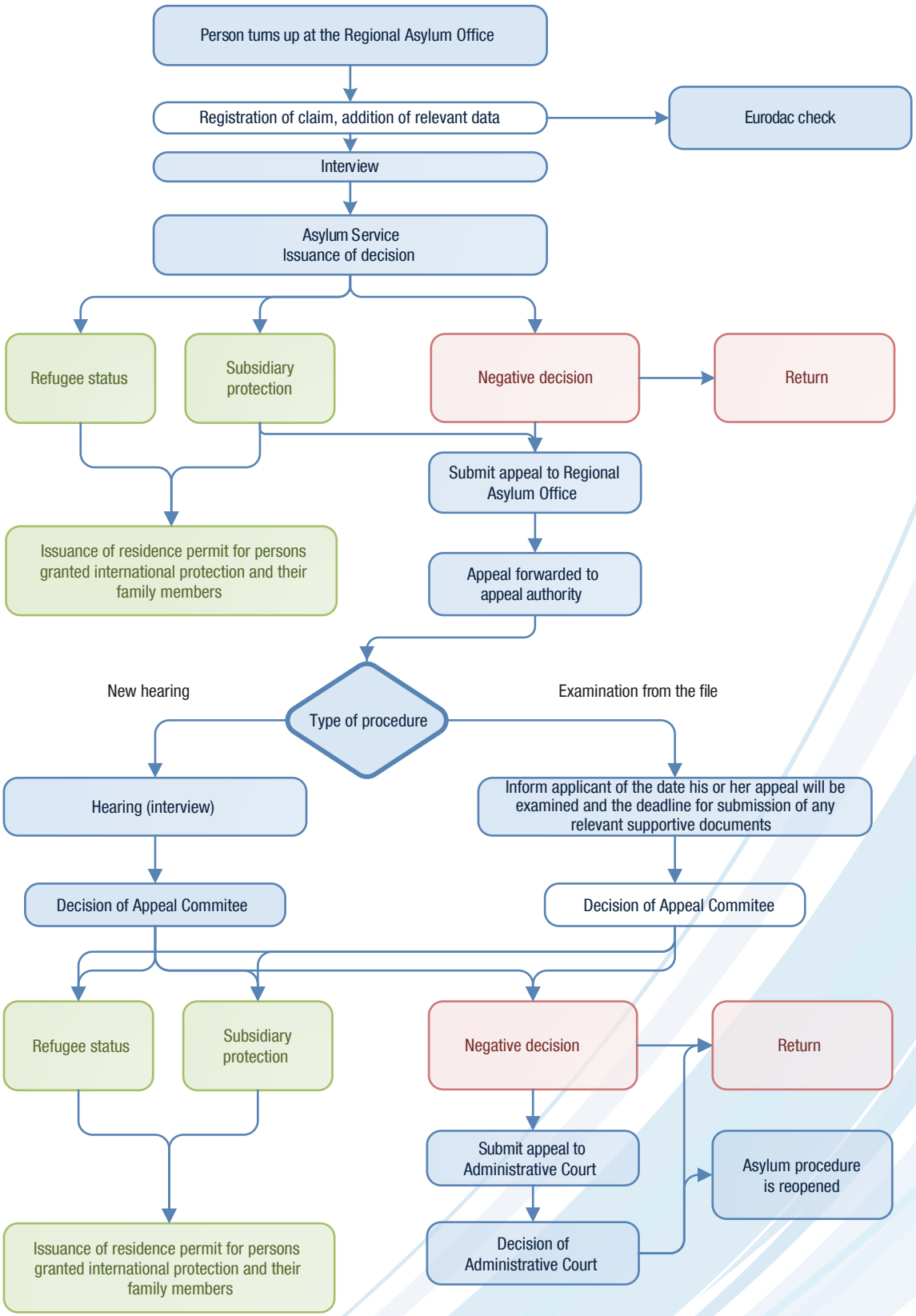
Readmission agreements are not applied to asylum seekers until final rejection.

11 INTEGRATION

Persons who are granted refugee status in Greece have access to a range of integration services funded through EU Funds.

12 ANNEX

12.1 Asylum Procedure Flow Chart



12.2 Additional Statistical Information

GRE. Fig. 4 Asylum Applications from Top 10 Countries of Origin in 2012, 2013 and 2014

	2012		2013		2014	
1	Pakistan	2,339	Pakistan	1,359	Afghanistan	1,708
2	Bangladesh	1,007	Afghanistan	1,223	Pakistan	1,617
3	Georgia	893	Bangladesh	730	Syria	778
4	Afghanistan	584	Albania	584	Bangladesh	634
5	Albania	384	Georgia	533	Albania	569
6	Senegal	373	Syria	481	Iran	361
7	Iraq	315	Egypt	308	Georgia	350
8	Syria	275	Nigeria	258	Sudan	335
9	Nigeria	267	Iran	187	Nigeria	332
10	Dominican Republic	257	China	174	Cameroon	283

GRE. Fig. 5 Decisions Taken at the First Instance in 2013 and 2014[6]

	Convention Status		Humanitarian Status and Subsidiary/Complementary Protection		Rejections		Withdrawn, Closed and Abandoned Cases		
Year	Number	%	Number	%	Number	%	Number	%	Grand Total
2013	257	1%	244	1%	12,579	73%	4,090	24%	17,170
2014	1,268	10%	703	5%	10,587	80%	639	5%	13,197

GRE. Fig. 6.a Positive First-Instance Decisions, Top Countries of Origin in 2012

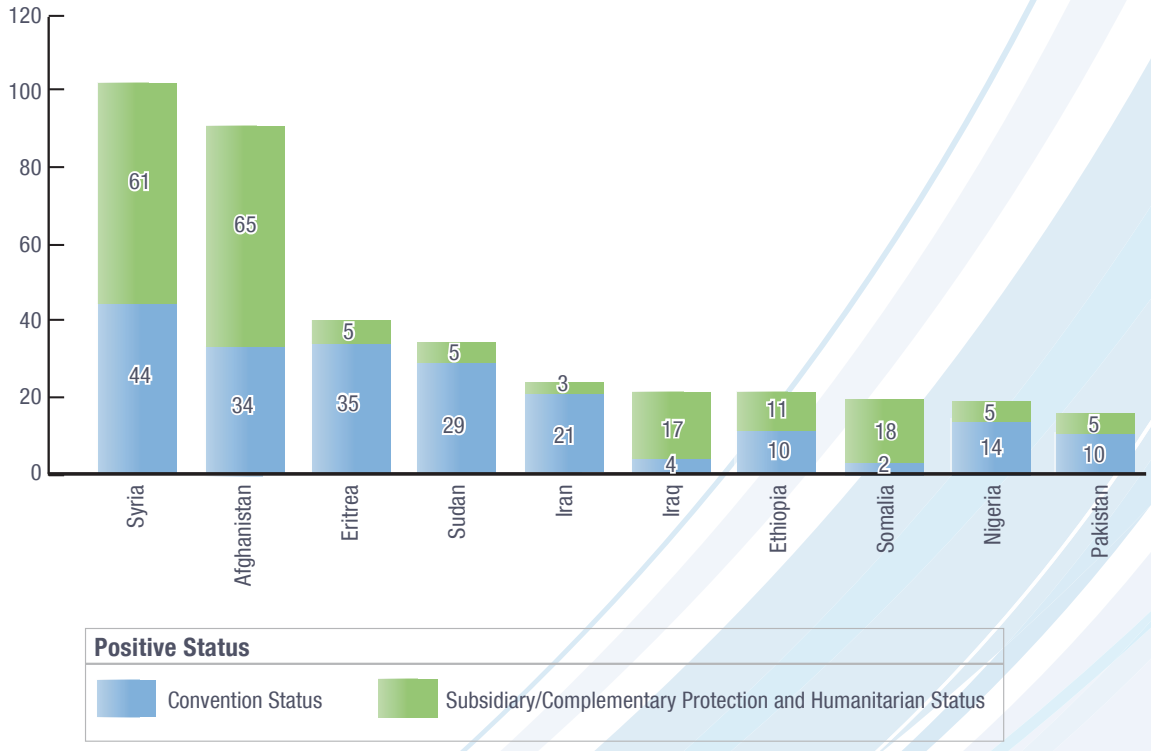
Data for 2012 are not available.

[6] Data for 2012 are not available.

GRE. Fig. 6.b Positive First-Instance Decisions, Top 10 Countries of Origin in 2013[7]

	Country of Origin	Total Positive	Total Decisions	Rate
1	Syria	105	175	60.0%
2	Afghanistan	99	929	10.7%
3	Eritrea	40	108	37.0%
4	Sudan	34	136	25.0%
5	Iran	24	142	16.9%
6	Iraq	21	242	8.7%
7	Ethiopia	21	141	14.9%
8	Somalia	20	77	26.0%
9	Nigeria	19	408	4.7%
10	Pakistan	15	4,294	0.3%

Total Positive Decisions by Status from Top 10 Countries of Origin, 2013



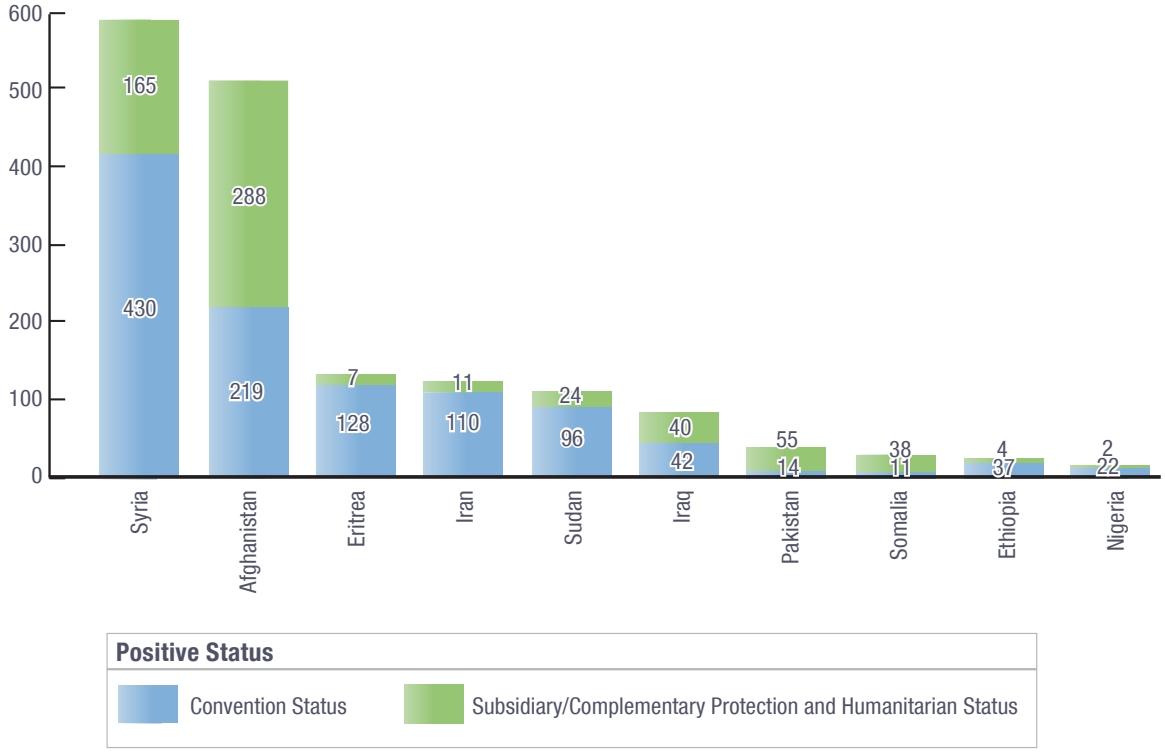
[7] For the purpose of this exercise, positive decisions include decisions to grant Convention status, subsidiary/complementary protection and other humanitarian statuses. Excluding withdrawn, closed and abandoned claims.

GRE. Fig. 6.c

Positive First-Instance Decisions, Top 10 Countries of Origin in 2014[8]

	Country of Origin	Total Positive	Total Decisions	Rate
1	Syria	595	989	60.2%
2	Afghanistan	507	1,925	26.3%
3	Eritrea	135	275	49.1%
4	Iran	121	352	34.4%
5	Sudan	120	290	41.4%
6	Iraq	82	549	14.9%
7	Pakistan	69	2,199	3.1%
8	Somalia	49	221	22.2%
9	Ethiopia	41	174	23.6%
10	Nigeria	24	365	6.6%

Total Positive Decisions by Status from Top 10 Countries of Origin, 2014



[8] For the purpose of this exercise, positive decisions include decisions to grant Convention status, subsidiary/complementary protection and other humanitarian statuses. Excluding withdrawn, closed and abandoned claims.

A Karen mother and daughter in a communal accommodation for recent arrivals at the Mae Ra Ma Luang refugee camp.

UNHCR/J. Redfern/2006

IRELAND

igc

1 BACKGROUND: MAJOR ASYLUM TRENDS AND DEVELOPMENTS

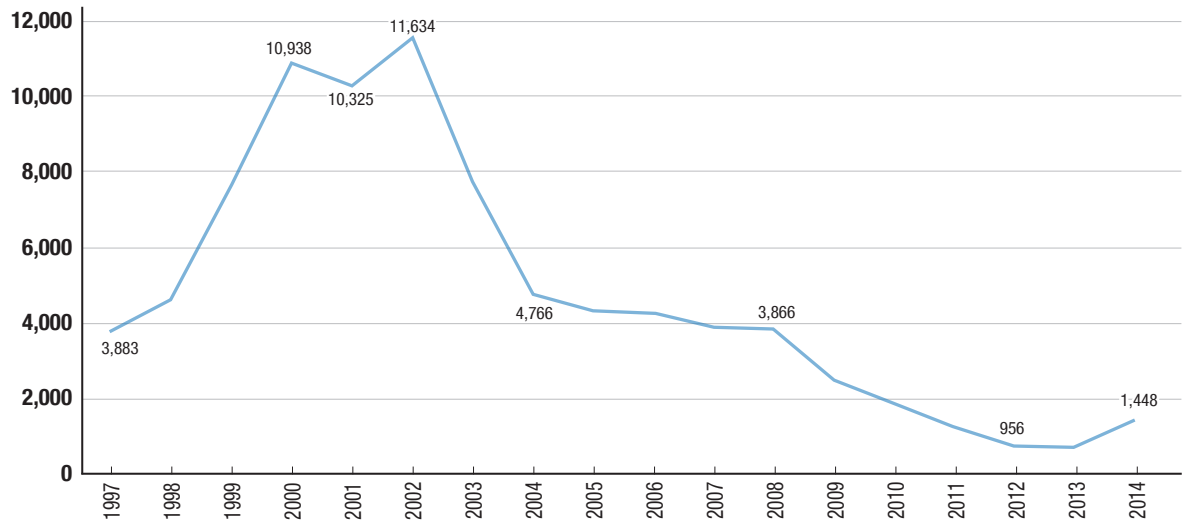
Asylum Applications

Ireland began to receive asylum applications in the early 1990s. Annual inflows increased dramatically in the late 1990s, reaching a peak of over 11,600 applications in 2002. Numbers began to decrease significantly from 2003 onwards, with 956 asylum applications received in 2012 and 946 applications received in 2013. However, there was an increase of 53 per cent in 2014, with some 1,448 applications received.

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. RIA operates a system of direct provision whereby asylum applicants are provided with bed and board and other benefits in kind rather than cash for the duration of the asylum procedure.

In 2005, the Irish Naturalisation and Immigration Service (INIS) was set up within the Department of Justice and Equality and has responsibility for, among other things, determining whether any other grounds exist for granting a failed protection applicant permission to reside in the State.

IRE. Fig. 1 **Total Asylum Applications by Year, 1997–2014**



Top Nationalities

In the early 1990s, the number of asylum seekers was low. The majority of applicants originated from Romania, Cuba and the former Yugoslavia. In the late 1990s, the top countries of origin were Nigeria, Romania and the Democratic Republic of the Congo. The top five countries for 2013 were Nigeria, Pakistan, the Democratic Republic of the Congo, Zimbabwe and Malawi. The top five countries for 2014 were Pakistan, Nigeria, Albania, Bangladesh and Zimbabwe.

Important Reforms

In the late 1990s, the procedural and institutional framework for refugee status determination was significantly reformed. The main change 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 first instance, and the Refugee Appeals Tribunal, which hears appeals of negative recommendations from ORAC.

The aforementioned developments led to a significant increase in the number of staff working in the asylum area at the time.

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 and, since 2005, foreign-national parents of Irish-born children have had to follow new procedures to apply for permission to remain in the State.

2 NATIONAL LEGAL FRAMEWORK

2.1 Legal Basis for Granting Protection

The domestic legislation dealing with refugees and asylum seekers is the 1996 Refugee Act (as amended), which entered into force in 2000. The 1996 Act was amended by the Immigration Act 1999, the Illegal Immigrants (Trafficking) Act 2000 and the Immigration Act 2003.

The 1996 Refugee Act incorporates the 1951 Convention relating to the Status of Refugees. It provided for the establishment of ORAC and the Refugee Appeals Tribunal. Additionally, it sets out a framework for the determination of asylum applications and family reunification applications, and includes provision for the admission of persons for resettlement and temporary protection.[1]

The European Communities (Eligibility for Protection) Regulations 2006 (Statutory Instrument No. 518 of 2006) came into force on 10 October 2006. These Regulations gave effect to Council Directive 2004/83/EC of 29 April 2004 (Qualification Directive).

Irish law and practice is in line with the Procedures Directive (2005/85/EC). Statutory instruments – the European Communities (Asylum Procedures) Regulations 2011 and the Refugee Act 1996 (Asylum Procedures) Regulations 2011 – were introduced in 2011 to give further effect to the Directive under Irish law.

Under the European Union (Subsidiary Protection) Regulations 2013 (Statutory Instrument No. 436 of 2013), the subsidiary protection application process was transferred to ORAC, effective from 14 November 2013.

International Protection Bill

New legislation aimed at reforming the protection system in Ireland is currently being developed.

The International Protection Bill will provide for the introduction of a single application procedure for the investigation of all grounds for protection in the State. This reorganization of the protection application processing framework should substantially simplify and streamline the existing multilayered and sequential processes and provide applicants with a final decision on their application in a more straightforward and timely fashion.

It is expected that the Bill will be enacted in 2015.

2.2 Recent/Pending Reforms

Subsidiary Protection

On 14 November 2013, responsibility for processing subsidiary protection applications transferred from INIS to ORAC under the European Union (Subsidiary Protection) Regulations 2013. These Regulations provide for a system for the investigation and determination of applications for subsidiary protection in the State. The Regulations also provide for a personal interview and the opportunity to appeal a negative recommendation.

The process of interviewing subsidiary protection applicants began in December 2013. Applicants who receive a negative recommendation following an interview are entitled to appeal to the Refugee Appeals Tribunal. The personal interview at ORAC is intended to establish the full details of an application and to enable a recommendation to be made. Representations may be made either before or at the end of the interview. Interpretation is provided where practicable in a language that an applicant may reasonably be expected to understand. Applicants are entitled to have a legal representative present at the interview.

In 2014, the Refugee Applications Commissioner introduced a policy according priority to certain classes of applications for subsidiary protection under the European Union (Subsidiary Protection) Regulations 2013. The United Nations High Commissioner for Refugees (UNHCR), as part of its mandate in relation to international protection, provided advice on the prioritization of applications and supported the approach taken by ORAC.

Priority was accorded to a number of classes of applications under two processing streams that ran concurrently.

In stream one, applications were prioritized for an interview mainly on the basis of the oldest applications first. In stream two, the following classes of cases were prioritized for an interview:

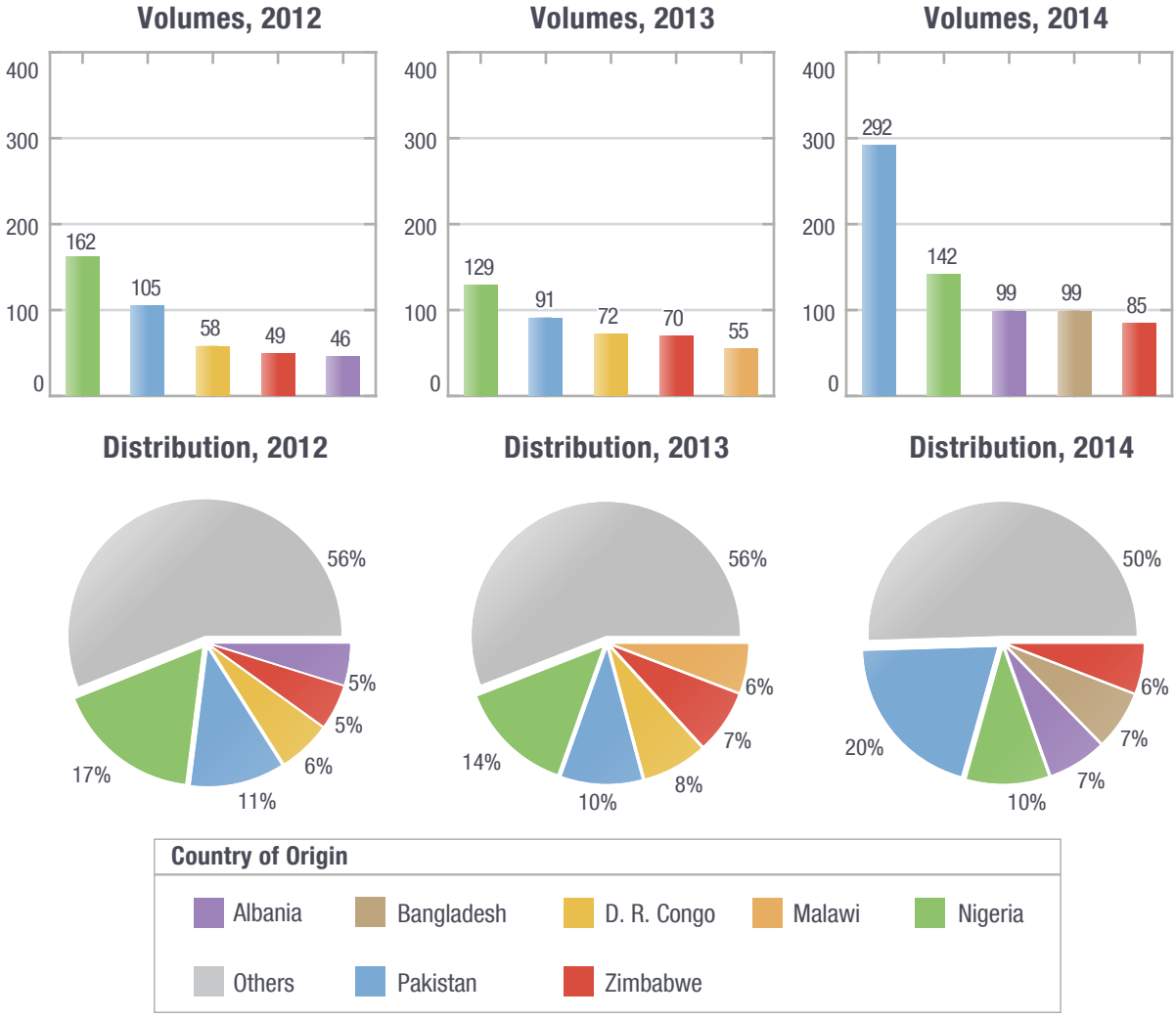
- Applicant of a certain age (for example, an unaccompanied minor)
- The likelihood the application is well founded (for example, due to the applicant's country of origin or in cases where a medico-legal report was produced).

Legal Panel and Training

A panel of legally qualified persons was established to assist the Refugee Applications Commissioner in undertaking interviews and making submissions on subsidiary protection applications. The panel was provided with comprehensive training by ORAC in conjunction with UNHCR. The remit of the panel is being extended in 2015 to cover applications for refugee status. Additional members are also being recruited to the panel.

[1] Relevant Irish asylum and immigration legislation can be viewed on the INIS website at www.inis.gov.ie/en/INIS/Pages/WP07000072 and www.inis.gov.ie/en/INIS/Pages/immigration%20Legislation. For the amended Refugee Act 1996, see the "unofficial restatement updated to 2004" version of 21 November 2005.

IRE. Fig. 2 **Asylum Applications Received from Top Five Countries of Origin in 2012, 2013 and 2014**



3 INSTITUTIONAL FRAMEWORK

3.1 Principal Institutions

ORAC is the first instance decision-making body. It is required to investigate each asylum application filed in Ireland and to make recommendations to the Minister for Justice and Equality in relation to whether a person should be granted refugee status or subsidiary protection. ORAC is also responsible for investigating applications made by refugees for family reunification.

The Refugee Appeals Tribunal hears appeals against negative first-instance recommendations and decides whether the first instance decision should be upheld or the person should be granted refugee status or subsidiary protection. On the recommendation of ORAC or the Tribunal, the Minister for Justice and Equality makes the decision either to grant or to refuse an asylum claim.

RIA is responsible for coordinating the reception services offered to asylum seekers.

INIS, which is part of the Department of Justice and Equality, considers whether there are any other reasons why a person who has been refused refugee status or subsidiary protection should be permitted to remain in the State.

The Garda National Immigration Bureau (GNIB), which is an agency of the Irish Police Force, is responsible for the enforcement of immigration policies, including the enforcement of deportation orders, Dublin transfer orders and removal orders[2] issued by the Minister.

[2] Removal orders pertain to European Union citizens subject to Regulation 20 of the European Communities (Free Movement of Persons) Regulations 2006.

The Office for the Promotion of Migrant Integration (OPMI) is part of the Department of Justice and Equality and has a cross-departmental mandate to develop, lead and coordinate integration policy across other government departments, agencies and services. The functions of OPMI include promoting the integration of legal immigrants into Irish society, managing the resettlement of refugees admitted as part of the UNHCR resettlement programme, and administering funding from national and European Union (EU) sources to promote integration.

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 of the various agencies and offices listed above and any other authorities that play a part in the process, such as the Health Service Executive (HSE) and the Department of Social Protection.

4 PRE-ENTRY MEASURES

To enter Ireland, all foreign nationals (with the exception of citizens of the United Kingdom 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

INIS 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 is a matter for the immigration officer at the port of entry.

4.2 Carrier Sanctions

Carrier liability was introduced in the Immigration Act 2003. Carriers are required to check that individuals have appropriate documentation before allowing them 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 EUR 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 the State 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 GNIB becomes aware of or encounters any person who is illegally present within the State, it will request that a deportation order be issued for the person under section 3(4) of the Immigration Act 1999.

In collecting information on those persons who are refused leave to land, GNIB identifies routes being used by persons attempting to enter the State illegally.

Airline Liaison Officers

GNIB has trained members to be airline liaison officers. Their aim is to prevent persons from entering 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 the State and make an asylum application with an immigration officer. Inside the territory, asylum applications may be made at ORAC in Dublin. Applications may also be accepted from persons in detention.

Children of asylum seekers may have their asylum claims processed with those of their parents. Persons over 18 years of age 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, including:

- 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 on the availability of legal advice services

[3] Visas are issued through cooperation between INIS Visa Offices, located in Dublin and at the Irish embassies in Abu Dhabi, Abuja, Beijing, London, Moscow and New Delhi, as well as at Irish missions overseas, which are run by the Department of Foreign Affairs. The Department of Foreign Affairs 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 considered where there has been fraud or deception in the visa application.

- A change of address form
- Advice on their right to consult a legal representative and UNHCR.

5.1.1 Outside the Country

Applications at Diplomatic Missions

Section 8 of the Refugee Act 1996 provides that any person seeking asylum at the frontiers of the State or while in the State may apply to the Minister for Justice and Equality for a declaration of refugee status. On this basis, applications for asylum may not be made from outside the State.

Resettlement

Ireland continues to participate in the UNHCR resettlement programme. In recent years, Ireland has focused on offering resettlement to a small number of medical cases where medical needs cannot be met except through resettlement.

Persons are referred for resettlement by UNHCR and must have a resettlement need. In exceptional circumstances, Ireland may enter into bilateral arrangements with other Governments.

Resettled refugees are not required to undergo a full refugee status determination post-arrival.

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, take the initial details of his or her asylum claim and fingerprint the applicant. A copy of the interview is given to the applicant and another copy is forwarded to ORAC. The applicant is informed that he or she is entitled to consult a legal representative and UNHCR.

Ireland does not operate an application determination process at ports of entry. Applicants are provided with information in relation to the asylum application process, and arrangements are made for their transfer to ORAC. Persons seeking asylum outside of normal office hours are guided to a reception centre for overnight accommodation before being transferred to ORAC during 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. 604/2013 (commonly known as the Dublin Regulation) to process an asylum claim may be made at any time during the asylum procedure.

All asylum applicants are provided with information in relation to the Dublin III Regulation and ORAC refers the applicant to the Refugee Legal Service. If it appears that the claim should be dealt with in another State, the applicant is invited to attend an interview in accordance with article 5 of the Dublin III Regulation. Applicants being considered under the Dublin III Regulation are provided with information specific to the Dublin process.

Unaccompanied children are provided with child-specific information in relation to the Dublin process. All information is examined and considered, including information received from other States, in advance of ORAC's decision to transfer.

ORAC makes a transfer decision on the case, which is issued to the applicant and his or her legal representative. The decision 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 State
- A brief outline of the applicant's case
- An outline of the decision referencing the article and the proofs required and supplied
- An outline of the remedies available
- A statement of the decision.

The file is then forwarded to INIS and arrangements are made for the transfer of the applicant from the jurisdiction.

Review/Appeal

An asylum seeker may appeal the transfer decision of ORAC to the Refugee Appeals Tribunal within 15 working days of the date of ORAC's determination. An appeal to the Tribunal will suspend the transfer of the asylum seeker to another State participating in the Dublin Regulation.

If the Tribunal overturns the transfer decision of ORAC, the application will be returned to ORAC for an examination of the asylum claim. If the Tribunal does not overturn the transfer decision, it will advise INIS of its decision and arrangements will be made for the transfer of the person to the relevant State.

Freedom of Movement and Detention
If it is suspected that a person intends to avoid removal from the State under the Dublin Regulation, 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 seeker is arranged by the Department of Justice and Equality. The transfer takes place as soon as possible and at the latest within six months of the date of acceptance by the other State or of the final decision on an appeal or review where there is a suspensive effect.

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 prioritized accordingly. Exceptions to this rule include the following:

- Asylum applications made by a national of an EU Member State. Under the EU Treaty Protocol on Asylum, Ireland does not accept asylum applications from nationals of EU Member States
- Accompanied minors whose application is processed together with the application of their parent or guardian, unless they indicate that they wish to have their application processed separately from that of their parent or guardian
- Persons who have already made an asylum application and who have received a decision in respect of the application. Such persons may not make a further application for asylum without first seeking the consent of the Minister under section 17(7) of the Refugee Act 1996 (as amended).

Prioritized Procedures

Section 12 of the Refugee Act 1996 (as amended) allows the Minister for Justice and Equality to prioritize certain classes of applications based on certain criteria.

Under section 12(4) of the Refugee Act 1996, the Minister may, after consultation with the Minister for Foreign Affairs and Trade, designate a country as a safe country of origin.[4]

Certain specific categories of applications are also given priority, such as applications from asylum seekers in detention.

Prioritized applications are generally examined and processed within a median processing time of 30 working days of the date of application, except where medical or other compelling reasons may increase the processing time. This time limit aside, the examination process follows the normal procedure.

As outlined above, in 2014, the Refugee Applications Commissioner introduced a policy according priority to certain classes of applications for subsidiary protection under the European Union (Subsidiary Protection) Regulations 2012.

Normal Procedure

Preliminary Interview
When an asylum application is made, a preliminary interview with the applicant is conducted. The purpose of this interview is to establish 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 where necessary.

If the asylum seeker makes the application at a port of entry, an initial interview is carried out by an immigration officer at the port. The applicant will subsequently be referred to ORAC.

Application Form
Following the preliminary interview, the applicant completes and signs a standard form (ASY1 form). An 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 of age.

Questionnaire
The asylum seeker is given a detailed questionnaire where he or she is to provide biographical details and the reasons for seeking asylum. The completed questionnaire must be returned to ORAC within seven days of the preliminary interview (within six days for prioritized cases). All applicants are photographed and those over 14 years of age are also fingerprinted by ORAC. They are then issued with a Temporary Residence Certificate as evidence that they have applied for asylum.

Asylum seekers are then referred to 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
An asylum seeker is invited to an interview carried out by an ORAC caseworker, with the assistance of an interpreter if required. Applicants are also entitled to have their legal representative present at the interview. In exceptional circumstances, if the Commissioner deems it necessary to investigate the application, the interview may take place with other family members of the applicant present. In cases involving an unaccompanied minor in the care of the State, a representative from the Child and Family Agency will also attend the asylum interview.

Recommendation
On the basis of the findings of the preliminary interview, the completed questionnaire, the substantive interview and

[4] See section 5.2 on safe country concepts for more information on the safe country of origin policy.

any other relevant information, including country of origin information (COI), the caseworker prepares a report on the application. The report incorporates a recommendation of whether or not refugee status should be granted as well as the reasons for the recommendation. If the recommendation is to refuse refugee status, a copy of the report is given to the applicant and his or her legal representative on completion of the application process. If no recommendation has been made within six months of the date of the application, the applicant may request an indication of the time frame within which a recommendation may be made.

IN FOCUS

QUALITY ASSURANCE AT ORAC

All non-prioritized cases (and 10 per cent of prioritized cases) are checked by a supervisor. A Quality Assurance Team checks random cases on a monthly basis, and reports findings to ORAC management. Caseworkers are provided with the relevant findings.

Appeal and overturn rates are also analysed to assess the quality of decisions, and interpretations and translations are reviewed for quality on a regular basis.

The Quality Assurance Team also monitors judicial review proceedings, legal challenges and court decisions and brings relevant issues to the attention of caseworkers.

Review/Appeal of the Normal Procedure

Applicants who receive a negative recommendation following their interview with ORAC may appeal the recommendation to the Refugee Appeals Tribunal within 15 working days of the date ORAC sends the notice. The appeal has a suspensive effect. The Tribunal has the power to affirm the ORAC recommendation or to set it aside and recommend that refugee status be granted.

Asylum seekers are entitled to request an oral hearing for this appeal.

The time frame to make an appeal on a negative recommendation is reduced to 10 working days if the ORAC recommendation includes in its findings one of the elements set out in section 13(6) of the Refugee Act 1996.

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 that was relied upon in coming to that recommendation.

When an asylum 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 1996 (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 Regulation
- Intend to leave the State and enter another State without lawful authority
- 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.

Any persons detained may have the length of their 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 a detained person's application for asylum shall be dealt with as soon as may be possible and, if necessary, before any other application of a person who is not detained.

Reporting

An applicant must 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 but 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 authorized by the Minister or a member of the Irish Police Force. A person failing to comply with any imposed reporting conditions may also be detained.

Repeat/Subsequent Applications

Under section 17(7) of the Refugee Act 1996 (as amended), it is not possible for a person who has been refused refugee status to make a further application without the consent of the Minister. A subsequent application is accepted only if an applicant submits new relevant information that was not previously submitted or available to 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, subsequent applications 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 1996 (as amended) and the provisions of Statutory Instrument No. 51 of 2011, the Minister may, by order, designate certain countries as safe countries of origin. If it appears to 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, it must be taken into account whether the country is party to, and generally complies with, obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights, and the Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights).

In addition, the following considerations must be taken into consideration where appropriate:

- Whether the country respects the principle of non-refoulement
- Whether the country has a democratic political system and an independent judiciary that ensures effective remedies against violations of rights and freedoms
- Whether the country is governed by the rule of law.

South Africa has been designated a safe country of origin and therefore applications made by persons from that country are prioritized.

UNHCR/B. Baloch/April 2014

5.2.2 First Country of Asylum

The Refugee Act 1996 (as amended) provides that an applicant who has made a prior application for protection in another State party to the 1951 Convention and who has received a negative recommendation by ORAC has 10 working days to appeal that decision to the Refugee Appeals Tribunal.

Such appeals are determined without an oral hearing.

5.2.3 Safe Third Country

The Minister may, by order after consultation with the Minister for Foreign Affairs and Trade, designate a country with which an agreement is in place as a safe third country. An asylum applicant may be transferred to a safe third country to have his or her asylum application considered if he or she has reasonable connections with that country.

No country has been designated as a safe third country to date.

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 years (a minor) arrives at a port of entry or at ORAC, the Child and Family Agency must be informed and the child placed in its care. HSE decides if and when it is in the best interests of the minor to make an application for asylum on his or her behalf.

In the event that an application is made, HSE then assists the minor throughout the procedure, including accompanying the child to the interview.

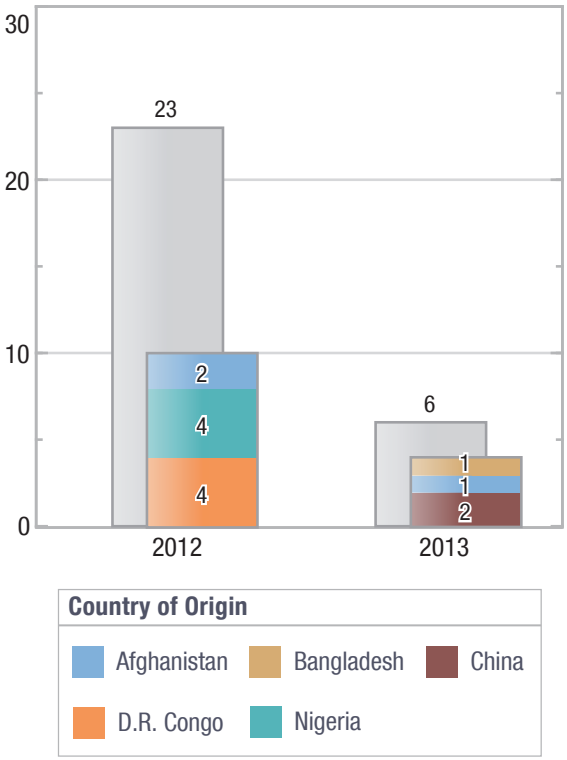
The following features are specific to the examination of asylum applications made by unaccompanied minors:

- All unaccompanied minors are interviewed by experienced ORAC caseworkers or panel members who have received additional specialized training
- Applications of unaccompanied minors are prioritized
- There is greater emphasis on certain objective factors, such as COI, in making a determination on the application of the unaccompanied minor
- HSE representatives are always in attendance at interviews.

Minors over 12 years of age are placed in a residential intake unit for four to six weeks, where their needs are assessed by social workers and psychologists. Following this period, they are placed in foster care. Children under the age of 12 years are placed directly in foster care.

IRE Fig. 3 Asylum Applications by Unaccompanied Minors in 2012 and 2013[5]

	2012	2013
Total Asylum Applications	956	946
Applications by Unaccompanied Minors	23	6
Percentage	2%	1%



5.3.2 Temporary Protection

Ireland participates in Council Directive 2001/55/EC (Temporary Protection Directive), and the Refugee Act 1996 provides the legislative framework for the transposition of this measure, specifically section 24.

5.3.3 Stateless Persons

If 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.

5.3.4 Gender-Based Claims

The ORAC training module on gender-related persecution draws on UNHCR guidelines as well as guidelines developed

[5] Data on unaccompanied minors for 2014 are not available.

by authorities in this field from Canada, the United Kingdom and the United States. ORAC has procedures in place to deal with cases in which an applicant highlights a gender-related issue, and ensures (where possible) that the interpreter and the caseworker are the same gender as the applicant.

6 DECISION-MAKING AND STATUS

The decision to grant or refuse refugee status is a matter for the Minister for Justice and Equality upon receipt of the recommendations of ORAC and the Refugee Appeals Tribunal.

6.1 Inclusion Criteria

Refugee status is granted if the applicant meets the requirements set out in section 2 of the Refugee Act 1996, 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 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 and Equality is responsible for granting an asylum seeker a determination on refugee status.

If a recommendation to grant refugee status is made by ORAC or if the Refugee Appeals Tribunal overturns a negative recommendation of 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.

If a recommendation to refuse refugee status has been made by ORAC and if the Tribunal does not overturn that recommendation, the Minister may refuse to grant refugee status.

6.3 Types of Decisions, Statuses and Benefits Granted

ORAC may make the following recommendations:

- Grant refugee status
- Refuse refugee status on the basis of the application having been withdrawn, or deemed to be withdrawn
- Refuse (substantive)
- Refuse with additional section 13(6) findings.[6]

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 1996 (as amended). Refugees are required to register with GNIB and are issued a residence permit. A refugee may apply for a Refugees Travel Document. 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
- Access to social welfare benefits
- Access to education and training.

A recognized refugee may apply for Irish citizenship three years after having made an application for refugee status. A refugee is also entitled to family reunification, upon application to the Minister.[7]

6.4 Exclusion

The definition of a refugee does not apply if article 1F of the 1951 Convention applies. 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 purpose of making an asylum application, or to be entitled to the rights afforded to a recognized 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.

Under the Refugee Act, a person who is the subject of such a removal cannot be removed until at least 30 days after the making of such an order, and the Minister is required to notify UNHCR and the individual's legal representative of this decision. 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), if the circumstances giving rise to an applicant being recognized as a refugee cease to exist, his or her declaration (refugee status) may be revoked.

[6] See the section on review/appeal for further details on additional section 13(6) findings.

[7] 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 and children of the refugee, who, on the date of the application are under 18 years of age 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.

6.6 Revocation

Section 21 of the Refugee Act 1996 (as amended) provides that the Minister may revoke a person's refugee status in certain circumstances.

A revocation decision will not be made 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 his or her former habitual residence.

Where the revocation of refugee status is being considered, the applicant, his or her legal representative(s) and 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 decision detailing the reasons for the revocation is issued in writing to the person.

If a person seeks to contest the revocation decision, he or she may make an appeal to the High Court within 15 working days of the decision of the Minister. The appeal has a 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. The Refugee Documentation Centre is utilized for COI research services, and within ORAC there is also a small team of COI researchers who assist caseworkers in retrieving and collecting COI that may be relevant in specific asylum cases.

While responsibility for the European Asylum Curriculum has been transferred to the European Asylum Support Office, the Refugee Documentation Centre continues to be involved in the development of the European Asylum Curriculum COI module and delivery of the programme. ORAC also uses COI reports produced by the European Asylum Support Office.

The Refugee Documentation Centre continues to develop Country Information Packs (reference documents for high priority countries on a broad range of COI topics, including subsidiary protection), which are available to all end-users. Information packs on marriage and adoption have also been created. In addition, library bulletins and alerts are issued to end-users to highlight available resources.

Other government agencies and members of the public may also use the Refugee Documentation Centre to conduct their own research.

6.7.2 Language Analysis

Language analysis is used when required to assist in the assessment of complex cases. The language analysis outcome forms part of a holistic assessment of the well-foundedness of refugee status or subsidiary protection applications. It includes an interview and the assessment of any written documentation provided by the applicants.

6.7.3 Other Support Tools

All caseworkers are provided with specific training that has been developed with UNHCR. In 2013 and 2014, a subsidiary protection training module was developed and delivered by ORAC in conjunction with UNHCR and other experts to ORAC investigators and new panel members.

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.

IN FOCUS

WORK CYCLES

At ORAC, the working year is divided in five-week cycles in the refugee status determination division. Caseworkers dedicate four of those weeks to interviews and decision-making; the fifth week is used for finalizing reports, training and attending meetings.

7 EFFICIENCY AND INTEGRITY MEASURES

7.1 Technological Tools

7.1.1 Fingerprinting

Currently, all asylum seekers over 14 years of age are fingerprinted using the Automated Fingerprint Identification System. This system provides ORAC with an enhanced fingerprint capacity and better capability for the exchange of information with the European fingerprint database, Eurodac.

7.1.2 DNA Tests

While DNA tests are not normally used by ORAC, they have been employed in the context of child protection procedures and in relation to establishing a biological family relationship in the context of the determination of applications for family reunification.

7.1.3 Forensic Testing of Documents

ORAC and INIS occasionally request the Irish Police Force 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 taken are registered in a database maintained by ORAC.

7.2 Length of Procedures

Persons with prioritized applications are normally scheduled for an interview within 9 to 12 working days of the date of application. In 2013, applications were completed within a median processing time of 25 working days from the date of application.

In 2013, all other cases (including cases that could not be processed for medical or other compelling reasons) were processed to completion within a median processing time of 12 weeks.

7.3 Pending Cases

At the end of 2013, of the 248 pending cases, only 17 applications were over six months old.

7.4 Information Sharing

Apart from the information sharing arrangements under the Dublin III Regulation, no information on an asylum seeker may be released to a third country without the consent of the asylum seeker.

7.5 Single Procedure

Ireland does not currently operate a single procedure; however, legislative reform aimed at establishing a single application procedure for the investigation of all grounds for protection is a key priority. Such reform would substantially simplify and streamline the existing arrangements by removing the current multilayered and sequential processes, and provide applicants with a final decision on their application in a more straightforward and timely fashion.

IN FOCUS

CUSTOMER SERVICE AT ORAC

ORAC developed a Customer Charter in 2004, which sets out the standards of service that customers can expect and which outlines how customers or their queries have to be dealt with.

A centralized Corporate and Customer Service Centre in ORAC monitors and develops customer service structures and supports ORAC with statutory and other duties, such as responding to enquiries from applicants or from the public, replying to correspondence and briefing requests, preparing material for parliamentary questions and replying to press queries. The centre produces documents and information leaflets, and provides information before, during and after the asylum interview.

The Irish model, with a centralized customer service function, enables front-line units to concentrate purely on processing work and allows for a consistent approach in dealing with customers.

The customer service system at ORAC also includes a written complaints mechanism, a consultation and customer service liaison panel for non-governmental organizations (NGOs), regular customer surveys and an up-to-date website. Strict rules on confidentiality apply.

8 ASSISTANCE AND RECEPTION BENEFITS FOR ASYLUM SEEKERS

8.1 Procedural Support and Safeguards

8.1.1 Legal Assistance

The Refugee Legal Service is an office established by the Legal Aid Board to provide asylum seekers and refugees with low-cost, independent and confidential legal services. It offers assistance to applicants at the various stages of the asylum process and assists applicants at the subsidiary protection and leave to remain stages. It can also provide legal representation before the Refugee Appeals Tribunal.

The Refugee Legal Service staff is comprised of legal representatives 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

ORAC and the Tribunal use independent 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

UNHCR is notified of developments affecting applicants throughout the refugee determination process and is afforded the opportunity to make submissions at various stages. However, UNHCR does not play an active role in the determination of individual asylum applications.

According to current legislation, UNHCR must be notified in writing when an asylum application is made. This notice includes the applicant's name and his or her country of origin. UNHCR may make a request to attend an interview conducted by ORAC or to receive a copy of the interview record or any other relevant documents. In addition, UNHCR can make representations on behalf of an applicant, and, on request, is informed of the recommendation of ORAC regarding the claim.

Similarly, the Refugee Appeals Tribunal is required to notify UNHCR of any appeals lodged and, on request, is obliged to furnish UNHCR with all documents relating to the application. UNHCR may, upon request, be present at appeal hearings and make submissions on behalf of the appellant. UNHCR is also informed of the decision reached by the Tribunal.

UNHCR is notified of applications for family reunification, revocation of status, decisions to detain for the purpose of removal from the State, and changes of location of detention.

ORAC continues to work closely with UNHCR with a view to ensuring the quality of the new subsidiary protection process and the existing refugee status determination process. Sanction was obtained to engage a protection expert from UNHCR to assist in introducing the new subsidiary protection arrangements, the enhancement of ORAC's processes and the planned single procedure.

8.1.4 NGOs

ORAC liaises with NGOs directly and via its Customer Liaison Panel. This panel provides a forum for consulting on a wide range of issues and for providing the relevant NGOs with information on developments in the asylum process in Ireland.

8.2 Reception Benefits

RIA is a non-statutory agency of the Department of Justice and Equality, which is responsible for the accommodation of asylum seekers in Ireland in accordance with the government policy of "direct provision" and "dispersal".

8.2.1 Accommodation

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.

After an asylum seeker makes his or her application for asylum to ORAC, RIA offers accommodation in a reception centre in Dublin for a period of between 10 and 14 days. During this period, asylum seekers are given access to health, legal and welfare services. Asylum seekers whose applications are not prioritized are then relocated to an accommodation centre outside the Dublin area.

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 forms of support. Asylum seekers in direct provision receive a nominal weekly payment of EUR 19.10 for adults and EUR 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.

8.2.3 Health Care

Health care in Ireland is provided through 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. Furthermore, asylum seekers in need of psychological treatment can access a dedicated asylum seekers' psychological service through HSE in Dublin.

8.2.4 Education

Asylum seekers can access free primary and secondary level education (up to 18 years of age). In addition, adult asylum seekers are provided with English language support.

8.2.5 Access to the Labour Market

Asylum seekers are not able to access the labour market in Ireland for the duration of the application 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 organizations in the same way as do Irish citizens. Asylum seekers may become involved in voluntary activities at the local level. These opportunities allow for interaction and integration with the local community.

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 regarding their asylum application, subsidiary protection application or application on any other grounds to be allowed to remain in the State.

9 STATUS AND PERMITS GRANTED OUTSIDE THE ASYLUM PROCEDURE

9.1 Subsidiary Protection

See section 2.2 on recent/pending reforms for information on subsidiary protection.

9.2 Temporary Leave to Remain

Leave to remain is a status granted at the discretion of the Minister for Justice and Equality to, among others, persons whose claims for asylum or subsidiary protection have been rejected but who cannot be returned to their countries of origin for humanitarian or other compelling reasons. This provision is set out in section 3 of the Immigration Act 1999 (as amended).

Persons granted temporary leave to remain in the State are entitled to the following benefits:

- A residence permit (normally for one, two or three years, renewable at the end of the stated period)
- The right to work
- Access to social security on the same level as Irish citizens.

UNHCR/J.Wreford/January 2007

9.3 Syrian Humanitarian Admission Programme

IN FOCUS

SYRIAN HUMANITARIAN ADMISSION PROGRAMME

The Syrian Humanitarian Admission Programme was introduced in March 2014 in response to the ongoing crisis in Syria.

The programme allowed naturalized Irish citizens of Syrian birth and Syrian nationals already lawfully resident in the State a six-week time frame from the programme's implementation date to make an application for vulnerable close family members to join them in Ireland. Those persons considered by the family member in Ireland (the sponsor) to be the most at risk were admitted under the programme (the beneficiaries). Beneficiaries were granted permission to remain on a temporary basis for up to two years. A sponsor could be a single person or the head of a family unit and in a position to sponsor and support the beneficiaries on their arrival.

This initiative was in addition to Ireland's commitment to resettle refugees admitted through the UNHCR resettlement programme and without prejudice to other avenues whereby Syrian nationals might lawfully enter the State, such as through family reunification for the family members of refugees and persons with subsidiary protection, and the UNHCR resettlement programme.

9.4 Risk Assessment

Before a person has a deportation order made against them, a risk assessment is conducted to take into account refoulement or any considerations related to the European Convention on Human Rights.

A risk assessment consists of a detailed consideration of the applicant's case under section 3(6) of the Immigration Act 1999 (as amended) and section 5 of the Refugee Act 1996 (as amended) on the prohibition of refoulement. The Minister for Justice and Equality is responsible for ensuring that this risk assessment is conducted. Any perceived risk to the applicant is 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.

9.5 Obstacles to Return

If, after a detailed consideration of a case prior to removal, it has been determined that there are no issues related to refoulement but that there are obstacles to effecting a return, such cases are kept under ongoing review. Obstacles may include difficulty in obtaining travel documents to facilitate the removal of the person concerned.

9.6 Regularization of Status over Time

INIS may regularize the status of a rejected asylum seeker by, where deemed appropriate, granting temporary leave to remain in the State. This is done on a case-by-case basis, as described above.

9.7 Regularization of Status of Stateless Persons

Ireland is a signatory to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. Every rejected asylum or protection 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. However, Ireland does not operate a statelessness determination procedure.

10 RETURN

INIS and GNIB are responsible for the formulation and implementation of return procedures.

10.1 Pre-departure Considerations

When an asylum or protection applicant has been given a negative decision, he or she receives a written notification advising him or her of the option of voluntary return and that assistance, if required, may be provided by the International Organization for Migration.

10.2 Procedure

Voluntary Return

Following the receipt of a negative asylum or protection decision, an applicant is given a period of 15 working days to notify the Minister of his or her decision either to return voluntarily to his or her country of origin or to avail of one of the other options open to him or her, that is, consent to the making of a deportation order or submit written representations setting out reasons why a deportation order should not be made. Once the person has notified INIS that he or she wishes to return voluntarily, he or she is allowed a reasonable time frame within which to make the practical arrangements for his or her departure from the State. In most cases, a period of up to one month is considered reasonable. INIS and GNIB coordinate assisted voluntary return schemes with the International Organization for Migration.

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 or protection claim or after they become otherwise illegally present in the State. If 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. If 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. If a person is subject to a transfer order in accordance with the Dublin Regulation, arrangements are made by INIS and GNIB for his or her transfer to the relevant Dublin Regulation State.

10.3 Freedom of Movement and Detention

Where an immigration officer or a member of the Irish Police Force, 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 placed 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 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 asylum seekers who received a negative decision on their application and persons found to be illegally present in the State.

11 INTEGRATION

Ireland adopts a mainstream policy of service provision with respect to integration while recognizing the need for targeted initiatives to meet specific short-term needs. OPMI is responsible for the promotion and coordination of integration measures with regard to legally resident immigrants. Through the mainstream approach, the effective and equitable provision of core services is emphasized; mainstream departments are responsible for the planning

and delivery of services and for making services more accessible to migrants. Government departments continue to make their services more accessible by implementing intercultural strategies, providing specific information for migrants, translating documentation into different languages, and providing interpretation and translation services.

Vocational Educational Committees, which are located throughout Ireland, also have a key role to play in providing English language classes. A range of other statutory and non-statutory bodies are involved in initiatives to provide migrants with information, social support and English language training.

Resettled Refugees

The status accorded to resettled refugees is "programme refugee". A programme refugee has the same rights and entitlements as a person granted status under the 1951 Convention relating to the Status of Refugees. A register of programme refugees is maintained as provided for in the Refugee Act 1996 (as amended).

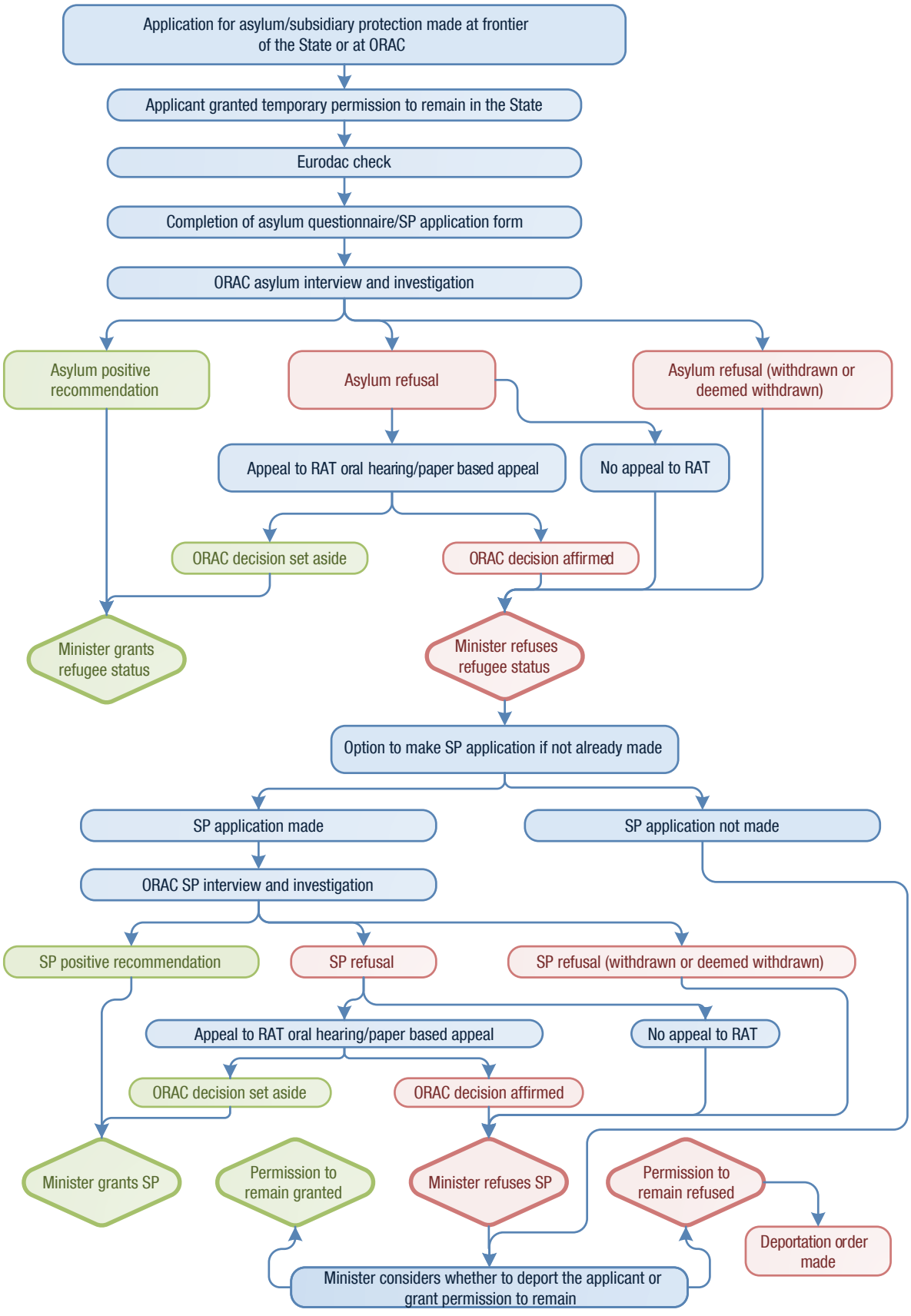
The resettlement programme is coordinated at the national level by the Resettlement Unit of OPMI. The structure of the resettlement programme is based on a partnership approach using a mainstream model of service provision.

Resettled refugees admitted as a group are generally accommodated in a reception centre post arrival, where they receive an orientation and training programme to prepare them for independent living before being resettled into the community. Health screening is offered and the resettled refugees are put in contact with various service providers. Services are offered using a mainstream model while taking into account the need for targeted services in exceptional circumstances. Supported by the Resettlement Unit, OPMI works in partnership with local authorities and the voluntary and community sector to develop actions at the local level to promote the long-term integration of resettled refugees. Receiving communities also receive training and information to ensure that they are aware of, and can prepare for, refugees with special needs.

Resettled refugees are provided with language training for up to 20 hours per week for a period of up to one year.

12 ANNEX

12.1 Asylum Procedure Flow Chart



Note: SP – subsidiary protection.

12.2 Additional Statistical Information

IRE. Fig. 4 | Asylum Applications from Top 10 Countries of Origin in 2012, 2013 and 2014

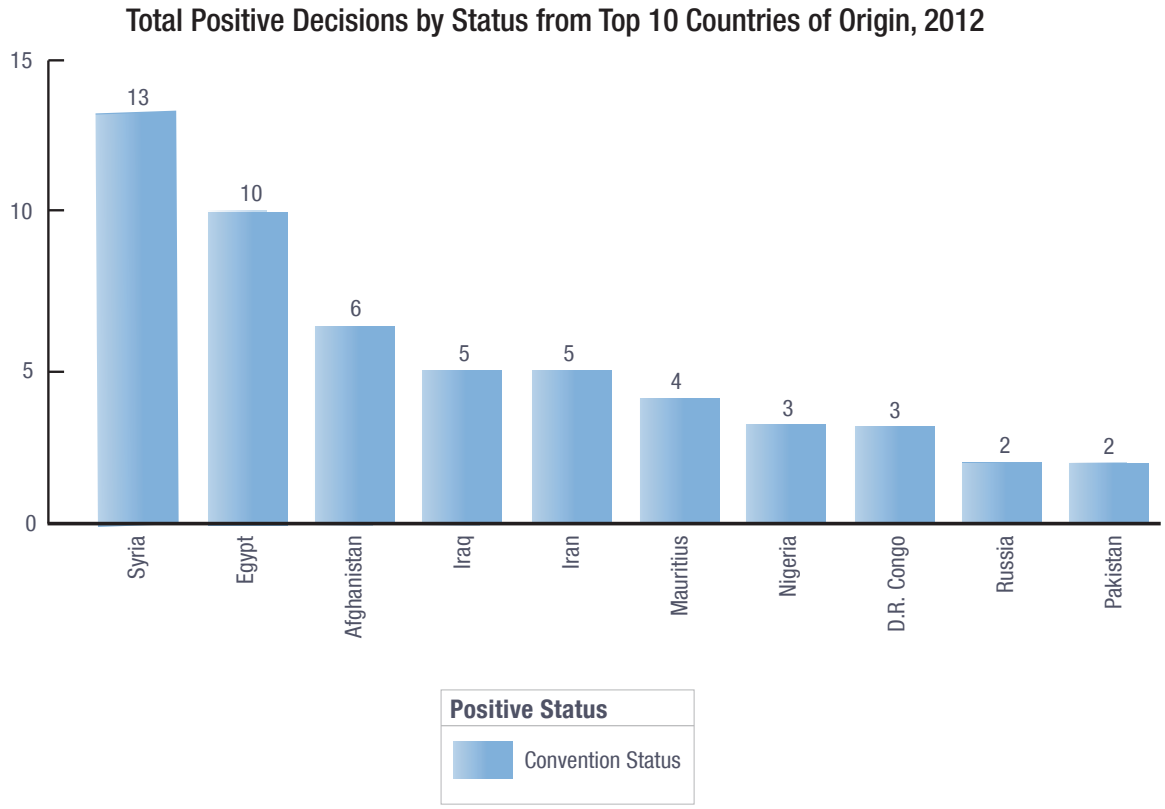
	2012		2013		2014	
1	Nigeria	162	Nigeria	129	Pakistan	292
2	Pakistan	105	Pakistan	91	Nigeria	142
3	D.R. Congo	58	D.R. Congo	72	Albania	99
4	Zimbabwe	49	Zimbabwe	70	Bangladesh	99
5	Albania	46	Malawi	55	Zimbabwe	85
6	South Africa	33	Algeria	51	Algeria	77
7	Afghanistan	31	Albania	48	D.R. Congo	74
8	China	31	Syria	38	Malawi	60
9	Algeria	29	Afghanistan	32	South Africa	50
10	Iran	26	Bangladesh	31	Ukraine	49

IRE. Fig. 5 | Decisions Taken at the First Instance in 2012, 2013 and 2014

	Convention Status		Humanitarian Status and Subsidiary/Complementary Protection		Rejections		Withdrawn, Closed and Abandoned Cases		
Year	Number	%	Number	%	Number	%	Number	%	Grand Total
2012	67	9%	0	0%	700	91%	0	0%	767
2013	128	18%	0	0%	582	82%	0	0%	710
2014	132	17%	0	0%	661	83%	0	0%	793

IRE. Fig. 6.a Positive First-Instance Decisions, Top 10 Countries of Origin in 2012[8]

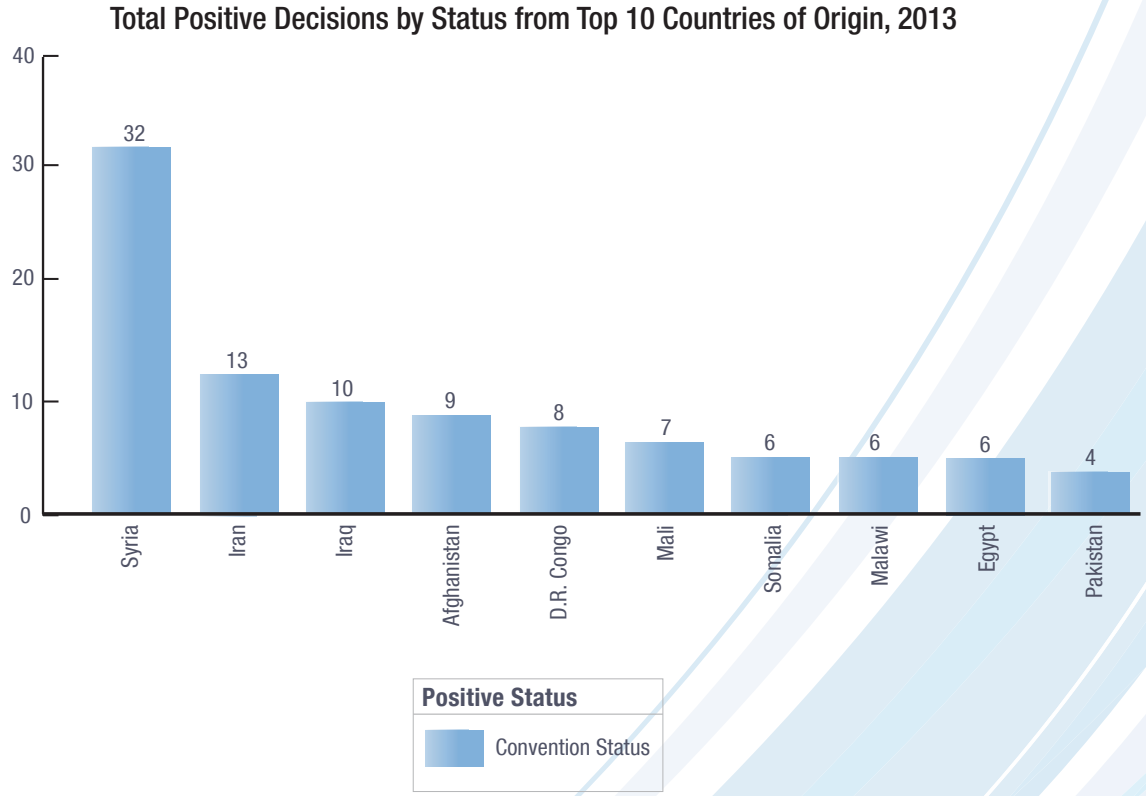
	Country of Origin	Total Positive	Total Decisions	Rate
1	Syria	13	19	68.4%
2	Egypt	10	15	66.7%
3	Afghanistan	6	31	19.4%
4	Iraq	5	9	55.6%
5	Iran	5	15	33.3%
6	Mauritius	4	16	25.0%
7	Nigeria	3	120	2.5%
8	D.R. Congo	3	54	5.6%
9	Russia	2	2	100.0%
10	Pakistan	2	86	2.3%



[8] Excluding withdrawn, closed and abandoned claims.

IRE. Fig. 6.b Positive First-Instance Decisions, Top 10 Countries of Origin in 2013[9]

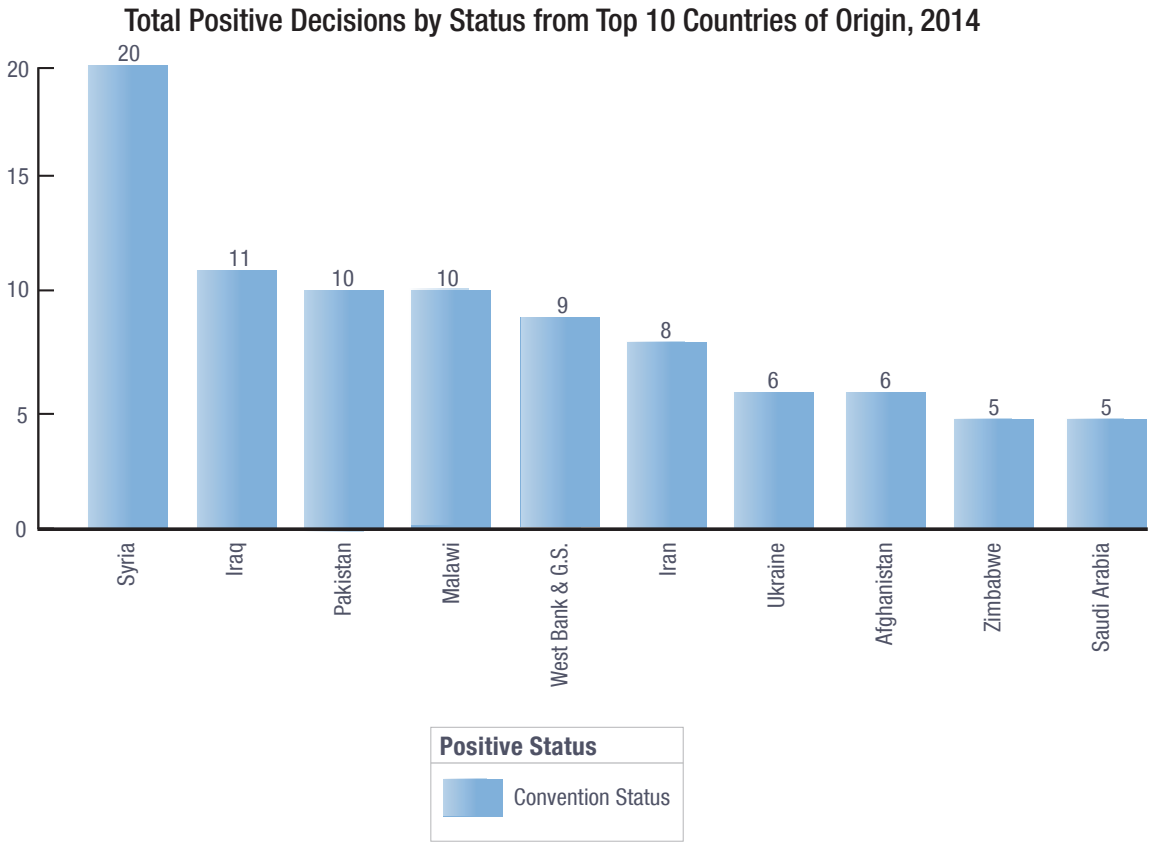
	Country of Origin	Total Positive	Total Decisions	Rate
1	Syria	32	33	97.0%
2	Iran	13	14	92.9%
3	Iraq	10	13	76.9%
4	Afghanistan	9	48	18.8%
5	D.R. Congo	8	59	13.6%
6	Mali	7	7	100.0%
7	Somalia	6	11	54.5%
8	Malawi	6	27	22.2%
9	Egypt	6	11	54.5%
10	Pakistan	4	68	5.9%



[9] Excluding withdrawn, closed and abandoned claims.

IRE. Fig. 6.c Positive First-Instance Decisions, Top 10 Countries of Origin in 2014[10]

	Country of Origin	Total Positive	Total Decisions	Rate
1	Syria	20	21	95.2%
2	Iraq	11	21	52.4%
3	Pakistan	10	71	14.1%
4	Malawi	10	63	15.9%
5	West Bank and Gaza Strip	9	10	90.0%
6	Iran	8	13	61.5%
7	Ukraine	6	28	21.4%
8	Afghanistan	6	16	37.5%
9	Zimbabwe	5	59	8.5%
10	Saudi Arabia	5	5	100.0%



[10] Excluding withdrawn, closed and abandoned claims.

Syrian refugee girl holds plastic sheets at a distribution center in Za'atri refugee camp in Jordan.

UNHCR/J. Kohler/November 2013

NETHERLANDS

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1 BACKGROUND: MAJOR ASYLUM TRENDS AND DEVELOPMENTS

Asylum Applications

In the late 1980s, the number of new asylum applications began to increase significantly, reaching a peak of 52,576 in 1994. Between 1995 and 2001, annual applications fluctuated between 23,000 and 45,000. Beginning in 2002, the number of applications decreased significantly, dropping to 9,731 in 2007.

From 2008, figures rose significantly, reaching a high in 2009 with 16,163 asylum applications (of which 14,880 were new applications). From 2010, the numbers started to decline again with 15,100 that year (13,290 new applications), 14,600 in 2011 (11,565 new applications), and 13,102 in 2012 (9,665 new applications), which was the lowest number of applications. Then in 2013, the figure rose to 17,190 (14,375 new applications). In 2014, the number of asylum applications was 24,534 (of which 21,811 were new applications).

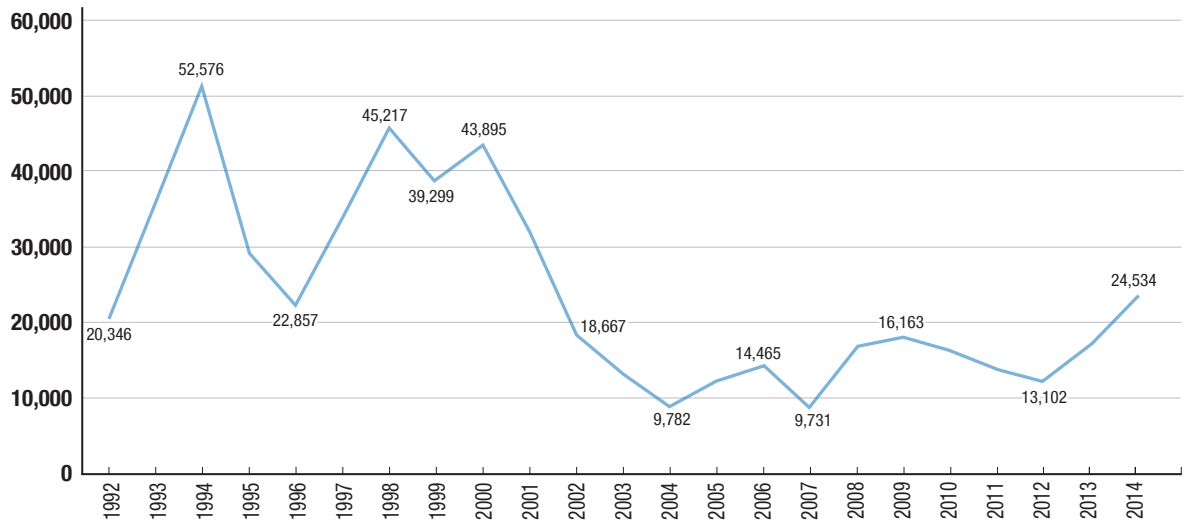
Top Nationalities

In the 1990s, the majority of asylum seekers originated from the former Yugoslavia, 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. Between 2003 and 2012, the majority of asylum seekers arrived from Iraq, Somalia and Afghanistan, with China replacing Afghanistan in 2007 and 2008. In 2013, Syria replaced Afghanistan in the top three nationalities of new asylum applicants in the Netherlands. In 2014, most of the new asylum applicants were Syrians, followed by Eritreans and stateless persons, the latter category consisting mainly of stateless Palestinians residing in Syria before applying for asylum in the Netherlands.

Important Reforms

Since the beginning of the 1990s, the legal framework for asylum procedures in the Netherlands has undergone significant reforms, with amendments to the Aliens Act taking effect in 1994, 2001 and 2010. The 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. Also during this time, dedicated application centres were created.

NET. Fig. 1 **Total Asylum Applications by Year, 1992–2014**



It should be noted that a separate registration of family reunification began on 28 March 2014. Family members who received an entry visa before this date are reported under first asylum applications. In the course of 2015, the data for new asylum applications will be retroactively modified in the sense that family reunification numbers will be filtered out from the new asylum application numbers.

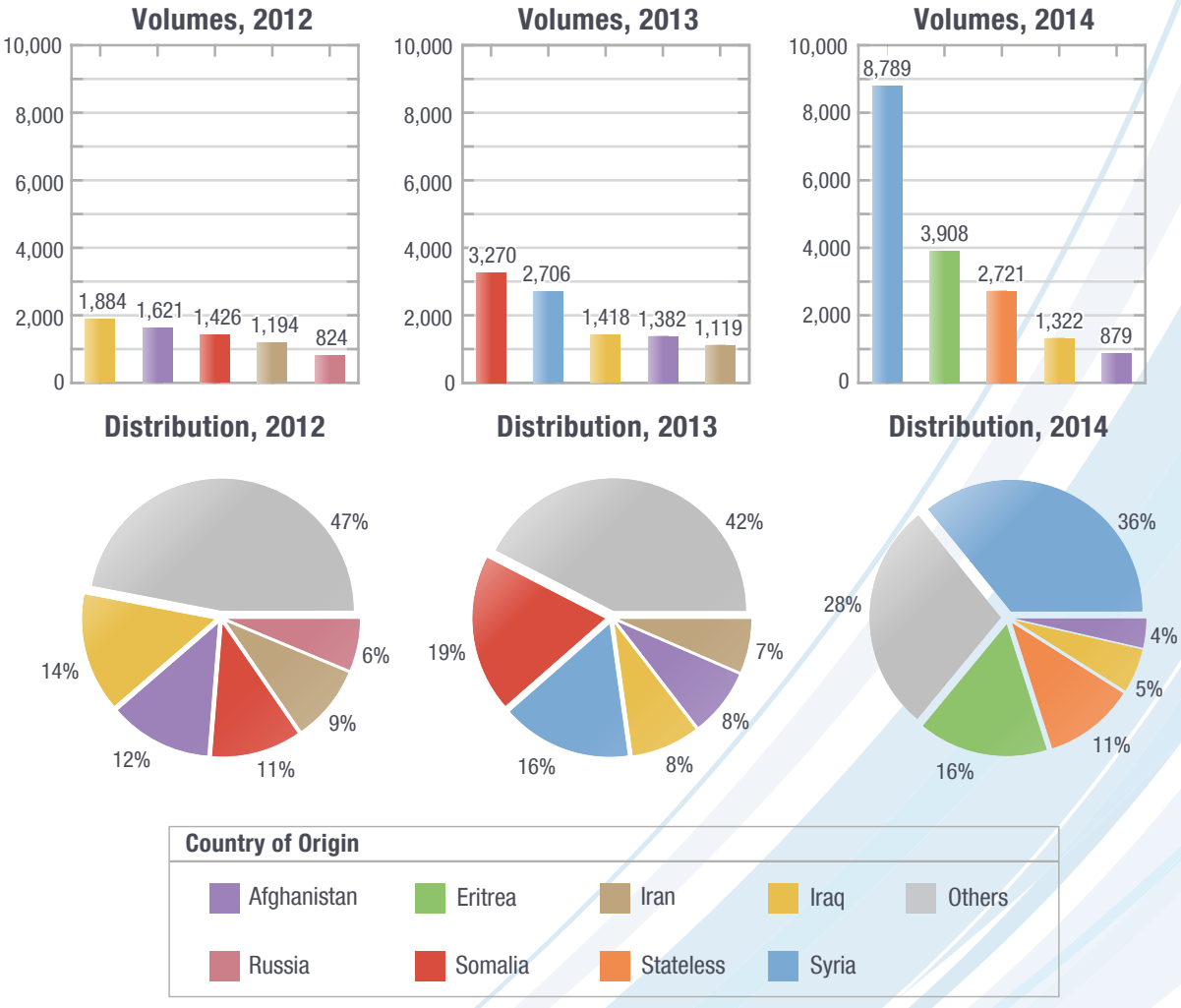
Since 2005, major reforms have been introduced. Under these reforms, a residence permit may be granted following the procedure in the application centres.

The Government of the Netherlands implemented an improved asylum procedure on 1 July 2010. This procedure enables asylum seekers to acquire more clarity about the outcome of the procedure earlier in the process. In addition, the reforms envisioned a decrease in both subsequent asylum applications and subsequent regular applications submitted by former asylum seekers, and a higher number of rejected asylum seekers actually leaving the Netherlands. The details on this new procedure, the procedure at Schiphol Airport, appeal procedures and repeated applications can be found in section 5.

As of 1 January 2014, measures took effect to shorten further the procedural time frames. By aligning the Dutch grounds for protection with the provisions of the Qualification Directive, this reform has brought the Dutch policy closer to the policy of other European Union (EU) Member States. As of 1 April 2014, this also involves the creation of a single asylum procedure, in which all grounds for protection are assessed, related to both asylum and other (such as humanitarian, medical or family-related) grounds. The procedure for Dublin cases has also been made faster and more efficient.

The reform also included the introduction of an accelerated procedure for subsequent applications. An assessment of the existence of new facts or circumstances will be made within one day. If no new facts or circumstances are found, the application will be rejected within a maximum of three days. If further investigation is required, the application will be processed in the general or extended asylum procedure. Files of rejected asylum seekers will be transferred directly to the Repatriation and Departure Service. To try to discourage unnecessary reapplications, a differentiated rate of legal aid for subsequent applications is under consideration.

NET. Fig. 2 Asylum Applications Received from Top Five Countries of Origin in 2012, 2013 and 2014



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, which entered into force on 1 April 2001.

EU Council Directives relating to Temporary Protection[1] and Reception Conditions[2] were transposed into Dutch law in 2005 while the Directives on Qualification[3] and Asylum Procedures[4] gained force of law in the Netherlands in 2008 and 2007, respectively. The Return Directive[5] entered into force in 2011.

The recast of the Qualification Directive[6] was implemented into Dutch law on 1 October 2013.

The recasts of the Reception Conditions Directive[7] and the Asylum Procedures Directive[8] were implemented on 20 July 2015.

The Dublin III Regulation[9] is transposed into Dutch law.

The Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment are given effect under Dutch law.

2.2 Recent/Pending Reforms

Recent Reforms

On 1 June 2013, a new policy on unaccompanied minors entered into force.

The purpose of the revision was to provide clarity about the prospects of the unaccompanied minor quickly. When an unaccompanied minor does not qualify for a residence permit, the emphasis is on ensuring that he or she returns to the country of origin as quickly as possible. The policy for unaccompanied minors pertains to those who do not need asylum protection.

Starting Points for the Revision of the Unaccompanied Minor Policy

The Netherlands advocates a strict and just asylum policy. In keeping with this, an unaccompanied minor who is entitled to protection will be granted an asylum permit, and an unaccompanied minor whose asylum application is refused after careful consideration must return to the country of origin on the condition that adequate reception facilities are available.

Just as the Government of the Netherlands has streamlined the admission procedures, it also has the ambition to provide unaccompanied minors with clarity sooner and permanently and to prevent the accumulation of subsequent procedures. The unaccompanied minor permit has therefore been cancelled under the new policy. Providing clarity about the prospects for residence and a quick return to the country of origin when protection is not at issue are in the child's interests.

In addition, a highly principled admission policy is inextricably linked with an effective return policy. The return of unaccompanied minors who have exhausted all legal remedies, on the condition that adequate reception facilities are available, is of great importance. If it has been established in a careful manner within the framework of the asylum procedure that an unaccompanied minor does not qualify for protection, it is possible to aim the efforts at return sooner and to the maximum extent. These efforts will in the first place be aimed at reunification with the parents or other relatives. If it turns out that this is not possible, other forms of local reception facilities are sought, such as shelter homes. Investments in additional local reception facilities have already been made for this purpose.

A successful return depends considerably on the cooperation of the unaccompanied minor, his or her environment, the embassies and the reception facilities in the country of origin. It requires time to realize this cooperation and adequate reception facilities. It is therefore important that a reasonable time frame be applied to work on return. The clarity envisaged by the revision is also meant for unaccompanied minors who are not entitled to protection but who clearly cannot return to the country of origin for reasons beyond their control. Thus, the policy for unaccompanied minors has been amended. The new policy applies a maximum period of

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).
5 Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (Return Directive).
6 Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (Qualification Directive Recast).
7 Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) (Reception Conditions Directive Recast).
8 Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (Asylum Procedures Directive Recast).
9 Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast).

three years, which commences at the time the application is submitted. By setting a maximum period, the period in which an unaccompanied minor is kept in uncertainty about his or her residence prospects is limited. When it turns out after not more than three years that adequate reception facilities cannot be realized for reasons beyond the unaccompanied minor's control, and the unaccompanied minor is still a minor, he or she may qualify for a residence permit. This policy is meant for exceptional cases. The principle that anyone who wishes to return can do so, as long as adequate reception facilities are available, also applies to minors.

On 13 September 2013, the Dutch Minister for Immigration informed the Dutch Parliament, via letter, of his opinion on research and reports concerning the asylum policy and the use of detention. The letter addressed five main topics: aliens detention; the extended closed asylum procedure at the border; the daytime activities of asylum seekers in reception; the policy towards aliens who cannot leave the Netherlands for reasons beyond their control; and the family reunification journey policy. The most important measures are as follows:

- Detention, as a means of supervising asylum seekers whose application has been rejected, is to be regarded, even more than in the past, as a last resort to ensure departure. Families whose asylum application has been rejected will in principle not be placed in detention, unless they have previously evaded supervision.

- In the Netherlands, people who have been refused entry into country but subsequently request asylum, enter the "closed extended asylum procedure". With the implementation of the new Dublin Regulation, this procedure has been changed for Dublin claimants, who no longer enter the closed extended asylum procedure.

- Following a report of the Advisory Committee on Migration Affairs on activities in reception facilities for asylum seekers (including rejected asylum seekers), a pilot project will research the effects of offering more activities to asylum seekers in reception facilities, aimed at fostering their health and facilitating their prompt return. The focus is on those asylum seekers whose asylum applications have been rejected and who are awaiting return. The activities offered can involve sports or short-term practical courses on such subjects as auto mechanics, languages or empowerment. The pilot takes place during the second half of 2014 and the first half of 2015. In addition, the Central Agency for the Reception of Asylum Seekers also offers activities to asylum seekers and rejected asylum cases in reception facilities.

- Following a report by the Advisory Committee on Migration Affairs, some changes were made in the policy towards asylum seekers whose application has been rejected, but who are unable to leave the Netherlands for reasons beyond their control. For example, if a former asylum seeker shows – with a written or oral declaration from the diplomatic mission – that he or she will not be issued a replacement travel document even though the authorities do not doubt his or her identity and nationality as he or she claimed, this person will then not have to prove his or her identity.

On 29 March 2014, an amendment of the Aliens Act entered into force in order to transpose Directive 2011/51 EU[10] into national law. With this change, a new EU residence permit for long-term residents was introduced. Holders of a residence permit for asylum can apply for the EU permit if they have been staying in the Netherlands for five years and fulfil the conditions regarding a long-term resident.

Pending Reforms

The recast EU Directives relating to reception conditions and to asylum procedures must be transposed into national law before 20 July 2015. This new legislation will again involve important changes to the Dutch asylum procedure. The most important changes under consideration are:

- The reintroduction of the notion of inadmissible and manifestly unfounded asylum applications
- The formal introduction of a border procedure at the application centre at Schiphol Airport
- A review of the system of granting a suspensive effect to appeals
- The introduction of a full and ex nunc examination by the courts in appeal.

3 INSTITUTIONAL FRAMEWORK

3.1 Principal Institutions

The Minister for Immigration is responsible for all areas pertaining to asylum. His or her office is part of the Ministry of Security and Justice, which is responsible for the following agencies dealing with various aspects of asylum:

- The Immigration and Naturalization Service (IND),[11] an autonomous agency under the political responsibility of the Minister for Immigration, is responsible for processing asylum applications and implementing the Aliens Act.

- The Central Agency for the Reception of Asylum Seekers (COA),[12] an independent administrative

[10] Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection.
[11] The acronym is based on the Dutch name *Immigratie- en Naturalisatiedienst*.
[12] The acronym is based on the Dutch name *Centraal Orgaan opvang Asielzoekers*.

body funded by the Ministry of Security and Justice, provides asylum seekers with reception facilities.
- The Repatriation and Departure Service (DT&V),[13] an implementing organization of the Ministry of Security and Justice, is responsible for the supervision and the return to the country of origin of rejected asylum seekers and persons who are residing illegally in the Netherlands.
- The Ministry of Social Affairs is responsible for matters pertaining to integration.

3.2 Cooperation between Government Authorities

Throughout the asylum procedure, IND collaborates with a number of other partner agencies and organizations as follows:

- Repatriation and Departure Service (see above)
- Royal Marechaussee and Seaport Police, which are responsible for border control activities and examining the validity of travel documents
- Aliens Police, which are in charge of registering personal data and checking places of residence
- Legal Aid Foundation, which provides asylum seekers with legal assistance
- Ministry of Foreign Affairs, which provides information on conditions in countries of origin for use by asylum decision-makers and policymakers
- Dutch Council for Refugees, a non-governmental organization (NGO) that provides asylum seekers with assistance during the procedure
- Public Prosecution Service, which is responsible for prosecuting criminal offences.

4 PRE-ENTRY MEASURES

To enter the Netherlands, foreign nationals must meet the following requirements:

- Be in possession of a valid travel document or documents authorizing entry
- Be in possession of a valid visa pursuant to Regulation 810/2009//EC, Annex I, or a valid residence permit, issued by a State party to the Schengen Agreement
- Justify the purpose and conditions for the intended stay and show sufficient means of subsistence for the duration of the stay
- Not be included in the alert system of the Schengen Information System for the purposes of being refused entry
- Not be a threat to public safety, internal security, public health or international relations of an EU Member State.

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 permitted 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 time frame.

The Netherlands provides for exceptions to the requirement of 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.[14]

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 the 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 unauthorized movements of persons and goods before they reach the Dutch border.[15] Border checks 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 surveillances also take place between the border crossing points in order to prevent persons from evading border checks.

Border control activities are carried out by various agencies, as follows:

- The Royal Marechaussee carries out border control activities at the airports, seaports[16] and land border crossings and undertakes internal surveillance within the Netherlands.
- The Seaport Police of the regional Rotterdam-Rijnmond police force supervise the adherence to and carrying out of the legal provisions regarding border control in this region. The officers patrol

[13] The acronym is based on the Dutch name *Dienst Terugkeer en Vertrek*.
[14] When, in exceptional cases, a visa is issued at the border (pursuant to regulation EC 413/2005) by a border guard, the visa is also issued on behalf of the Minister of Foreign Affairs.
[15] 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.
[16] The Royal Marechaussee does not, however, carry out border control at Rotterdam. This is done by the Seaport Police.

(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.
- Border control authorities carry out border control at all border crossings and along the maritime coastline by gathering a variety of data, including pre-arrival information. The objective is to create an effective and efficient border monitoring process leveraging automated monitoring and risk-driven actions based on information received in advance (passengers and goods) to the greatest extent possible.
- At the Coast Guard Centre in Den Helder, the Coast Guard gathers information from various services with regard to enforcement in the North Sea and border surveillance.

Immigration Liaison Officers

The Netherlands has immigration liaison officers stationed around the world[17] to provide carriers and local authorities with advice on whether or not to take passengers. These officers also act as advisors to visa departments at Dutch missions abroad concerning dubious applications. Upon the request of local border authorities or carrier staff, immigration liaison officers provide training on documentation and Schengen-related legislation and regulations. They also exchange information with liaison officers from other countries. Besides prevention, the officers are also tasked with return issues. At the operational level, they collaborate with DT&V concerning the repatriation of persons to their country of origin.

In addition to their advisory and trainer role, immigration liaison officers collect information on travel routes, trends in illegal immigration and human trafficking, and help to develop risk profiles. They investigate the possibilities of repatriation to the country of origin and transit countries using their network, monitoring the involvement of particular organizations, investigating the repatriation policies of other Western nations and identifying reception facilities.

Liaison officers of the Royal Marechaussee[18] seconded abroad are deployed mainly for the purpose of migration-related crime. The Royal Marechaussee liaison officers report, analyse and advise on developments in illegal migration to and through the Netherlands and map out illegal migration patterns.

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 an IND application centre. There are two IND application centres: one at Schiphol Airport, which is for individuals who are refused admission at the border and for unaccompanied minors, and one in Ter Apel. Applications can be processed in four locations: in addition to the two above-mentioned application centres, there is one in Den Bosch and another in Zevenaar. Applications for asylum may also be made by persons in detention.

The Dutch Refugee Council informs all asylum seekers about their rights and about what they can expect during the asylum procedure. As part of this information, asylum seekers are told that it is possible to request a female interpreter, and that it is very important to disclose all possibly relevant facts.

5.1.1 Outside the Country

Applications at Diplomatic Missions

As of 11 September 2003, it is no longer possible to submit an application for provisional sojourn at diplomatic missions in the country of origin or in a third country for the purpose of making an asylum claim in the Netherlands. In other words, it is no longer possible to lodge a formal application for asylum outside 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 is not sufficient, the Minister of Foreign Affairs can make a proposal to the Minister of Security and Justice to allow the foreign national to come to the Netherlands.

Resettlement

The Netherlands has in place a resettlement programme that currently accepts 2,000 refugees over a four-year period. Refugees are selected during, on average, four selection missions each year, as well as on the basis of dossiers prepared by the United National High Commissioner for Refugees (UNHCR). Selection missions are usually carried out by IND and COA (of the Ministry of Security and Justice). IND organizes interviews with the refugees and makes a final decision on selection with the input of COA. The Netherlands places particular importance on the strategic use of resettlement. Together with other European resettlement countries, the Netherlands promotes resettlement in order

[17] Immigration liaison officers are posted in China (2), Ghana, Jordan, Kenya, Nigeria, Panama, Russia, South Africa, Thailand, Turkey, Ukraine and the United Arab Emirates (Dubai).
[18] These liaison officers are posted in Bosnia and Herzegovina, Hong Kong, China, Kenya, Malaysia, Morocco, Nigeria, Pakistan, Peru, Spain and Turkey.

to increase the number of resettlement places offered within the EU.

The Netherlands has committed to resettle 250 Syrian refugees so far.

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 the person states that he or she wishes to apply for asylum, he or she will be brought to the application centre at Schiphol Airport. The applicant must stay in a place secured against unauthorized departure in order to prevent the individual from entering the Netherlands. The procedure at the Schiphol Airport application centre is the same as at the other application centres (described below). As of 1 September 2014, families with minor children are not refused entry into the territory and are brought to an open application centre, unless individual circumstances compel the refusal of entry into the territory.

5.1.3 Inside the Territory

Responsibility for Processing the Claim

The Dublin System

Application and Procedure

As soon as an asylum application is lodged, IND conducts an interview with the applicant in order to facilitate the process of determining the State responsible for examining the asylum application. When there are indications that another State is responsible for examining the asylum application, a request to "take-charge" or to "take-back" can be initiated during the initial six-day rest and preparation time. Then, during the general asylum procedure – or the extended asylum procedure – IND conducts a second Dublin interview with the asylum seeker. During this Dublin interview, the asylum seeker has the opportunity to explain why the Netherlands should deal with his or her asylum application instead. After receiving an intended decision for refusal, the asylum seeker and his or her legal representative can respond to this intended decision. If IND decides not to change the intended decision, the asylum seeker can appeal the negative decision to a judge.

Freedom of Movement and Detention

When there is a significant risk of absconding, the person concerned may be detained in order to secure transfer procedures in accordance with Dublin Regulation No 604/2013,[19] on the basis of an individual assessment and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively.

Conduct of Transfers

If the country agrees with the "take-back" or "take-charge" request of IND, the asylum seeker is transferred within six months. The transfer is conducted by DT&V.

Suspension of Dublin Transfers

Dublin transfers may be temporarily suspended due to a pending procedure at the higher or lower court.

Review/Appeal

The asylum seeker may appeal the decision of IND before the District Court. The court must decide whether the IND decision was correct or incorrect. Upon the judgement, 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 were correctly observed, and whether the court correctly applied the law.

Application and Admissibility

Application

After formally lodging an asylum application and having had an intake interview conducted by IND on identity and Dublin Convention issues, all asylum seekers are permitted a rest and preparation period of a minimum of six days. During this period, there is no contact between IND and the asylum seeker. A preliminary investigation of travel and identity documents can, however, be conducted. This period is meant to improve the overall quality of the asylum procedure.

Once an asylum seeker states his or her intent to apply for asylum, the applicant is referred to the central reception location in Ter Apel, where asylum seekers stay for a period of approximately three days. After the intake interview (which should not be confused with the asylum interview), the authorities will start examining the authenticity of the applicant's documents. At this stage, preparations for a "take-charge" and "take-back" request on the basis of the Dublin III Regulation may be initiated. All guarantees and provisions of the relevant EU legislation are applicable as of this stage.

Soon after the intake, the asylum seeker will be transferred to the process reception location, where he or she will stay for the remainder of the rest and preparation period, as well as during the general asylum procedure. The process reception centres are situated in Ter Apel, Den Bosch and Zevenaar, in the proximity of the application centres.

During the remainder of the rest and preparation period, several activities take place, as described below.

[19] Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast).

Medical Check
All asylum seekers have the possibility to receive a medical check. This allows their general physical and mental condition to be taken into account during the asylum procedure. When, for instance, a medical condition affects their ability to tell their story in a coherent and consistent manner, the interview procedure can be adjusted accordingly.

In addition, any evidence of medical problems can be a reason for IND to start a separate procedure, parallel to the asylum procedure, to ascertain whether these medical problems in and of themselves are justification to grant the asylum seeker leave to remain. This procedure prevents a situation in which a rejected asylum seeker applies for residence on medical grounds after going through the entire asylum procedure.

Information Provision by the Dutch Refugee Council
The Dutch Refugee Council provides all asylum seekers with information about the asylum procedure and their rights. They are also informed that they may request an interpreter of a particular sex and about the importance of disclosing all relevant facts.

Legal Assistance
All asylum seekers have a right to free legal assistance. The maximum amount of legal assistance provided for during the rest and preparation period plus the general asylum procedure is 12 hours. On average, eight hours is granted. In the extended procedure, an extra five (to a maximum of seven) hours of legal assistance is available. As often as possible, the asylum seeker will have the same legal aid worker throughout the procedure.

Procedures

Procedure at the Application Centre

After the rest and preparation period, as a rule, all asylum seekers first enter the general asylum procedure. This involves an eight working day process in which all necessary procedural steps are taken in order to come to a decision on the asylum application with full consideration given to the obligations of the Netherlands under the Convention relating to the Status of Refugees (1951 Convention) and other legal instruments (see In Focus).

Under the eight-day general asylum procedure, an extensive detailed interview is conducted in all cases with the assistance of an interpreter if necessary and in the presence of the legal representative, if requested. This 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.

IN FOCUS

THE GENERAL EIGHT-DAY ASYLUM PROCEDURE

Day 1: First interview on identity, nationality and travel route.

Day 2: The asylum seeker discusses the first interview and prepares for the second interview with his or her legal aid worker.

Day 3: Second interview: in-depth interview on the reasons for applying for asylum.

Day 4: The asylum seeker discusses the second interview with his or her legal aid worker. Corrections and additions can be made to the report of the second interview with the legal aid worker.

Day 5: IND either decides to grant asylum or informs the asylum seeker of its intention to reject the claim. If IND grants protection, the procedure stops here. If the intention is to reject the asylum application, the procedure continues. At this stage, IND can also decide that further investigation is necessary and redirect the application to the extended asylum procedure.

Day 6: The asylum seeker and the legal aid worker draw up a response to the intention of IND to reject the asylum application.

Days 7–8: IND will (a) make the decision to reject the asylum claim, (b) make the decision to grant international protection, or (c) decide that further investigation is necessary and redirect the application to the extended asylum procedure.

While in the majority of cases a detailed interview relating to the reasons for asylum is conducted, exceptions may occur (for example, when an interview is not possible or desirable for medical reasons, or in cases concerning an unaccompanied minor younger than 12 years of age).

If IND exceeds the deadlines, the asylum seeker will be sent to a reception centre and the decision regarding asylum will be taken in the extended asylum procedure.

IND can actively decide to proceed to the extended procedure after receiving the corrections and additions of the detailed interview and after receiving the applicant's view on the intended decision.

Extended Procedure at a Processing Office

As described above, IND may decide to forward an asylum application to the extended procedure after several key stages: the initial interview, 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 IND believes further examination of the claim is required.

If the extended procedure is applicable, the asylum claim is forwarded to an IND processing office, and the asylum seeker moves from the process reception centre to a general reception centre. Asylum seekers whose applications are being examined in the extended procedure at Schiphol Airport can be accommodated at the detention centre nearby.

During the extended procedure, an additional interview may be held in which the applicant can add elements, correct statements or provide further documents supporting his or her claim.

The asylum seeker has four weeks to submit his or her corrections and additions to the interview report, after which an 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.

Review/Appeal of Asylum Decisions

The competent authority for appeal is the District Court, and for further appeal, the Council of State.

Appeals may be made against IND decisions following either the general asylum procedure at the application centre or the extended procedure. Following the general asylum procedure, appeals may be made within one week of the decision, while under the extended procedure appeals may be made within four weeks of the decision.

Appeals made in the extended procedure have a suspensive effect, while appeals in the general asylum procedure do not. However, the asylum seeker can ask the court for a provisional ruling.

Both the asylum seeker and the Minister for Immigration can lodge a higher appeal to the Council of State against the verdict of the court. The higher appeal does not have a suspensive effect.

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 Administrative Court). As mentioned above, families with minor children will not be refused entry into the territory and will be brought to an open application centre, unless individual circumstances compel the refusal of entry into the territory.

In-Country Procedure

There is no restriction on the 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 such a case, the 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. IND must 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.

At the application centre, the asylum seeker is given instructions based on article 55 of the Aliens Act to remain at the application centre from 7:30 a.m. until 10 p.m. After 10 p.m. the asylum seeker may leave the centre, but he or she has to report back at 7:30 a.m. the following morning. The asylum seeker also has the option of spending the night at the process reception location, in which case he or she has to respect the centre's house rules. If IND or the Legal

Aid Foundation decides that the asylum seeker's 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. First, the asylum seeker is required to express in writing his or her wish to do so, and state (in writing) the reasons for making the subsequent application, while submitting any new documents – translated into Dutch – to support these statements. IND will then schedule an appointment to lodge the asylum application at an IND application center within two weeks.

The procedure that applies to subsequent applications is a simplified procedure that is faster than the eight-day standard procedure. During a subsequent procedure, no rest and preparation period will be allowed. The applicant will be interviewed on the first day, after the lodging of the application. Only new evidence or information will be considered in the examination of a subsequent claim.

If the application is granted, IND may issue the decision on that same (first) day.

If the application is rejected, IND will also issue the intended decision on the first day. On the second day, the applicant and the legal aid worker can draw up a response to the intention of IND to reject the asylum application and provide their corrections and additions to the report of the interview. On the third day, IND will (a) make the decision to reject the asylum claim, (b) make the decision to grant international protection, or (c) decide that further investigation is necessary and redirect the application to the general or extended asylum procedure.

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 Minister for Immigration 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:

- 1951 Convention
- European Convention on Human Rights
- Convention against Torture.

If the alien originates from a country of origin considered to be safe, and he or she cannot demonstrate that this country does not comply with the obligations of these instruments, it is presumed that the person will not be persecuted or run a real risk of being subjected to treatment described in article 3 of the European Convention on Human Rights. 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 EU Citizens

The Netherlands considers itself party to the Spanish Protocol, annexed to the Treaty of Amsterdam, and enforces the provisions of the Protocol. 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.
- 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 Minister for Immigration is responsible for determining which countries may be considered safe on the basis of a set of criteria, namely the conventions listed in section 5.2.1 above.

If the person 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 he or she will not be persecuted or run a real risk of being subjected to treatment described in article 3 of the European Convention on Human Rights. The burden of proof rests with the asylum seeker. However, if there is common knowledge that a country does not comply with the obligations in the aforementioned conventions, it will not be presumed to be 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

On 1 February 2013, the Government of the Netherlands introduced a new policy concerning children (including unaccompanied minors) who have been in the Netherlands for an extended period of time since their (failed) asylum procedure. The policy measure contains both a permanent regulation and a temporary regulation. The latter ended on 1 May 2013. The conditions of the permanent regulation are stricter than those of the temporary regulation.

Both regulations require that the child filing an application has been in the Netherlands for five years or longer, and had applied for asylum at least five years before turning 18 years of age. Furthermore, the Government needs to have been aware of the applicant's whereabouts in the Netherlands during this period. An interruption of a maximum period of three months is allowed.

A child has to be under the age of 21 years to apply for the temporary regulation or under the age of 19 years to apply for the permanent regulation.

The permanent regulation requires that the child and his or her family members have actively participated in facilitating their return to the country of origin. In addition, there should not be any doubts concerning identity.

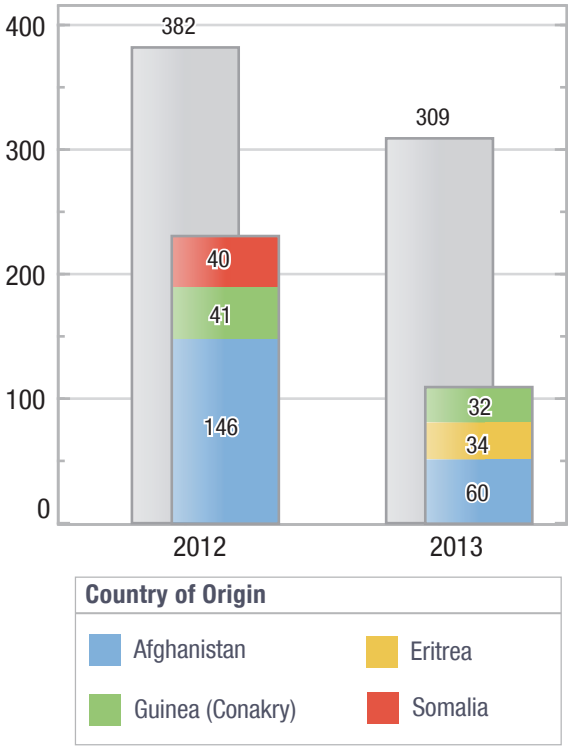
No residence permit is granted if there is a threat to national security or public order or when the person has demonstrably left the EU.

When an unaccompanied minor applies for asylum in the Netherlands, the authorities will assess whether he or she qualifies for a residence permit according to the normal (in-country) asylum procedure. Unaccompanied minors are interviewed by specially trained staff and are assigned a guardian who will assist them throughout the procedure. Under the current asylum procedure, a longer period of rest and preparation, lasting three weeks instead of six days, is available for unaccompanied minors.

Unaccompanied minors who are entitled to protection are granted a temporary asylum residence permit. Those whose asylum application is rejected must return to the country of origin, under the condition of adequate reception. If, within three years of the filing of the first application for a residence permit, it is established that the unaccompanied minor is unable to leave the Netherlands (for reasons beyond his or her control) because there is no adequate reception, and the unaccompanied minor was below the age of 15 years at the time of his or her first application and is still a minor, he or she may qualify for a residence permit on this ground. This permit, subject to the restriction of "temporary humanitarian grounds", is granted for a period of five years.

NET. Fig. 3 Asylum Applications by Unaccompanied Minors in 2012 and 2013[20]

	2012	2013
Total Asylum Applications	13,102	17,189
Applications by Unaccompanied Minors	382	309
Percentage	3%	2%



[20] Data on unaccompanied minors for 2014 are not available.

Age Assessment

If an unaccompanied minor has no documents proving his or her age and there is doubt about the stated minority, an age assessment can be offered to the unaccompanied minor. X-rays are taken of the joint between the hand and the wrist, and – if the hand-wrist bone is completely fused – of the collarbones. The X-rays are examined by independent radiologists, who assess whether the bones are completely fused or not, or whether the result is unclear. The Dutch Forensic Institute bases its conclusion on the findings of the radiologists. Results of the age assessment may be as follows:

- The individual is possibly a minor (not proven to have reached the age of majority) and the given age is accepted by IND.
- The individual is an adult; he or she is considered to be 20 years of age or older (because completely fused collar bones have never been found on a person aged younger than 20 years).

5.3.2 Temporary Protection

As of 1 January 2014, in order to align the Dutch grounds for protection with the provisions of the Qualification Directive, it is no longer possible to grant a temporary residence permit on categorical grounds. This policy is no longer necessary, since European case law is now according increasing significance to the general situation in the country of origin as grounds for international protection. Furthermore, continuing with this policy proved undesirable given that, in some cases in the past, it encouraged fraud and abuse.

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, IND will usually examine the claim against conditions in the country of former habitual residence. In determining the country of former habitual residence, 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.

IN FOCUS

RECENT COURT DECISIONS – ARTICLE 1D OF THE 1951 CONVENTION

The judgement of the Court of Justice of the European Union [C 364/11] in the case of El Kott was implemented in the Dutch Alien Circular on 1 October 2013. According to article 1D, persons who received protection or assistance from a United Nations agency other than UNHCR (such as the United Nations Relief and Works Agency for Palestine Refugees in the Near East) shall be entitled to the "benefits of the Convention" if protection or assistance by the other United Nations agency has ceased "for any reason".

The judgement of the Court of Justice determined that this includes the situation in which a person who, after availing himself or herself of such protection or assistance, ceases to receive it for a reason beyond his or her control and independent of his or her volition. It is for the Member State responsible for examining the asylum application to ascertain whether that person was forced to leave the area of operations of such an organ or agency, which will be the case where that person's personal safety was at serious risk and it was impossible for that organ or agency to guarantee that his or her living conditions in that area would be commensurate with the mission entrusted to that organ or agency.

IN FOCUS

COURT DECISION ON LESBIAN, GAY, BISEXUAL AND TRANSGENDER (LGBT) PERSONS

The jurisprudence (Cases C 199/12 to C 201/12) of the Court of Justice of the European Union (7 November 2013) regarding the assessment of applications from LGBT asylum seekers was transposed into Dutch legislation in February 2014.

The jurisprudence was the result of the request for a preliminary ruling, concerning the interpretation of article 9(1)(a) of Council Directive 2004/83/EC of April 2012 under article 267 TFEU, from the Council of State from the Netherlands.

The jurisprudence states the following:

- The existence of criminal laws, which specifically target homosexuals, in the country of origin supports the finding that LGBT persons must be regarded as forming a particular social group. The criminalisation of homosexual acts per se does not constitute an act of persecution. However, a term of imprisonment which sanctions homosexual acts and which is actually applied in the country of origin which adopted such legislation must be regarded as being a punishment which is disproportionate or discriminatory and thus constitutes an act of persecution.

- When assessing an application for refugee status, the competent authorities cannot reasonably expect, in order to avoid the risk of persecution, the applicant for asylum to conceal his homosexuality in his country of origin or to exercise reserve in the expression of his sexual orientation. The jurisprudence of the Court of Justice as a result of a request for a preliminary ruling concerning the assessment of credibility of LGBT asylum seekers is expected.

6 DECISION-MAKING AND STATUS

6.1 Inclusion Criteria

A single procedure is in place for the examination of asylum claims. IND first determines whether the asylum seeker is a Convention refugee and, if he or she is 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 or subsidiary protection according to the Qualification Directive.[21]

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 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 for asylum to persons who do not meet the criteria for Convention refugee status but who face a real risk of being subjected to torture or to inhuman or degrading treatment or punishment.

According to article 29, section 2, a residence permit for asylum can also be granted to the spouse or minor child, or the dependent partner or adult child who has entered the Netherlands either at the same time as the person or within three months of the date on which the original applicant was granted a residence permit.

Humanitarian Grounds

As of 1 January 2014, it is no longer possible to grant a temporary residence permit for asylum on humanitarian grounds, in order to align the Dutch grounds for protection with the provisions of the Qualification Directive. It is still possible to grant a "regular" residence permit on humanitarian grounds.

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 of 1 January 2014, all the relevant elements are assessed in the first asylum procedure. Not only asylum-related grounds for protection but all other humanitarian grounds for protection are included at this stage (such as family life in the Netherlands, medical treatment, human trafficking or a situation of acute humanitarian need). It will therefore be clear if there is anything preventing the applicant's departure from the Netherlands. An added advantage is that, in the event of further applications, a full and carefully compiled file will be available, on the basis of which the merits of a further application can be assessed quickly.

6.2 The Decision

IND is the decision-making authority. It presents 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, Statuses and Benefits Granted

There are four types of decisions that can be taken by 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

[21] Articles 2(f) and (g) of Directive 2011/95/EU.

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 on humanitarian grounds.
- The asylum seeker does not satisfy the conditions and is refused both a residence permit for asylum and a regular residence permit.

Benefits

There is a single type of residence permit – the residence permit for asylum – that is granted to persons who meet the protection grounds 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 this period, the person can apply for a permanent residence permit for asylum if the grounds for granting the residence permit for asylum remain valid.

If a person is regarded as a long-term resident according to the Long-term Residence Directive,[22] he or she can also apply for the new EU residence permit for long-term residents. This is a permanent residence permit.

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, including health care, according to their residence permit.

IN FOCUS

CREDO PROJECT ON CREDIBILITY ASSESSMENTS

In May 2013, UNHCR published *Beyond Proof,*[23] a report on credibility assessment in asylum procedures. The Netherlands was one of three countries that participated in the country-focused research. Specifically, the Netherlands provided case files and decisions for review on credibility assessment in individual cases, and permitted UNHCR researchers to observe personal interviews with applicants and to interview the relevant stakeholders (caseworkers and a policy officer). The scope of the research included a review of the legal and policy frameworks on credibility in the Netherlands, as well as their implementation by caseworkers. The Netherlands was selected because it has developed national guidelines and standards for guidance on credibility assessment.

6.4 Exclusion

The grounds for exclusion are prescribed in the Qualification Directive (Directive 2011/95/EU).

A person who meets the criteria set out in article 1F of the 1951 Convention will not be granted a residence permit. The Minister 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" for considering that the person meets the exclusion criteria. If a foreign national were 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 European Convention on Human Rights constitutes an obstacle to the individual's repatriation to his or her country of origin, in very exceptional circumstances a residence permit can be granted if the excluded person has resided in the Netherlands for a period of 10 years, if the person has made a reasonable case that he or she cannot return to his or her country of origin or to a third country, and if due to individual circumstances it is considered disproportionate to withhold his or her legal stay any longer. 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, paragraphs 1(a) and (b), 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 10 years or more without a residence permit, family members of a person excluded from the 1951 Convention make an application for a residence permit, the person's exclusion from the 1951 Convention will no longer have 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.

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[22] Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, as amended by Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection.

[23] UNHCR, *Beyond Proof: Credibility Assessment in EU Asylum Systems* (Brussels, 2013).

IN FOCUS

APPROACH TO EXCLUSION ISSUES IN THE NETHERLANDS

The Netherlands has a special unit (the so-called "Unit 1F"), where specialized and trained caseworkers deal with (potential and actual) article 1F cases, both in asylum and regular migration procedures.

Specifically for Syria, certain measures have been taken to recognize potential article 1F cases. In the early stage of application – during the intake and registration – caseworkers look for certain "risk profiles". In case such a risk profile is detected, Unit 1F is informed and the case will be marked as a "special attention case" before the start of the asylum procedure.

Recently, Unit 1F initiated a project under the European Refugee Fund that is envisaged to officially run from 2014 until June 2015. Its focus will be on securing, enlarging, sharing and providing information and documentation, on knowledge and expertise, and on efforts to identify and address migration issues related to suspected perpetrators of international crimes. It will provide new products and services for immigration officers and reshape instruments focusing on the prevention of entry, the detection of exclusion cases and law enforcement. There will be a special focus on Syria, but the project also incorporates other Arab Spring countries.

Unit 1F recently started a pilot to detect potential article 1F cases in family reunion cases. The person in the Netherlands is asked additional questions in a situation when a family member with a certain risk profile is still in the country of origin and they could apply for family reunion at a later stage.

6.5 Cessation

IND may apply the cessation clauses of the 1951 Convention and the Qualification Directive to both Convention refugees and beneficiaries of subsidiary protection if changes in the country of origin warrant this. However, 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.

If IND makes the decision to evoke 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

IND may revoke the status granted to a Convention refugee or to a beneficiary of subsidiary protection in any 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, 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 "sliding scale" policy – the longer the person has resided in the Netherlands, the graver the breach has to be to constitute grounds for revoking the residence permit.

IND sends an intended decision to the asylum seeker, who 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 those for the asylum procedure (see review/appeal of asylum decisions in section 5).

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.

6.7 Support and Tools for Decision-Makers

6.7.1 Country of Origin Information

There are two bodies within the Dutch administration that are responsible for producing the country of origin information (COI) used by decision-makers in the asylum procedure: the Ministry of Foreign Affairs and IND.

The COI Unit of the Ministry of Foreign Affairs publishes approximately 20 reports each year on the human rights, security and political situation in countries of origin for use by asylum decision-makers and policymakers. The Ministry of Foreign Affairs may be requested by OCILA, the COI office at IND, 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 for each report.

OCILA is part of the Directorate for Specialist Services and International Cooperation within 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, as well as country analysis reports, for use by asylum decision-makers and other officials of IND. It produces approximately 40 reports each year. Apart from writing reports, the Country Subdivision organizes workshops for decision-makers on relevant topics or countries of origin. In addition, the Country Subdivision responds to specific COI questions from decision-makers.

OCILA is an active partner in European and international information-sharing and cooperation activities in the field of COI. In recent years, it has organized a seminar for COI researchers on Iran and another on Somalia. The office participates actively in the European Asylum Support Office COI-specialist networks on a number of countries and is a facilitator for the specialist network on Somalia.

6.7.2 Language Analysis

The Language Analysis Subdivision of OCILA examines 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 person's actual country or region of origin.

Language analysis plays an important role in determining the origin of asylum seekers and it has proven to be a useful instrument for decision-makers. Language analysis is an efficient way of assisting IND in determining the origin of large numbers of asylum seekers claiming to originate from a country or region for which 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 importance in recent years. OCILA produces about 600 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 or 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 (Indigo), which is linked to the Central Shared Database, which contains basic information on applicants. The Central Shared Database is the central system used by government agencies involved in the immigration process.

7.2 Length of Procedures

There is no time limit for filing an application for asylum. However, an asylum seeker has a maximum of one week to make an appeal in the case of a rejected claim in the general asylum 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. The general asylum procedure takes eight working days (after an initial minimum six-day rest and preparation period). In the extended procedure, the time limit is six months in principle but it can be extended by another six months if advice is needed from third party experts. Furthermore, if the situation in the country of origin is too complex for assessing asylum claims by nationals from that country, the Minister for Immigration can decide to introduce a moratorium on decisions. This means the time limit can be extended for up to another year.

7.3 Pending Cases

No recent data on the number of pending cases are available.

7.4 Information Sharing

The only information-sharing agreements to which the Netherlands is party are those that take effect under the Dublin Regulation, including an agreement with Switzerland for this purpose. Thus, specific information on asylum seekers can be released to other EU Member States and Switzerland, in accordance with the Dublin 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 the 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.

IN FOCUS

CASE RESPONSIBILITY AT IND

In order to improve the customer-orientation of the organization, IND assigns each asylum case to a case manager. The applicant and his or her legal representative are given the details of this case manager at an early stage and can, at any given time, contact the case manager to request information. The case manager thus serves as a direct contact point, manages the process and content of the application, and has the responsibility of ensuring that a decision is made within the statutory decision-making period.

8.1.2 Interpreters

Interviews at IND take place in Dutch; therefore, an independent and impartial interpreter is also present to assist the asylum seeker. In addition, translators are available to translate documents or declarations submitted by the asylum seeker.

8.1.3 UNHCR

UNHCR has a general monitoring function in the Netherlands and does not have a direct role in the determination of individual cases. At times, the Regional Office of UNHCR for the Benelux countries (Belgium, Netherlands, Luxembourg) gives 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 asylum seekers with assistance 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 have four weeks to leave, during which time they are offered accommodation.

8.2.1 Accommodation

The Central Agency for the Reception of Asylum Seekers (COA) is responsible for the reception of asylum seekers during the asylum procedure. 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.

UNHCR/S.Kritsanavarin/November 2008

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.

If the decision on the asylum application cannot be made within the general asylum procedure at the application centre, the asylum seeker is placed in a normal reception centre.

Special accommodation arrangements are made for unaccompanied minors. Children under 13 years of age are generally placed with foster parents, while children between 13 and 15 years of age are usually placed in a small unit with 24-hour supervision. In the majority of cases, the reception facilities for unaccompanied minors consist of regular housing units, which are financed by the central Government. Children over 15 years of age are placed either in special reception centres that offer specialized care or in small housing units.

8.2.2 Social Assistance

COA provides asylum seekers with financial assistance for food and "pocket money". The Dutch Refugee Council assists asylum seekers socially and in the asylum procedure throughout their stay at the reception centre.

If necessary, an asylum seeker may consult a social worker.

8.2.3 Health Care

An asylum seeker has the right to the same health care package as Dutch residents, with the exception of a few medical procedures. Until they are 18 years of age, children have their regular dental expenses covered as well.

8.2.4 Education

Asylum seekers below 18 years of age receive education in regular schools, pursuant to the Compulsory Education Law. Adults receive some training as well. They have the opportunity to learn the Dutch language and acquire some background information on Dutch society at the reception centre. Adults can pursue various forms of education, provided they pay for it.

8.2.5 Access to the Labour Market

Asylum seekers are permitted to work six months from the date of the application for asylum. After obtaining a work permit, they have the right to work 24 weeks per year.

Asylum seekers may also take part in voluntarily 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 is required to perform tasks that are mandatory and unpaid, such as cleaning the common rooms and showers. If the asylum seeker does not comply with any obligation to perform the tasks at the reception centre, 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 on the asylum application has been taken, 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 Government of the Netherlands.

8.2.7 Access to Benefits by Rejected Asylum Seekers

Free legal aid, social assistance and reception are available during the appeal process at the return stage. After the first negative decision, the asylum seeker is no longer eligible for Dutch language training. They can, however, receive vocational training relevant to the skills needed upon 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 (in some cases) a financial contribution.

As of 1 January 2012, it is also possible for rejected asylum seekers to receive a combination of monetary and in-kind reintegration assistance.

Grant Policy for Migration and Development

On 5 December 2011, the former Minister for Immigration, Integration and Asylum informed the Parliament about changes made in the grant policy with regard to the voluntary, sustainable return and reintegration of former asylum seekers. The main change concerned the possibility of combining in-kind assistance (up to a maximum value of EUR 1,500) and financial (cash) assistance.

This grant policy formed part of the Migration and Development Programme 2012 of the Ministry of Foreign Affairs, which ran from 1 January 2012 to 31 December 2012. During this period, international organizations and NGOs in the Netherlands could apply for the grant by submitting project proposals to DT&V.

The submitted grant applications were evaluated by the Voluntary Return Steering Committee (comprised of representatives from the Ministry of Foreign Affairs and the Ministry of Security and Justice).

The Voluntary Return Steering Committee awarded seven projects in 2012, six projects in 2013 and five projects in 2014. In 2012, approximately 600 persons benefited from in-kind support through these projects, while in 2013 about 900 people made use of the in-kind support.

9 STATUS AND PERMITS GRANTED OUTSIDE THE ASYLUM PROCEDURE

9.1 Humanitarian Grounds

The Minister for Immigration 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 for the person. The type of permit granted and the attendant benefits are determined on a case-by-case basis. As of 2010, failed applicants who apply for leave to remain based on health reasons receive, under certain conditions, shelter while the determination on whether to grant a permit is made.

9.2 Obstacles to Return

A regular residence permit valid for one year (with the possibility of renewal) may be issued to aliens when objective evidence is provided, showing that they cannot be held accountable for being unable to return to their country of origin. This is the case, for instance, when an alien can document a failed attempt to obtain travel documents, even after mediation by DT&V. In these cases, if the alien cannot obtain permission from his or her authorities to return to his or her country of origin on a voluntary basis, DT&V will advise IND. Each case will be assessed and judged on its own merits.

9.3 Regularization of Status of Stateless Persons

The Netherlands is party to both the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, and is currently developing a determination procedure. Statelessness as such does not constitute grounds for legal residence. However, if a stateless person cannot return to a country of former stay through no fault of his or her own, a residence permit can be granted. Lawfully residing stateless persons are entitled to a travel document.

10 RETURN

10.1 Pre-departure Considerations

Return is implemented by the Repatriation and Departure Service of the Ministry of Security and Justice, together with the Royal Marechaussee. The Royal Marechaussee is responsible for escorting aliens to their country of origin if there are indications that they will resist during their actual departure.

A person who has received a final negative decision on an asylum application is required to leave the Netherlands within 28 days of the notification of the decision (see section 10.2). For those who do not finalize their departure within 28 days, this period can in principle be extended by a maximum of 12 weeks, provided that they are willing to cooperate in preparing their return. A measure of restricted movement in accordance with article 56 and a duty to report in accordance with article 54 of the Dutch Aliens Act will be imposed. Intensive case management will be conducted by DT&V in order to realize actual departure (voluntarily or non-voluntarily). Uncertain circumstances in countries of origin may result in a temporary stay on removals to these countries of origin.

10.2 Procedure

Once an asylum claim has been rejected, the failed asylum seeker is given the 28-day departure period, during which he or she is provided with accommodation. The return process can begin after the alien has received a negative decision by IND during the general asylum procedure. IOM and a number of NGOs in the Netherlands offer voluntary return assistance to asylum seekers who are subject to a removal decision.

The following forms of assistance are available:

- The Return and Emigration of Aliens from the Netherlands programme, which is financed by DT&V and implemented by IOM in The Hague, includes practical support (such as pre-departure counselling and the purchasing of airline tickets) and a modest one-time financial grant.
- The Return and Reintegration Regulation, which is financed by the Ministry of Foreign Affairs, provides asylum seekers with financial assistance.
- Several assisted voluntary return and reintegration programmes, which are financed by the Ministry of Foreign Affairs and the European Return Fund, provide additional in-kind assistance (such as medical care, housing, schooling and vocational training) in addition to the assistance provided through the Return and Emigration of Aliens from the Netherlands programme and the Return and Reintegration Regulation.
- Post-arrival assistance projects have been set up by DT&V in several third countries in order to effectuate non-voluntary return.
- The Assisted Voluntary Return from Detention programme offers assistance to aliens held in detention who wish to return voluntarily.

10.3 Freedom of Movement and Detention

After the initial 28-day departure period and (in principle) an additional maximum 12-week period, rejected asylum seekers may be placed in a centre with restricted movement, where they receive return guidance. On a case-by-case basis, and under the supervision of DT&V, rejected asylum seekers are encouraged to return. Based on individual considerations, an asylum seeker may be transferred to a detention centre to await his or her final departure (when the person frustrates the return process by not providing the necessary information on his or her identity and nationality).

Detention must be as short as possible (in accordance with the Return Directive and the Reception Directive). It should be used only if needed for securing removal and if removal cannot be achieved through less drastic measures (the "ultimate remedy" principle). There must also be a viable prospect of deportation. Three special centres for alien detention have been set up, one of which is in Zeist and one each at the airports of Amsterdam and Rotterdam.

The detention of aliens is always the measure of last resort; in every case, there is an assessment of whether less coercive measures are suitable. A bill that would give an administrative basis to the detention of aliens is currently being prepared, and the "measure of last resort" principle of alien detention will receive even greater emphasis. In 2012, pilots were started with the aim to promote the use of alternatives to detention.

The capacity to place aliens in detention will be reduced from over 1,500 spaces in 2014 to 933 in 2016.

Because families who must return are in principle not placed in detention before their removal (unless they had previously evaded supervision), some families are absconding together with their minor children. As a result, as of 1 October 2014, it is again possible to place these families in a closed setting (that is, a secure housing unit).

10.4 Readmission Agreements

The Ministry of Security and Justice and the Ministry of Foreign Affairs are responsible for negotiating readmission agreements. They are implemented by the Repatriation and Departure Service of the Ministry of Security and Justice. The Netherlands implements readmission agreements concluded between the EU and countries such as Armenia, Azerbaijan, Georgia, Russia and Ukraine. The Benelux countries jointly negotiate implementing protocols to EU readmission agreements, as well as Benelux readmission agreements (most recently with Kazakhstan and Kosovo).

10.5 Persons Who Are Unable to Leave the Netherlands for Reasons beyond Their Control

It is presumed that all persons can return to their country of origin. Nevertheless, in extraordinary situations when a person cannot leave the Netherlands and cannot be held accountable for not leaving, a residence permit can be granted (see section 9.2).

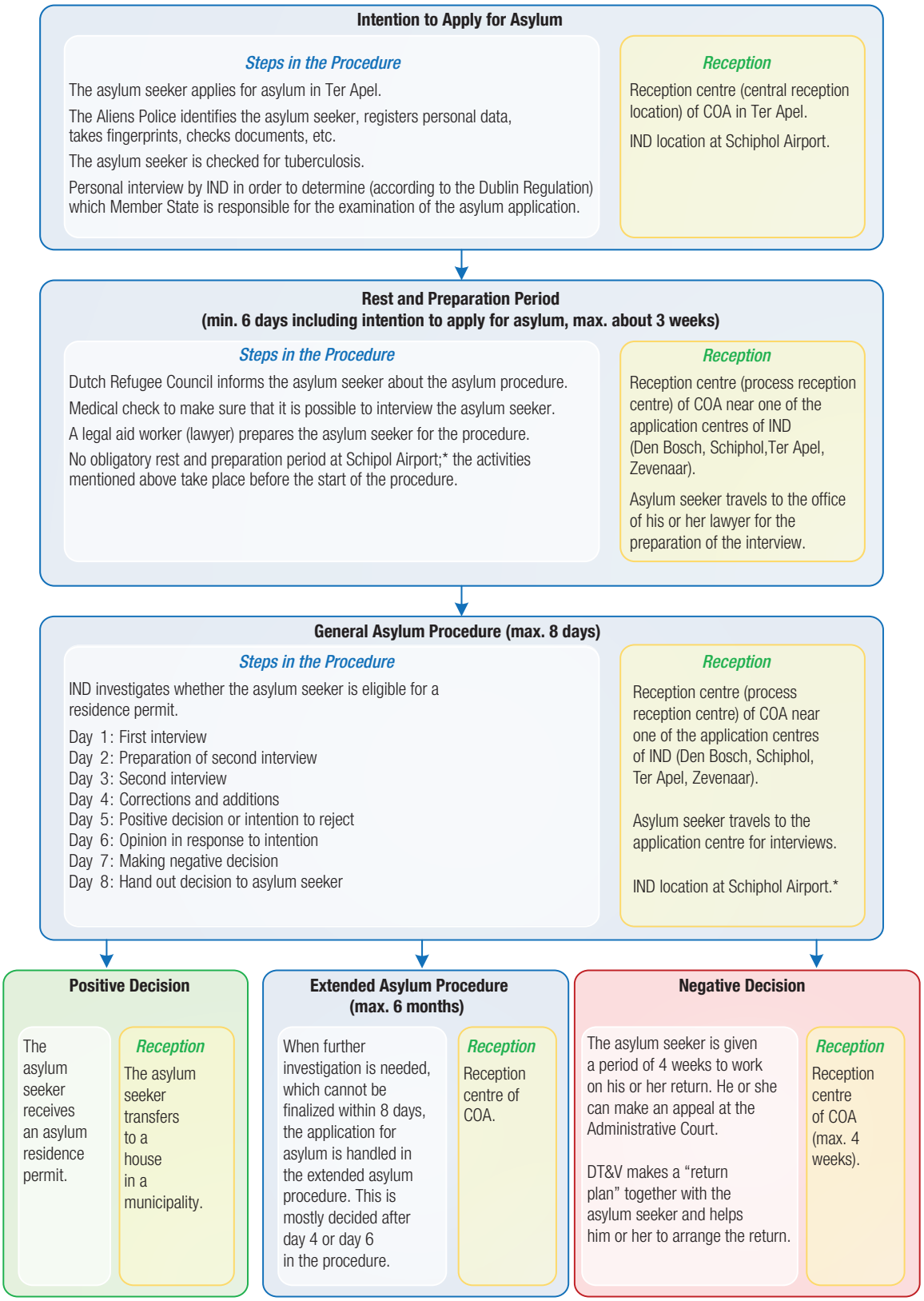
11 INTEGRATION

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 at 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.

COA runs a preparation for the integration programme that prepares permit holders to be responsible for following a civic integration course themselves, in order to fulfil their integration duty.

12 ANNEX

12.1 Asylum Procedure Flow Chart



* Asylum seekers who apply for asylum at the "air border" at Schiphol Airport are denied entry to the Netherlands / Schengen area and are detained in the IND location at the airport. They are not permitted to leave this location. Asylum seekers who have already entered the Netherlands via a land border are not detained but are obliged to report themselves at given times and places during the asylum procedure.

12.2 Additional Statistical Information

NET. Fig. 4 | Asylum Applications from Top 10 Countries of Origin in 2012, 2013 and 2014

	2012		2013		2014	
1	Iraq	1,884	Somalia	3,270	Syria	8,789
2	Afghanistan	1,621	Syria	2,706	Eritrea	3,908
3	Somalia	1,426	Iraq	1,418	Stateless	2,721
4	Iran	1,194	Afghanistan	1,382	Iraq	1,322
5	Russia	824	Iran	1,119	Afghanistan	879
6	Syria	575	Eritrea	1,039	Iran	667
7	Eritrea	481	Russia	330	Somalia	596
8	Armenia	312	Serbia	280	Mongolia	445
9	Georgia	252	Armenia	250	Georgia	333
10	Guinea (Conakry)	239	Stateless	238	Ukraine	267

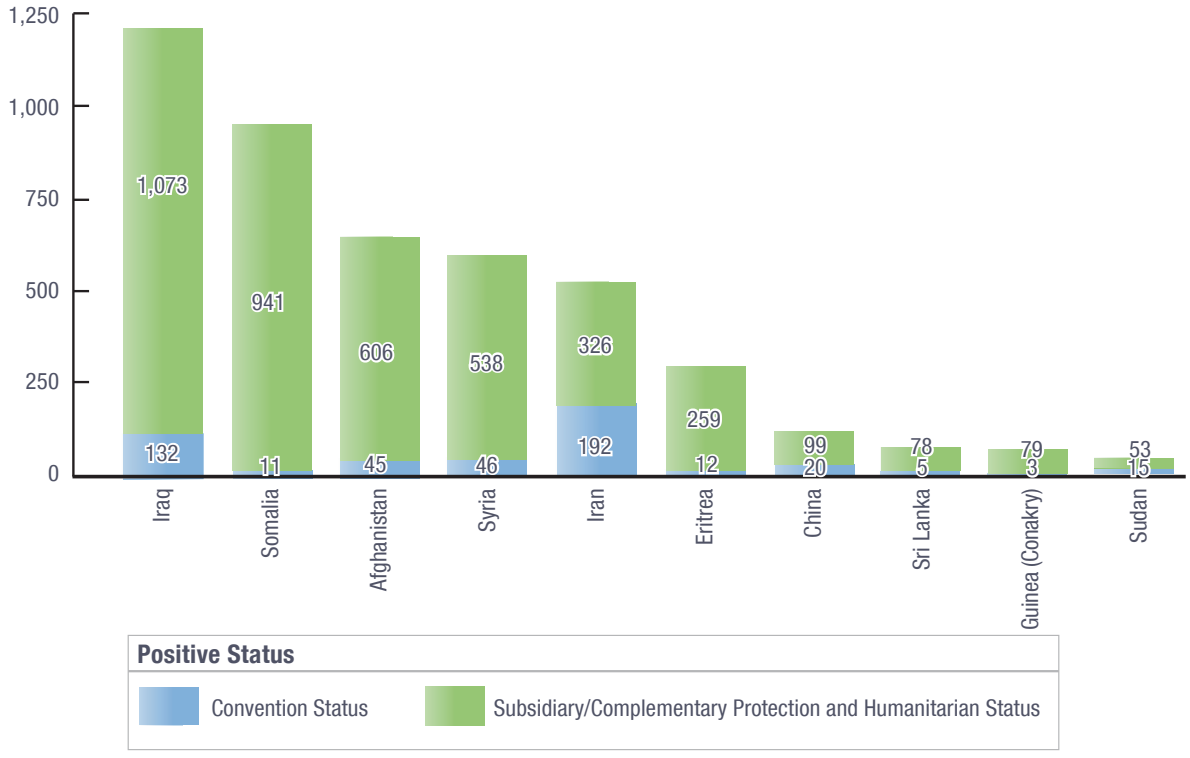
NET. Fig. 5 | Decisions Taken at the First Instance in 2012, 2013 and 2014

	Convention Status		Humanitarian Status and Subsidiary/Complementary Protection		Rejections		Withdrawn, Closed and Abandoned Cases		
Year	Number	%	Number	%	Number	%	Number	%	Grand Total
2012	630	5%	4,877	36%	7,933	59%	0	0%	13,440
2013	1,235	8%	8,309	53%	6,046	39%	0	0%	15,590
2014	2,484	13%	10,067	54%	6,259	33%	0	0%	18,810

NET. Fig. 6.a Positive First-Instance Decisions, Top 10 Countries of Origin in 2012[24]

	Country of Origin	Total Positive	Total Decisions	Rate
1	Iraq	1,205	1,863	64.7%
2	Somalia	952	1,599	59.5%
3	Afghanistan	651	1,851	35.2%
4	Syria	584	632	92.4%
5	Iran	518	1,197	43.3%
6	Eritrea	271	468	57.9%
7	China	119	243	49.0%
8	Sri Lanka	83	194	42.8%
9	Guinea (Conakry)	82	235	34.9%
10	Sudan	68	163	41.7%

Total Positive Decisions by Status from Top 10 Countries of Origin, 2012

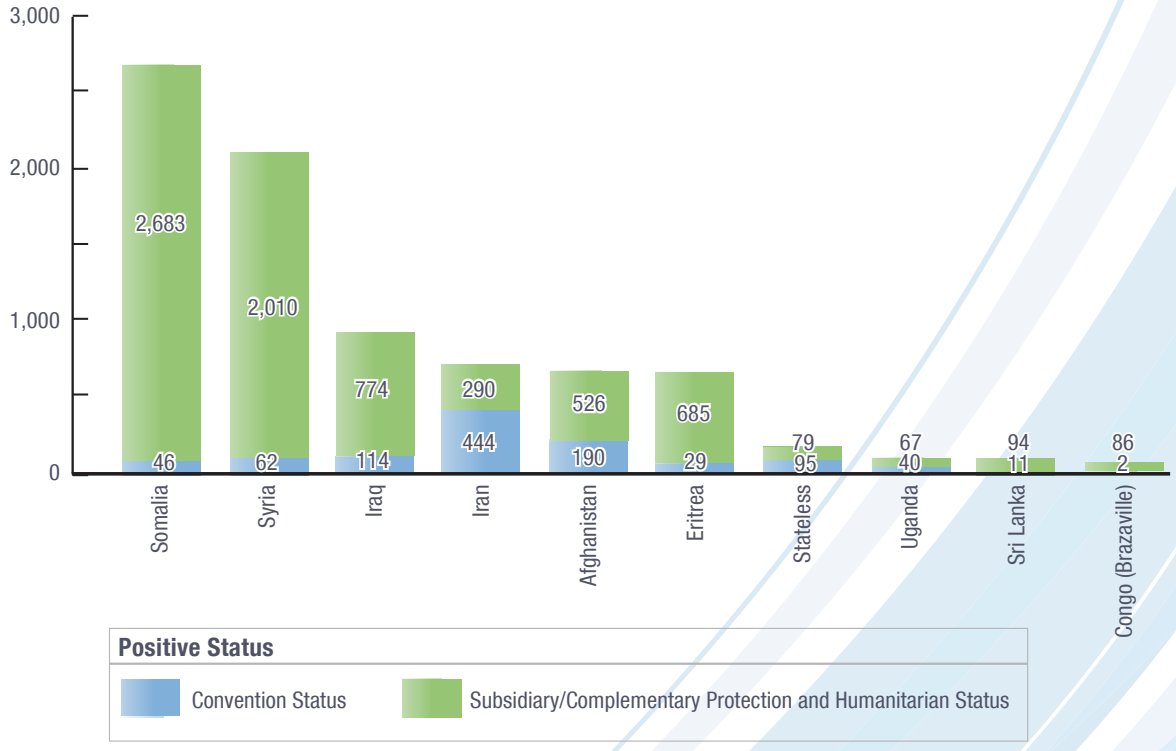


[24] For the purpose of this exercise, positive decisions include decisions to grant Convention status, subsidiary/complementary protection and other humanitarian statuses. Excluding withdrawn, closed and abandoned claims.

Positive First-Instance Decisions, Top 10 Countries of Origin in 2013[25]

	Country of Origin	Total Positive	Total Decisions	Rate
1	Somalia	2,729	3,020	90.4%
2	Syria	2,072	2,371	87.4%
3	Iraq	888	1,335	66.5%
4	Iran	734	1,223	60.0%
5	Afghanistan	716	1,333	53.7%
6	Eritrea	714	878	81.3%
7	Stateless	174	212	82.1%
8	Uganda	107	180	59.4%
9	Sri Lanka	105	191	55.0%
10	Congo (Brazzaville)	88	152	57.9%

Total Positive Decisions by Status from Top 10 Countries of Origin, 2013

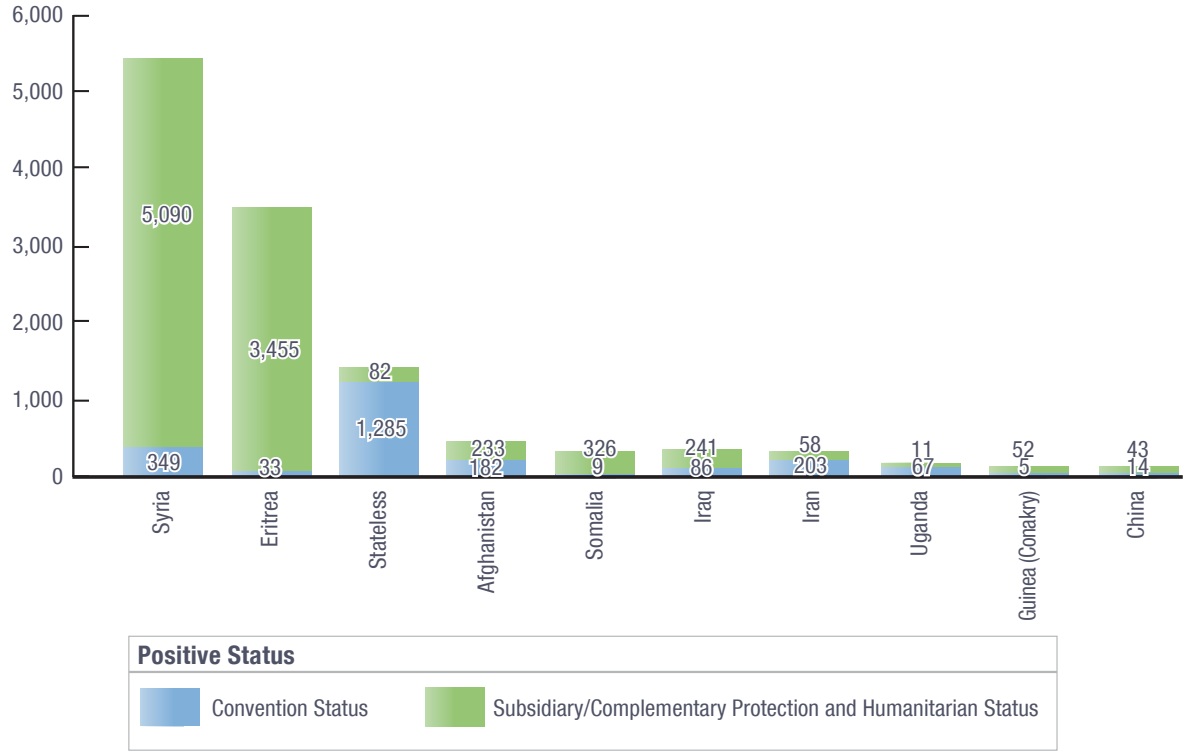


[25] For the purpose of this exercise, positive decisions include decisions to grant Convention status, subsidiary/complementary protection and other humanitarian statuses. Excluding withdrawn, closed and abandoned claims.

NET. Fig. 6.c Positive First-Instance Decisions, Top 10 Countries of Origin in 2014[26]

	Country of Origin	Total Positive	Total Decisions	Rate
1	Syria	5,439	5,952	91.4%
2	Eritrea	3,488	3,845	90.7%
3	Stateless	1,367	1,605	85.2%
4	Afghanistan	415	829	50.1%
5	Somalia	335	570	58.8%
6	Iraq	327	777	42.1%
7	Iran	261	580	45.0%
8	Uganda	78	165	47.3%
9	Guinea (Conakry)	57	132	43.2%
10	China	57	121	47.1%

Total Positive Decisions by Status from Top 10 Countries of Origin, 2014



[26] For the purpose of this exercise, positive decisions include decisions to grant Convention status, subsidiary/complementary protection and other humanitarian statuses. Excluding withdrawn, closed and abandoned claims.

Syrian refugee mother kisses her daughter outside an informal tented settlement in Lebanon.

UNHCR/A. McConnell/May 2014

NEW ZEALAND

igc

1 BACKGROUND: MAJOR ASYLUM TRENDS AND DEVELOPMENTS

Asylum Applications

In the late 1990s, the number of asylum applications made in New Zealand began to increase significantly compared to those of previous years. In 1997, for example, over 2,600 claims were received. Numbers peaked in 1998 at over 2,700. However, the number of new applications decreased significantly from 2002 onwards. From 2007 to 2014, New Zealand received about 300 claims per year. For 2012, 2013 and 2014, the total numbers of applications were 324, 292 and 288, respectively.

The Immigration Amendment Act 1999 incorporated the Convention relating to the Status of Refugees (1951 Convention) and its 1967 Protocol into the Immigration Act 1987. This law reform gave statutory recognition to the Refugee Status Appeals Authority and created the position of refugee status officer, who would decide refugee claims made in New Zealand at the first instance.

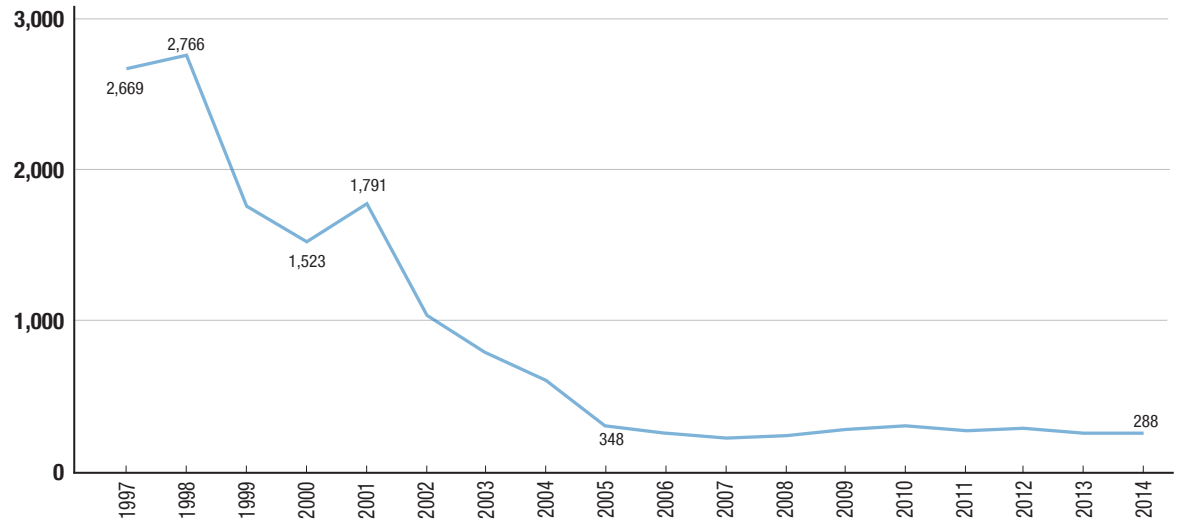
Also in 1999, the current policy of granting recognized refugees the right to apply for permanent residence visas was introduced.

In 2001, the Mangere Refugee Resettlement Centre began to be used in part as a low-security detention centre for some asylum seekers. Asylum seekers – except those who stay at the centre or remand facilities for higher security detention – may receive open work visas, which allow for freedom of movement, access to the labour market and certain welfare support benefits.

After 2004, refugee status officers became responsible for the cancellation of refugee status in cases of fraud.

The Immigration Act 2009 came into force on 29 November 2010. It significantly reformed New Zealand immigration law, including visa, asylum, detention and deportation processes. The Act incorporated a new complementary protection regime which gave effect to New Zealand's immigration-related obligations under the 1987 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and articles 6 and 7 of the International Covenant on Civil and Political Rights (ICCPR).

NZL. Fig. 1 **Total Asylum Applications by Year, 1997–2014**



Top Nationalities

In the late 1990s, 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 2008, the top claiming nationalities were Iran, Iraq, China and Sri Lanka. From 2009 to 2013, the top claiming applicants were from Fiji, Iran, China, Pakistan and Sri Lanka. The same five countries also came out on top in 2014 in the following order: Sri Lanka, Fiji, Pakistan, China and India.

Important Reforms

From the early 1980s, asylum claims were decided by the Interdepartmental Committee on Refugees. 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 were made to the independent tribunal, the Refugee Status Appeals Authority.

First instance claims to refugee status and complementary protection are now decided by refugee and protection officers (RPOs), who also decide cancellation, cessation and deportation of refugees under articles 32.1 and 33 of the 1951 Convention.

The 2009 Act also created a single immigration appeals body, the Immigration and Protection Tribunal. The jurisdiction of the Tribunal includes that of the previous bodies, the Refugee Status Appeals Authority, the Removal Review Authority, the Deportation Review Tribunal and the Residence Review Board.

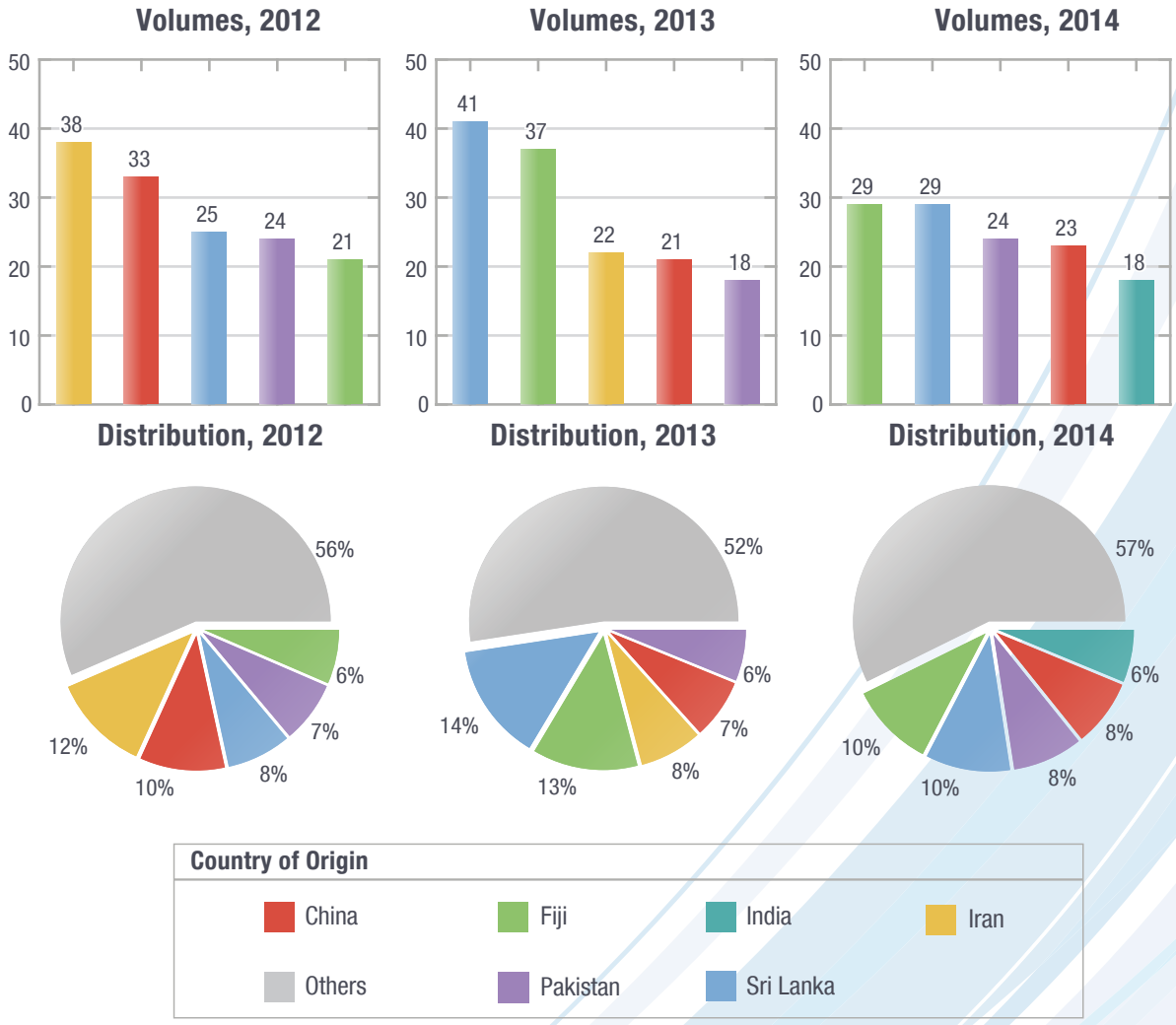
2 NATIONAL LEGAL FRAMEWORK

2.1 Legal Basis for Granting Protection

The asylum procedures and the competencies of asylum institutions are governed by the Immigration Act 2009, which incorporates and codifies the 1951 Convention and its 1967 Protocol. A further amendment was enacted in 2013.

The Immigration Act 2009 also codifies certain obligations under CAT and ICCPR, to which New Zealand is a party.

NZL. Fig. 2 **Asylum Applications Received from Top Five Countries of Origin in 2012, 2013 and 2014**



2.2 Recent Reforms

The Immigration Act 2009 introduced a number of changes to immigration matters in New Zealand. With regard to asylum and refugee protection, the main changes are as follows:

- In deciding whether claimants are to be recognized as refugees on the basis of the 1951 Convention and its 1967 Protocol, designated RPOs also, in a single procedure, determine whether grounds for preventing removal exist under article 3 of CAT and articles 6 and 7 of ICCPR. A person who does not qualify as a refugee but does qualify under CAT or ICCPR is called a "protected person". The Immigration Act does not apply the 1951 Convention exclusion clauses to CAT and ICCPR protection but specifies tests analogous to articles 1E and 1F as part of the complementary protection determination. If a protected person is found to be a person to whom the 1F equivalent test applies, his or her final immigration status is determined by the Minister.
- A single immigration tribunal hears all immigration appeals, including refugee and protection.
- Classified security information may be relied on in certain circumstances, including in refugee or protection claims.

In February 2012, the Government of New Zealand announced that the Department of Labour, of which Immigration New Zealand (INZ) is a part, would be merged with three other government departments[1] to form a new Ministry of Business, Innovation and Employment. The new Ministry came into existence on 1 July 2012.

On 19 June 2013, the Immigration Amendment Act 2013 came into force. Broadly speaking, the Amendment Act allows a "mass arrival group" (30 or more persons, who arrive together unlawfully on an unscheduled craft or vessel), other than unaccompanied minors, to be detained under a group warrant for up to six months, unless the court directs a shorter period. A district court judge must be satisfied that the warrant is necessary before issuing it. If required, the warrant can be extended for periods of up to 28 days at a time (as determined by the judge).

The Amendment Act also allows for the suspension of determination on refugee claims by Order in Council of the Governor General that share common circumstances or characteristics if the Minister of Immigration is satisfied that the regulations are necessary because "(i) there are problems in accessing information or assessing information that is relevant to determining or making a decision on the claims to be specified in the regulations" or "(ii) the circumstances to which the claims … relate…" are "… subject to such a degree of change or uncertainty, that determination or decision of the claims… is unlikely to produce a robust outcome."[2]

The Amendment Act also restricts appeal rights for all persons by:

- Restricting review proceedings in the courts on any matters being dealt with by the Immigration and Protection Tribunal until it has made final decisions
- Requiring review proceedings against the Tribunal to be filed by leave of the High Court
- Removing the obligation for the Tribunal to provide an oral hearing for subsequent claims for refugee or protected person status.

In addition, the Amendment Act extends the obligation of an RPO to include refusal to consider a subsequent claim if the claimant has acted otherwise than in good faith for the purposes of creating a complementary protection claim. Previously, the "good faith" requirement applied only to subsequent refugee claims.

3 INSTITUTIONAL FRAMEWORK

3.1 Principal Institutions

Immigration New Zealand (INZ)

INZ is a service of the Ministry of Business, Innovation and Employment and sits within the Labour Group of the Ministry. The Refugee and Protection Unit of INZ contains the National Manager's Office, the Refugee Status Branch (RSB), the Country Research Branch[3] and the Refugee Quota Branch. The Refugee and Protection Unit is located within the Settlement, Protection and Attraction Division. Visa Services and Compliance, Risk and Intelligence Services are, among others, located within INZ.

RPOs in RSB decide claims under the 1951 Convention and protection claims under CAT and ICCPR. RPOs do not make decisions on removal, visa matters, or any other decision of a humanitarian nature.

The Refugee Quota Branch is responsible for implementing New Zealand's Refugee Quota Programme and assessing eligibility under the refugee family support category. The Refugee Quota Branch also manages the Mangere Refugee Resettlement Centre, where quota refugees undertake a six-week reception programme. The centre also operates as a detention facility where asylum applicants may be detained while their claims are being determined.

The Country Research Branch provides decision-makers with open-source country of origin information (COI), specifically on the political, social, cultural, economic and human rights

1 The Department of Building and Housing, the Ministry of Economic Development, and the Ministry of Science and Innovation.
2 Now section 403(2) of the Immigration Act 2009.
3 The Country Research Branch has been previously known as the Nicholson Library, Refugee Research and Information Branch and the Refugee and Immigration Risk Research Unit.

situations in countries of origin. The branch comprises researchers based in Auckland and Wellington.

INZ immigration officers (located within Visa Services) decide applications for temporary and permanent visas, including applications by recognized refugees for permanent residence visas.

Compliance, Risk and Intelligence Services is responsible for, among other things, the detention of refugee and protection claimants when appropriate, as well as the removal of failed claimants.

Immigration and Protection Tribunal

The Tribunal was set up by the Immigration Act 2009, and is administered by the Ministry of Justice. It replaced four immigration appeal bodies.[4] This streamlined the procedure by providing a single hearing and decision on all bases of appeal. The Tribunal issues separate written decisions on different classes of appeal.

3.2 Cooperation between Government Authorities

Section 151 of the Immigration Act 2009 allows information on refugee claims to be shared among government authorities whose roles require them to have access to that information (for example, to assess eligibility for entitlements, to determine the claim or to uphold the law).

4 PRE-ENTRY MEASURES

4.1 Visa Requirements

INZ manages New Zealand's visa system. Transit, temporary entry and residence visas are the main classes of visa. Certain classes of persons are deemed to hold a visa (such as air crew).

Non-citizens must hold a visa to travel to and remain in New Zealand lawfully. A visa allows a person to travel to or to remain in New Zealand.

Upon arrival in New Zealand, all non-citizens must present a valid travel document, and may be required to provide further proof of the bona fide nature of their purpose for travelling to New Zealand. For example, persons entering on visitor visas may be required to show that they have tickets for onward travel, sponsorship or sufficient funds for living expenses. Entry permission may be declined at the border even if a person holds a valid visa.

4.2 Carrier Sanctions

The Immigration Act 2009 requires that the carrier or the person in charge of any craft en route to New Zealand or that berths, lands or arrives in New Zealand is responsible for ensuring all persons boarding the craft have the appropriate immigration documentation. The Immigration Regulations 2010 (carrier's information obligations) prescribe the immigration documentation, which includes:

- A valid passport or certificate of identity (unless exempt)
- A visa (if required) or an endorsement indicating New Zealand citizenship.

The check for a visa or endorsement is not required if the carrier or person in charge of a commercial craft obtains the advance passenger processing information (as detailed in section 4.3) from every person who intends to board the craft for the purpose of travelling to New Zealand, and provides the immigration authorities with that information.

A carrier or person in charge of a commercial craft who, without reasonable excuse, fails to ensure that all persons boarding the craft have the appropriate immigration documentation except where a person is exempt under Regulation 11(3) of Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 from holding certain documentation, commits an offence and may:

- Incur an infringement fee
- Be prosecuted
- Have other actions taken against him or her utilizing any appropriate enforcement tools in order to encourage compliance.

4.3 Interception

Airline Liaison Officers

New Zealand uses airline liaison officers to assist airlines in meeting carrier requirements under immigration legislation, prior to aircraft departure for New Zealand.

Advance Passenger Processing System

New Zealand uses the Advance Passenger Processing System, which assesses travel permission, including requirements and authenticity, electronically at check-in. Once the information is submitted, the carrier receives an automatic boarding directive from the system. If the system identifies an issue, then the passenger and INZ staff may speak by telephone, and the passenger may be denied boarding or permitted to travel.

[4] The Residence Review Board, the Removal Review Authority, the Refugee Status Appeals Authority and the Deportation Review Tribunal.

Regional Movement Alert System

New Zealand is part of an initiative of the Asia-Pacific Economic Cooperation known as the Regional Movement Alert System. The objective of the alert system is to strengthen the collective capacity of participating Asia-Pacific Economic Cooperation countries to detect lost, stolen or otherwise invalid travel documents and to prevent them from being used illegally. Australia, New Zealand and the United States have been participating in this initiative since March 2006.

A key component of the Regional Movement Alert System is the broker, which acts like a switchboard for routing queries and answers to and from border systems and the passport databases of participating countries. No data are stored in the broker, which means that data are accessed and not exchanged, and each country controls how much information is made available to another. This approach also ensures that only the most up-to-date data are accessed.

A vital part of the Regional Movement Alert System is the contact between each country'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 country receives an alert system notification.

5 ASYLUM PROCEDURES

5.1 Application Possibilities and Requirements, Procedures and Legal Remedies

Under the Immigration Act 2009, a person must be in New Zealand to lodge a claim for refugee or protected person status. Asylum claims can be made in person or in writing to a police officer or representative from the Ministry of Labour. Asylum claims can be made at any time after arrival in New Zealand and prior to departure.

Every individual, including children, must make a separate claim.

Access to Information

When a claim is made, RSB provides the claimant with written information – in English and certain other languages – concerning the process, his or her rights and obligations, and support services that may be available. This information is also available on the INZ website. Lawyers working in the asylum field use interpreters to obtain details of the claim and to explain the process and the legal test to the claimant. Legal aid may be available to cover the lawyer's fee and the interpretation and translation costs.

5.1.1 Outside the Country

Applications at Diplomatic Missions

It is not possible to make a claim for asylum under the Immigration Act 2009 at a diplomatic mission abroad.

5.1.2 At Ports of Entry

A person may make a claim to a relevant official at a port of entry, but the claim is not processed there. Information relevant to the claim may be gathered, and the initial application form completed.

Persons presenting claims to Customs or the Police at ports of entry will be referred to INZ, where immigration officers, with the assistance of an interpreter, will interview claimants to determine their means of arrival and identity. The INZ immigration officer will also make a decision on whether or not to issue a visa or whether it is necessary to place the claimant in detention.[5]

From that point, the standard refugee status determination procedure is applicable.

5.1.3 Inside the Territory

Responsibility for Processing the Claim

All refugee and protection status decisions are made by specialist RPOs. These decisions can be appealed to the Tribunal.

New Zealand decides all refugee claims made by eligible persons within its territory.[6] The Immigration Act 2009 provides for the possibility for an international arrangement with one or more countries in respect of processing refugee claims. However, there are no such international arrangements. Section 134(5) of the Immigration Act 2009 requires the Minister of Immigration to be satisfied that the relevant signatory State has a satisfactory refugee and complementary protection regime before making such an international arrangement or agreement.

Application and Eligibility

A 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 Ministry of Labour or to a member of the Police. This application must then be confirmed in writing by completing a Confirmation of Claim to Refugee and Protection Status form.

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5 See the section on freedom of movement and detention for information on when detention would be considered appropriate.
6 See the section on eligibility.

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 visa for New Zealand. Present regulations place citizens of Australia in this category.
- The asylum seeker is a New Zealand citizen.
- The asylum seeker is exempt from having to hold a visa.

Refusal to Examine Claims

Under section 134 of the Immigration Act 2009, an RPO must decline to accept a refugee claim for consideration if it is determined that the claimant deliberately caused one or more of the circumstances to create grounds for a claim. That is, the claimant is required to act in good faith. This does not apply to complementary protection claims.

The applicant has a right to appeal this decision before the Tribunal.

Accelerated Procedures

Procedure for Detained Asylum Seekers

RSB prioritizes claimants in detention, and RPOs process these claims under stricter time limits. Otherwise, the processing and determination of these cases do not differ from those of the claims in the normal procedure.

Detained claimants must confirm their claim in writing within five calendar days of signalling their intention to make a claim. This period of time may be shorter if the claim is a subsequent claim. Often, an RPO will assist the claimant in completing the Confirmation of Claim to Refugee and Protection Status form, which constitutes the formal lodging of the claim. Although an RPO is not obliged to interview a detained refugee claimant, the officer will always endeavour to conduct one. The interview takes place approximately 20 days after the completed form is received. This period allows for the claimant to complete an application for legal aid and for the lawyer (and/or the claimant) to prepare. The RPO issues a written interview report 10 days after the interview, and the claimant is given 10 working days in which to make submissions (that is, comment in writing) on the report. A decision is usually made within 15 to 20 days of receipt of the submissions.

If a refugee claim is rejected by the RPO, the decision may be appealed to the Tribunal within five working days of notification of the decision.

Normal Procedure

The formal steps in the refugee status determination process are:

- Claim
- Written statement
- Interview
- Interview report
- Legal submissions
- Decision.

In making a claim for asylum, all applicants must confirm their claim in writing by completing the Confirmation of Claim to Refugee and Protection Status form. Refugee and protection claimants must provide evidence of their identity, such as travel documents or a birth certificate, and of their country of origin. If such documents are not available, they are required to provide RSB with a statutory declaration outlining their personal details. Applicants may also be required to provide biometric information in the form of fingerprints and a photograph. This biometric information is shared with Five Country Conference partners.[7]

The claimant must provide the RPO with all the 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
- Documents indicating the alleged agent of persecution and the reason for that persecution, if available
- Details of persons who may be contacted to support or verify the claim.

An RPO conducts an interview with the claimant in the presence of his or her legal representative and an independent interpreter. A record of the interview is made in writing and by digital audio recording. The RPO 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 it is usually used as it assists the claim process by confirming an understanding of the claim and ensuring fairness.

Following receipt of final submissions from the claimant and his or her counsel, the RPO will make a decision on whether or not to recognize refugee status. If the person is not recognized as a refugee, the same RPO will also consider if he or she qualifies for protected person status under CAT or ICCPR.

[7] The Five Country Conference is comprised of Australia, Canada, New Zealand, the United Kingdom and the United States.

Classified information may be used in decision-making if the individual concerned can be provided with a summary of allegations. This ensures procedural fairness as the individual is made aware of the allegations against him or her and he or she has the opportunity to respond.

Review/Appeal of Asylum Decisions

Under the Immigration Act 2009, the Tribunal hears all matters relating to refugee and protection status appeals. Appeals may be lodged against negative decisions, refusals to consider claims, and cancellation and cessation decisions. If an RPO determines that a refugee is subject to article 32.1 or 33 of the 1951 Convention, this can also be appealed.

Refugee and protection appeals must be made within 10 working days of the decision, or five days for detained persons. Leave may be requested to lodge appeals outside this time frame, and may be granted if it is warranted by the circumstances. Under this unified system, appellants are no longer able to lodge an appeal to different bodies. Different grounds for appeal must be lodged together.

Proceedings for appeals relating to refugee and protection status are oral. The Tribunal conducts a de novo enquiry into the merits of the claim. Appeals to the Tribunal have a suspensive effect on the deportation of the appellant. The Tribunal process, like that at the first instance, is inquisitorial, not adversarial. Any appeal of a deportation (or prospective deportation) decision based on humanitarian grounds must be lodged concurrently with the appeal of the refugee or protected person determination.

The Tribunal may uphold or reverse the decision of the RPO.

Further appeals to the courts are possible. Applications to the High Court for a judicial review of Tribunal decisions must be lodged within 28 days. Appeals may also be made to the High Court on points of law. On application to the court, leave may be granted to appeal High Court decisions to the Court of Appeal and subsequently to the Supreme Court. Appeals to the courts do not automatically have a suspensive effect on deportation, but a request to that effect may be made by the appellant. Courts have the power to return cases to decision-makers, RPOs or the Tribunal when a reviewable fault has been found.

The Immigration Amendment Act 2013 made a number of changes in order to streamline refugee and protection claims and appeals.[8]

Freedom of Movement during the Asylum Procedure

People who enter New Zealand on a valid visa and make a claim before they are subject to a deportation order are usually granted a visa to allow them to remain in New Zealand while their claim is being assessed. Visas are less likely to be issued if a subsequent claim is made. There is no restriction on freedom of movement for such claimants.

The Immigration Act 2009 contains discretionary powers relating to the restriction of movement of refugee and protection claimants who make their claim at the border and who have not been granted entry permission and issued a visa to be in New Zealand. The possible discretionary responses are:

- Granting of a temporary visa and/or entry permission for New Zealand
- Releasing into the community or to an approved open (low-security) immigration detention facility on residence and reporting requirements
- Detaining under a warrant of commitment in an approved open (low-security) immigration facility, or in a penal institution (prison) that is administered by New Zealand's Department of Corrections.

In all cases, a decision to detain a refugee or protection claimant in a penal institution rather than in a facility with fewer restrictions on the person's freedom of movement is made only after all other alternatives have been excluded. The overriding principle is that, if freedom of movement of persons claiming refugee or protection status at the border is to be restricted at all, then it should be restricted to the least degree and for the shortest duration possible.

The responses take into account the individual's circumstances, including any concerns regarding their identity, whether or not their refugee claim has been assessed as being made in good faith, and whether or not any risk to national security or public order has been identified. These concerns must be balanced against the person's right to freedom of movement, and any issues of well-being related to his or her individual circumstances (such as a person's status as a minor, family groups and health issues).

The responses are not static: throughout the duration of a person's presence in New Zealand, an INZ immigration officer revisits the case to ensure that the decision to restrict a person's freedom of movement remains appropriate in view of any changed circumstances (including simply the passage of time). Any restrictions must continue to be able to be justified as necessary. It may, for example, be appropriate for a person initially detained in a penal institution to be moved to an approved premise. A person detained at an approved premise may be released on conditions or released into the community with a temporary visa. It may be appropriate for a person previously released on conditions to be taken back into custody to be detained at an approved facility or in a penal institution.

[8] See section 2.2 on recent reforms.

Persons detained pending deportation from New Zealand may also claim refugee status. This detention is brought about in the course of proceedings to effect their deportation, and may persist despite the refugee claim.

The Immigration Amendment Act 2013 introduced detention provisions for members of a mass arrival, other than unaccompanied minors. The Act allows for the detention, for up to six months, on group warrants. An INZ immigration officer may apply to a district court judge for a warrant of commitment, if the grounds for a group warrant exist. The judge must be satisfied that the warrant is necessary, and may issue the warrant for a shorter period than what is sought. An extension of the warrant is possible for up to 28 days at a time, as directed by the district court judge.

Alternatively, asylum seekers may be released into the community on conditions.

Safeguards

Persons subject to immigration detention may be detained for a maximum of 96 hours by a police officer without a warrant. Following this period of time, a court-issued warrant of commitment is required to sustain the detention.

The court, or an INZ immigration officer, may decide to release a detainee, to keep him or her in detention for up to 28 days or to release the person on reporting conditions.

There is a six-month limit on immigration detention following the final decline of a refugee or protection claim, except for cases in which a foreign national hinders his or her own departure and there are no exceptional circumstances that favour release. This is intended to avoid the use of refusals to cooperate to secure release from immigration detention.

The most frequent application of restriction on the freedom of movement is release on reporting conditions or detention in an approved low-security immigration detention facility.

Reporting

As stated above, instead of detaining a refugee or protection claimant under a warrant of commitment in an approved open, low-security immigration facility, or in a penal institution, the claimant may be released on a Residence and Reporting Requirements Agreement under section 315 of the Immigration Act 2009. This is used to manage a person who poses a low to moderate level of flight risk and a low risk to the safety of the community, and where the person has a stable residential address and ties to the community, and the risk of absconding can be managed through reporting and other imposed conditions.

Repeat/Subsequent Applications

The Immigration Amendment Act 2013 amended section 140 of the Immigration Act 2009 so that limitations on subsequent claims apply to both refugee status and protected person status.

Section 140(1) of the Immigration Act 2009 limits an RPO from considering a subsequent claim unless he or she is satisfied that there has been a significant change of circumstances material to the claim since it was determined and that this change was not brought about by the claimant acting otherwise than in good faith and for the purpose of creating grounds for recognition.

Section 140(3) of the Immigration Act 2009 enables an RPO to refuse to consider a subsequent claim for recognition as a refugee or protected person if he or she is satisfied that the claim is manifestly unfounded or clearly abusive, or repeats a previous claim.

Refusal to consider a subsequent refugee claim under section 140 of the Immigration Act 2009 may be appealed to the Tribunal. The claimant must be given the opportunity to attend an interview either at the first instance or on appeal. Interviews are usually offered at the first instance. If the subsequent claim is accepted for substantive consideration either at the first instance or on appeal, it will then be determined whether or not the claimant is a refugee or a protected person.

Legal aid may be available for applicants making subsequent claims, provided the claim is not considered to be without prospects of success by the agency that administers legal aid payments.[9]

Subsequent claims may be made by anyone eligible to claim, whether 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 any non-citizen.[10]

Asylum Claims Made by 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.

5.3 Special Procedures

5.3.1 Unaccompanied Minors

Representatives

An immigration officer or an RPO must designate a responsible adult to act in the best interest of the unaccompanied minor claiming refugee status. If no suitable person is available to act as the responsible adult, a social worker from Child, Youth and Family Services may be appointed as the responsible adult.

[9] For more details, see section 8.1.1 on legal assistance.
[10] See the section on eligibility.

Procedures

Unaccompanied minors claiming refugee or protection status benefit from the following safeguards during the asylum procedure:

- The designation of a responsible adult and a legal representative who are present during the interview.
- A flexible approach to interviews, whereby interviews are scheduled for unaccompanied minors who have been assessed by an officer to be sufficiently mature to undergo the interview.
- If the unaccompanied minor is under 14 years of age, the interview lasts no longer than two hours; for minors between 14 and 17 years of age, the time limit is three hours.
- Detention is a last resort and used only in exceptional circumstances.

Age Assessment

If there is doubt as to the age of the unaccompanied minor, the responsible adult is informed that the minor may be requested to undergo a formal medical age assessment through either a dental examination or an x-ray. The consent of the unaccompanied minor 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 and any other relevant agency to assist in locating the unaccompanied minor's family.

Removal

If the unaccompanied minor's refugee claim fails, an assessment is made to determine whether or not to deport him or her. Efforts will be made to have the minor deported in a sensitive manner, including (if appropriate) interacting with the welfare agencies of the receiving country and making attempts to locate his or her guardian(s) in the home country.

NZL. Fig. 3 | **Asylum Applications by Unaccompanied Minors**

Data is not available.

5.3.2 Temporary Protection

While it is not New Zealand's policy to provide temporary protection to recognized refugees, a small number of cases have occurred in which identity or criminality issues were not found sufficient to withhold the recognition of refugee status but were sufficient to deny a residence visa. These persons were issued temporary (usually three-year) work visas.

5.3.3 Stateless Persons

New Zealand is not a signatory to the 1954 Convention relating to the Status of Stateless Persons. However, the New Zealand Citizenship Act 1977 enables the Minister of Internal Affairs (not the Minister of Immigration) to grant citizenship to a person who is stateless. This is a discretionary power that is rarely exercised.

New Zealand refugee jurisprudence recognizes 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 recognized that some, but not all, situations of statelessness occur because of grounds outlined in article 1(A) of the 1951 Convention.

5.3.4 Persons with Claims Based on Sexual Orientation or Gender

There are no special procedures or policies for claims based on sexual orientation or gender identity. However, such claimants may request an RPO and an interpreter of a particular gender. RPOs have been provided with extensive training on how to manage and decide such cases.

6 DECISION-MAKING AND STATUS

6.1 Inclusion Criteria

6.1.1 Convention Refugee

The Immigration Act 2009 requires that refugee claims be decided in accordance with the 1951 Convention and its 1967 Protocol.

IN FOCUS

CASE LAW ON DETERMINATION PRACTICES

New Zealand's refugee determination case law is most developed at the Immigration and Protection Tribunal, previously the Refugee Status Appeals Authority.

Cases from the late 1980s saw the Refugee Status Appeals Authority and the New Zealand courts interpreting the 1951 Convention through publications by the United Nations High Commissioner for Refugees (UNHCR), especially the *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status*,[11] Australian and Canadian jurisprudence, and academic literature.[12]

With regard to credibility, New Zealand courts have maintained that only the highest standards of fairness suffice in refugee matters.[13] Courts have also directed that, while a person claiming refugee status has the burden of establishing

[11] UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status* (Geneva, 2011).
[12] Most notably, J. Hathaway, *The Law of Refugee Status* (Toronto, Butterworths,1991).
[13] *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.

the elements of the claim, that rule should not be applied mechanically.[14]

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.*[15]

Core norms of international human rights law are used to define the forms of serious harm amounting to persecution.[16] State protection analysis drew on the Canadian case of Ward.[17] 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.[18] Importantly, there is no requirement for the refugee to avoid the risk of harm where doing so is an exercise of a protected right.[19]

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" Convention grounds 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.[20]

New Zealand has interpreted "particular social group" using an *ejusdem generis* approach.[21] 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.[22] 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 or sexual orientation, while the second encompasses, for example, human rights activists. The third category is included 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.[23]

Claims concerning "generalized violence" or civil war were addressed by the Refugee Status Appeals Authority 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 (that is, the risk of persecution) is a separate inquiry to that of the "for reason of" element (that is, 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 flight alternative was re-examined by the Refugee Status Appeals Authority. The Canadian approach based in protection was reaffirmed as the preferred New Zealand approach, rather than those of Australia, the European Union and the United Kingdom, which were characterized as looking at the question of risk rather than the existence of protection.[24]

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.[25]

Turning from the Convention's inclusion clauses, the New Zealand approach to exclusion under article 1F was examined by the Supreme Court in *Attorney-General (Minister of Immigration) v Tamil X and Anor.*[26] The court found that the "serious reasons for considering" standard was higher than mere suspicion but otherwise deliberately vague. The standard recognized the difficulties in gathering factual evidence. As established in earlier case law, there is no balancing exercise undertaken between the acts committed by the claimant and any threat to their life and security should they return to their home country.[27]

14 *Butler v. Attorney General* [1999] NZLR 205.
15 This test was adopted in Refugee Appeal No. 1/91 Re TLY and Refugee Appeal No. 2/91 Re LAB (11 July 1991).
16 Refugee Appeal No. 74665/03 [2005] NZLR 60; [2005] INLR 68 at [36] – [125].
17 *Canada (Attorney General) v. Ward [1993] 2 SCR 689, 709 (SC:Can).*
18 Refugee Appeal Nos. 1/91 and 2/91 Re TLY and LAB (11 July 1991).
19 Refugee Appeal No. 1312/93 (30 August 1995).
20 Refugee Appeal No. 73635 (8 September 2001).
21 *Khalon v Attorney General (Minister of Immigration)* [1996] 1 NZLR 458.
22 Refugee Appeal No. 71427/99 (16 August 2000). See also Refugee Appeal No. 1312/93 Re GJ (30 August 1995).
23 Refugee Appeal No. 71427/99 (16 August 2000) at [98]. See also Refugee Appeal No. 1312/93 Re GJ (30 August 1995).
24 Refugee Appeal No. 76044 (11 September 2008). The Refugee Status Appeals Authority 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*.
25 Refugee Appeal No. 72635/01 (6 September 2002).
26 *Attorney-General (Minister of Immigration) v. Tamil X* and *Anor, [2010] NZSC 107, New Zealand: Supreme Court* (27 August 2010). Available at www.refworld.org/docid/4d9f07802.html.
27 Refugee Appeal No. 71398/99 (10 February 2000).

6.1.2 Complementary Protection

The Immigration Act 2009 requires that, when a claim is made, the RPO must decide whether the claimant is a refugee and, if not, whether he or she is a protected person. A protected person is defined as a person for whom there are substantial grounds for believing that he or she would be in danger of being subjected to arbitrary deprivation of life or torture, cruel, inhuman or degrading treatment or punishment ("cruel treatment") if deported from New Zealand. This definition adheres closely to the non-refoulement obligation contained in CAT and in articles 6 and 7 of ICCPR.

Section 131 of the Immigration Act 2009 stipulates that the impact on the person due to the inability of a country to provide health or medical care, or health or medical care of a particular type or quality, is not to be treated as cruel treatment.

The Immigration and Protection Tribunal has interpreted the Immigration Act 2009 to mean that, if refugee status is recognized, the attainment of protection status is precluded because the person is no longer at risk of being deported from New Zealand.[28]

The Tribunal has also found that cruel treatment as defined in CAT and ICCPR would qualify as persecution under the 1951 Convention, and the degree of likelihood of cruel treatment occurring is analogous to (or not lower than) the Convention standard of a "real chance".[29]

As such, a person will normally obtain protected person status only if they are unable to meet the definition of a refugee in article 1, for example because they are excluded under 1F or there are no "Convention grounds", but there are substantial grounds for believing that he or she would be in danger of being subject to cruel treatment.

As noted above, the Immigration Act 2009 stipulates that there be an assessment as to whether protected persons meet the exclusion criteria of article 1F of the 1951 Convention. If so, the person's immigration status in New Zealand is referred to the Minister of Immigration.

6.2 The Decision

Following receipt of final submissions from the claimant and his or her counsel, RSB provides the claimant with a reasoned written decision.

Information on appeal rights is provided if the claim is declined.

When it is safe and in the public interest to do so, RPO or Tribunal decisions may be made public. Usually this is by way of the anonymized publication for research purposes of Tribunal decisions on its website.[30]

If an RPO recognizes the claimant as a refugee or a protected person, the successful applicant is provided with information on applying for residence in New Zealand and other settlement-related information.

6.3 Types of Decisions, Statuses and Benefits Granted

A person recognized as either a refugee or a protected person, whether by an RPO or the Tribunal, may apply for a permanent residence visa. He or she will normally be provided with an appropriate temporary visa (work, study or visitor) while waiting for the residence application to be decided.

Benefits

Refugees and protected persons are generally granted permanent residence unless there are character or identity issues. If the permanent residence application is refused, the refugee or protected person is issued temporary visas allowing him or her to remain and work in New Zealand.

Permanent residence allows a person to access employment and publically funded social services on the same basis as New Zealand citizens and nationals. Travel to and from New Zealand does not require further visas and residents may vote in national and local elections.

Refugees may apply for a refugee travel document. New Zealand passports are issued only to citizens. After five years in New Zealand as a residence visa holder, the person may apply for citizenship.

Recognized refugees or protected persons may sponsor their spouse and dependent children to come to New Zealand during the course of their residence visa application. Unaccompanied minor refugees may sponsor their parents. Refugees and protected people without any immediate family may sponsor more distant family members under the Refugee Family Support Category. This policy provides 300 places a year for family members of refugees who are without family other than dependent children in New Zealand.

Recognized refugees or protected persons who have arrived as part of a mass arrival are granted a temporary (work or student) visa. Their claim will be reassessed after three years and they will be able to apply for residence if they are found still to require protection. At that point they will be able to sponsor their immediate family members to come to New Zealand. They will not be able to sponsor extended family members.

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28 *AB(Iraq)* [2011] NZIPT 800014.
29 *AC(Syria)* [2011] NZIPT 800035 and *BG(Fiji)* [2012] NZIPT 800091.
30 www.justice.govt.nz/tribunals/immigration-protection-tribunal.

6.4 Exclusion

6.4.1 Refugee Protection

The exclusion clause is applied in refugee claims and may lead to a claim being declined. RPOs and members of the Tribunal consider grounds for exclusion provided for in article 1F of the 1951 Convention in every case in which they are relevant. If an RPO declines a refugee status claim on the grounds of article 1F, the appeal to the Tribunal is considered afresh regarding questions of inclusion and exclusion.

6.4.2 Complementary Protection

Regarding the consideration of exclusion issues in relation to protection status under CAT and ICCPR, section 137(2) of the Immigration Act 2009 stipulates that successful protected person claimants must be assessed in relation to a test that is analogous to article 1F of the 1951 Convention. As the language of the statutory provision is identical to that of article 1F and the intent has clearly been to adopt the same test, the same approach is adopted when making the assessment for refugee status.

In cases where the exclusion provisions of article 1F apply to a protected person, the person's final immigration status is determined by the Minister of Immigration (section 139 of the Immigration Act 2009). The Minister's decision is not appealable to the Tribunal, but judicial review is available.

6.5 Cessation

Cessation of refugee or protection status is rarely used in New Zealand due to its policy of providing refugees and protected persons with access to permanent residence and citizenship to promote effective settlement (a durable solution). While cessation provisions exist under New Zealand law, they have been applied only in a small number of cases.

In order to determine refugee status cessation, an RPO must establish that the refugee no longer requires international protection because of the grounds given in article 1C of the 1951 Convention. With regard to the cessation of protected person status, the RPO must assess whether there are no longer substantial grounds for believing the person will be subjected to torture, cruel, inhuman or degrading treatment or punishment, or arbitrary deprivation of life should he or she be deported.

Before reaching such a decision, the RPO must notify the person concerned that the matter is to be considered and provide him or her with information on which he or she intends to base this decision. An interview may be requested by the person. If cessation is applied, then the person may appeal the decision to the Tribunal.

6.6 Cancellation

The Immigration Act 2009 specifies that the cancellation of refugee or protected person status may apply where:

- The refugee status or protection status may have been obtained by fraud, forgery, false or misleading representation, or by concealment of relevant information.
- 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.
- The person has been convicted of an offense where it is established that they acquired recognition as a refugee or a protected person status by fraud, forgery, false or misleading representation, or concealment of relevant information.

The Immigration Act 2009 sets two different cancellation procedures based on whether the person is a New Zealand citizen and whether they were recognized as a refugee by the Tribunal or by an RPO.

The Immigration Act 2009 requires the RPO to follow a process for cancellation as if it were a claim. That is, the refugee can request an interview and has the opportunity to comment on prejudicial information before the decision is made. He or she is eligible to apply for legal aid.

The enquiry into cancellation is a two-stage process for both procedures, in which it is first determined whether status was procured by fraud or the like, and then whether the person is eligible for refugee or protected person status. That is, even in cases where fraud is established to the requisite standard, cancellation of status is not automatic, and a fresh assessment of the person's need for international protection is undertaken.

If status is cancelled, the decision may be appealed to the Tribunal.

If refugee status is finally cancelled by the Tribunal, the person may be subject to deportation or face revocation of visas, including the permanent residence visa, and thus be liable for deportation. If the person is a New Zealand citizen, it is possible to remove citizenship if it is established that the citizenship was also procured by fraud.

6.7 Support and Tools for Decision-Makers

6.7.1 Country of Origin Information

The primary focus of the Country Research Branch is day-to-day research in response to specific case-related research requests. In supporting general information needs, the branch produces a monthly current awareness bulletin, among other e-news products. Thematic resource guides, country background packs, fact sheets and major COI reports are made available on the Intranet so staff have easy access to the material at all times. In addition, the branch delivers a suite of annual projects to improve its own research practice and to keep researchers up to date with developments in new media as a potential source of COI.

Other projects undertaken focus on specific customer group needs on agreed themes.

Researchers at the Country Research Branch in Auckland focus mainly on carrying out research and providing information for refugee and protection status determination. The team provides research for context and specific details for determining whether the "well-founded fear of persecution" can be substantiated. The team's core customer groups include RSB, the Refugee Quota Branch and the Tribunal.

Researchers at the Country Research Branch in Wellington focus mainly on immigration risk and border security. The team provides research for context and specific details for determining the "potential risk to New Zealand's international reputation". The researchers look into evidence of war crimes and gross human rights violations. The team's core customer groups are INZ Compliance, Risk and Intelligence Services and INZ immigration officers. Requests for country information related to cases involving domestic violence also come to this team.

6.7.2 Contacts Abroad

RPOs have access to verification services through INZ offshore branches and Ministry of Foreign Affairs and Trade staff abroad. They may also purchase verification services through contracted agencies. Information from UNHCR may be available on provision of a privacy waiver.

In cases where refugees have a travel or immigration history in a third country, RPOs may request that the authorities of that country provide information on the claimant, particularly in relation to travel, refugee claim information, immigration status or serious criminal information.

New Zealand is a party to the Five Country Conference through which biometric information is shared with partner countries. In the event of a match, the RPO may request immigration-related information on an individual from the partner country.

6.7.3 Contacts inside New Zealand

RPOs or Tribunal staff may request information from third parties or other government departments that may be relevant to deciding the claim. Section 151 of the Immigration Act 2009 allows RPOs to request such information from other government agencies and for government agencies to provide RPOs or Tribunal staff with information about a claimant or refugee.

6.7.4 Language Analysis

Language analysis has been carried out through a contracted agency, but it is very rarely used. The reliability of language analysis was criticized by the Refugee Status Appeals Authority.

6.7.5 Quality Check

All decisions on asylum claims made by an RPO must pass a thorough second-person "quality assurance" check. The written decision, as well as the file containing all the information relevant to the claim, is considered as part of the assurance review. RPOs are given verbal and written feedback on the decision. UNHCR also regularly requests and reviews RPO decisions and provides feedback.

7 EFFICIENCY AND INTEGRITY MEASURES

7.1 Technological Tools

7.1.1 Fingerprinting and Biometric Information

RSB is equipped with electronic biometric enrollment stations for recording biometric information. All 10 fingerprints are taken as plain impressions using "livescan". Under section 149(1)(e) of the Immigration Act 2009, RPOs have the authority to require a refugee or protection claimant to provide their fingerprints and photograph (that is, biometric information). Biometric information of undocumented border arrivals who claim refugee or protection status at the border is taken by INZ immigration officers, as provided for under section 111(1) of the Immigration Act 2009.

INZ provides pamphlets in English, Farsi, Arabic, Chinese, Tamil, French, Spanish, Samoan, Tongan, Punjabi and Hindi, which explain the biometric information collection process to claimants.

Refugee and protection claimants may refuse to provide biometric information; the RPO may consider the credibility of the reasons for such a refusal when determining the claim.

The collection of biometric information may be used by RPOs to assist in establishing a claimant's identity or nationality. Fingerprints may be checked against the New Zealand Police fingerprint database or that of foreign jurisdictions, particularly the databases of Five Country Conference partners.

7.1.2 DNA Tests

DNA tests are not routinely undertaken, but have been carried out to determine family links, with the consent of the refugee or protection claimant. 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

RPOs have access to experts in forensic document examination within INZ as required.

7.1.4 Database of Asylum Applications/Applicants

RSB uses an in-house database for refugee and protection status case management. The RSB database records procedural and other information related to the claim and claimant. The database draws on the centralized INZ case management database, known as the Application Management System.

INZ rolled out a new technology platform (Immigration ONLINE) in 2014. Initially covering student visa applications, it will be extended to other visa types, but not refugee or protected person status applications.

7.2 Length of Procedures

The standard time frames for the first instance procedure are as follows:

- Lodgement of claim to interview: 20 working days
- Interview to interview report: 15 working days
- Interview report to legal submissions: 15 working days
- Legal submissions to draft decision: 15 working days
- Second person check: 10 working days.

RSB has service guarantees to process 75 per cent of claims within 140 days.

If a person is declined at the first instance, he or she has 10 days (5 days if detained) to lodge an appeal. The Tribunal does not have published timeline standards for its decisions.

7.3 Pending Cases

As of March 2015, New Zealand had 94 claims on hand with an average age of 78 days. New Zealand does not have a backlog of cases.

7.4 Information Sharing

New Zealand has an information-sharing agreement in place with the countries of the Five Country Conference. As stated above, this relates to the matching of biometric information, and in the event of a match, the RPO may request immigration-related information on the person in question from those countries.

Third parties outside New Zealand requesting information must comply with section 305 of the Immigration Act 2009. If the information concerns a refugee, they must comply with section 151, which allows confidential information regarding a refugee claim to be disclosed in the following cases:

- To a person necessarily involved in the determination of the relevant refugee claim
- To an officer or employee of a Government of New Zealand department, or of a Crown agency whose function requires knowledge of the particulars of a refugee claim
- For the purposes of the maintenance of the law, including for the prevention, investigation or detection of offences in New Zealand or elsewhere
- To a representative of UNHCR.

Information concerning a refugee claim may be disclosed to other persons only if there is no serious possibility that the safety of the person would be endangered. The Tribunal may publish anonymized decisions on refugee or protection claims as long as they are published in a manner that is unlikely to disclose the identity of the person concerned.

A claimant or a refugee may allow the sharing of his or her information. This is usually authorized by signing a privacy waiver (witnessed) stating who may give or receive information about him or her and to whom.

7.5 Single Procedure

Through the Immigration Act 2009, New Zealand adopted a single procedure for considering refugee and protection claims. Prior to this Act, there was no formalized procedure for complementary protection. Claimants now make one application for international protection and this will automatically be considered under both the 1951 Convention and the complementary protection mechanisms. The RPO, or the Tribunal on appeal, first considers whether the claimant meets the criteria for refugee status before proceeding to consider whether he or she is eligible for complementary protection. Under New Zealand jurisprudence, if a claimant is recognized as a refugee, this precludes subsequent recognition as a protected person.

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 a lawyer or immigration adviser prior to making a claim and during processing.

Independent interpreters are available as needed for interactions between claimants and RPOs, as well as during the appeal procedure. Interpreters are provided and funded by the government agency with which the claimant is interacting, be it INZ, the Ministry of Justice or another department. Interpretation and translation services are included as part of a legal aid grant.

The Immigration Advisers Licensing Act, introduced in 2007, requires immigration advisers 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 practice as an immigration adviser, and stipulates a code of conduct for advisers. An oversight body, the Immigration Advisers Authority, has been established to investigate and take action on breaches of the adviser's conduct provisions, including banning persons from working as advisers. Lawyers are exempt from the provisions of this Act and their conduct is regulated by their own professional bodies.

In the case *Legal Services Agency v. Hosseini*[31] 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 have a low annual income. If the claim is considered by the Ministry of Justice not to have a reasonable prospect of success, then legal aid will be denied. This decision is made by the Ministry of Justice after receipt of an application for a grant of legal aid by the refugee claimant's lawyer, usually at the beginning of the asylum procedure. Decisions to deny legal aid may be appealed to the Legal Services Agency peer review and to the independent Legal Aid Tribunal. The decision by the Ministry of Justice on whether or not to grant legal aid is not relevant to the decision by the RPO or the Tribunal as to whether a person actually qualifies as a refugee or protected person.

Legal aid is also available in matters of cancellation of refugee status, subject to the requirements of a prospect of success and the financial circumstances test. Other immigration applications are not eligible for legal aid.

Upon receipt of a claim, RSB provides claimants with information on the process and on their obligations and entitlements. It also provides information on how to access various support services.

8.1.2 UNHCR

All refugee claimants are provided with the contact details of the UNHCR regional office in Canberra. UNHCR submissions in refugee cases and deportation are rare. A provision is made in the Immigration Act 2009 for a UNHCR representative to sit as a member of the Tribunal in refugee and protection appeals, although this provision has not been utilized since the 1990s.

IN FOCUS

QUALITY ASSURANCE

UNHCR undertakes regular reviews of first instance decisions (of RPOs) on refugee and protection claims. UNHCR selects a sample of first instance decisions and may provide written or other qualitative feedback on them. The purpose is to assist in systemic improvements in the quality of case processing and decision-making in accordance with UNHCR best practice standards. UNHCR and RSB have regular meetings to facilitate ongoing feedback and to discuss issues of mutual interest.

8.1.3 NGOs

Non-governmental organizations (NGOs) in New Zealand that work with refugees are engaged with INZ in a number of forums, providing an avenue for policy and operational consultation and feedback. Several NGOs receive government and/or philanthropic funding to provide refugee settlement services and claimant support services.

8.2 Reception Benefits

New Zealand does not operate a reception centre model for asylum. Most asylum seekers live in the community and have visas allowing them to support themselves while they go through the determination process. Those who have been placed in a low-security detention centre (such as the Mangere Refugee Resettlement Centre) for reasons unrelated to their asylum claim are not issued visas, and therefore cannot legally work. Their health care and basic needs are met by the centre and they are provided with a weekly allowance.

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.

8.2.2 Social Assistance

An asylum seeker's access to government-funded support depends on his or her immigration status in New Zealand.

[31] *Legal Services Agency v. Hosseini* (CIV 2005-404-743, NZHS, 21 February 2006).

Those asylum seekers who have a valid visa at the time they make their claim for refugee status are usually granted further temporary work, student or visitor visas while their claim is decided. If unemployed, an asylum seeker with a current visa can apply for Emergency Benefit and Temporary Additional Support, but not for other social security assistance.

Persons who claimed refugee status on arrival in New Zealand and who were denied a visa but have been released into the community are provided with a living allowance to cover food and necessities other than accommodation.

Persons who are detained in order to facilitate their removal from New Zealand, who then claim refugee status and are subsequently released into the community (usually by the courts) are not able to access social assistance payments.

8.2.3 Health Care

All asylum seekers in New Zealand are eligible to access public health and mental health services. Free health screening is provided through the Regional Public Health Services in Auckland, Wellington and Christchurch.

Claimants are encouraged to undertake free health screening at the beginning of the asylum procedure. The screening covers a range of health tests, including tests for general health and communicable diseases.

8.2.4 Education

Asylum seekers with a relevant visa may also be able to access public education or to study at tertiary institutions. Schooling for any child between five and 16 years of age is mandatory, regardless of immigration status. Child claimants are thus issued student visas allowing them to attend school.

8.2.5 Access to the Labour Market

All adult claimants may apply for a work visa while awaiting 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 and otherwise unable to support themselves.

8.2.6 Access to Integration Programmes

Once recognized, all refugees or protected persons have access to a range of settlement assistance.

8.2.7 Access to Benefits by Rejected Asylum Seekers

Rejected asylum seekers are unable to access benefits that are tied to the holding of a visa, unless or until their immigration status is regularized by other means. In some cases, based on humanitarian grounds, consideration may be given to grant rejected asylum seekers temporary work visas until such time as the barrier to departure no longer exists. This is based on a case-by-case approach, and rejected asylum seekers have no entitlement or right to apply for a visa (section 150 of the Immigration Act 2009).

Rejected claimants may have access to government funding for emergency health care services. The children of rejected asylum seekers who remain in New Zealand are able to attend public schools.

9 STATUS AND PERMITS GRANTED OUTSIDE THE ASYLUM PROCEDURE

9.1 Humanitarian Grounds

Appeals against deportation on humanitarian grounds are considered together with the refugee and protection status appeal at the Tribunal. 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 must 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 with Compliance, Risk and Intelligence Services of INZ are required to consider the individual circumstances of a person who is liable for deportation or return against New Zealand's international obligations. In addition, the Minister of Immigration may consider these factors when deciding whether or not to deport a person.

Where an appeal to the Tribunal is not available or has not been finally determined, a person who is subject to deportation or return can apply to the High Court to seek a review of a decision made by an immigration or compliance officer.

9.2 Policy Grounds (Bona Fide Migrants)

While immigration officers, including compliance officers, may issue a visa to a rejected asylum seeker, it is not possible for rejected asylum seekers to apply for a visa. Persons who have not been granted refugee status but who would otherwise qualify for a work or residence visa under immigration policy (based on qualifications, skills and work experience) may be issued a visa to remain in New Zealand by INZ, provided they meet the policy criteria, including character and health requirements.[32]

[32] Health and character requirements are described in the INZ operational manual.

9.3 Temporary Withholding of Removal and 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 generalized violence in those States. The Minister of Immigration and INZ compliance officers are guided by UNHCR return advisories and other information 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 regularized in New Zealand. The general principle is that persons not entitled to remain in New Zealand are responsible for effecting their own departure.

9.5 Temporary Protection

As noted above, temporary protection may be provided by INZ by way of long-term visas issued to a failed refugee claimant whose removal from New Zealand was stopped by obligations under CAT or ICCPR. In addition, those who came to New Zealand as part of a mass arrival and who are assessed as requiring protection will have their protection needs reconsidered after three years.

9.6 Regularization of Status over Time

There is no group-based protection procedure in place, as every case is assessed individually. 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 Regularization of Status of Stateless Persons

As noted in section 5.3.3 on stateless persons, the New Zealand Citizenship Act 1977 allows the Minister of Internal Affairs (not the Minister of Immigration) to grant citizenship to a person who is stateless. This is a discretionary power that is rarely exercised. Also, New Zealand refugee jurisprudence recognizes that stateless persons may also be refugees.

10 RETURN

Compliance Operations, which falls under Compliance, Risk and Intelligence Services of INZ, is responsible for the return and deportation 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.

UNHCR/R. Arnold/June 2014

10.2 Procedure

The New Zealand procedure for removal includes the service of a deportation liability notice to persons liable for deportation, and/or the service of a deportation order to compel deportation. Humanitarian circumstances and circumstances relevant to New Zealand's international and human rights obligations may be raised by the client with a compliance officer, who will take such concerns into account when considering whether to cancel the deportation order. Deportation liability may be appealed by some persons on the facts and/or on humanitarian grounds.

10.3 Freedom of Movement and 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 person's cooperation. 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

Asylum seekers who are granted refugee or protection status in New Zealand are eligible to apply for permanent residence and citizenship after five years of residence. Refugees and protected persons have access to the same government-funded social services as other permanent residents and New Zealand citizens.

INZ has developed a series of DVDs, which are also available online, to assist all migrants in settling in New Zealand. *Settling into New Zealand* is specifically aimed at helping refugees to settle in the country. This DVD includes information on employment, benefits, housing and health to assist refugees in accessing the services and information they need to support themselves.

In 2012, the Government approved the New Zealand Refugee Resettlement Strategy, a whole-of-government approach to delivering improved refugee resettlement outcomes so that refugees more quickly achieve self-sufficiency, social integration and independence. It is being implemented progressively from 2013/14 and applies first to quota refugees arriving in New Zealand after 1 July 2013.

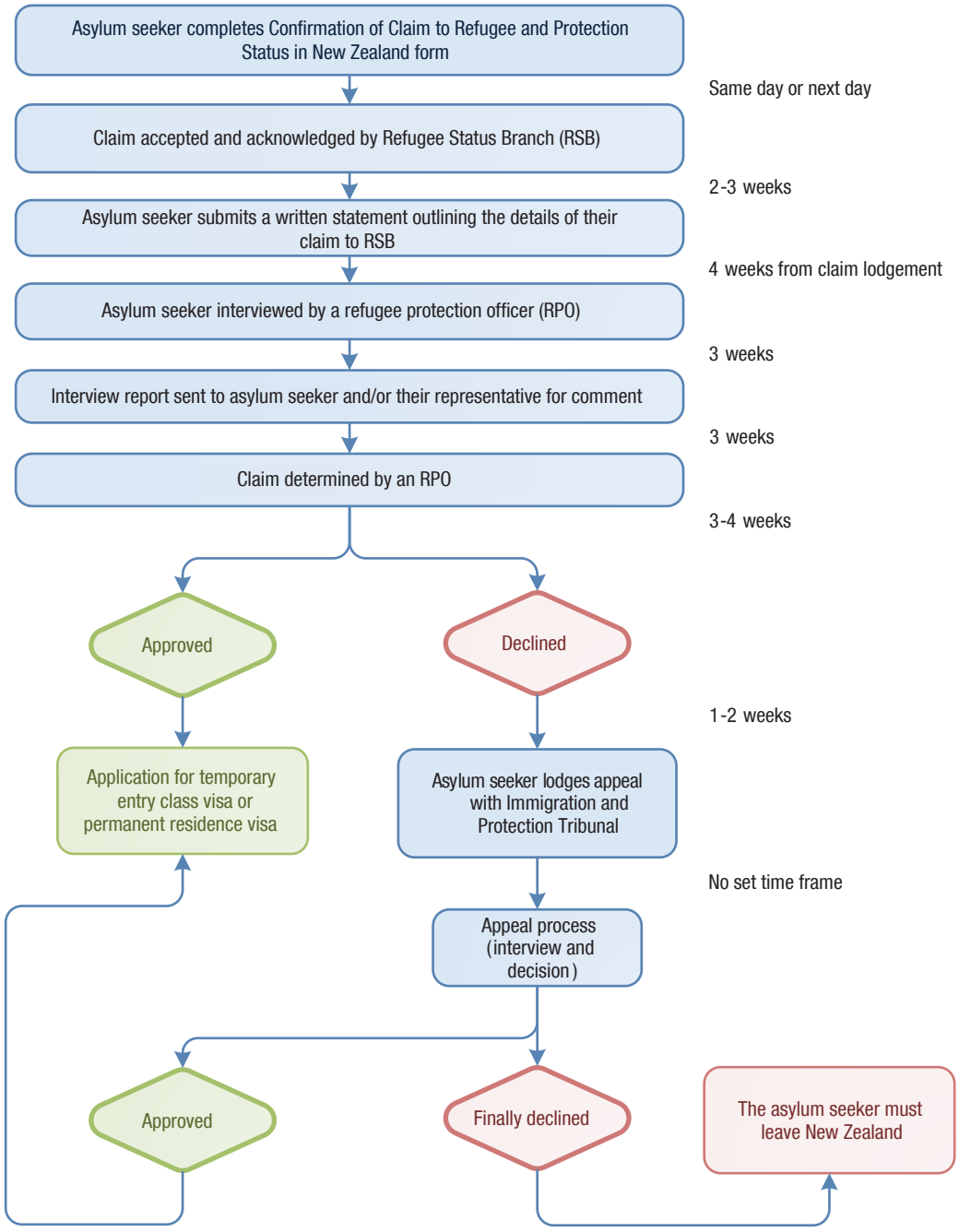
The overarching objective of the Refugee Resettlement Strategy is for refugees to be participating fully in society and integrated socially and economically as soon as possible so that they are living independently, undertaking the same responsibilities and exercising the same rights as other New Zealanders and have a strong sense of belonging to their own community and to New Zealand.

This overall objective is supported by the following five integration goals:

- Self-sufficiency: all working-age refugees are employed in paid work or are supported by a family member in paid work.
- Participation: refugees actively participate in New Zealand life and have a strong sense of belonging to New Zealand.
- Health and well-being: refugees and their families enjoy healthy, safe and independent lives.
- Education: refugees' English language skills enable them to participate in education and achieve qualifications, and support them in participating in daily life.
- Housing: refugees live independently of government housing assistance in homes that are safe, secure, healthy and affordable.

12 ANNEX

12.1 Asylum Procedure Flow Chart



12.2 Additional Statistical Information

NZL. Fig. 4 | Asylum Applications from Top 10 Countries of Origin in 2012, 2013 and 2014

	2012		2013		2014	
1	Iran	38	Sri Lanka	41	Fiji	29
2	China	33	Fiji	37	Sri Lanka	29
3	Sri Lanka	25	Iran	22	Pakistan	24
4	Pakistan	24	China	21	China	23
5	Fiji	21	Pakistan	18	India	18
6	Saudi Arabia	20	Iraq	15	Syria	12
7	Syria	13	Turkey	12	Iran	11
8	Czech Republic	12	Syria	10	Iraq	11
9	Afghanistan	10	South Africa	9	Afghanistan	9
10	India	9	Indonesia	8	Turkey	9

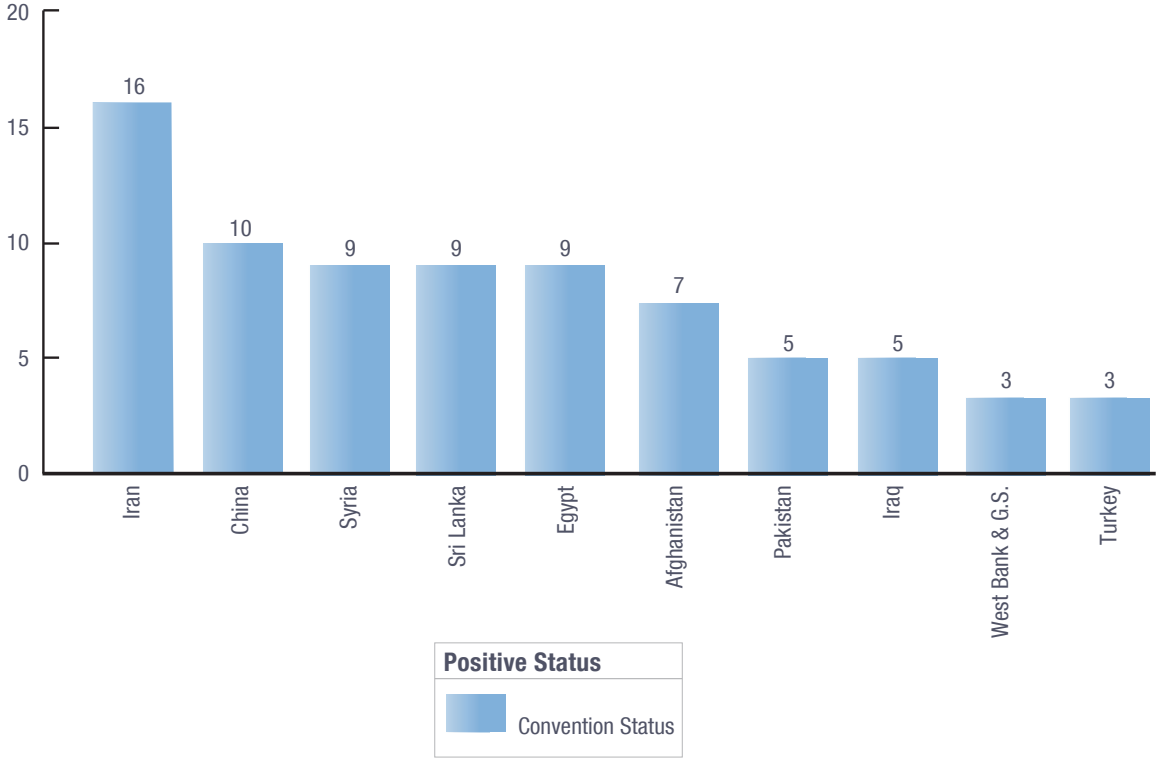
NZL. Fig. 5 | Decisions Taken at the First Instance in 2012, 2013 and 2014

	Convention Status		Humanitarian Status and Subsidiary/Complementary Protection		Rejections		Withdrawn, Closed and Abandoned Cases		
Year	Number	%	Number	%	Number	%	Number	%	Grand Total
2012	90	28%	1	0%	235	72%	0	0%	326
2013	79	26%	0	0%	230	74%	0	0%	309
2014	73	25%	0	0%	218	75%	0	0%	291

NZL. Fig. 6.a Positive First-Instance Decisions, Top 10 Countries of Origin in 2012[33]

	Country of Origin	Total Positive	Total Decisions	Rate
1	Iran	16	38	42.1%
2	China	10	32	31.3%
3	Syria	9	12	75.0%
4	Sri Lanka	9	19	47.4%
5	Egypt	9	18	50.0%
6	Afghanistan	7	7	100.0%
7	Pakistan	5	30	16.7%
8	Iraq	5	8	62.5%
9	West Bank and Gaza Strip	3	3	100.0%
10	Turkey	3	7	42.9%

Total Positive Decisions by Status from Top 10 Countries of Origin, 2012



[33] Excluding withdrawn, closed and abandoned claims.

NZL. Fig. 6.b

Positive First-Instance Decisions, Top 10 Countries of Origin in 2013[34]

	Country of Origin	Total Positive	Total Decisions	Rate
1	Saudi Arabia	16	18	88.9%
2	Iran	11	31	35.5%
3	China	8	19	42.1%
4	Turkey	6	7	85.7%
5	Syria	6	7	85.7%
6	Somalia	6	8	75.0%
7	Sri Lanka	5	37	13.5%
8	Pakistan	4	17	23.5%
9	Iraq	3	10	30.0%
10	Afghanistan	3	9	33.3%

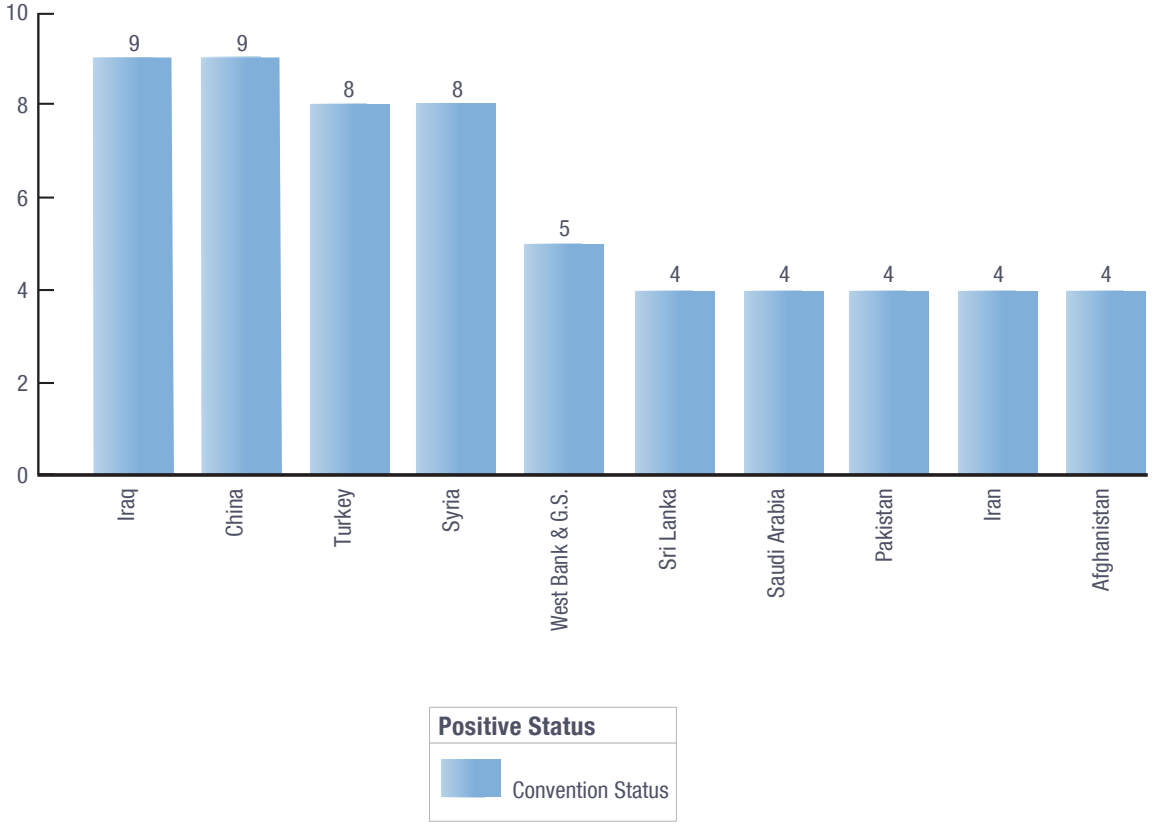
Total Positive Decisions by Status from Top 10 Countries of Origin, 2013

[34] Excluding withdrawn, closed and abandoned claims.

NZL. Fig. 6.c Positive First-Instance Decisions, Top 10 Countries of Origin in 2014[35]

	Country of Origin	Total Positive	Total Decisions	Rate
1	Iraq	9	14	64.3%
2	China	9	25	36.0%
3	Turkey	8	17	47.1%
4	Syria	8	9	88.9%
5	West Bank and Gaza Strip	5	9	55.6%
6	Sri Lanka	4	40	10.0%
7	Saudi Arabia	4	5	80.0%
8	Pakistan	4	23	17.4%
9	Iran	4	11	36.4%
10	Afghanistan	4	10	40.0%.

Total Positive Decisions by Status from Top 10 Countries of Origin, 2014

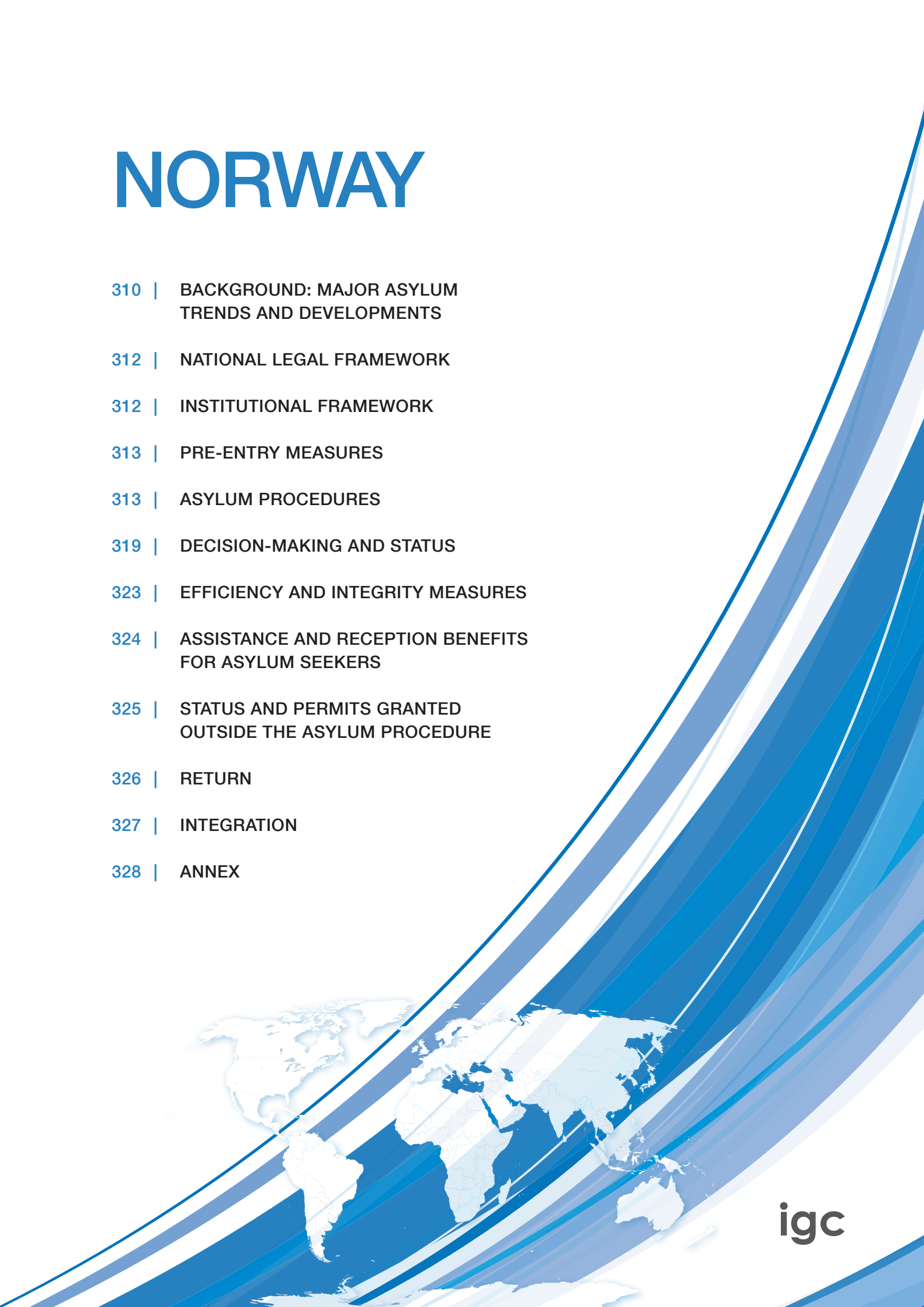


[35] Excluding withdrawn, closed and abandoned claims.

Eight year old Mariam gets ready to attend classes at a school in Niamey, Niger. She and her family had to flee the fighting in northern Mali.

UNHCR/H. Caux/October 2012

NORWAY



igc

1 BACKGROUND: MAJOR ASYLUM TRENDS AND DEVELOPMENTS

Asylum Applications

In the early 1980s, asylum applications made in Norway were in the hundreds per year. The numbers started to increase in 1986, reaching a first peak of 12,876 in 1993. Numbers decreased significantly from 1994 to 1997, and increased again in the late 1990s, reaching a second peak of nearly 17,500 in 2001. The intake of asylum applications began to decline in 2003, dropping to a low of some 5,300 in 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 and in 2009, the figure was 17,226. In 2010, there was a sharp decrease in the number of asylum seekers, with 10,064 applicants. In 2011, the numbers decreased even further to 9,053 persons. In 2012, a total of 9,785 persons applied for protection in Norway, while in 2013, 11,983 applied for protection, equal to 22 per cent more than in the previous year. In 2014, numbers remained fairly stable with 11,480 applications.

Important Reforms

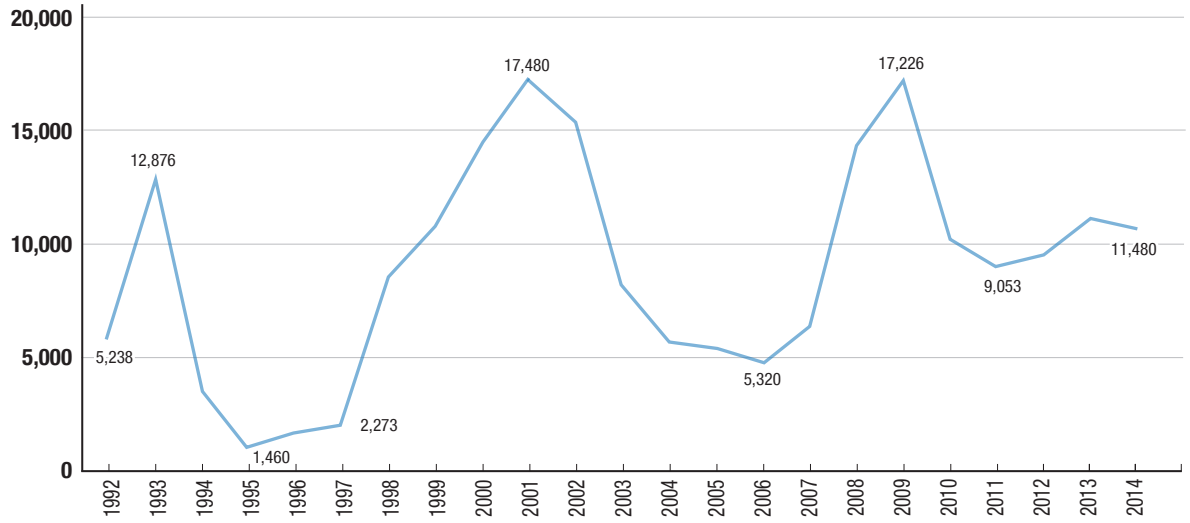
The Act Concerning the Entry of Foreign Nationals into the Kingdom of Norway and their Presence in the Realm (Immigration Act of 1988) replaced the Immigration Act of 1956 and established the Norwegian Directorate of Immigration (UDI)[1] on 1 January 1988. This new body represented a reorganization of responsibility for immigration policy and immigration-related activities.

Prior to the creation of UDI, responsibility for immigration policy had been spread across several ministries. Since then, UDI has grown considerably, both in the range of its responsibilities and in its level of human resources. It 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.

Further changes included the transfer of the Migration Department from the Ministry of Labour and Social Inclusion to the Ministry of Justice and Public Security and the Police on 1 January 2010.[2] Since June 2012, UDI has been under the authority of the Ministry of Justice and Public Security.

The Norwegian Immigration Appeals Board (UNE),[3] an independent, quasi-judicial body, was established in 2001 to hear appeals against decisions made by UDI. Prior to the creation of UNE, the Ministry of Justice and Public Security was responsible for hearing appeals.

NOR. Fig. 1 **Total Asylum Applications by Year, 1992–2014**



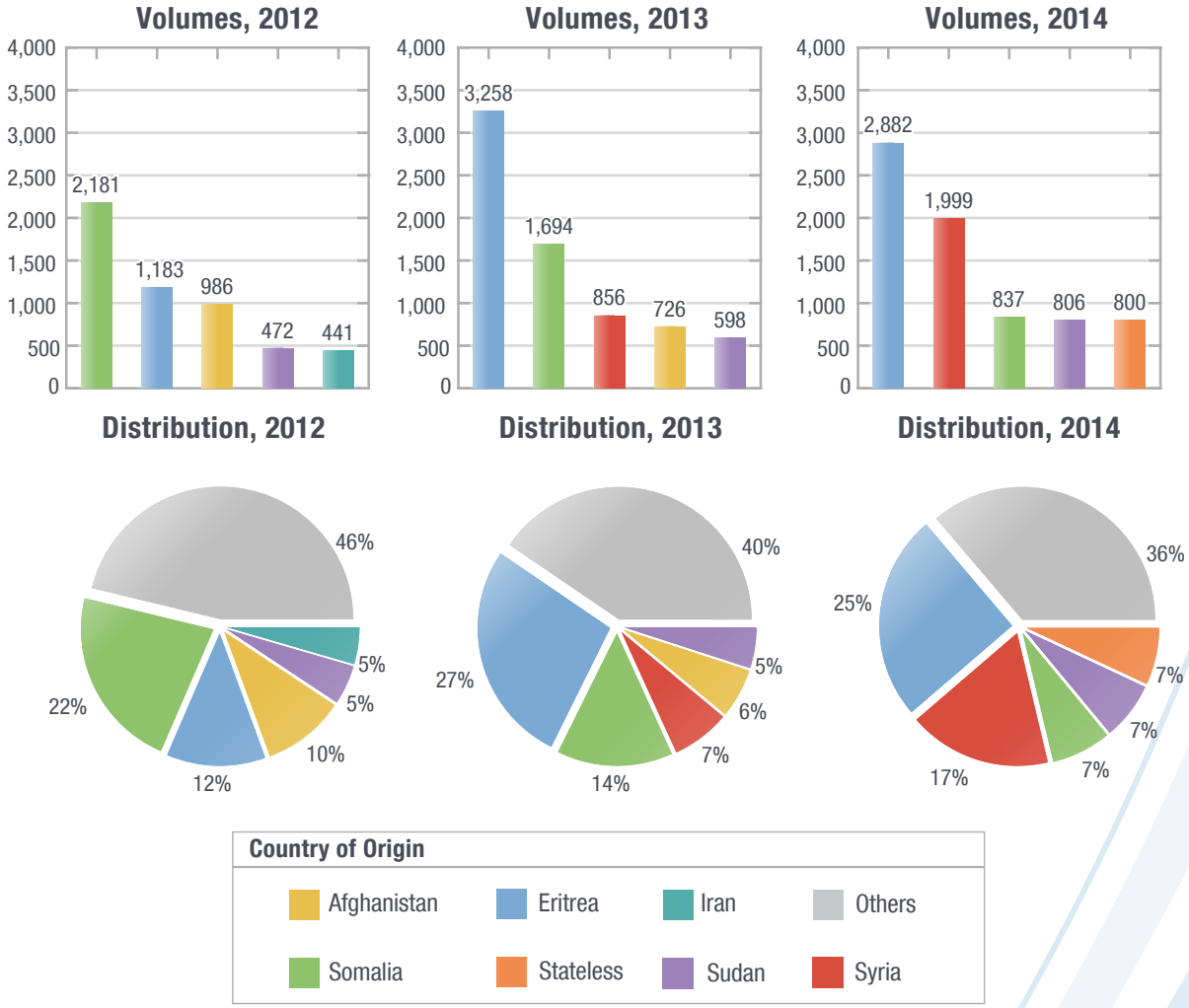
Top Nationalities

In the 1990s, the greatest number of applicants came from the former Yugoslavia, Somalia, Sri Lanka, Iran and Iraq. Since 2000, the countries of origin of the greatest number of applicants have included the former Yugoslavia, Iraq, Eritrea, Afghanistan, Somalia and Russia. The top three countries of origin in 2011 and 2012 were Somalia, Eritrea and Afghanistan. In 2013 and 2014, Syria replaced Afghanistan, while Eritrea and Somalia remained in the top three.

1 The acronym is based on the Norwegian name *Utlendingsdirektoratet*.
2 The Ministry of Labour and Social Inclusion was in practice responsible for the fields of migration and inclusion until 20 October 2009.
3 The acronym is based on the Norwegian name *Utlendingsnemnda*.

NOR. Fig. 2

Asylum Applications Received from Top Five Countries of Origin in 2012, 2013 and 2014



The Immigration Act of 1988 was replaced by the Immigration Act of 15 May 2008. This Act, as the previous ones, regulates the entry of foreign nationals into Norway and their right to residence and work. The Act and the corresponding Immigration Regulation came into force on 1 January 2010. There were no significant changes to the Act or the Regulation in 2010 or 2011.

The new Act establishes that the term "refugee" includes persons who meet the criteria of article 1A of the 1951 Convention relating to the Status of Refugees, as well as other applicants covered by the non-refoulement provisions of any international convention to which Norway is a party. The most important of these is the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). 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. This also means that more persons have the right to family reunification without the requirement of future income, whereas in the Immigration Act of 1988 this applied only to those falling within the definition of the 1951 Convention. The revised Act also strengthens refugee children's right to family reunification.

The new Act includes 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 formalizing the requirement to cooperate with the United Nations High Commissioner for Refugees (UNHCR). The normative weight of UNHCR recommendations has also been emphasized in the Regulations accompanying the Act.

The revised Immigration Act includes a new provision

concerning pro forma marriages, and the Government has presented several new initiatives to combat forced marriages. In addition, changes regarding removal and expulsion have enhanced the possibility for authorities to react to breaches of the Immigration Act.[4] According to the new Immigration 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.

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 2008 (and the Immigration Regulations based on the Act). The 1951 Convention (section 16, paragraph 1) and the European Convention on Human Rights (section 3) are incorporated in the Immigration Act by reference. An asylum seeker who does not meet the criteria for asylum may be granted a residence permit on humanitarian grounds.

According to section 3 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 Recent Reforms

Norway introduced increased penalties for expelled foreigners with an entry ban who violate the prohibition on entry. The new provisions, which entered into force in January 2014, increase the penalty to fine or imprisonment for a term not exceeding two years (normally imprisonment for one year or more).

In addition, Norway promulgated new legislation regarding immigration cases that involve considerations related to national security or foreign policy. The provisions entered into force on 1 January 2014, and several changes have been made to the Immigration Act. The changes were deemed necessary in order to ensure harmonization with European Convention on Human Rights requirements. The scope of the new provisions is to ensure compliance with the contradictory principle and the necessity of a contradictory debate in cases involving classified information under the Act Relating to Protective Security Services (the Security Act) and the Norwegian Protection Instruction, as established by European Court of Human Rights case-law standards.

Among other things, the new legislation increases the possibility of expelling foreign nationals who represent a threat to national security, while respecting the requirements of due process. Under certain circumstances, Norwegian immigration authorities can now present classified material in court.

Upon reaching an agreement on asylum and migration issues, the Government of Norway proposed and currently holds public consultations to receive written comments on several legislative proposals. One legislative proposal establishes that the age limit for family reunification at 24 years (for persons outside the European Economic Area). Furthermore, persons (sponsors) applying for a family formation permit in Norway will have to demonstrate that they fulfil the income requirement of NOK 300,000 (about EUR 35,000).

The Ministry of Justice and Public Security has also made amendments to the Norwegian Immigration Regulations by introducing a new temporary provision (sections 8 to 13) that will apply to asylum seeking children who have been in Norway for at least three years. This provision will allow the asylum seeking children to stay in Norway with their families, even if the family's claim has been rejected or has yet to be processed. Once all the cases involving asylum seeking children (who have been in Norway for at least three years) have been decided, the temporary provision will be repealed and replaced by a permanent provision. The public consultation regarding the introduction of permanent provisions in the Immigration Regulations is now closed, and the new permanent rules are currently under review.

3 INSTITUTIONAL FRAMEWORK

3.1 Principal Institutions

Ministry of Justice and Public Security

The Ministry of Justice and Public Security has overall responsibility for refugee and immigration policies. Within the Ministry, the Migration Department is responsible for formulating and coordinating legislation and policies on immigration, asylum seekers and refugees. The Ministry supervises UDI and UNE through acts, regulations, budgets and letters of budgetary allocation. However, the Ministry may not instruct UNE on interpretations of the law, the exercise of discretion or decisions on individual cases.

Norwegian Directorate of Immigration (UDI)

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. UDI also gives professional input into the development of policies and regulations. In addition, UDI is responsible for running the different reception centres for asylum seekers.

[4] A distinction is made between an expulsion decision and a removal decision. Expulsion entails that a foreign national must leave Norway and may re-enter only if special conditions are met. The person will normally also be entered into the Schengen Information System. 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 the Schengen Information System.

Norwegian Immigration Appeals Board (UNE)

UNE is an independent, quasi-judicial appeals board that handles appeals of rejections by UDI pursuant to the Immigration Act. A special body within UNE, the Grand Board, reviews cases on issues of principle, cases with wide-ranging economic and social consequences, as well as cases in which UNE'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 Public Security.

Ministry of Children, Equality and Social Inclusion

The Ministry of Children, Equality and Social Inclusion is responsible for integration policies. It supervises the Directorate of Integration and Diversity.

The Directorate for Children, Youth and Family Affairs oversees the Child Welfare Service, which is responsible for accommodating unaccompanied minors under 15 years of age who are seeking asylum. UDI is responsible for those between 15 and 18 years of age.

Directorate of Integration and Diversity

The Directorate of Integration and Diversity was established on 1 January 2006 to act as a centre of excellence and a driving force for integration and diversity. It cooperates with immigrant organizations and groups, municipalities, government agencies and the private sector. It provides advice and implements government policy. The goal of the Directorate of Integration and Diversity is to contribute to equality in living conditions and to diversity through employment, integration and participation.

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

UDI is the competent authority for issuing visas. In most cases, however, this authority has been delegated to the Norwegian diplomatic missions. Where there is no Norwegian diplomatic presence in a host country, the authority for issuing visas may be delegated to the diplomatic mission of another Schengen Area Member State. If a Norwegian 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 UNE.

4.2 Carrier Sanctions

Carrier sanctions are applicable to airplanes and ships when crossing the Schengen border. 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 or in-country at a police station. Applicants at these locations are sent to the National Police Immigration Service in Oslo for registration. UDI conducts a short arrival interview regarding the reasons for seeking asylum and schedules the asylum interview. Subsequently, applicants are accommodated at a transit centre.

Persons who are 18 years of age or older 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.

Since January 2014, technical solutions were put in place to facilitate video and audio tape recording upon registration with the National Police Immigration Service and during the asylum interviews.

Access to Information

The Police will inform the applicant about his or her rights and duties, the asylum process (including the Dublin III procedure) and his or her obligation to cooperate with the Norwegian immigration authorities during the procedure.

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 languages regarding the normal asylum procedure and the accelerated procedures. UDI has also produced three informational videos in up to 25 languages: one on the general asylum procedure, one on unaccompanied minors and another on the accelerated 48-hour procedure. Furthermore, leaflets on the Dublin procedure are available in 13 languages, while those on unaccompanied minors seeking asylum have been produced in 14 languages, and leaflets on the general asylum procedure are available in 25 languages. The Norwegian Organisation for Asylum Seekers (NOAS), a non-governmental organization (NGO), is responsible for distributing this information on behalf of UDI. NOAS also informs all applicants that forced marriage is illegal in Norway, while asylum seekers from certain nationalities are informed that female genital mutilation (FGM) is illegal and punishable under Norwegian law.

Representatives from NOAS organize 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 they may have, and prepare them for the interview with UDI.

Representatives from IOM are also present at the transit centre and offer information on assisted return to rejected asylum seekers who wish to return voluntarily to the country of origin.

5.1.1 Outside the Country

Resettlement

Norway has in place an annual resettlement programme. The Ministry of Justice and Public Security allocates the annual quota taking into account the advice of UNHCR and government agencies, notably the Ministry of Foreign Affairs, UDI, the Ministry of Children, Equality and Social Inclusion and the Directorate of Integration and Diversity. UDI is responsible for selecting refugees for resettlement. The decision is not subject to appeal. The Directorate of Integration and Diversity is responsible for the placement and integration of resettled refugees.

The size of the quota has been 1,200 places during the last few years. In 2014, the resettlement quota was increased by 500 places as a direct result of the crisis in Syria. The quota will be further increased in 2015 with 1,000 places for Syrian refugees. Norway will receive in total 2,120 resettlement refugees in 2015.

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. Prospects for other durable solutions are also considered in both the short-term and the long-term perspective.
- Norway gives priority to women-at-risk cases. A substantial proportion of available resettlement places is reserved for women and girls.
- Persons of known criminal behaviour or heavy drug users will, as a rule, not be offered resettlement in Norway.
- Persons to whom the exclusion clauses of the 1951 Convention apply will, as a rule, not be offered resettlement in Norway.
- Norway will not accept persons who may constitute a threat to national security.
- The capacity of settlement services to cater to resettled individuals with special needs.

Resettlement allocations also include sub-quotas. Norway has 20 places available each year allocated to medical cases. It applies exactly the same criteria as those outlined under section 4.1.1 in the *UNHCR Resettlement Handbook*[5] when assessing the severity of the health condition and possible improvement after resettlement.

The quota for cases with emergency priority has varied between 75 and 80 places between 2008 and 2014. Such cases are to be processed within 48 hours. The sub-quota for unallocated places has contained 175 places since 2009.

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 in Oslo. When an asylum application is submitted to the National Police Immigration Service, the application is registered and a short interview with the applicant is conducted. 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, and the travel route to Norway. They will also ask about the applicant's 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 the States parties to the Dublin III Regulation.

[5] UNHCR, *UNHCR Resettlement Handbook* (Geneva, 2011). Available at www.unhcr.org/4a2ccf4c6.html.

5.1.3 Inside the Territory

Responsibility for Processing the Claim

The Dublin System

Application and Procedure

Norway applies Regulation (EU) No 604/2013 of the European Parliament and of the Council[6] in cases where applicants for international protection first submitted their application or were granted a residence permit or a Schengen visa by a State party to the Dublin III Regulation.

When an application for international protection is submitted to the National Police Immigration Service, the Service registers the application and takes the applicant's fingerprints, which are registered and checked in Eurodac and the Visa Information System. The National Police Immigration Service also obtains other information regarding any ties the applicant may have to another State party to the Dublin III Regulation.

The case is then sent to UDI, which decides whether Norway or another State is responsible for processing the application for international protection, pursuant to the Dublin III Regulation and national legislation.

If UDI determines that another State is responsible for the application, and the exceptions in national law are not applicable, it rejects the application for international protection 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 the notification, and may submit a petition for review with a suspensive effect within 48 hours of the decision being served. The National Police Immigration Service gives the applicant a laissez-passer travel document and arranges for the applicant to be transferred to the responsible State.

Freedom of Movement and Detention

Applicants for international protection whose applications fall under the Dublin III Regulation may, as a rule, decide whether they wish to stay at an asylum reception centre or at a private address while 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 is found to have tampered with his or her fingerprints. The detention period cannot exceed 12 weeks, except on special grounds.
- There is a significant risk of absconding and detention is necessary in order to secure transfer procedures in accordance with the Dublin III Regulation. In such cases, the detention period may last up to four weeks. Detention may be extended only twice, which means a maximum period of 12 weeks' detention.

As a rule, persons detained on these grounds are placed in an immigrant detention centre.

Suspension of Dublin Transfers

UDI receives petitions for a suspensive effect and notifies UNE, who processes the petition. The main rule for Dublin cases is that a suspensive effect is not granted. A petition for a suspensive effect may be granted by UNE in exceptional cases, particularly when the applicant is able to show that he or she is unfit for travel.

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.

Currently, UDI does not transfer applicants to Greece under the Dublin III Regulation, and these cases are being processed in Norway.

Review/Appeal

When UDI has rejected an application for international protection pursuant to the Dublin III Regulation, the applicant has the right to appeal within three weeks of the decision. UDI prepares the appeal before it is forwarded to UNE.

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 48-hour procedure or the three-week procedure).

All applications, with the exception of those that are processed under the accelerated procedures, are then considered by the Dublin unit of UDI. 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 one 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, UDI considers information given to the Police during an extended registration process.

[6] Regulation (EU) No 604/2013 of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (Dublin III Regulation).

Accelerated Procedures

48-Hour Procedure

On 1 January 2004, Norway introduced the 48-hour procedure.

UDI has developed a list of countries[7] on which it has sufficient information regarding 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.

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, 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: Armenia, Bangladesh, Belarus, India, Kosovo (only minorities), Nepal, Russia (ethnic Russians) and Ukraine. These are countries from which UDI rejects a high number of applications. 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 UNE. A petition for a suspensive effect may be granted, except where the claim for protection was considered by UDI to be manifestly unfounded. When a case is processed within the 48-hour procedure, the asylum seeker must submit a petition for a suspensive effect within three hours of notification of the UDI decision.

Cases processed in the three-week procedure are given priority in appeal.

Normal Procedure

After the asylum seeker has been registered with the Police and asked about the reasons for seeking asylum, he or she is sent to a transit reception centre.

Interviews are held on UDI premises or at the transit reception centre. Unaccompanied minors seeking asylum can be interviewed at a care centre for children. The interviews are conducted 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 transferred to a reception centre while the case is being processed.

Children have the right to be heard. Usually, the caseworker conducts a short interview with the child in the presence of one or both parents. Children may also be heard without parental consent in order to assess whether they have an independent/individual protection claim.

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 asylum interview and from the registration form completed with the Police, as well as the initial information given to the Police regarding the asylum seeker's reasons for seeking asylum
- Any information received through language tests, age examinations and other checks (such as enquiries made to diplomatic missions abroad)
- Any other information provided by an organization, the applicant or a representative of the applicant (including a legal representative, if appointed).

Review/Appeal of Asylum Decisions

Norwegian Immigration Appeals Board (UNE)

An asylum seeker whose claim is rejected by UDI is assigned a legal representative and given the option of appealing the decision before 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 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 UNE. The appeal has a suspensive effect unless the case was found by UDI to be manifestly unfounded.

[7] As of April 2015, the list includes the following countries: Albania, Argentina, Australia, Austria, Barbados, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Chile, Costa Rica, Croatia, the Czech Republic, Denmark, Estonia, the Faroe Islands, the Falkland Islands, Finland, France, the former Yugoslav Republic of Macedonia, Georgia, Germany, Gibraltar, Greece, Greenland, the Holy See, Hungary, Iceland, Ireland, Israel, Italy, Japan, Kosovar Albanians from Kosovo, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Mongolia, Montenegro, the Netherlands, New Zealand, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, the United Kingdom and the United States. Applications from nationals of Cyprus belonging to minority groups are also considered according to this procedure.

Appeals may be decided either according to a paper-based process (that is, without a hearing) or following a hearing held with the appellant and his or her legal representative, or following an ad hoc hearing without the appellant's presence.

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.

Grand Board

A Grand Board located within UNE may review cases that involve issues of principle, cases with wide-ranging economic and social consequences, and cases in which 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 106(1) of the Immigration Act provides that an asylum seeker may be detained by the 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 in a regular prison. According to section 106 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 asylum 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 (section 105 of the Immigration Act).

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. 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, UNE is responsible for processing the claim. However, if the applicant has been in the country of origin or outside Norway before reapplying, UDI will process the application, and the applicant has the right to appeal UDI's decision to UNE.

5.2 Safe Country Concepts

Apart from implementing the Dublin III Regulation and applying accelerated procedures for asylum claims from specific countries of origin,[8] Norway does not have in place any safe country policies.

5.3 Special Procedures

5.3.1 Unaccompanied Minors

A special unit within UDI handles applications made by unaccompanied minors seeking asylum. The caseworkers in this unit are specially trained to interview these minors and to assess their applications.

There is no minimum age for a person to seek asylum in Norway. Those claiming to be unaccompanied minors seeking asylum are registered by the Police and placed under the care of the State Child Welfare programme if they are under 15 years of age. Minors of that age group are accommodated in a centre run by specially trained staff. Those between 15 and 18 years of age are offered accommodation in separate reception centres while the asylum claim is processed.

Upon arrival, 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.

In the Immigration Regulations (section 8-2, second paragraph), there is a new regulation that states that asylum seeking children, and adults with children, who do not have their appeal processed by UNE within 15 months after UNE received the case may be granted a residence permit under section 38 of the Immigration Act (residence permit on the grounds of strong humanitarian considerations or a particular connection with Norway). This regulation underlines UNE's obligation to process asylum cases involving children within a reasonable time frame.

Age Assessment

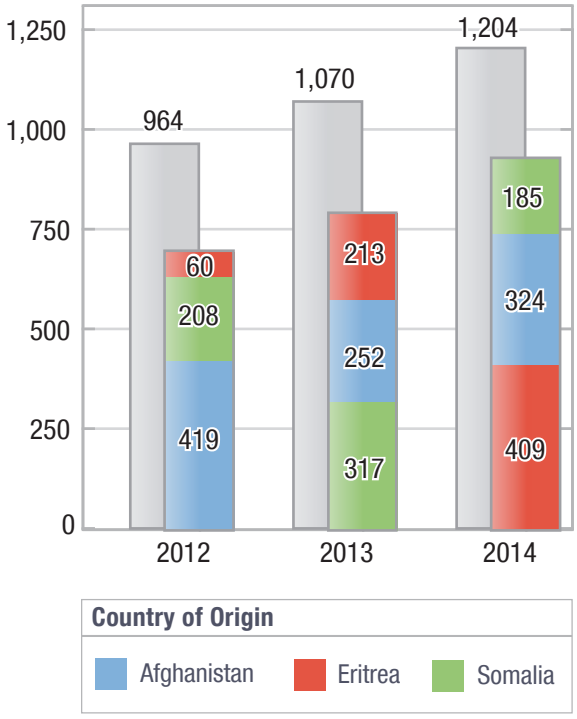
An age assessment in the form of dental and wrist X-rays is carried out if there is doubt about the stated age of a minor. Staff at asylum reception centres, guardians, lawyers and teachers may also be asked to provide an opinion on the age of the minor.

[8] See the section on accelerated procedures for a list of the countries of origin subject to an accelerated procedure.

The 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 arrival interview, and the regular interview is not conducted until the results of the age assessment are clear.

NOR. Fig. 3 Asylum Applications by Unaccompanied Minors in 2012, 2013 and 2014

	2012	2013	2014
Total Asylum Applications	9,785	11,983	11,480
Applications by Unaccompanied Minors	964	1,070	1,204
Percentage	10%	9%	10%



5.3.2 Collective Protection in a Mass Flight Situation

Collective protection may be granted in cases of a 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 (collective) 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 granting of the permit remain applicable.

Any application for asylum made by a person subsequently granted a permit under collective 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 application of 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 UDI, which may also delegate these tasks to the Police.

5.3.3 Temporary Protection

Under the single asylum procedure, UDI may grant temporary protection to persons who do not meet the criteria for Convention status or protection against refoulement 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 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 not to 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 by UDI a residence permit in Norway based on humanitarian grounds.[9]

[9] 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 UNE (see the section on status and permits granted outside the asylum procedure).

5.3.5 Gender-Based Claims

In June 2012, the Ministry of Justice and Public Security issued instructions for UDI in the handling of female genital mutilation (FGM) cases. According to the instructions, UDI has a duty to assess the risk of FGM – even if the risk of FGM has not been claimed by the applicant or her parents – if there are general or individual factors indicating that there may be a risk.

Also in July 2012, the Ministry of Justice and Public Security instructed UDI in the interpretation of the 1951 Convention in cases involving lesbian, gay, bisexual, transgender and intersex (LGBTI) persons. The instruction is in line with the Supreme Court decision from March 2012 (see In Focus).

The Ministry updated the guidelines on gender-related persecution in June 2012.

In April 2013, the Ministry of Justice and Public Security instructed UDI to develop and implement measures to improve the situation for vulnerable asylum seekers, in cooperation with the Health Directorate. LGBTI and victims of sexual violence are specifically included in the definition of vulnerable asylum seekers. The measures include information provisions, early identification, exchange of information and guidelines on how to support the processing of vulnerable asylum seekers.

In January 2013, UDI published guidelines for asylum interviews in FGM cases and LGBTI cases.

UDI is currently developing guidelines for handling cases where asylum seekers are exposed to forced marriage or violence in close relations.

UDI will continue to arrange training for caseworkers in 2015 on specific vulnerable groups, including LGBTI, forced marriage and FGM.

UDI has recently arranged training for asylum lawyers on communication with vulnerable asylum seekers through the use of interpreters. UDI will consider whether such training should be mandatory for lawyers who participate in UDI's free legal services arrangement for asylum seekers.

IN FOCUS

RECENT COURT DECISION

In March 2012, there was a decision by the Supreme Court concerning a gay man from Iraq. The Court concluded that refugee status could not be refused on the grounds that an applicant may give up his gay identity and thereby avoid persecution. The assessment must consider how the applicant in actual fact will behave upon return. Further, the Court found that applicants who are likely to conceal their sexual orientation on return meet the criteria of the 1951 Convention if a central reason for the concealment is fear of persecution. The decision is available in Norwegian at www.udiregelverk.no/no/rettskilder/hoyesterettsavgjorelser/hr-2012-00248-a/.

6 DECISION-MAKING AND STATUS

6.1 Inclusion Criteria

Under the single procedure, UDI first considers whether a person meets criteria for Convention refugee status, then for protection against refoulement, and finally for a permit on humanitarian grounds.[10]

6.1.1 Convention Refugee

According to section 28a of the Immigration Act, 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.

6.1.2 Protection against Refoulement

According to section 28b of the new Immigration Act, all individuals entitled to international protection following the provisions of any international agreement to which Norway is a party will be covered by the definition of "refugee" and will be granted all corresponding rights and benefits.

In other words, even if an applicant does not meet the inclusion criteria for Convention refugee status, he or she will be granted a residence permit on protection grounds and will be recognized as a refugee if there is 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.

[10] As described in section 6.3, 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 or determination of a manifestly unfounded claim.

6.1.3 Humanitarian Status

Section 38 of the Immigration Act states that, if a person does not meet the criteria for Convention refugee status or other protection, decision-makers must determine whether the asylum seeker may be granted a permit on humanitarian grounds. Examples of circumstances that may lead to a humanitarian status are: unaccompanied minors without proper care if returned, the existence of compelling health circumstances, social or humanitarian circumstances relating to the return situation and victims of human trafficking.

In cases concerning children, fundamental consideration is given to the best interests of the child. Children may be granted a residence permit even if the situation is not so serious that a residence permit would have been granted to an adult.

According to the Immigration Act, importance may be attached to considerations relating to immigration control when assessing whether or not to grant a permit. These considerations include:

- Possible consequences for the number of applications based on similar grounds
- Social consequences
- The need for control
- Respect for the other provisions of the law.

When there is doubt regarding the identity of the foreign national, when the need is temporary, or when other particular grounds so dictate, it may be determined that:

- The permit shall not provide the basis for a permanent residence permit.
- The permit shall not provide the basis for residence permits pursuant to chapter 6 of the Act for the foreign national's family members.
- The permit may not be renewed.
- The validity period of the permit shall be shorter than one year.

6.2 The Decision

The UDI caseworker, after having considered all the 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, UDI sends the decision to the Police, who will inform the applicant in writing. Negative decisions are reasoned.

IN FOCUS

QUALITY ASSURANCE AT UDI

Senior caseworkers supervise almost 100 per cent of all draft decisions, and annual quality checks of each caseworker are carried out by the Head of Unit. Quality checks of specific samples are also performed. Academics may be involved in this work.

6.3 Types of Decisions, Statuses and Benefits Granted

UDI may make the following types of decisions:

- Grant Convention refugee status.
- Grant refugee status – protection against refoulement.
- Grant humanitarian status.
- Grant a limited residence permit to unaccompanied asylum-seeking minors 16 years of age or older, due to the lack of proper care if returned.
- Grant 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.
- Grant a temporary permit for medical reasons or on humanitarian grounds in the absence of an established identity.
- Reject a claim that is not manifestly unfounded.
- Reject a manifestly unfounded claim.

Benefits

Beneficiaries of refugee status are entitled to the following:

- A provisional residence permit, usually valid for three years, 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 18 years of age) and/or children under 18 years of age without a spouse or cohabitant. If the family was established before the refugee applied for asylum in Norway, the ability to provide economic support for his or her family is not a criterion.
- Social benefits: refugees are entitled to health care, child benefits and education.

Beneficiaries of collective protection are entitled to the following:

- A provisional residence permit
- Right to work
- Some social benefits
- Right to education.

Beneficiaries of suspension of removal have the right to work during the period of suspension if the conditions for this are fulfilled.

6.4 Exclusion

A provision on exclusion is incorporated into section 31 of the Immigration Act. Exclusion may be applied to both refugees and beneficiaries of subsidiary protection. Exclusion does not, as such, apply to the leave to stay on humanitarian grounds, but in these cases the excludable act will be weighed against the humanitarian considerations. The grounds for exclusion are those laid down in article 1F of the 1951 Convention.

In addition to the exclusion grounds prescribed in the 1951 Convention, exclusion may also apply to a person eligible for protection status based on the non-refoulement obligations under article 3 of the European Convention on Human Rights (subsidiary protection), if there are grounds to believe that the person constitutes a threat to national security.

Excluded persons may be granted a six-month residence permit if they cannot be returned to the country of origin. This permit does not allow for travel documents, family reunification or permanent status.

UDI considers article 1F of the 1951 Convention when examining an asylum claim and has a special unit responsible for assessing exclusion cases.

If an asylum seeker has been excluded, he or she has the right to lodge an appeal within three weeks of notification of the decision. If UDI does not amend the decision before the case proceeds to appeal, 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 European Convention on Human Rights and the Convention against Torture, Norway does not forcibly return excluded persons if this would constitute a breach of the non-refoulement principle.

An excluded person is not entitled to a residence permit, but may be granted a special residence permit, as stipulated earlier. The applicant may reapply for a similar permit as long as international obligations under the European Convention on Human Rights and the Convention against Torture pose an obstacle to return.

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 circumstances have changed before the asylum applications have been decided. Article 1C of the 1951 Convention is transposed in section 37 of the Immigration Act.

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 UDI information concerning trips taken by refugees to their country of origin or when such 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 continuing to qualify for 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 interpretation of article 1C(1) (re-availment), article 1C(4) (re-establishment) is rarely invoked.

According to Norwegian law, the refugee claimant in question will be notified in advance that UDI 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.

6.6 Revocation

In addition to applying the cessation clauses of the 1951 Convention, according to Norwegian law, 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.

UDI will notify the person in advance if it is considering revoking 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 UDI's decision. If 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.

6.7 Support and Tools for Decision-Makers

6.7.1 Country of Origin Information

The Norwegian Country of Origin Information Centre, Landinfo, was established on 1 January 2005. Although administratively attached to UDI, Landinfo is an independent body within the Norwegian Immigration Authorities, meaning that neither UDI nor UNE can give instructions to Landinfo regarding its research and analyses.

Landinfo is responsible for collecting, analysing and presenting objective and updated country of origin information (COI) for various actors within the Immigration Authorities. Landinfo also provides the Ministry of Justice and Public Security with information. Its core users – the decision-makers within UDI and UNE – use the information for making decisions on residence and asylum cases.

Landinfo neither participates in the actual decision-making process nor provides an opinion on whether it is safe for an individual to return to a specific country or area. Landinfo does not give advice on what the outcome of a case should be, and it is not involved in interpreting the information provided against the applicable legislation.

Landinfo is staffed by 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.

6.7.2 Exclusion Unit

On 1 January 2009, the UDI unit handling cases involving exclusion and security risks was established.[11]

6.7.3 Language Analysis

The Police or UDI may conduct a language test by recording its conversations with an asylum seeker, upon the asylum seeker's consent. The recordings are sent to a contracted language analysis firm, which will make a determination on the country or the region of origin of the applicant. The conclusions of the language analysis are considered one among many elements that may determine the final decision of UDI.

6.7.4 Support Units

UDI has established its own teaching and training unit, the "UDI-skolen" (UDI-school), with the aim of enhancing the competence of its staff through tailored training courses.

The Asylum Department also has an Administration and Process Development Unit, which deals with issues relating to human resources, IT-development and process improvement. In addition, the Asylum Department has a Legal Unit, which provides the Director of the Asylum Department with guidance. This unit follows up on issues relating to refugee law, including international developments and practice in this area, legal issues in general and interview techniques. Furthermore, the unit is responsible for coordinating practices in the Asylum Department and acts as a support unit for the entire department. It can cooperate with the Education Unit to provide staff with the necessary training.

Caseworkers are trained to conduct asylum interviews using a professionalized and structured interview method. In order to obtain high-quality information from the applicant, the method focuses on important communication principles, such as the establishment of a good rapport between the interviewer and the interviewee, a clear description of the aim of the interview and an open-ended questioning style.

All interviewers receive one week of initial training in conducting the interview. They are also offered additional training in relevant topics such as questioning techniques, intercultural communication and credibility assessment.

6.7.5 National Identity and Documentation Centre

Norwegian ID Centre

The Norwegian ID Centre is an expert body under the Police Directorate that works with identity and documents within the immigration field. The main objective of the Norwegian ID Centre is to strengthen the work of the immigration authorities and the Police in establishing the identity of foreign nationals entering, applying for residence in, or residing in Norway. The Norwegian ID Centre assists persons with unclarified identities by ensuring that they receive the benefits to which they are entitled and helps to impede those who have false identities or criminal intent. The centre has the main competence in authenticity assessments of travel and identity documents, and develops tools and methods that can be employed when an immigrant's identity is undocumented.

The Norwegian ID Centre:

- Assists and advises in general and in individual cases
- Collects and processes information, develops and shares expertise
- Coordinates the development of methods related to identification and documentation work
- Evaluates the identification and documentation work of the immigration authorities.

[11] See section 6.4 on exclusion.

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 in establishing the identity of asylum seekers and to determine whether the Dublin III Regulation is applicable, the National Police Immigration Service in Oslo takes fingerprints at the time of registration. Only asylum seekers over 14 years of age are fingerprinted.

7.1.2 DNA Tests

While rare, 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

UDI may request the Police to verify identity documents when there are doubts about their authenticity. The documents are sent to the police department that specializes 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, including the Police, UDI and UNE, regularly update and use the information in the database.

IN FOCUS

ELECTRONIC PROCESSING SYSTEM

A complete electronic processing system has been in place since 2010. This includes electronic filing of all documents, service for users and communication with other government departments. In the joint electronic archive, each case has a single electronic file that is accessible at all times to all agencies that are processing the case in question.

7.2 Length of Procedures

As noted above, there are time limits for the 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 formal time limits for asylum seekers to lodge their applications or for the turnaround of decisions under the normal procedure.

Norway is currently seeking to further shorten processing times, focusing on optimizing the case flow in the majority of the cases dealt with under the normal (not fast-track) procedure. Norway is aiming to finalize first instance asylum decisions shortly after the interview. Normally, the caseworker who interviews the asylum seeker will also decide on the asylum application.

IN FOCUS

LEAN PROCESSING METHOD

The "lean processing method" aims to increase efficiency by optimizing the workflow. Caseworkers process one case at a time, and cases are differentiated at an early stage. Lean processing also involves checking at an early stage whether there is enough information to make the decision, whether more information is needed from the applicant, or whether it is necessary to verify the information.

7.3 Pending Cases

Updated data on the number of pending cases are not available.

7.4 Information Sharing

Norway is a State party to the Dublin III Regulation. Specific information about asylum seekers may therefore be released to other States parties in accordance with article 34 of the Dublin III Regulation. However, information on an asylum seeker cannot be released unless the asylum seeker consents.

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, protection against refoulement or a permit on humanitarian grounds.

Both UDI and UNE have full authority to deal with every aspect of a particular case. If asylum or protection against refoulement is not granted, UDI and UNE also take into account and examine the case for the existence of other "humanitarian" reasons (such as unaccompanied minors without proper care if returned, victims of trafficking or

persons with serious health problems) or other immigration grounds (such as the existence of a particular connection or ties with Norway) for granting a residence permit. All of these grounds will be considered during a single procedure if raised by the applicant or considered relevant to the case by the decision-makers.

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 offered by the authorities in the first instance to unaccompanied minors seeking asylum, to applicants who are found to pose a threat to national security, to whom exclusion clauses may apply and to those whose claims may affect diplomatic relations. In addition, asylum seekers who have received a negative decision on their claim are provided with legal counsel services for a certain number of hours at 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 applicable 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. 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, as well as contact details of legal counsellors and of the relevant national institutions. The UNHCR office also offers training, advice and information to NGOs and lawyers who have direct contact with asylum seekers.

UNHCR has no formal role in the Norwegian asylum procedure. However, upon the request of a party in the procedure, UNHCR may provide updated COI, legal advice or UNHCR recommendations and guidelines. In exceptional precedent-setting cases, UNHCR may submit amicus curiae to the last instance body.

The 2010 reform of the Immigration Act formalizes cooperation with UNHCR and increases the normative weight of UNHCR guidelines. All Norwegian practice in conflict with these guidelines will now, as a rule, be referred to the Grand Board of UNE.

8.1.4 NGOs

The Norwegian Organisation for Asylum Seekers (NOAS) aims to advance the interests of asylum seekers in Norway. The organization offers legal aid or social services support to persons who seek or have been granted asylum status or protection in Norway.

The services of NOAS, including legal aid and information provision, as well as academic and political efforts, are aimed 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 Justice and Social Security 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. Those whose cases are being handled within the accelerated procedure (48-hour or three-week) or who are subject to the Dublin III Regulation are accommodated in transit centres for the duration of the procedure. Families with children are offered accommodation in regular asylum centres.

Asylum Reception Centres

When the applicant has concluded an asylum interview, he or she is transferred to an asylum reception centre, where he or she is accommodated until the final decision on his or her asylum application is implemented (grant of permit, voluntary return or forced return).

Asylum seekers must take up residence in asylum reception 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 reception centres.

8.2.2 Social Assistance

Asylum seekers residing at an asylum reception centre receive a cash allowance from UDI. The amount of this allowance varies according to the type of reception centre (transit or regular) and whether these centres include canteens. The allowance for adults who receive a final rejection on their application for protection is reduced.

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 6 to 16 Years of Age

Asylum-seeking children, whether accompanied or not, have the right and obligation to attend primary and secondary school until they are 16 years of age.

Asylum Seekers 16 to 18 Years of Age

The municipalities are responsible for vocational education for asylum seekers 16 to 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 asylum reception centres.

8.2.5 Access to the 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.
- There is no question of rejecting the applicant or of requesting another country to take back the applicant.
- The asylum seeker is above 15 years of age. The legal guardian's consent is necessary if the asylum seeker is between 15 and 18 years of age.

An asylum seeker has to present an approved travel document or national identity card to be granted a permit to take up employment under section 94 of the Act. Exemptions are made for applicants from countries that do not issue travel documents or national identity cards.

The permit is valid until a final decision is issued and if the appeal following the first rejection from the first instance is given a suspensive effect. The temporary work permit is not granted to persons who may return voluntarily. The decision not to 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 asylum 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 at an asylum reception centre. They can also participate in sports and cultural activities.

UDI can provide funding for the activities organized for children in asylum reception centres. Recipients of grants may include reception centres, NGOs, non-commercial operators and municipalities.

8.2.8 Access to Benefits by Rejected Asylum Seekers

Asylum seekers who have received a final negative decision on their claim will still have the right to be accommodated in a regular asylum reception centre, and they are provided with a cash allowance. Rejected asylum seekers have access to emergency health care but are required to cover all other medical expenses. They are also eligible for emergency social assistance. Children under 16 years of age have the right to continue to attend school.

9 STATUS AND PERMITS GRANTED OUTSIDE THE ASYLUM PROCEDURE

9.1 Humanitarian Grounds

Upon request for reversal of a decision, UNE may, under section 38 of the Immigration Act, grant a residence permit to an asylum seeker whose application has been finally rejected.

The following conditions must be met:

- It has been three years since the case was opened without the rejection having been implemented, and it is moreover unlikely that it will be possible to carry out the rejection.
- There is no doubt as to the identity of the applicant. As a general rule, the applicant must

have assisted in clarifying his or her identity during the period as an asylum seeker.
- The applicant has contributed to making his or her return possible, including helping to procure a travel document issued by his or her country of origin.

If legal proceedings have been instituted for expulsion under section 66 of the Act, no permit may be granted until the question of expulsion has been clarified, except in cases where the ground for expulsion is an overstay of the time limit for departure.

Unless there are special grounds that warrant doing so, a permit shall not be granted until one year has passed since the final rejection and the processes of clarifying the asylum seeker's identity and issuing a travel document have been completed.

Before a permit is granted, a statement must be procured from the Police, containing an assessment of whether the applicant has assisted in clarifying his or her identity and contributed to making his or her return possible, and whether the process of clarifying his or her identity and issuing travel documents has been completed.

Such a permit may form the basis for a permanent residence permit. Family reunification may be granted for a person who received a residence permit on humanitarian grounds on condition that the person is able to support his or her family economically.

9.2 Risk Assessment and Withholding of Removal

Once a negative decision on an appeal has been reached by UNE, a rejected asylum seeker may be removed from Norway. However, in special cases and on a case-by-case determination, 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 from the time of 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 Collective Protection

As described in section 5.3.2 of this chapter, the Government may grant collective protection in situations of mass influx. The residence or work permit is temporary (section 34 of the Immigration Act).

10 RETURN

10.1 Pre-departure Considerations

Rejected asylum seekers who are accommodated in asylum reception centres are given information on the voluntary return programme, which is implemented by IOM. Mandatory individual counselling with the aim of encouraging return is a central part of return preparatory activities in the centres.

More extensive counselling is offered on a voluntary basis to selected groups at a limited number of asylum reception centres. UDI combines counselling on return with training and education. UDI also conducts outreach information campaigns directed at persons without a residence permit who are staying outside the reception centres.

The amount the beneficiary will receive in cash support through the voluntary return programme depends on when the application is submitted. Those who apply for voluntary return prior to the departure deadline will receive EUR 2,650, whereas EUR 2,000 is given to those who apply up to two months after the departure deadline, and EUR 1,350 to those who wait longer than two months after their departure deadline to apply. This support is not available to applicants whose claims were processed under the 48-hour procedure. For Afghan, Iraqi, Ethiopian and Somali (Mogadishu area) nationals, Norway offers a special return and reintegration programme that includes specific information and career planning prior to departure. Beneficiaries of these programmes receive reintegration support in cash as well as in kind after return. Children in returning families receive an additional EUR 1,350 as a special incentive for motivating families with children to apply for voluntary return.

10.2 Procedure

If the Norwegian authorities reject an application for asylum and there are no protection grounds or humanitarian grounds for granting a residence permit, 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 IOM for assistance with his or her voluntary return. The application must then be approved by UDI. 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 and 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 who 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 the 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), Albania, Algeria (oral agreement), Armenia, Bosnia and Herzegovina, Bulgaria, Burundi, Croatia, Czech Republic, Estonia, Ethiopia, the former Yugoslav Republic of Macedonia, Georgia, Hong Kong (China), Iraq, Kosovo, Latvia, Lithuania, Moldova, Montenegro, Romania, Russia, Serbia, Slovakia, Slovenia, Sweden, Switzerland, Tanzania, Ukraine and Viet Nam.

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.

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 duration of the programme may be up to two years, with an extension in the case of an approved absence. Municipalities provide immigrant residents with the programme activities as soon as possible after a person's arrival and no later than three months after arrival. Monitoring and evaluation 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.

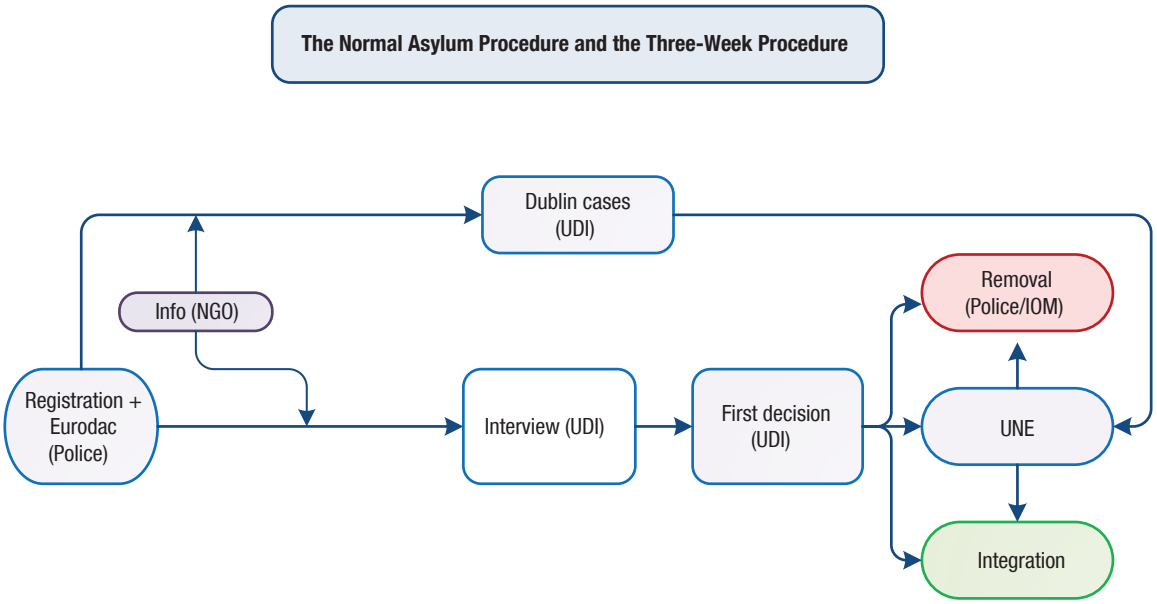
Since 2005, it is compulsory for certain newly arrived adult immigrants to take 300 lessons in Norwegian language and social studies. For those receiving their first residence permit after 1 January 2012 this has increased to 600 hours. Beyond the compulsory instruction, those who have further need for 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 refugees, persons granted humanitarian status, persons granted collective protection and the family members of these persons. Persons who come from outside of the European Economic Area or European Free Trade Area and have a work permit are entitled to take part in 300 lessons, but have no legal right to take the courses free of charge. Individuals from the European Economic Area or European Free Trade Area have no legal obligation to take part in language courses.

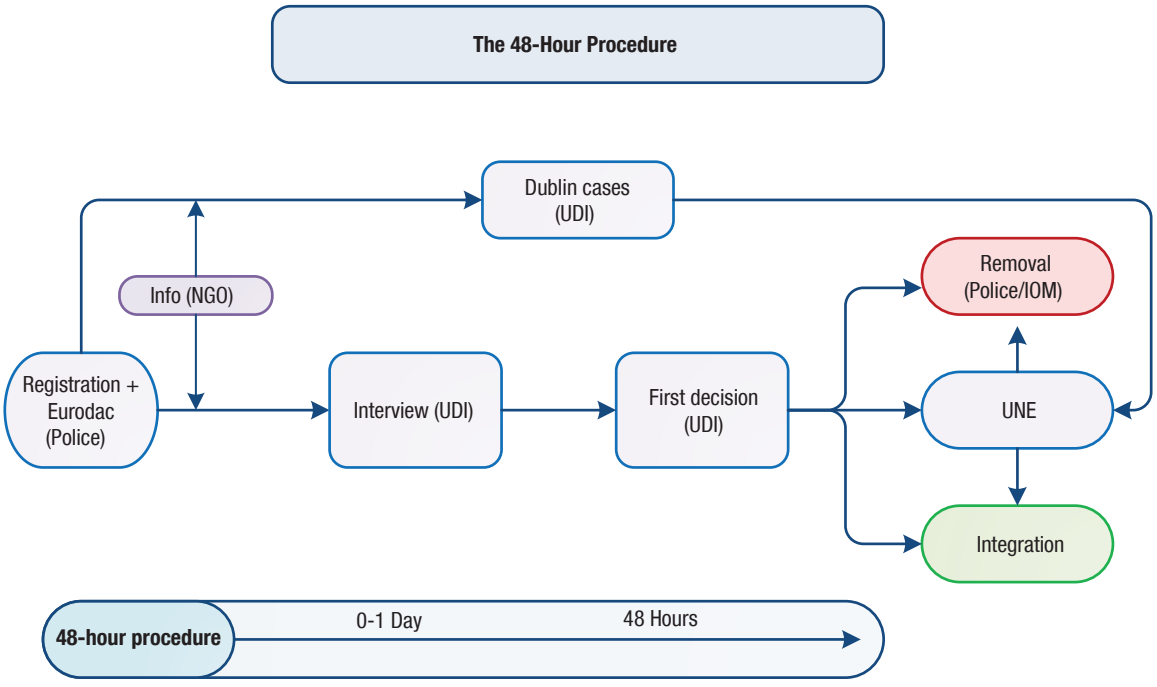
Assistance with housing is also offered to newly arrived refugees, both resettled persons and successful asylum seekers. Municipalities provide refugees with housing through government funding.

UNHCR/January 2014

12 ANNEX

12.1 Asylum Procedure Flow Chart





12.2 Additional Statistical Information

NOR. Fig. 4 | Asylum Applications from Top 10 Countries of Origin in 2012, 2013 and 2014

	2012		2013		2014	
1	Somalia	2,181	Eritrea	3,258	Eritrea	2,882
2	Eritrea	1,183	Somalia	1,694	Syria	1,999
3	Afghanistan	986	Syria	856	Somalia	837
4	Sudan	472	Afghanistan	726	Sudan	806
5	Iran	441	Sudan	598	Stateless	800
6	Russia	370	Stateless	550	Afghanistan	579
7	Nigeria	355	Nigeria	522	Ethiopia	375
8	Syria	327	Russia	376	Nigeria	345
9	Stateless	263	Ethiopia	291	Russia	227
10	Bangladesh	225	Iran	266	Albania	204

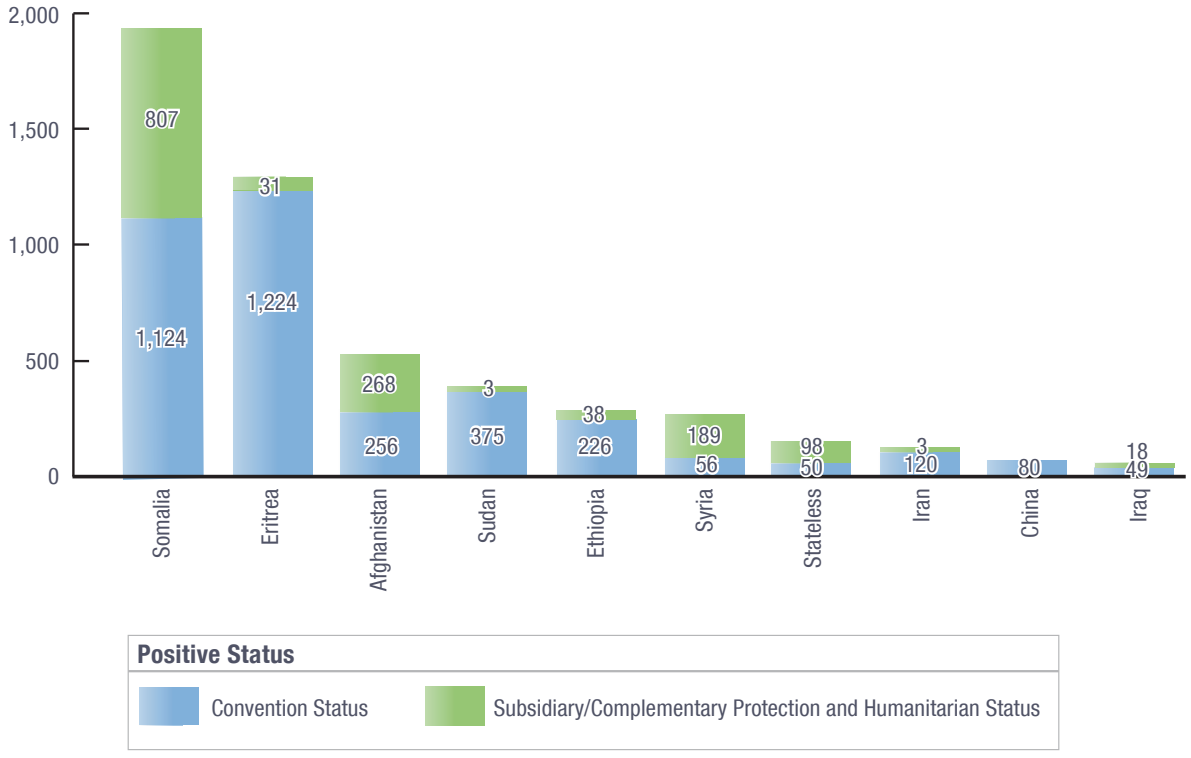
NOR. Fig. 5 | Decisions Taken at the First Instance in 2012, 2013 and 2014

	Convention Status		Humanitarian Status and Subsidiary/Complementary Protection		Rejections		Withdrawn, Closed and Abandoned Cases		
Year	Number	%	Number	%	Number	%	Number	%	Grand Total
2012	3,667	32%	1,545	14%	5,465	48%	764	7%	11,441
2013	4,525	36%	1,312	10%	5,971	47%	781	6%	12,589
2014	3,588	36%	1,341	13%	4,685	47%	442	4%	10,056

NOR. Fig. 6.a Positive First-Instance Decisions, Top 10 Countries of Origin in 2012[12]

	Country of Origin	Total Positive	Total Decisions	Rate
1	Somalia	1,931	2,590	74.6%
2	Eritrea	1,255	1,493	84.1%
3	Afghanistan	524	1,105	47.4%
4	Sudan	378	465	81.3%
5	Ethiopia	264	485	54.4%
6	Syria	245	303	80.9%
7	Stateless	148	306	48.4%
8	Iran	123	394	31.2%
9	China	80	92	87.0%
10	Iraq	67	239	28.0%

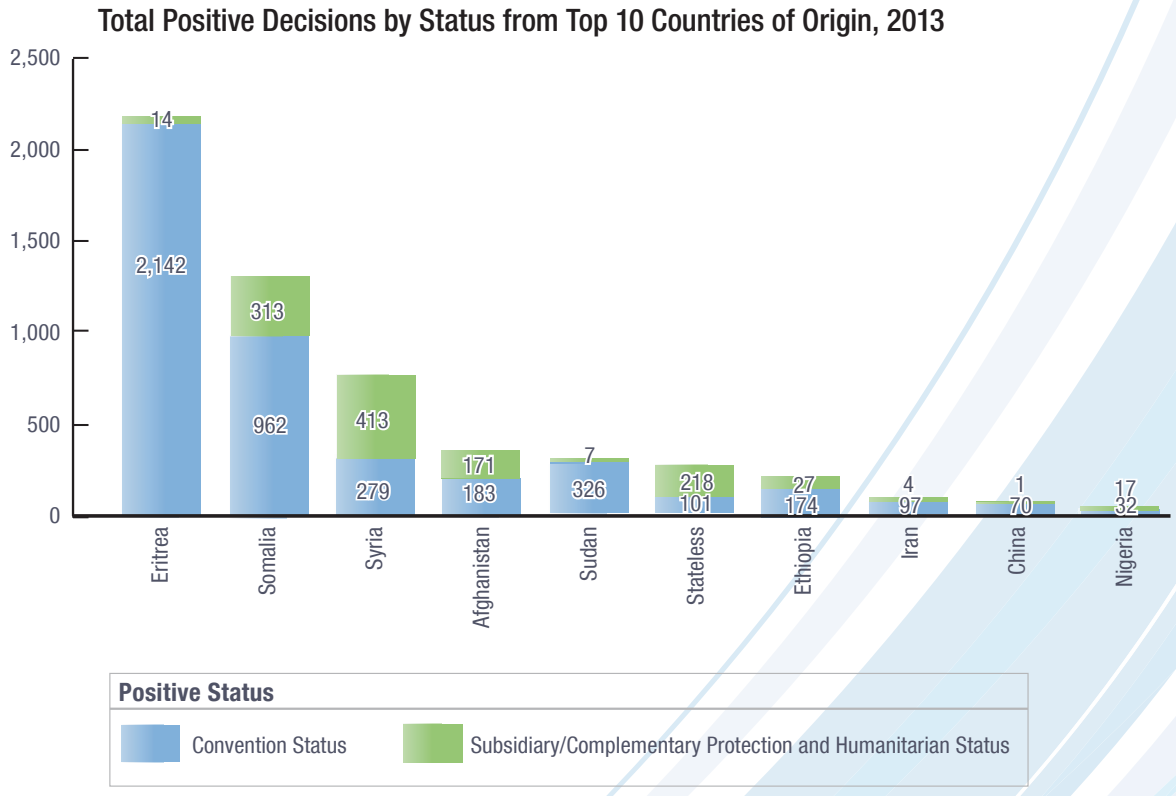
Total Positive Decisions by Status from Top 10 Countries of Origin, 2012



[12] For the purpose of this exercise, positive decisions include decisions to grant Convention status, subsidiary/complementary protection and other humanitarian statuses. Excluding withdrawn, closed and abandoned claims.

Fig. 6.b Positive First-Instance Decisions, Top Countries of Origin in 2013[13]

	Country of Origin	Total Positive	Total Decisions	Rate
1	Eritrea	2,156	2,712	79.5%
2	Somalia	1,275	2,136	59.7%
3	Syria	692	828	83.6%
4	Afghanistan	354	714	49.6%
5	Sudan	333	672	49.6%
6	Stateless	319	495	64.4%
7	Ethiopia	201	376	53.5%
8	Iran	101	317	31.9%
9	China	71	83	85.5%
10	Nigeria	49	540	9.1%

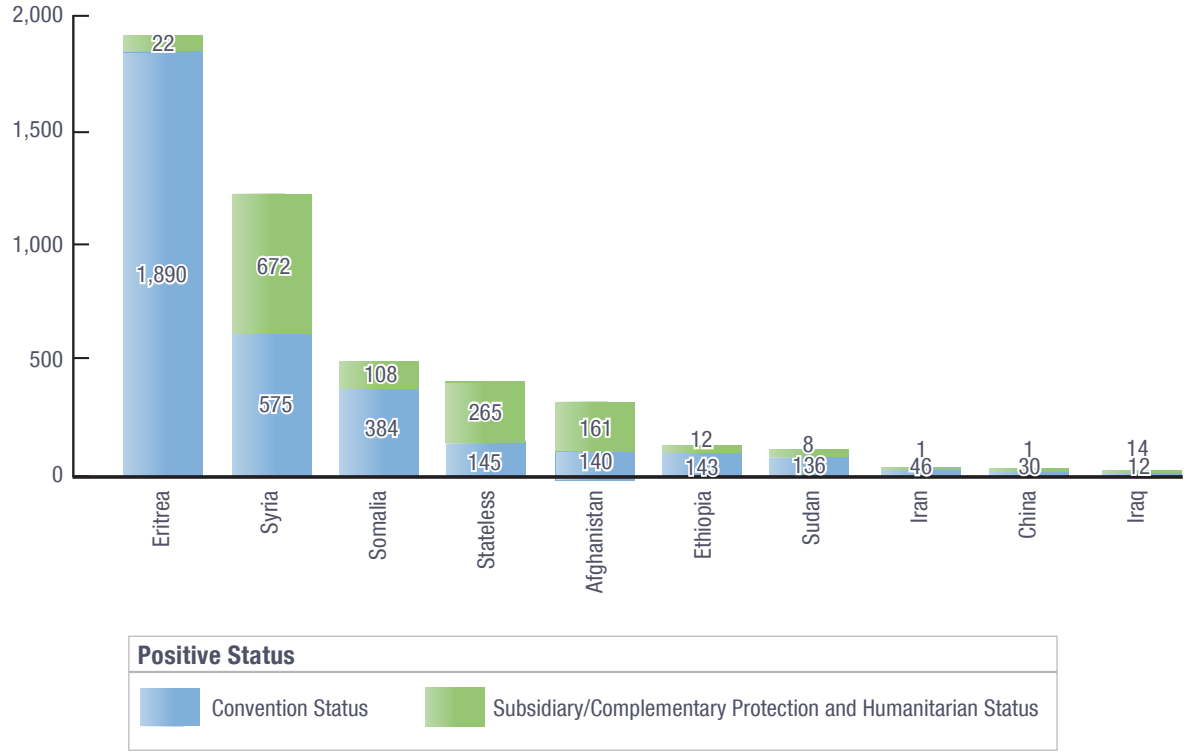


[13] For the purpose of this exercise, positive decisions include decisions to grant Convention status, subsidiary/complementary protection and other humanitarian statuses. Excluding withdrawn, closed and abandoned claims.

NOR. Fig. 6.c Positive First-Instance Decisions, Top Countries of Origin in 2014[14]

	Country of Origin	Total Positive	Total Decisions	Rate
1	Eritrea	1,912	2,361	81.0%
2	Syria	1,247	1,414	88.2%
3	Somalia	492	933	52.7%
4	Stateless	410	552	74.3%
5	Afghanistan	301	570	52.8%
6	Ethiopia	155	265	58.5%
7	Sudan	144	352	40.9%
8	Iran	47	154	30.5%
9	China	31	41	75.6%
10	Iraq	26	159	16.4%

Total Positive Decisions by Status from Top 10 Countries of Origin, 2014



[14] For the purpose of this exercise, positive decisions include decisions to grant Convention status, subsidiary/complementary protection and other humanitarian statuses. Excluding withdrawn, closed and abandoned claims.

The Spanish coastguard intercept a traditional fishing boat carrying migrants off the island of Tenerife.

UNHCR/A. Rodriguez/October 2007

SPAIN

igc

1 BACKGROUND: MAJOR ASYLUM TRENDS AND DEVELOPMENTS

Asylum Applications

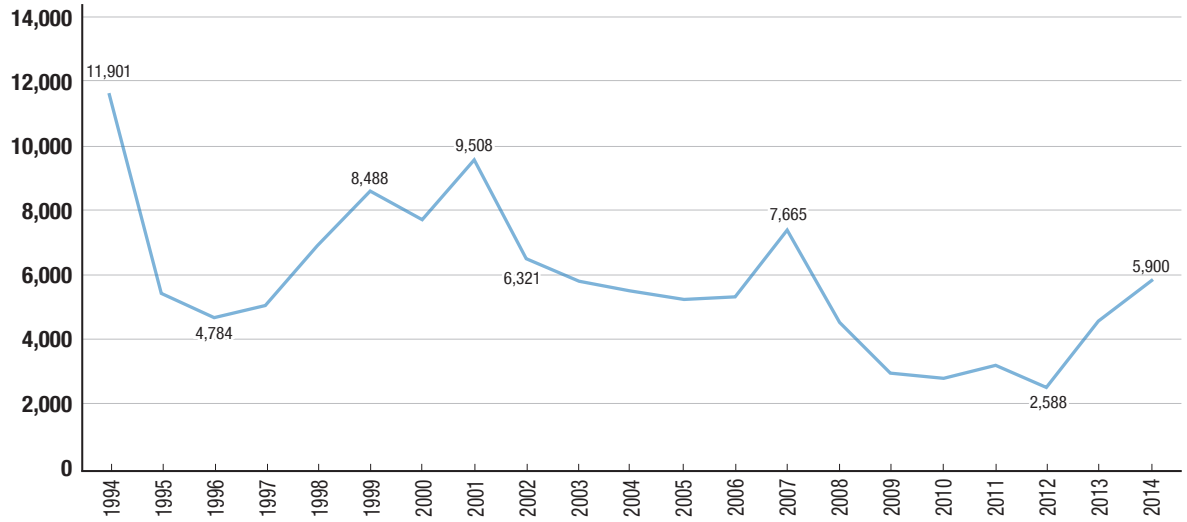
With 11,901 applications, 1994 was a record year for asylum applications in Spain. Such a high number was only close to being reached again in 2001, when there were 9,508 applicants. Numbers continuously decreased in the following years, and this trend was interrupted only in 2007, with a peak of 7,665 asylum applications. Since 2012, numbers have started to increase again and, in 2014, 5,900 persons sought asylum in Spain.

when there were 2,588 applications. Mali, with 1,482 applications, and Syria, with 724 applications, were the two countries of origin with the highest numbers of applicants. The third country was Algeria with 352 applicants.

Following trends of previous years, 2013 registered an important number of positive decisions, bringing the overall recognition rate to 23.6 per cent.

In 2014, the upward trend was maintained, with 5,900 applications being registered (a 29 per cent increase), together with a significant increase in the recognition rate, which reached the peak of 40 per cent. The top countries of origin were Syria (1,510 applications), Ukraine (894) and Mali (597).

SPA. Fig. 1 **Total Asylum Applications by Year, 1994–2014**



Top Nationalities

In the 1990s, 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. In 2010, the top five countries of origin were Cuba, Nigeria, Algeria, Guinea (Conakry) and Cameroon. In 2011, Ivory Coast was the top country of origin, followed by Cuba, Nigeria, Guinea (Conakry), and the West Bank and Gaza Strip. In 2012, the conflicts in Syria and Mali had an impact on the asylum data. The country of origin with the most asylum applications in Spain was Syria with 254 applicants, followed by Nigeria (203), Algeria (202), Cameroon (121), Ivory Coast (109) and Mali (99).

In 2013, there was a significant increase in asylum applications, amounting to 4,513. This figure represents an increase of 74.4 per cent from that of the previous year,

Important Reforms

Law 5/1984 regulating the Right to Asylum and Refugee Status underwent significant reforms in 1994,[1] a reflection of Spain's focus on safeguarding the integrity of the asylum system against abuse while 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.

In addition, the border procedure became an accelerated procedure, whereby the Ministry of Interior had four days from the time of the application to decide whether the claim was admissible, and rejected asylum seekers had a right of appeal within 24 hours of receiving the decision, and the appeal would be heard within two days. Manifestly unfounded claims or claims made by persons subject to a transfer

[1] Reforms in 1994 were a result of amendments contained in Law 9/1994.

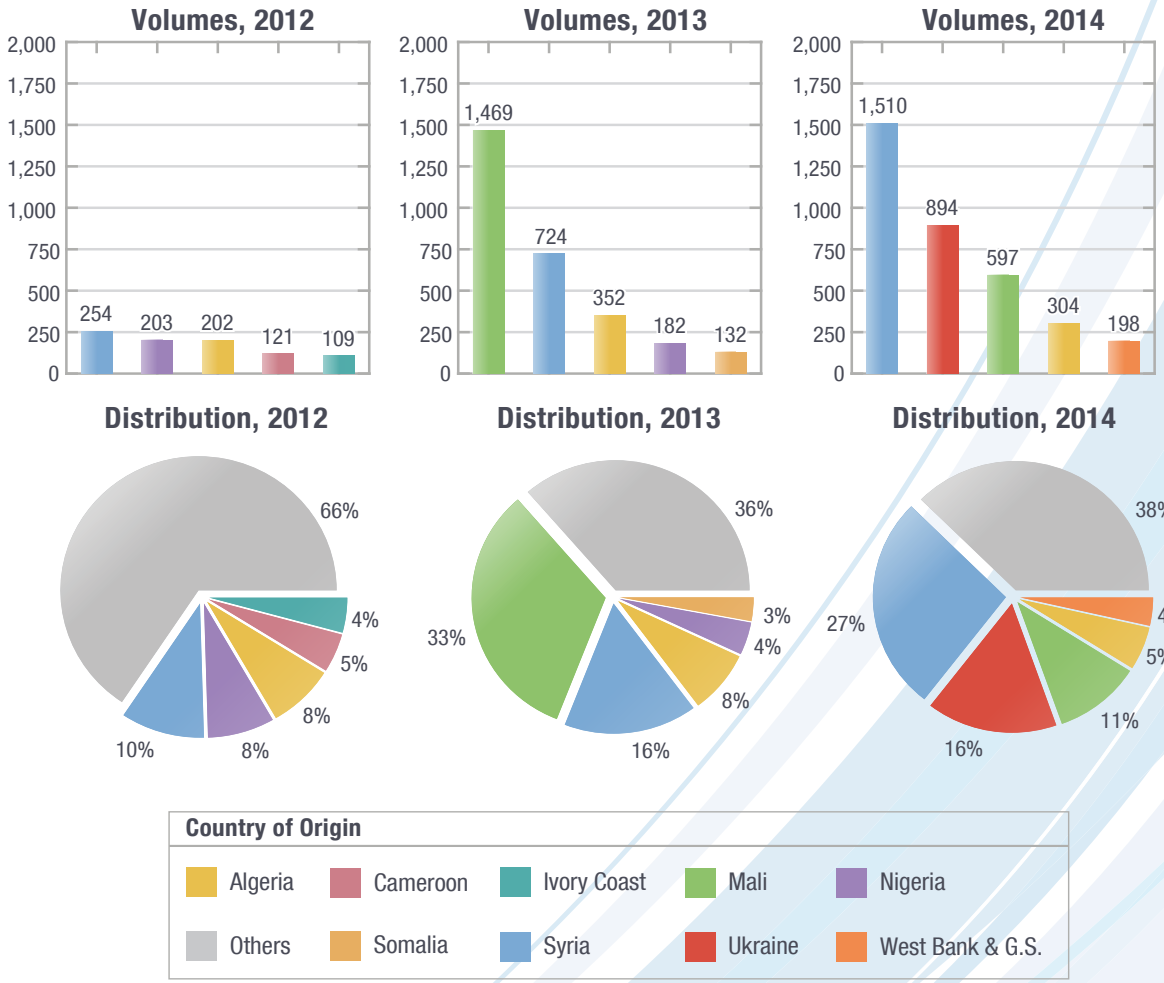
under the Dublin II Regulation could be deemed inadmissible. Under Law 1/1996 (10 January), asylum seekers became entitled to free legal assistance if they lacked financial resources.

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 Protection[2] and Council Directive 2003/9/EC on Reception Conditions[3]
- 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
- The introduction of Organic Law 3/2007, which regulates gender equality such that persons claiming gender-based persecution could be recognized as Convention refugees.

The international protection system in Spain underwent a revision in 2009, resulting in the new Law 12/2009 regulating the Right to Asylum and Subsidiary Protection (Asylum Law). This new law transposes EU Council Directives 2004/83[4] and 2005/85[5] into Spanish law, thus completing the total implementation of the first phase of the Common European Asylum System into Spanish legislation, and already includes some elements of the second phase of the system. With these changes, Spanish legislation is now in line with that of other European Union (EU) Member States.

SPA. Fig. 2 Asylum Applications Received from Top Five Countries of Origin in 2012, 2013 and 2014



[2] 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).

[3] Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (Reception Directive).

[4] 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).

[5] 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 Asylum Law also incorporates new interpretations and criteria derived from international doctrine and jurisprudence of European tribunals such as the Court of Justice of the European Union and the European Court of Human Rights.

The overall aim of the new legislation is to improve procedural safeguards for asylum seekers and beneficiaries of international protection. In order to increase the transparency of administrative procedures, the procedure for granting international protection has been accelerated. Moreover, the new law aims to guarantee access to the asylum procedure, and makes it easier for asylum seekers to move through the different stages of the procedure. The Asylum Law emphasizes the important role of the United Nations High Commissioner for Refugees (UNHCR) within the asylum procedure.

The most important changes introduced by the Asylum Law are as follows:

- The introduction of a uniform international protection status, including both refugee status and subsidiary protection status
- The reinforcement of procedural safeguards for the granting of international protection
- The recognition of sexual orientation or gender as grounds for persecution in addition to the ones listed in the Convention relating to the Status of Refugees (1951 Convention)
- The role assigned to UNHCR during the international protection procedure
- The possibility for family members to apply for international protection, outside of the family reunification regime
- The introduction of special safeguards for minors (including unaccompanied minors) and other vulnerable persons during the procedure
- The commitment of the Administration to the training of civil servants and other staff dealing with asylum seekers on aspects related to international protection
- The introduction of an annual resettlement programme.

In 2014, an amendment to the 2009 Asylum Law was introduced in order to transpose the Qualification Directive.[6] The amendment affected article 40 of the Asylum Law concerning the definition of family members, in light of the right to family unity.

Furthermore, the drafting of the regulation implementing the Asylum Law is underway. It takes into account the negotiations on the Common European Asylum System. It is expected that the regulation will be adopted in the near future.

2 NATIONAL LEGAL FRAMEWORK

2.1 Legal Basis for Granting Protection

The granting of asylum and refugee status in Spain is governed by the Asylum Law.

2.2 Pending Reforms

While the new Asylum Law was passed in late 2009, the regulation implementing the Asylum Law is still pending and expected to be adopted shortly.

3 INSTITUTIONAL FRAMEWORK

3.1 Principal Institutions

The Office of Asylum and Refugees (OAR), which falls under the responsibility of the Ministry of Interior, receives asylum applications and examines all international protection claims lodged with the Spanish authorities.

The Interministerial Asylum and Refugees Commission (CIAR)[7] comprises one representative each from the Ministry of Interior, the Ministry of Foreign Affairs and Cooperation, the Ministry of Justice, the Ministry of Employment and Social Security, and the Ministry of Health, Social Benefits and Equality. UNHCR participates in CIAR with a voice but has no voting rights. CIAR has the task of drawing up proposals for decisions on asylum claims, and submitting these 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 III Regulation and returns of rejected asylum seekers to their countries of origin.

The Ministry of Employment and Social Security is responsible for the reception and integration of asylum seekers.

[6] Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast).

[7] The acronym is based on the Spanish name *Comisión Interministerial de Asilo y Refugio*.

3.2 Cooperation between Government Authorities

The various ministries cooperate at a practical level throughout the asylum procedure. As mentioned above, there are high levels of cooperation between the Ministry of Interior (including asylum authorities and law enforcement authorities), the Ministry of Foreign Affairs and Cooperation, the Ministry of Justice, the Ministry of Employment and Social Security, and the Ministry of Health, Social Benefits and Equality.

4 PRE-ENTRY MEASURES

4.1 Visa Requirements

To enter Spain, foreign nationals must comply with the conditions established in article 5 of the Schengen Borders Code. Visa requirements follow the rules established by Council Regulation 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from this requirement.

4.2 Carrier Sanctions

According to the Aliens Law, carrier sanctions are applicable to carriers that are found to have transported onto Spanish territory foreign nationals who are not in possession of valid travel documents and visas, if required.

4.3 Interception

The Spanish Civil Guard, a law enforcement agency accountable to both the Ministry of Interior and the Ministry of Defence, is in charge of border surveillance and intercepting migrants attempting to access Spanish territory by land or by sea without proper authorization. The purpose of the Integrated System for External Surveillance, which is implemented along most of the coast of Spain, is to detect activities relating to both unauthorized 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) and in-country. In-country applications may be made at the following locations:

- OAR in Madrid
- Any aliens office
- Designated police stations.

An application may also be made by a third country national while in detention, the claim being lodged at the detention centre.

An application for asylum should be made within one month of the person's arrival in Spain. However, those 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 accessible in the form of a leaflet available in three 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, asylum seekers have access to the assistance of social workers from the Ministry of Employment and Social Security, who provide information on reception benefits.

5.1.1 Outside the Country

Applications at Diplomatic Missions

Since the Asylum Law entered into force, it is no longer possible to make a claim for asylum at a Spanish diplomatic mission in a third country.

Resettlement

In the past, Spain engaged in *ad hoc* resettlement of refugees.

By adopting the Asylum Law, the Government of Spain established an annual resettlement programme. In accordance with the Asylum Law, the Council of Ministers approved the Spanish resettlement programme for the year 2011. The 2011 programme comprised the resettlement of 82 refugees from Eritrea, Ethiopia and Sudan, who had been established in the Shousha Camp in Tunisia.

Since 2011, Spain has confirmed its political commitment to resettlement by adopting subsequent annual resettlement programmes. Together, the programmes for 2012 and 2013 allowed for the resettlement of up to 130 Syrian refugees from Jordan. A new resettlement programme for 2014 has also included a quota of up to 130 refugees.

5.1.2 At Ports of Entry

Border Procedure

The border procedure is applied to asylum applications made at border crossing points.

Persons arriving at ports of entry without the required documentation to enter Spain must approach the Police and express their wish to apply for asylum. Once the application has been lodged, it will be forwarded to OAR. Within the framework of the border procedure, legal assistance is prescriptive. The asylum seeker is also entitled to an interpreter, if necessary. He or she must submit all the relevant identity and travel documents, as well as all other documentation supporting his or her claim.

All asylum applications are shared with UNHCR, which issues a reasoned opinion on the claim before a decision is adopted. On the basis of all the information gathered, OAR must determine within four days whether or not the claim is admissible. This time limit may be extended to a maximum of 10 days in exclusion cases, upon reasoned request by UNHCR. In the case of a negative decision on admissibility, the applicant may, within two days of notification of the decision, make a request for re-examination. OAR, in turn, must then come to a decision regarding the admissibility of the claim within two days.

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 may make a further appeal to the Tribunal and request precautionary measures, with suspensive effects.

The border procedure applied at border crossing points also applies to protection claims made by persons held in detention centres. If the application is declared admissible, the claim will be processed under the accelerated procedure.

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 OAR will determine which State is responsible for processing of the claim, according to the terms of the Dublin III Regulation.

Freedom of Movement and Detention
Asylum seekers are not detained while awaiting a transfer under the Dublin procedure.

Conduct of Transfers
Once a take-charge or take-back request 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 III 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 Applications
Applications for asylum must be made in person within one month of the person's arrival in Spain, or within one month of the time when the events that gave rise to the fear of persecution or serious harm occurred.

The fingerprints of the asylum seeker are taken and he or she is issued an initial document that identifies the person as having applied for asylum in Spain.

During the procedure, legal assistance and interpretation may be provided if necessary.

Once the application has been made, the applicant cannot be returned, expelled or extradited until a decision on the admissibility of the application has been issued.

Admissibility
On the basis of the information gathered during the interview held with the applicant, OAR must make a proposal on the admissibility of the claim (admissible, non-admissible or rejected) within one month of the application. 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 OAR. The formal decision on admissibility is then taken by the Ministry of Interior.

If the claim is found admissible, the asylum seeker is issued a six-month stay permit, which is renewable until a final decision on the claim is made. The case is then further processed under the normal procedure.

If a negative decision on admissibility is issued, the asylum seeker is obligated to leave Spain.

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 notification of the decision. The Ministry then has one month to confirm or change its decision.

The asylum seeker may also appeal the decision before the Administrative-Contentious Courts within two months. The asylum seeker may make an appeal of the decision on inadmissibility or a negative decision following the

[8] See the section on application and admissibility for more information on review of negative admissibility decisions.

administrative appeal, before the Central Administrative Court within two months of the negative decision.

The decisions of the Central Administrative Court may be appealed before the National High Court within two months of the decision.

Normal Procedure

For all international protection applications that are deemed admissible, the Ministry of Interior initiates the normal procedure for determining eligibility for protection.

The Asylum Law differentiates between two types of procedures for processing admissible international protection claims: the normal procedure, which has a processing time of six months, and the accelerated procedure, for which the time limit is reduced to three months.

In both the normal and accelerated procedures, after examining the claim, OAR sends its reasoned examination to CIAR for its consideration. CIAR will then make a formal proposal to the Ministry of Interior for a final decision.

Accelerated Procedure

The same procedural steps and guarantees for the normal procedure are provided within the framework of the accelerated procedure, the only difference being the reduced time frame to adopt a final decision on the claim (three months, compared with six months in the normal procedure). Accordingly, the Asylum Law allows for certain applications to be processed with priority.

Cases may be transferred to the accelerated procedure due to the applicant's vulnerability, or because the outcome of the application is already evident.

Review/Appeal of Asylum Decisions

Administrative Review

A negative decision taken by the Ministry of Interior on an asylum claim at the first instance may be appealed. 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 international 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 time frame, the asylum seeker may appeal directly to the courts.

Judicial Review

A rejected asylum seeker may request judicial review before the National High Court. Upon receiving the request, the High Court must notify OAR, which 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 international protection or another form of protection
- Uphold the decision
- Return the case to OAR for a re-examination of the case.

A negative decision by the High Court may be appealed in "cassation" before the Supreme Court, which examines the legality of the High Court's decision but not the facts of the case. The Supreme Court may uphold or overrule the judgement of the National High Court in part or in whole.

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 never detained for having applied for asylum.

Reporting

During the asylum procedure, asylum seekers are obligated to communicate their exact place of residence and any changes of address to OAR.

Repeat/Subsequent Applications

Repeat applications are not subject to a preliminary examination as part of the admissibility phase of the asylum procedure unless new information pertaining to changed circumstances in the country of origin are put forward by the applicant and justify a further examination of the 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 EU Nationals

Spain applies the Protocol on Asylum for Nationals of Member States of the European Union, also known as the Spanish Protocol, annexed to the Treaty of Amsterdam. Thus, asylum applications made by nationals of EU Member States are deemed unfounded and are declared inadmissible.

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 in 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 and Vulnerable Persons

According to the Asylum Law, the specific situation of applicants in a vulnerable situation should be taken into consideration during the examination of asylum claims. Vulnerable persons include:

- Minors
- Unaccompanied minors seeking asylum
- Pregnant women
- Persons with disabilities
- Single parents with minor children
- Victims of torture or other trauma
- Other persons with a special vulnerability.

OAR decides asylum claims made by unaccompanied minors through the accelerated procedure. In addition, specific procedural standards apply to the examination of minors' claims. Once the person's age has been determined, a legal guardian is appointed so as to assist and support the unaccompanied minor throughout the procedure, from the lodging of the claim to the decision on the claim. In addition, a complementary interview is always held with the unaccompanied minor and they are exempt from the application of the border procedure.

IN FOCUS

NEW MEASURES REGARDING UNACCOMPANIED MINORS SEEKING ASYLUM

A framework protocol with measures regarding unaccompanied minors was adopted in July 2014. The protocol was subscribed by the ministries of Interior, Justice, Employment and Social Security, Health and Social Services, and Foreign Affairs, as well as by the Public Prosecutor's Office.

In the field of international protection, the protocol establishes the minor's right to be informed and assisted by the public entity responsible for his or her guardianship throughout the procedure, with a view to guarantee the best interests of the child.

SPA. Fig. 3 | Asylum Applications by Unaccompanied Minors

Data is not available.

5.3.2 Stateless Persons

Stateless persons may apply for asylum and have their claims processed in the same manner as other asylum claims. A separate statelessness determination procedure has been in place since 2001 and also falls under the responsibility of OAR.

6 DECISION-MAKING AND STATUS

6.1 Inclusion Criteria

When considering the merits of a claim, OAR must first consider whether the criteria for granting refugee status are met. If this is not the case, 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 1951 Convention and its 1967 Protocol are granted refugee status.

6.1.2 Subsidiary Protection

According to article 10 of the Asylum Law, persons 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 may be granted subsidiary protection. Under the Asylum Law, the same level of protection and the same rights are granted to both persons with refugee status and beneficiaries of subsidiary protection.

6.2 The Decision

Following a reasoned examination of the asylum claim by OAR, the dossier is submitted to CIAR.

Following its deliberation, CIAR forwards its proposal to the Ministry of Interior, which adopts the formal decision to grant asylum or subsidiary protection, or to reject the application.

Decisions on asylum claims are provided in writing and are reasoned through facts and law. Negative decisions contain information on options for review or appeal as well as a notification that the asylum seeker must leave Spanish territory.

IN FOCUS

QUALITY ASSURANCE AT OAR

In 2011, an initiative was launched to enhance the procedure for granting international protection by improving the quality of asylum decisions, and more specifically providing more in-depth motivation of the grounds and reasons for the decision.

OAR provides caseworkers with the UNHCR *ASQAEM Summary*,[9] which is to be used in every step of the procedure.

6.3 Types of Decisions, Statuses and Benefits Granted

Upon the recommendation of CIAR, the Ministry of Interior may make one of the following decisions on an asylum claim:

- Grant Convention refugee status
- Grant subsidiary protection
- Reject the application for asylum.

Status and Benefits

There is no difference between Convention refugee status and the subsidiary protection status. Both Convention refugees and beneficiaries of subsidiary protection are provided with the same level of protection, including the following rights and benefits:

- Authorization of residence
- Authorization to work and to take part in professional and commercial activities
- The necessary travel and identity documents
- Family reunification
- Social assistance benefits.

6.4 Exclusion

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 subsidiary protection. If the exclusion clauses are found to apply to a claim, OAR will recommend to CIAR that the claim for asylum be denied. Persons may also be denied refugee status or subsidiary protection if they pose a threat to national security or public order.

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.[10]

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 articles 42 and 43 of the Asylum Law, refugee status ceases automatically in any of the following circumstances:

- The refugee explicitly requests the cessation.
- The refugee has obtained Spanish citizenship, or has acquired the nationality of a third country and availed himself or herself of the protection offered by this country.
- The refugee voluntarily accepts the protection of his or her country of origin.
- The refugee has settled voluntarily in another country, including his or her country of origin.

Subsidiary protection ceases when:

- The protected person so requests.
- The protected person has taken up residence in a third 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.

OAR may start a procedure for cessation of status after a final decision on an asylum claim has been 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. OAR takes into account any evidence provided by the person before making a recommendation to CIAR on whether or not to cancel status.

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 CIAR by following the same procedure for negative decisions on asylum claims at the first instance, as described above.

[9] UNHCR, *ASQAEM Summary: Asylum Systems Quality Assurance and Evaluation Mechanism Project in the Central and Eastern Europe Subregion* (2010). Available at www.unhcr.org/4e60a4549.html.

[10] See the section on review/appeal of asylum decisions.

6.6 Revocation

According to article 44 of the Asylum Law, refugee status or subsidiary protection, along with all the 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 the cancellation of status in accordance with articles 1F and 33(2) of the 1951 Convention. Cases where a person constitutes a threat to national security or public safety may also have this result.

The same procedure is applied for cancellation of status as for cessation of status, which is described above. 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 OAR provides caseworkers with asylum seekers' country of origin information (COI). 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 takes an active part in international training activities, such as the European Asylum Curriculum training organized by the European Asylum Support Office, and makes use of the Common COI Portal.

6.7.2 Language Analysis

OAR does not use language analysis for the purposes of examining asylum claims.

6.7.3 Other Support Tools

In addition to COI provided by the Documentation 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.

IN FOCUS

TRAINING ON SEXUAL ORIENTATION AND ON TORTURE

In 2014, OAR organized a special training session for decision-makers on assessing credibility in asylum claims based on sexual orientation. The training was organized and delivered in cooperation with the relevant civil society experts in the field. A second training organized for decision-makers the same year focused on handling cases involving victims of torture and the Istanbul Protocol of 1999, which sets out international guidelines for documentation of torture and its consequences.

7 EFFICIENCY AND INTEGRITY MEASURES

7.1 Technological Tools

7.1.1 Fingerprinting

Fingerprints of asylum seekers aged 14 years or older are taken by the Police at the time the asylum application is made. One of the purposes of taking fingerprints is to assist OAR in determining the State responsible for examining the asylum claim, in accordance with the Dublin III Regulation and the Eurodac Regulation.

7.1.2 DNA Tests

DNA tests are rarely required, but they 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, according to article 40 of the Asylum Law.

7.1.3 Forensic Testing of Documents

OAR may make a request to the Police for authentication of identity documents, in such cases when there are doubts about the authenticity of the 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 contains data on all foreign nationals who have come into contact with government authorities.

OAR maintains a separate database with all files of asylum seekers.

7.2 Length of Procedures

Decisions on admissibility (rejection or non-admissibility) at the border must be taken within eight days of the application.

For admissibility decisions on applications made in-country, applicants must be notified within one month of the time of the application.[11]

The length of the eligibility procedure, as stipulated by law, is six months for the regular procedure and three months for the accelerated procedure.

IN FOCUS

FASTER PROCESSING AT OAR

Besides using standard time frames for the different steps in the procedures, OAR may resort to ad hoc measures to accelerate the processing of asylum applications.

In the summer of 2011, in the context of massive inflows of asylum seekers in certain regions, OAR made use of videoconferencing in order to speed up the processing of asylum applications.

7.3 Pending Cases

At the end of 2014, the number of pending cases before OAR stood at 6,000.

7.4 Information Sharing

Under Spanish law, 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 UNHCR.

Within the Government, information on asylum matters may be shared by 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 III Regulation and the agreements with Denmark, Iceland, Norway and Switzerland that extend the application of the Dublin III Regulation to those States.

7.5 Single Procedure

A single procedure for considering whether an asylum seeker meets the criteria for Convention refugee status or the criteria for subsidiary protection is in place. OAR must consider both sets of criteria when making a proposal for a decision to CIAR.

8 ASSISTANCE AND RECEPTION BENEFITS FOR ASYLUM SEEKERS

8.1 Procedural Support and Safeguards

8.1.1 Legal Assistance and Interpreters

Article 18.1 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.

OAR has full-time interpreters for certain languages at the disposal of asylum seekers at the time of application. Interpretation services are also provided through a public tender with the Catholic Commission's Association for Migration, a non-governmental organization (NGO) that provides asylum seekers with assistance.

Asylum seekers may have legal counsel present during the interviews and may continue to benefit from legal aid during the appeal procedure. If the asylum seekers lack the financial means to afford legal counsel, it is provided free of charge.

8.1.2 UNHCR

UNHCR plays a key role in various aspects of the asylum procedure.

Asylum applications are forwarded to UNHCR as soon as the application is received. UNHCR can be present at the interviews and issue reasoned opinions on individual claims. Asylum seekers are free to contact UNHCR for assistance during the procedure.

As described previously, 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, it must be informed of all negative proposals on admissibility and is given 10 days to provide an opinion on the matter.

A representative from UNHCR takes part in CIAR. In this context – UNHCR has a voice but no voting rights – it analyses all cases sent to CIAR and makes recommendations and provides its opinion as appropriate.

8.1.3 NGOs

There are a number of NGOs in Spain that provide asylum seekers and refugees with support and assistance. When a person makes a claim for asylum in Spain, he or she is advised on where to obtain, among other things, the contact information of NGOs that may be able to assist them

[11] See the section on border procedures for more details.

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 Employment and Social Security is responsible for the reception of asylum seekers in Spain. Asylum seekers have access to a social worker, who will 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 these facilities for a maximum of eight days, during which time a decision on the admissibility of their claim must be made.

If their claims receive the administrative go-ahead, the asylum seekers may seek accommodation at one of the refugee reception centres if they lack the means to provide their own accommodation, for a maximum of six months. Asylum seekers may also choose to reside in private accommodation.

There are four refugee reception centres run by the Ministry of Employment and Social Security. Two are located in Madrid, one in Valencia and one in Seville. There are additional accommodation facilities across the country, run by the Spanish Red Cross, the Catholic Commission's Association for Migration, the Spanish Commission for Refugee Assistance and other NGOs. All reception centres are co-funded by the Ministry and the European Refugee Fund.

There is a temporary reception centre run by the Ministry of Employment and Social Security in each of the Spanish enclaves of Ceuta and Melilla.

Until they are 18 years of age, unaccompanied minors seeking asylum are placed in regular children's homes or residential units under the responsibility of 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 refugee reception centres, asylum seekers must undergo a medical exam performed by the Spanish Red Cross.

UNHCR/A. D'Amato/March 2014

Asylum seekers are entitled to the same health care benefits that are 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 Employment and Social Security. In addition, the reception centres organize various leisure activities.

Children under 16 years of age have access to the regular school system.

8.2.5 Access to the Labour Market

Asylum seekers are entitled to a work permit six months after lodging their asylum application. The permit is valid until a decision on their claim has been made at the first instance.

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 reside. 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 a 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

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 Royal Decree 1325/2003 of 24 October 2003 incorporates the Temporary Protection Directive for situations involving a mass influx of displaced persons.

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 Regularization 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 Regularization of Status of Stateless Persons

Spain is a State party to the 1954 Convention on the Status of Stateless Persons. According to Organic Law 4/2000 (11 January) and the Regulation adopted by 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. OAR undertakes an examination of the person's situation, after which the General Director of Internal Policy makes a recommendation for a decision to the Ministry of Interior.

The 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 conducting return procedures and enforcing returns. Asylum seekers who receive a negative decision on their claim are obligated to leave Spanish territory within 15 days of the decision, although they may be given up to 90 days under certain circumstances. However, the Ministry of Interior may decide for reasons of national security that the person has less than 15 days to leave Spain. After this period, a return procedure for irregular stay may be started. The Ministry may decide that a person whose removal is pending meets the criteria set out in the Aliens Law to obtain a permit to remain in Spain.

10.2 Procedure

Expulsion orders are enforced by the Police.

The Ministry of Employment and Social Security 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 the Catholic Commission's Association for Migration and the Spanish Red Cross, and to the International Organization for Migration to implement the programme. There are other assisted voluntary return programmes in existence, such as the Social Care Voluntary Return Programme. Assistance is also available to set up microenterprises in countries of origin.

10.3 Freedom of Movement and Detention

Persons who do not have authorization to remain in Spain may be detained pending their return under conditions established by law. Alternatively, they may be required to report to the Police on a regular basis or to submit their travel or identity documents.

10.4 Readmission Agreements

Spain has bilateral readmission agreements in force with various EU Member States for the return of nationals and third-country nationals.

Spain has also concluded readmission agreements with Algeria, Bosnia and Herzegovina, Cape Verde, the former Yugoslav Republic of Macedonia, Gambia, Ghana, Guinea-Bissau, Guinea (Conakry), Mali, Mauritania, Morocco, Niger and Nigeria. An agreement has also been signed with Senegal to deal with unaccompanied minors, notably relating to their repatriation and social rehabilitation.

In addition, there are EU readmission agreements with third countries.

11 INTEGRATION

The Ministry of Employment and Social Security oversees the implementation of integration programmes offered to refugees and beneficiaries of subsidiary protection in Spain. The Ministry provides funds to a number of NGOs that offer a variety of integration assistance activities. These activities include the following:

- Offering financial assistance for rental accommodation for a three-month period
- Running a programme that provides financial assistance to those who wish to become self-employed
- Offering guidance and legal advice
- Running 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. This programme also offers assistance with the journey to Spain and with meeting basic needs upon arrival.

The European Refugee Fund also provides funding on a yearly basis to NGOs running integration programmes. Within the framework of the European Refugee Fund's national implementation plan, the objectives in the field of social inclusion have been:

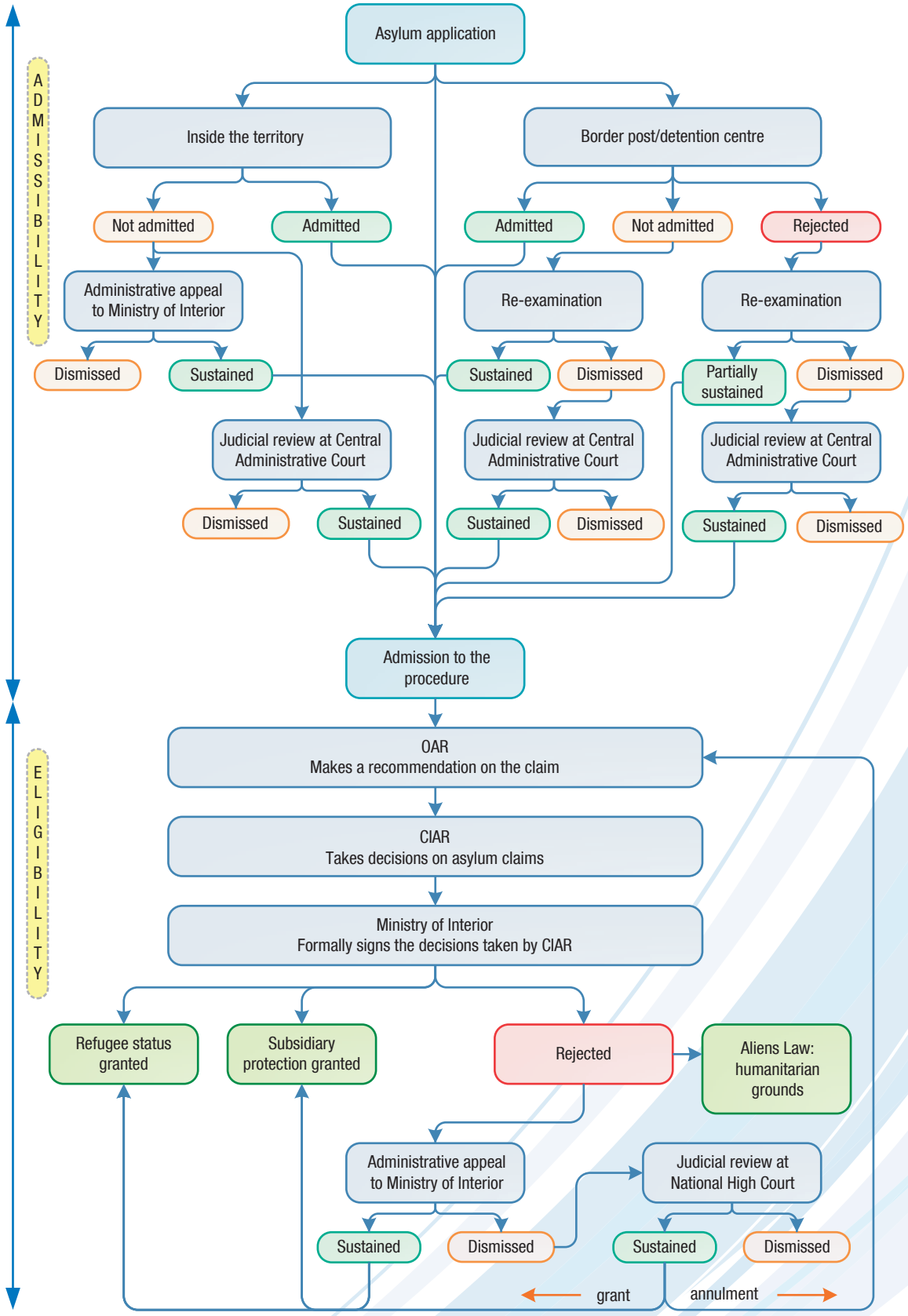
- Better actions to identify people who need assistance with social inclusion
- Provide the most vulnerable groups with special attention (including psychological help)
- Social awareness about asylum, refugees and gender issues
- Family reunification for people meeting certain conditions.

More broadly, persons who have obtained protection in Spain have access to training courses, Spanish-language classes and advice on gaining employment.

In particular, the Ministry of Employment and Social Security manages the reception centres for refugees, which are public establishments providing accommodation, meals, and social and psychological assistance. These centres receive refugees and applicants for international protection (whose applications have been accepted for processing) lacking economic resources or employment. The reception centres meet their basic needs and are a first step towards social integration.

12 ANNEX

12.1 Asylum Procedure Flow Chart



12.2 Additional Statistical Information

SPA. Fig. 4 Asylum Applications from Top 10 Countries of Origin in 2012, 2013 and 2014

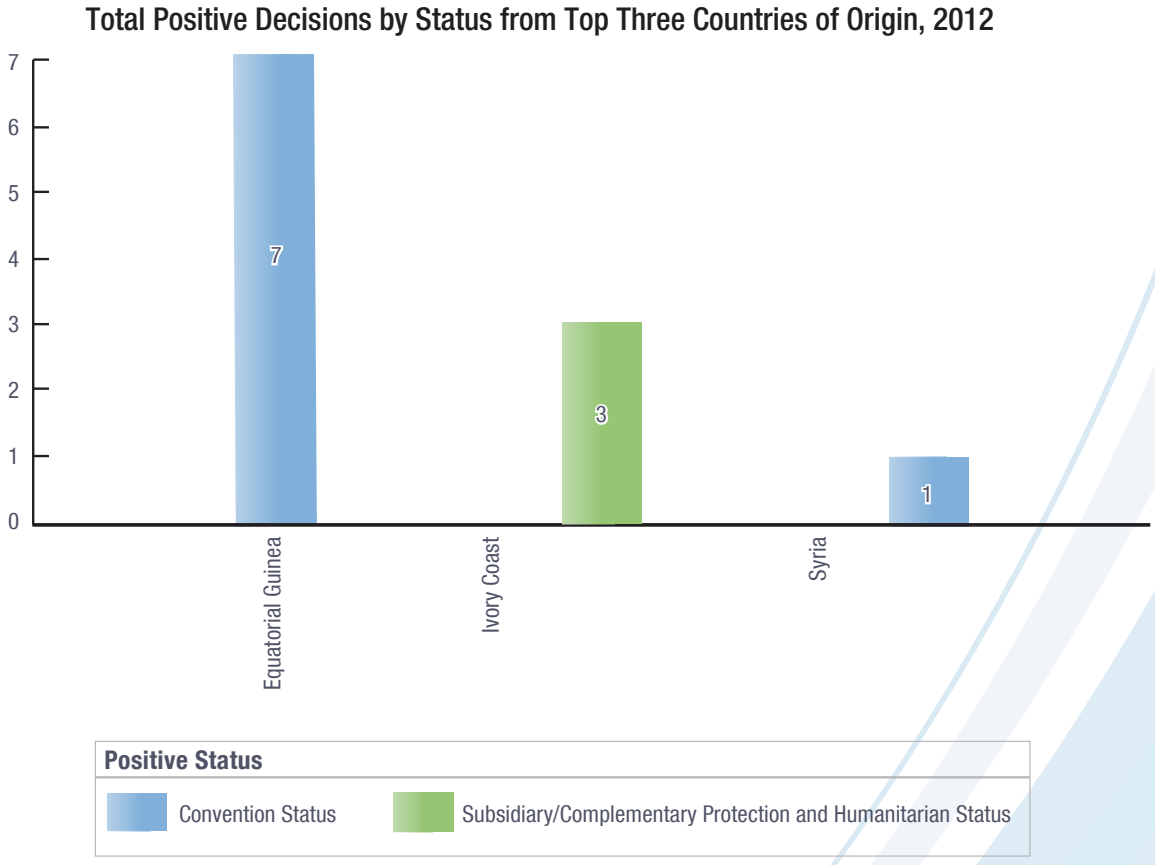
	2012		2013		2014	
1	Syria	254	Mali	1,469	Syria	1,510
2	Nigeria	203	Syria	724	Ukraine	894
3	Algeria	202	Algeria	352	Mali	597
4	Cameroon	121	Nigeria	182	Algeria	304
5	Ivory Coast	109	Somalia	132	West Bank & G.S.	198
6	Mali	99	West Bank & G.S.	130	Nigeria	160
7	Somalia	98	Pakistan	102	Pakistan	139
8	Pakistan	97	Guinea (Conakry)	89	Venezuela	122
9	D.R. Congo	78	Cameroon	87	Iraq	115
10	West Bank & G.S.	78	D.R. Congo	78	Somalia	99

SPA. Fig. 5 Decisions Taken at the First Instance in 2012, 2013 and 2014

	Convention Status		Humanitarian Status and Subsidiary/Complementary Protection		Rejections		Withdrawn, Closed and Abandoned Cases		
Year	Number	%	Number	%	Number	%	Number	%	Grand Total
2012	8	1%	3	0%	1,102	99%	0	0%	1,113
2013	203	11%	329	17%	1,366	72%	0	0%	1,898
2014	384	13%	1,201	42%	1,279	45%	0	0%	2,864

SPA. Fig. 6.a Positive First-Instance Decisions, Top Three Countries of Origin in 2012[12]

	Country of Origin	Total Positive	Total Decisions	Rate
1	Equatorial Guinea	7	18	38.9%
2	Ivory Coast	3	93	3.2%
3	Syria	1	14	7.1%

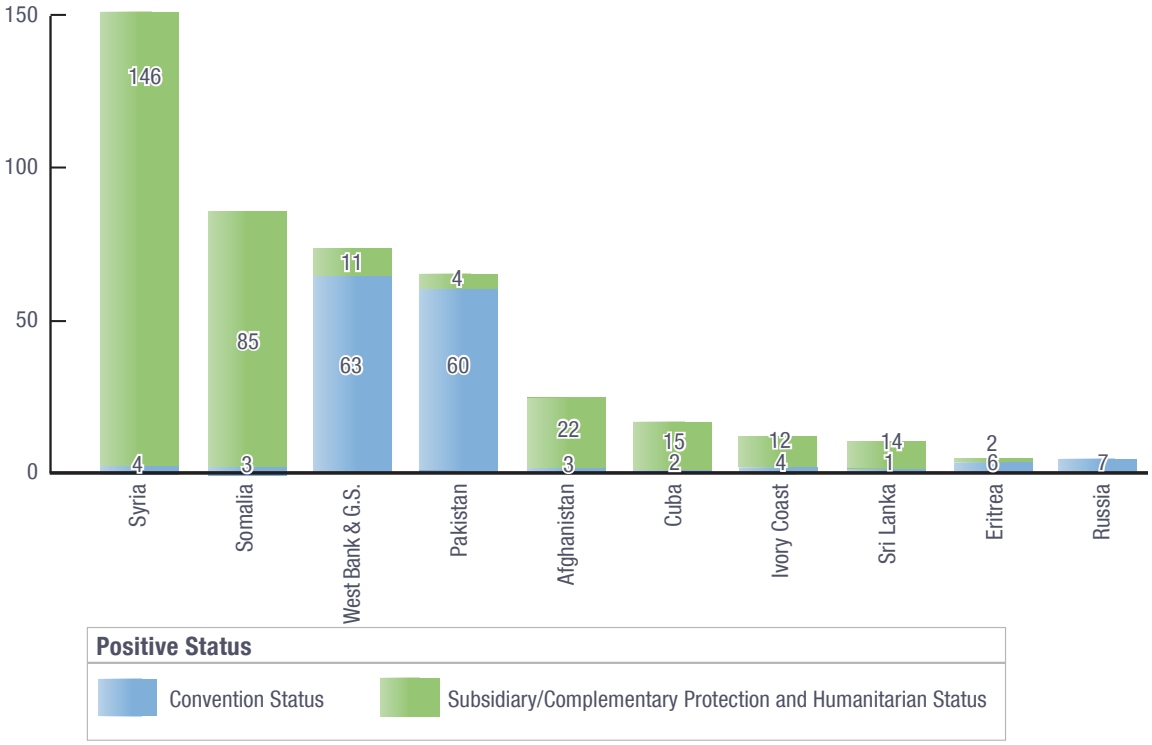


[12] For the purpose of this exercise, positive decisions include decisions to grant Convention status, subsidiary/complementary protection and other humanitarian statuses. Excluding withdrawn, closed and abandoned claims.

SPA. Fig. 6.b Positive First-Instance Decisions, Top 10 Countries of Origin in 2013[13]

	Country of Origin	Total Positive	Total Decisions	Rate
1	Syria	150	152	98.7%
2	Somalia	88	98	89.8%
3	West Bank & Gaza Strip	74	87	85.1%
4	Pakistan	64	91	70.3%
5	Afghanistan	25	26	96.2%
6	Cuba	17	37	45.9%
7	Ivory Coast	16	236	6.8%
8	Sri Lanka	15	17	88.2%
9	Eritrea	8	20	40.0%
10	Russia	7	23	30.4%

Total Positive Decisions by Status from Top 10 Countries of Origin, 2013

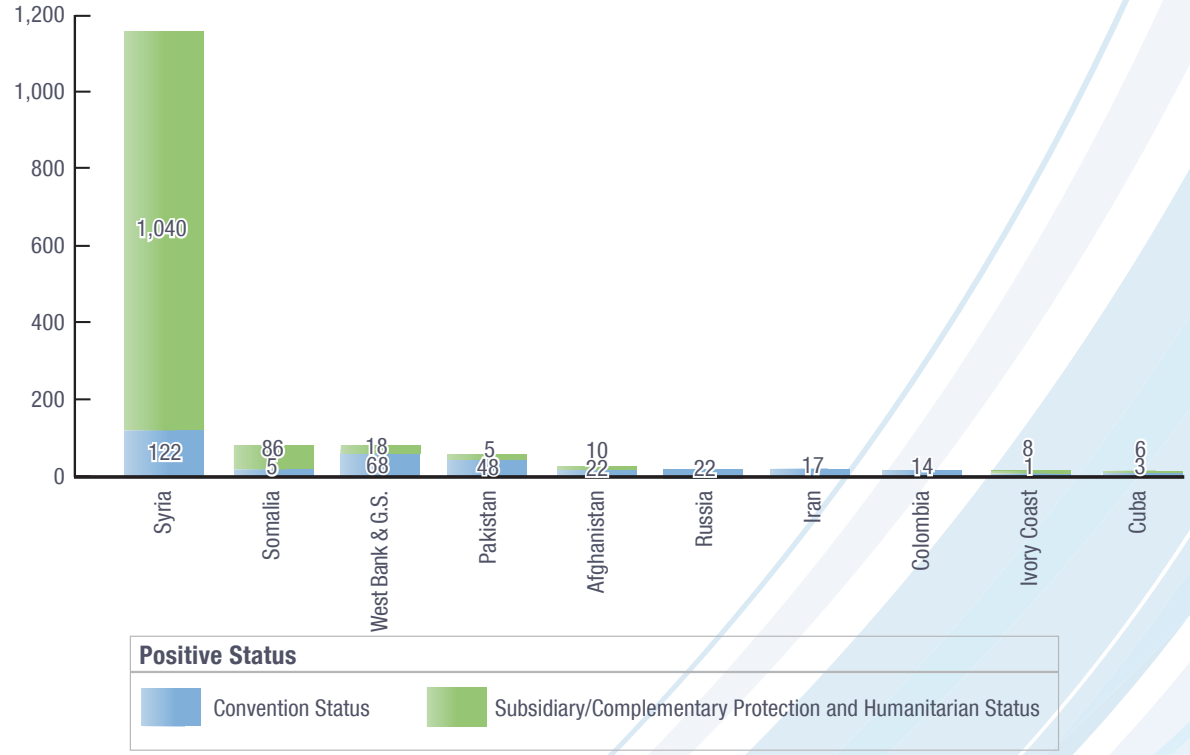


[13] For the purpose of this exercise, positive decisions include decisions to grant Convention status, subsidiary/complementary protection and other humanitarian statuses. Excluding withdrawn, closed and abandoned claims.

Positive First-Instance Decisions, Top 10 Countries of Origin in 2014[14]

	Country of Origin	Total Positive	Total Decisions	Rate
1	Syria	1,162	1,162	100.0%
2	Somalia	91	117	77.8%
3	West Bank & Gaza Strip	86	101	85.1%
4	Pakistan	53	76	69.7%
5	Afghanistan	32	33	97.0%
6	Russia	22	31	71.0%
7	Iran	17	37	45.9%
8	Colombia	14	45	31.1%
9	Ivory Coast	9	313	2.9%
10	Cuba	9	17	52.9%

Total Positive Decisions by Status from Top 10 Countries of Origin, 2014

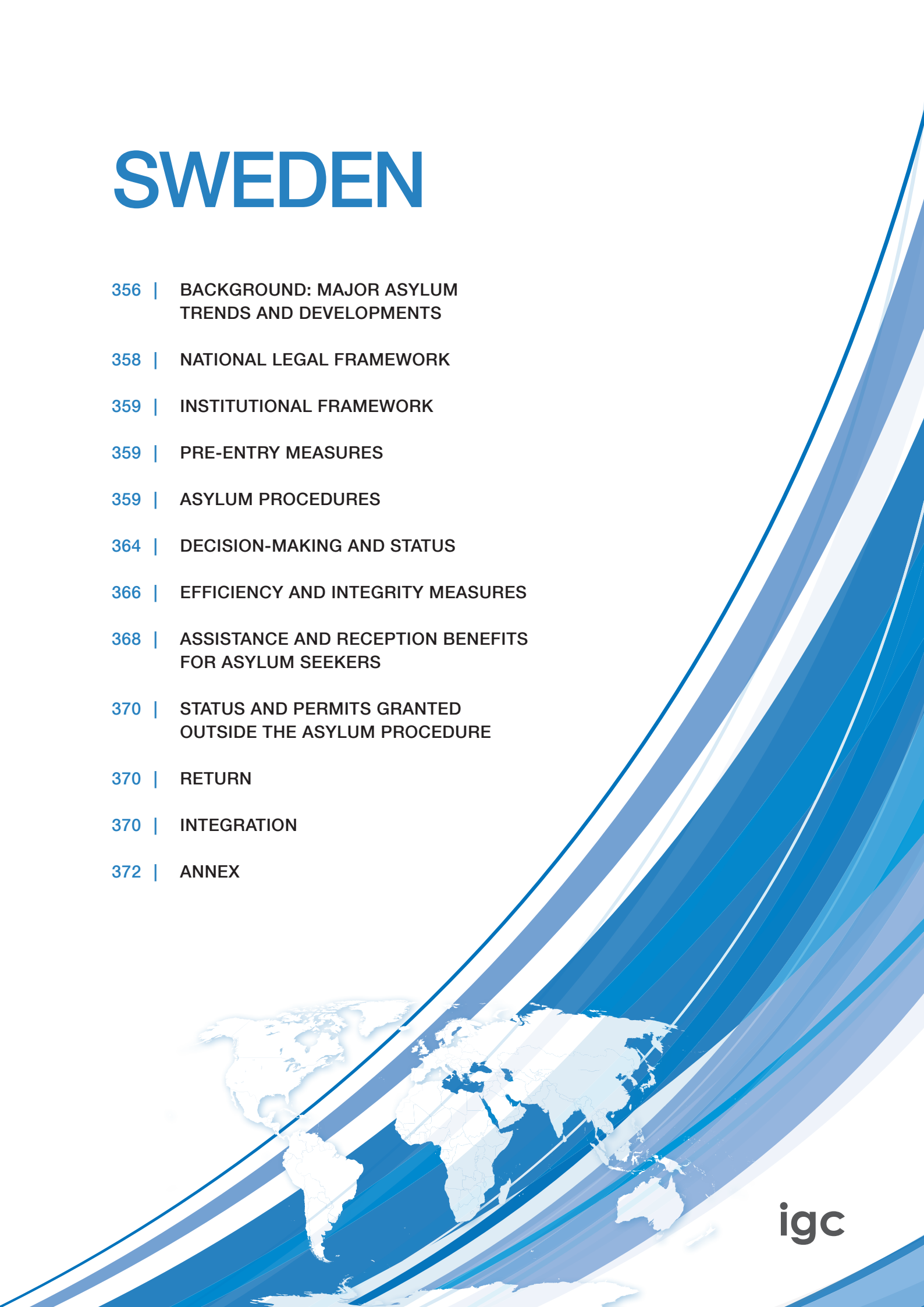


[14] For the purpose of this exercise, positive decisions include decisions to grant Convention status, subsidiary/complementary protection and other humanitarian statuses. Excluding withdrawn, closed and abandoned claims.

Portrait of a young Syrian refugee taken in her mobile home in Za'atri camp in Jordan.

UNHCR/O.Laban-Mattel/June 2013

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 1980s, reaching a peak of 84,000 in 1992. Although figures decreased again in the following years, the numbers started to increase from the early 2000s onward, culminating in the peak figure of 36,207 asylum seekers in 2007. Since 2012, however, numbers have been on the rise again. While 44,000 applications were filed in 2012, 54,000 were made in 2013. In 2014, more than 80,000 persons sought asylum in Sweden, 50 per cent more than in 2013.

The current development has led the Swedish Migration Agency[1] to estimate that the inflow in 2015 will be between 80,000 and 105,000 asylum seekers. This means that Sweden now has by far the highest number of asylum seekers per capita among the IGC Participating States and in the European Union (EU). The continuing developments in Syria and the wider Middle East will be decisive factors.

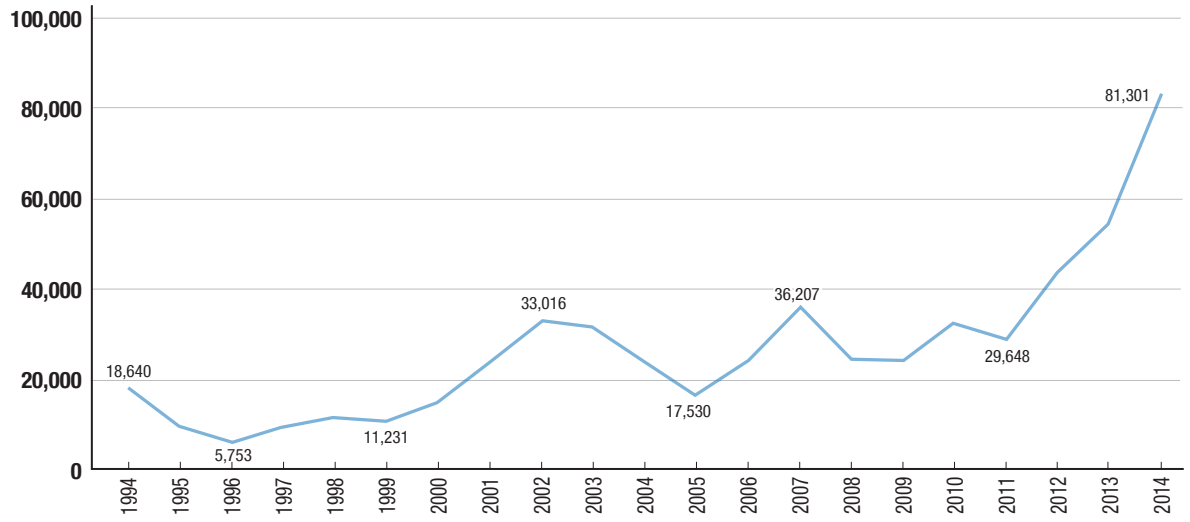
Top Nationalities

In the 1990s, Sweden received asylum claims mainly from the former Yugoslavia, Iraq, Somalia and Iran. During the 2000s, there was only a minor shift in the top countries of origin, with asylum seekers originating mostly from Iraq, Serbia, Russia, Afghanistan and Somalia. There was a large increase in the number of asylum seekers originating from the Balkans in 2010 and 2011, mainly due to the removal of a visa requirement to travel to the EU. Since 2012, the number of asylum seekers from Syria has increased rapidly and Syrians are now by far the largest group of asylum seekers. While 7,800 applications from Syrians were filed in 2012, the numbers increased to 16,300 in 2013 and to 30,500 in 2014. As the number of Syrian asylum seekers has increased, the number of stateless applicants has risen as well. In 2013, 7,000 stateless persons applied for asylum in Sweden and in 2014, the number increased to 8,000. Many, but not all, have a connection to Syria. However, the most significant change in Sweden during 2014 compared to the previous year occurred with Eritrean applicants, whose numbers increased to approximately 6,700 in absolute terms, and by 140 per cent in relative terms.

Important Reforms

Until 2006, asylum procedures had been governed by the Aliens Act 1989:529. In 1992, the Aliens Appeals Board, an independent authority, was created to replace the Government[2] as the second instance decision-making authority. However, the Aliens Appeals Board and the Swedish Migration Agency, which is the first instance decision-making body, could refer individual cases to the Government for a guiding decision taken collectively by the ministers.

SWE. Fig. 1 **Total Asylum Applications by Year, 1994–2014**



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 new rules regarding which categories of persons, in addition to Convention refugees, might receive protection. The new categories included persons who faced a risk

[1] Before March 2015, the Swedish Migration Agency was known as the Swedish Migration Board. All references to the Swedish Migration Board in this chapter are referring to what is now known as the Swedish Migration Agency.

[2] The word Government in this context should be interpreted in its most narrow sense, as the collective of all ministers, including the prime minister.

of being subjected to the death penalty, corporal punishment or torture or other inhuman or degrading treatment or punishment, persons fleeing armed conflicts and persons who faced a risk of being subjected to persecution on gender-related or sexual orientation grounds.

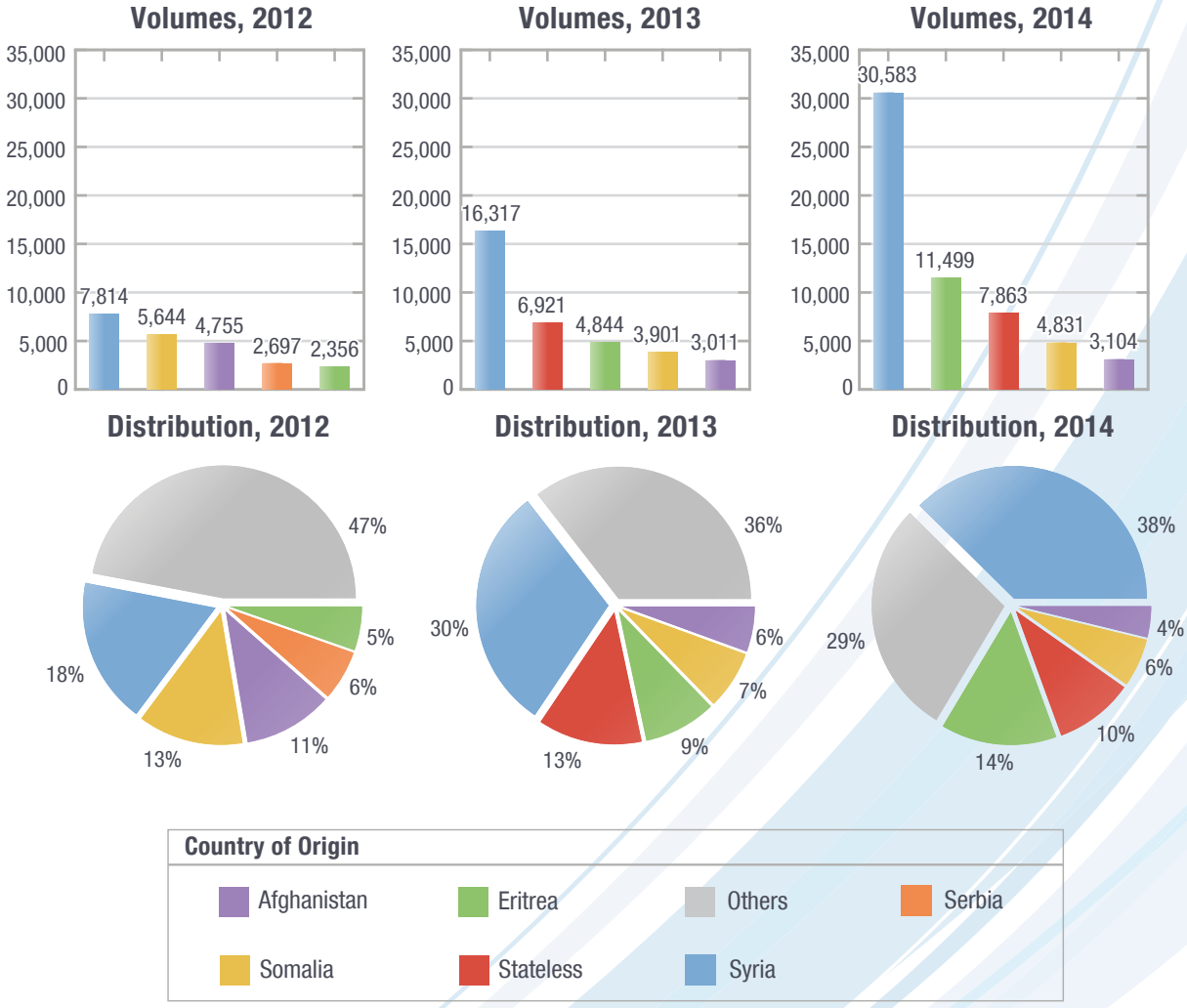
- The possibility for family reunification for persons granted protection was restricted to the nuclear family (spouse, children).

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 appeals procedure designed to increase the possibility for an asylum seeker to obtain an oral hearing on his or her case. The Aliens Appeals Board was abolished and replaced by three Migration Courts and a Migration Court of Appeal. The Government lost the ability to make precedent-setting decisions, which are now made by the Migration Court of Appeal. A fourth Migration Court was established in October 2013.

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 orientation.[3]

In January 2010, amendments to the Swedish Aliens Act, aimed at adapting the Act to the Qualification Directive[4] and the Asylum Procedures Directive, entered into force. As a result of the amendments, there are now three categories of persons in need of protection under the Aliens Act: refugees, persons eligible for subsidiary protection and persons otherwise in need of protection. Refugees and persons eligible for subsidiary protection are covered by the Qualification Directive. The third category, persons otherwise in need of

SWE. Fig. 2 Asylum Applications Received from Top Five Countries of Origin in 2012, 2013 and 2014



[3] In the previous Act, persons claiming gender-related persecution were determined to be persons "otherwise in need of protection".

[4] 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).

protection, is a national protection category. Under the new rules, a person in need of protection will now receive a formal declaration confirming his or her status.

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 Others Ordinance (1994:361). The refugee definition in the 1951 Convention relating to the Status of Refugees (along with the Qualification Directive) is transposed into chapter 4, section 1, and chapter 12, section 2, of the Aliens Act. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and the Qualification Directive are included in chapter 4, section 2, and chapter 12, section 1, of the Aliens Act.

On the basis of this legal framework, Sweden grants Convention refugee status to persons meeting the criteria set out in the 1951 Convention, and others in need of protection are granted subsidiary protection status or status as a person otherwise in need of protection.

2.2 Recent/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 board was requested to examine the following elements:

- Accommodation facilities at reception centres run by the Swedish Migration Board (now known as the Swedish Migration Agency)
- The financial benefits available to asylum seekers during the procedure
- 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 Swedish Migration Board and local councils, municipalities, government agencies, non-governmental organizations (NGOs) and other stakeholders involved in reception in order to increase asylum seekers' opportunities to support themselves.

The Commission of Inquiry on Detention was established in 2010 to examine the legal framework for detention under the Aliens Act. This included reviewing the current legislation and regulations, as well as presenting any suggestions for improving the system of detention. The commission presented its final report in February 2011. In May 2012, the Return Directive[5] was transposed into Swedish legislation together with parts of the recommendations from the report.

The Swedish Migration Agency is working on increasing efficiency in the asylum process by improving the case handling process, as well as using an e-Migration system that will permit a better determination of a person's identity.

In March 2012, the Government and the Green Party concluded a framework agreement on migration and asylum policy. This has led to, among other things, a revision of the right to education of children present in the country without a permit, and broadened access to subsidized health and medical care for asylum seekers, which now also includes rejected asylum seekers and persons who have not applied for any residence permit in Sweden.

In 2012, a commission was established to examine the language and formulations of decisions and judgements in migration cases.

Recent Developments

The Swedish Migration Agency decided to change its organizational structure from 1 January 2015. The new structure aims to strengthen the authority's ability to be flexible in managing variations in the number of asylum applicants, to enhance conditions for a coaching leadership, to enhance the current process orientation, to strengthen further the processes of governance, and to support monitoring and supervision. An overarching goal of the organizational changes is to create, with the resources available, the best possible value from the applicant's perspective.

The main features of the change are strengthened leadership, the establishment of geographical regions for case management, the creation of interprofessional teams and closer staff management relations, with a head office where core functions are integrated and vision-oriented.

As a result, the Director General of the Swedish Migration Agency has appointed a head of operations and a head of quality. The head of operations will oversee six regional offices.

[5] Directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third country nationals.

3 INSTITUTIONAL FRAMEWORK

3.1 Principal Institutions

The Swedish Migration Agency is an independent body responsible for examining all asylum applications made in Sweden and for the reception of asylum seekers. It assesses issues concerning refugee protection and other forms of protection through a single asylum procedure. The Swedish Migration Agency also provides for assistance in voluntary returns and is involved in the resettlement of refugees to Sweden.

The Migration Courts process appeals of the Swedish Migration Agency's decisions on asylum claims. There are four Migration Courts located within the County Administrative Courts in Stockholm, Göteborg, Luleå 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. It is the last instance in regular asylum claims.

The Swedish Migration Agency can hand over the enforcement of decisions for removal to the Swedish Police.

3.2 Cooperation between Government Authorities

The Migration Courts and the Migration Court of Appeal work independently from the Swedish Migration Agency and the government authorities. In order to uphold the independence of the Swedish Migration Agency, there are no consultations between it and the Ministry of Justice in individual cases.

4 PRE-ENTRY MEASURES

4.1 Visa Requirements

As of 5 April 2010, the EU Visa Code applies as law in Sweden. The Visa Code regulates the provisions on Schengen visas for a period shorter than three months and applies to all Schengen countries. The Schengen countries have abolished border controls for people travelling between these countries, and a visa granted by any one of these States is valid for visits to the other Schengen countries. In exceptional cases, if the holder's passport is not approved by all of the Schengen countries, the visa may be valid only for entry into and stay in the issuing country or only for certain Schengen countries. A visa entails permission to enter and to stay in the Schengen area (including Sweden) for a short period of time. A visa is time limited and valid for a maximum of 90 days in any 180-day period. Anyone who has spent 90 days in the Schengen area must therefore leave the area for at least 90 days before they can be granted a new Schengen visa.

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. The carrier must also check that the alien has funds to pay for the journey home.

At the request of a police authority, a carrier transporting passengers to Sweden by air directly from a State that does not belong to the EU and has not entered into an agreement on cooperation under the Schengen Implementation Convention with States parties to the Convention must transmit information about the arriving passengers as soon as check-in has been completed.

The information referred to consists of:

- The number and type of travel document used
- The nationality
- The full name
- The date of birth
- The border crossing point of entry
- The mode of transport
- The departure and arrival time of the transportation
- The total number of passengers carried on the transport
- The initial point of embarkation.

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 organize 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. The Swedish Migration Agency has application units at various locations in the country. There is no time limit for applying. Information leaflets on the asylum procedure and other relevant topics (such as the Dublin procedure, accommodation and

detention) are available in various languages and accessible through the authority's web portal.

5.1.1 Outside the Country

Applications at Diplomatic Missions

Applications for asylum made at diplomatic missions are not granted.

Resettlement

Sweden is an experienced resettlement country, with an annual refugee quota in place since 1950. Cases for resettlement are submitted by the United Nations High Commissioner for Refugees (UNHCR). They are examined on the basis of prevailing law and practice by the Swedish Migration Agency. Sweden resettles solely refugees or persons in need of subsidiary protection, according to the Aliens Act, largely corresponding with the 1951 Convention. Persons selected for resettlement receive permanent residence permits and arranged transfer from the host country to Sweden. The Swedish Migration Agency forms voluntary agreements with municipalities to house and support the resettled refugees upon arrival. Once in Sweden, resettled refugees are included in mainstream services and are offered the same support as other refugees or immigrants.

The size of the Swedish resettlement quota is set annually by the Parliament, and since 2008 it has been set at 1,900 persons. Further instructions are given to the Swedish Migration Agency by the Ministry of Justice.

Sweden decides on its annual resettlement quota in close cooperation with UNHCR, and relies on UNHCR's analysis and recommendations regarding which groups to prioritize for resettlement. Refugees are examined both through dossier selection and in-country selection missions. Approximately 20 per cent of the quota is reserved for urgent or emergency cases. Sweden has long been engaged in the resettlement of Afghans, Eritreans and Somalis, among other groups. Since 2013, Sweden has been highly engaged in the resettlement of Syrians from the Middle East and North Africa. Sweden assumed chairmanship of the Core Group for Resettlement of Syrian Refugees for 2013–2014 and as such worked together with UNHCR to promote an increased intake and the efficient and high qualitative processing of Syrian cases, for resettlement as well as other forms of admission to States. Sweden is supportive of UNHCR's goal of submitting 130,000 Syrians for resettlement or humanitarian admission to States for the period 2013–2016. Approximately 1,200 of Sweden's resettlement places in 2013 and 2014 were allocated to persons from Syria.

5.1.2 At Ports of Entry

The Swedish Police are responsible for regulating the entry of persons at airports, seaports and border posts. A foreign national arriving in Sweden may state his or her intent to make an asylum application with the Police either at border control or upon being refused entry. Information about such intent is transferred to the Swedish Migration Agency, where the applicant must lodge his or her asylum application in person.

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 Swedish Migration Agency must first determine whether Sweden is responsible for processing the claim under the Dublin III Regulation. The Migration Agency conducts an oral interview with the applicant in accordance to article 5 of the Dublin III Regulation. As a rule, unaccompanied minors have the right to public counsel. If another State party to the Regulation is responsible for processing the application, the Migration Agency issues a decision to transfer the asylum seeker to the responsible country.

Freedom of Movement and Detention

The Swedish Migration Agency may decide to detain asylum seekers subject to the Dublin procedure, in accordance with provisions in the Dublin Regulation and the Aliens Act that are applicable to all stages of the asylum procedure.[6]

Review/Appeal and Suspension of Dublin Transfers

An asylum seeker can appeal to the Migration Court the Migration Agency's decision to transfer. The appeal must be made within three weeks of notification of the transfer decision. In case of an appeal, the applicant may, in accordance with article 27(3)c of the Dublin Regulation, request the court to suspend the transfer pending the outcome of the appeal.

Application and Admissibility

An asylum application can be made only if the applicant is present. When filing an asylum application, asylum seekers are requested to:

- Provide all relevant information, such as identity documents and date of arrival (identity documents may be retained by the Swedish Migration Agency)
- Have their photograph and fingerprints taken
- Appear at an interview with the Swedish Migration Agency.

In addition to determining whether the person is subject to the Dublin III Regulation as described above, the Swedish

[6] These provisions are outlined in the subsequent section on freedom of movement during the asylum procedure.

Migration Agency must also determine whether the application is subject to the principle of first country of asylum.

The Swedish Migration Agency undertakes an initial examination of the claim. At this stage, it 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 the criteria for protection; no public counsel is appointed.
- The claim does not appear to meet the criteria for protection; public counsel is appointed in order to assist the asylum seeker through the procedure.

For prioritized groups, such as asylum-seeking unaccompanied minors, the Swedish Migration Agency has set up special procedures in order to accommodate special needs.

Accelerated Procedure

According to chapter 8, section 6, of the Aliens Act, an asylum claim may be assessed under an accelerated procedure if it is deemed by the Swedish Migration Agency to be manifestly unfounded. A decision must not be made later than three months after the first application for a residence permit was made. The Migration Agency may also remove the person from Sweden before the decision has entered into force.

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. The Migration Agency or the Migration Courts can suspend the removal if reasons have been put forward.

Normal Procedure

If, during the initial examination, the Swedish Migration Agency determines that an asylum seeker will be granted a permit, the case is examined without the appointment of public counsel. For other asylum seekers, public counsel is appointed to assist applicants with their claim. Each asylum seeker can contact the responsible case officer handling his or her case throughout the process.

The case officer conducts one or more interviews with the applicant and thereafter presents a recommendation to the decision-making officer for a formal decision.

Review/Appeal of Asylum Decisions

An asylum seeker who receives a negative decision on his or her claim may, within three weeks of being informed about the decision, lodge an appeal at one of the four Migration Courts. Before an appeal is sent to the court, the Swedish Migration Agency makes an informal review of the case. If the Migration Agency 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 Swedish Migration Agency is represented by a litigation officer and the asylum seeker by a legal representative. An oral hearing can be conducted when deemed necessary by the court.

The decision of the Migration Court may be appealed 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

Instead of detaining a person, the Swedish Migration Agency or the police authority can decide to place the person under supervision. According to the principle of proportionality, a person should not be detained if supervision is a sufficient measure.

According to the Aliens Act, a person 18 years of age or older can be detained in the following circumstances:

- Detention is necessary to enable an investigation to be conducted. In this case, the person may not be detained for more than 48 hours.
- 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 there are particular reasons, the detention can be prolonged for another two weeks.
- It is likely that the person will not be granted a residence permit or will be required to leave Sweden, and there is a risk of absconding, of hampering the return process or of pursuing 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. Pursuant to the Return Directive, a person may not be detained for more than one year unless he or she is ordered to leave Sweden on account of a criminal conviction. 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 the children being separated from both parents or from their guardians. 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.

Conditions in Detention

Detention facilities run by the Swedish Migration Agency 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 Swedish Migration Agency cooperates with volunteer organizations, churches and community groups to offer support to detained asylum seekers.

Supervision

Instead of detaining a foreign national, the Swedish Migration Agency or the police 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. A supervision order may also direct a person to surrender his or her passport or other identity documents.

Repeat/Subsequent Applications

In a case concerning the enforcement of a refusal-of-entry or expulsion order that has become final and non-appealable, the Swedish Migration Agency 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, the Swedish Migration Agency 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. A prerequisite to grant a re-examination is that the circumstances could not previously have been invoked by the person, or the person shows a valid reason for not having invoked these circumstances previously. If the conditions are not fulfilled, the Migration Agency may decide not to grant a re-examination.

The Migration Agency'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 Agency decides to issue a stay of enforcement order, it may appoint a public counsel if deemed necessary.

5.2 Safe Country Concepts

5.2.1 Safe Country of Origin

Sweden does not apply a general principle of safe country of origin. Each case is assessed on its individual merits.

Asylum Claims Made by EU Nationals

Sweden does not consider the Spanish Protocol, which is annexed to the Treaty of Amsterdam, to limit EU Member States' obligations under the 1951 Convention. When an EU national applies for asylum, the Swedish Migration Agency must immediately inform the Ministry for Foreign Affairs, which then directly informs the Council of the European Union. When examining an asylum claim made by an EU national, the Migration Agency tries to use the accelerated procedure. It 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 and Safe Third Country

According to chapter 5, section 1b, of the Aliens Act, an asylum application may be dismissed if the applicant has been declared a refugee or a person eligible for subsidiary protection in another EU Member State, or has been declared a refugee or been granted equivalent protection in a country that is not an EU Member State. The latter is applicable only if the applicant will be allowed entry into that third country and is protected there against persecution and against being sent on to another country where he or she risks persecution.

An asylum application may also be dismissed if the applicant can be sent to a country where he or she does not risk being subjected to persecution, does not risk the death penalty, corporal punishment, torture or other inhuman or degrading treatment or punishment. The applicant must also be protected in that country against being transferred to a country where he or she does not have equivalent protection or the opportunity to apply for protection as a refugee. In addition, it must be reasonable for him or her to travel to the country to which he or she is being sent. However, there may be circumstances under which an application may not be dismissed when the applicant has members of his or her family in Sweden, or has acquired special ties to Sweden because of a previous extended stay in Sweden with a residence permit.

The current rules on first country of asylum and safe third country entered into force in January 2010 and are a result of amendments that were made to the Swedish Aliens Act aimed at adapting the Act to the Asylum Procedures Directive.

5.3 Special Procedures

5.3.1 Unaccompanied Minors

The number of asylum applications made by unaccompanied minors has been increasing in recent years. In 2012 and 2013, the Swedish Migration Board received 3,578 and 3,852 applications from unaccompanied minors, respectively.

Procedures

The Swedish Migration Agency prioritizes applications made by unaccompanied minors. Special procedural arrangements are made as follows:

- A representative is appointed by the municipality's chief guardian's office to represent the unaccompanied minor and to protect his or her interests.
- Asylum interviews are conducted by specially trained staff who use a particular interview guide and adjust the questions to the unaccompanied minor's age and maturity level.
- In all actions involving a child, child impact assessments are used in order to highlight the child´s situation and to determine the best interests of the child.
- In 2013, in order to provide adequate reception for the increasing number of unaccompanied minors in Sweden, the Swedish Migration Board was given extended possibilities to assign unaccompanied minors seeking asylum to municipalities, even in the absence of a reception agreement between the Swedish Migration Board and the municipality.
- An unaccompanied minor is not returned to the country of origin if he or she cannot be received by a member of his or her family or a nominated guardian, or if there are no adequate reception facilities in the State to which he or she would be returned.

Age Assessment

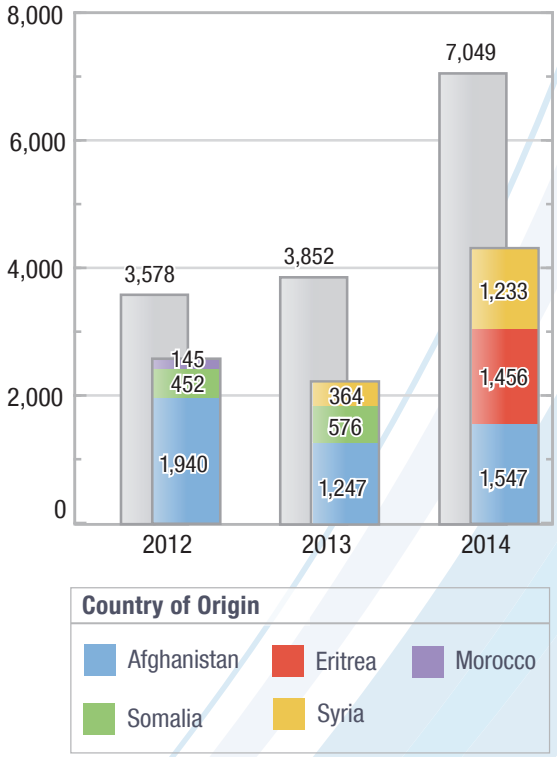
If there is uncertainty about an applicant's age, the Swedish Migration Agency can offer a medical age assessment. The outcome of a medical assessment is evaluated together with all other circumstances relating to the applicant's age. A decision regarding the applicant's identity and age is usually made in the asylum application decision.

5.3.2 Temporary Protection

Chapter 21 of the Aliens Act 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 Agency 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 a refugee travel document. Asylum seekers already in the asylum procedure may be granted temporary protection according to this provision if a residence permit is not granted on other grounds.

SWE. Fig. 3 Asylum Applications by Unaccompanied Minors in 2012, 2013 and 2014

	2012	2013	2014
Total Asylum Applications	43,887	54,259	81,301
Applications by Unaccompanied Minors	3,578	3,852	7,049
Percentage	8%	7%	9%



5.3.3 Stateless Persons

Under the Aliens Act, stateless persons are treated the same as persons with citizenship – which means that stateless persons may apply for asylum in the same manner as other asylum seekers. The definition of a refugee and of the other forms of protection in the Aliens Act explains that the asylum application of a stateless person is assessed against 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).

Gender-Based Persecution

IN FOCUS

SWEDISH MIGRATION AGENCY'S GOALS IN THE AREAS OF LESBIAN, GAY, BISEXUAL AND TRANSGENDER (LGBT) APPLICANTS AND GENDER

The Swedish Migration Agency has three overarching goals in the fields of LGBT and gender:

- All persons should have their rights protected in accordance with the relevant international conventions and national law.
- The goals to secure equal treatment regardless of sex, sexual identity and sexual orientation must be visible in the operational planning and in the follow-up activities.
- Work methods that ensure the individual's right not to be discriminated against due to sex, sexual identity or sexual orientation must be standardized.

A formal internal decision was taken by the Swedish Migration Board in December 2012. The decision identifies future development in the field and, among other things, appoints a special coordinator to work full time on developing and coordinating the activities within the LGBT and gender sphere of the Migration Board.

Since the decision of December 2012, work on these issues has intensified. Several projects have been carried out and new work methods, training material and tools have been developed. For example, each asylum examination unit now has a specially trained LGBT specialist, who is appointed to support colleagues that are dealing with LGBT asylum seekers.

The Swedish Migration Agency has particular information on their website for LGBT asylum seekers.[7]

6 DECISION-MAKING AND STATUS

6.1 Inclusion Criteria

When making a determination on an asylum claim, the Swedish Migration Agency must first consider whether the person meets the criteria for refugee status or as a person otherwise in need of protection and, failing that, whether other grounds for protection are met. The Migration Agency 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 provided in chapter 4, section 1, of the Aliens Act. The definition follows the criteria in the 1951 Convention. Gender or sexual orientation may determine membership in a particular social group. A person who is a refugee will be granted a status declaration.

6.1.2 Subsidiary Protection

Persons who do not qualify for Convention refugee status may meet the criteria for subsidiary protection or for protection as a person otherwise in need of protection, a category of protection specific to Sweden.

Subsidiary protection is granted if there is danger of:

- Punishment by death
- Physical punishment, torture or other inhuman and degrading treatment
- As a civilian, physical integrity is at risk because of armed conflict.

Protection as a person otherwise in need of protection, which is covered in chapter 4, section 2a, of the Aliens Act, is granted to an alien who is outside the country of the alien's nationality because he or she:

- Needs protection because of an 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
- Is unable to return to the country of origin because of an environmental disaster.

IN FOCUS

THE SITUATION IN SYRIA

Following the Swedish Migration Board's decision on 3 September 2013, Syrian applicants granted subsidiary protection status will be granted permanent residence permits. The decision also paves the way for granting permanent residence to those previously granted subsidiary protection status with temporary permits. The Migration Board's decision to grant permanent residence permits to Syrian applicants was based on the main rule according to national preparatory work and case law – and thus, there is no policy change. Sweden has a long tradition of granting permanent residence permits to those granted international protection (the granting of temporary permits in certain situations is a more recent deviation from the main rule).

7 See www.migrationsverket.se/English/Private-individuals/Protection-and-asylum-in-Sweden/For-lgbtq-persons.html.

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 asylum seeker's country of origin are taken into consideration. In July 2014, there was an amendment concerning children, who may now be granted a residence permit in cases of particularly distressing circumstances.

Impediment to Enforcement of a Refusal-of-Entry or Expulsion Order

A temporary residence permit may be granted if there is a temporary impediment to the enforcement 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 (especially distressing circumstances for children).

6.2 The Decision

Decisions are made by the decision-making officers of the Swedish Migration Agency who examine the merits of the claim.

The applicants are notified orally of the decision. All decisions for residence permits or long-term residence status in Sweden must contain the reasons on which the decision is based.

6.3 Types of Decisions, Statuses and Benefits Granted

Benefits

Recognized refugees and other persons in need of protection are entitled to the same rights and have the same obligations as all inhabitants of Sweden. Refugees and others in need of protection have the following benefits:

- Right of status
- Permanent residence or temporary residence permit valid for at least three years
- Right to work or study
- Right to settle anywhere
- Support to find housing in a municipality.

Furthermore, refugees can apply for a travel document valid for all countries except the country of origin, for a maximum and non-renewable period of five years.[9] Persons benefiting from other protection may apply for an alien's passport according to chapter 2, section 1a, of the Aliens Act.

Convention refugees and persons in need of protection may apply for citizenship after having resided in Sweden for four years.

6.4 Exclusion

According to article 1F of the 1951 Convention, persons who have a well-founded fear of being subjected to the death penalty or other cruel punishment if returned to the country of origin – including those who have been excluded from protection – will not be removed from Sweden.

According to chapter 4, sections 2b and c, of the Aliens Act, an alien is excluded from international protection where there are serious reasons for considering that he or she has:

- committed a crime against peace, a war crime or a crime against humanity.
- committed a serious crime – if an alien is a refugee, the crime should be non-political and outside Sweden.
- 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.

6.4.1 Refugee Protection

According to the Aliens Act, a person who meets the criteria for Convention refugee status may be refused a residence permit if he or she, through particularly serious crime, would pose serious danger to public order and safety or with regard to national security if he or she would be allowed to stay in Sweden. Provisions in the Aliens Act on impediments to enforcement of removal (chapter 12, section 1) are also applicable in this instance.

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 or war crimes, or to raise concerns of national security. Return would not be implemented if provisions relating to impediments to enforcement of removal were applicable.

The Swedish Migration Agency 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.

[8] See the section on repeat/subsequent applications for more information on the re-examination of asylum claims.

[9] Refugees may apply to the Swedish Migration Agency for a travel document that satisfies EU passport requirements. A computer chip includes the holder's personal details and a photograph. A person under 18 years of age must have the consent of his or her parents or legal guardian in order to acquire this document.

6.5 Cessation

The Swedish Migration Agency may make a decision to apply cessation clauses if one of the conditions set out in chapter 4, section 5 (refugees) or 5a (otherwise in need of protection), of the Aliens Act is met.

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 Swedish Migration Agency.

Residence permits may be withdrawn from a person who has knowingly supplied incorrect information or knowingly suppressed information that was important for 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 a resident of Sweden. If the person concerned has informed the Migration Agency that he or she wishes to keep his or her residence permit, the permit may be withdrawn at the earliest two years following the person's departure from Sweden.

6.7 Support and Tools for Decision-Makers

6.7.1 Country of Origin Information

The Country of Origin Information Unit of the Swedish Migration Agency is made up of about 15 persons who provide case officers with research and information support. The unit consists of different geographical teams staffed by country of origin information (COI) researchers and COI analysts.

For the reorganization of the Migration Agency, it was decided to increase the independence of the Country of Origin Information Unit (in line with the EU guidelines for COI) by removing the unit from the Legal Division and having it become an organizationally independent unit directly under the Director General.

The Country of Origin Information Unit collects relevant information from reliable international and domestic sources. The staff members respond to questions from case officers and produce reports on various topics. COI analysts conduct fact-finding missions in countries of origin. Through these missions, they try to answer different questions and offer a basis for analysis (for example, regarding the situation for a certain minority in a country). Since 2011, special efforts have been made to collect information of interest concerning unaccompanied minors. This has involved attempting to trace family members and investigating the existence or standards of orphanages.

One of the elements of the legal reform introduced by the new Aliens Act in 2006 was the increased transparency of the asylum process. In order for this to be achieved, it was decided that the country information gathered by the Swedish Migration Agency should, to the greatest extent possible, be publicly accessible. Information from Lifos, the COI database, is available to the public through the Swedish Migration Agency's website, as are decisions from the Court of Appeal, the European Court of Human Rights, the Court of Justice of the European Union and the Committee against Torture.

6.7.2 Language Analysis

The Swedish Migration Agency may use language analysis as an investigation tool when the asylum seeker has not been able to establish his or her identity through identification documents or statements. Language analysis is not the sole instrument for determining an asylum seeker's place of origin – questions about personal circumstances and tests of knowledge about the region of origin are also used.

The Swedish Migration Agency has a contract with two independent companies that provide language analysis through analysts and linguists. Most analysis is conducted through a telephone conversation between the analyst and the asylum seeker, during which the analyst attempts to analyse the speech. Sometimes the asylum seeker's speech is recorded by an official at the Migration Agency. The asylum seeker is always informed before the recordings take place and his or her identity is always kept from the companies and analysts throughout the whole process. After receiving the recording from the Migration Agency, the analyst conducts the examination together with a linguist, who finalizes the report on the language analysis. The use of language analysis is not regulated by the Aliens Act or the Aliens Ordinance, but the Swedish Migration Court of Appeal has, in a precedent case, made statements evaluating language analysis as evidence.

7 EFFICIENCY AND INTEGRITY MEASURES

7.1 Technological Tools

7.1.1 Fingerprinting

The Swedish Migration Agency and the National Police Board have the authority to collect fingerprints from persons over 14 years of age. The fingerprints are searched for and/or stored in the national fingerprint database, as well as in Eurodac and the Visa Information System in accordance with national and EU legislation.

7.1.2 DNA Tests

In cases concerning the applications for residence permits on the grounds of family ties, the Swedish Migration Agency 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 the application. A DNA analysis may be performed only if the person to be examined has been informed of the purpose of the analysis and has given his or her written consent.

7.1.3 Verification/Examination of Documents

The Swedish Migration Agency has a unit for biometrics and document verification. Within this unit, a document team specializes in examining documents. This team carries out document training for Migration Agency staff and consular personnel. It also provides Swedish embassies and consulates around the world with support in answering questions regarding documents.

7.1.4 Database of Asylum Applications/Applicants

All asylum applications and decisions are registered in a database in which all foreign nationals in Sweden are registered. The Migration Agency also maintains a specific statistical database.

IN FOCUS

LEAN PRINCIPLES IN THE ASYLUM SYSTEM

By adopting lean production principles, the Swedish Migration Agency intends to reach a final decision on a claim within three months without infringing legal obligations or compromising case-by-case assessment.

The Migration Agency's interpretation of lean production is process-oriented and focused on the learning aspect. The asylum seeker is the centre of a client-based approach, consisting of four main elements:

- Process efficiency
- Performance management
- Organization and skills
- Mindsets and behaviours.

The system benefits not only the agency, but also the individual asylum seeker, whose legal rights are improved. The process is more transparent and the interview takes place early in the process. Improvements are introduced systematically, in a standardized manner.

7.2 Length of Procedures

There are no legally enforced time frames for processing asylum claims. The goals of the Migration Agency are to maintain high quality and efficient decision-making, to respond effectively to fluctuations in intake and to shorten the time asylum seekers spend in the reception system.

7.3 Pending Cases

As of 31 August 2014, there were 38,214 pending cases at the Swedish Migration Agency.

7.4 Information Sharing

Sweden is party to the Dublin III Regulation and has agreements with Denmark, Iceland, Norway and Switzerland extending the application of the Dublin Regulation to those States. Specific information on asylum seekers can be released to other States, in accordance with article 21 of the Dublin Regulation. Other than that, information about an asylum seeker can be released to a third country only if the Public Access to Information and Secrecy Act permits it.

7.5 Single Procedure

Sweden has a single asylum procedure. Consequently, an asylum seeker needs to make only one application for international protection in order to obtain either Convention refugee status or subsidiary protection. The Migration Agency 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.

IN FOCUS

QUALITY ASSURANCE

The Swedish Migration Agency's quality system has recently been enhanced. Many of the measures were implemented within the framework of the project entitled "The Learning Organization", which was co-financed by the European Refugee Fund and carried out between January 2012 and June 2014. The project was extensive and holistic, with an aim to ensure high legal standards in asylum adjudications and a harmonized asylum process. After the project was completed, The Learning Organization was made into a unit within the Migration Agency.

The measures introduced included criteria for high legal standards, methods for systematic follow-ups on quality, and tools and guidelines for processing asylum cases (such as a handbook on asylum interviews and case learning).

A comprehensive training programme has recently been launched. The aim is for all staff working with asylum claims to take part in training activities, including on certain European Asylum Curriculum modules.

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 the following:

- When, after a preliminary review of the case, it is obvious to the Swedish Migration Agency that the applicant will be allowed to remain in Sweden
- 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. 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 Regional Representation for Northern Europe, 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 COI, legal advice, or UNHCR's recommendations and guidelines. UNHCR may also submit amicus curiae to the courts.

UNHCR, along with NGOs, is entitled to provide legal counsel with specific country expertise and to intervene on behalf of an asylum seeker during the asylum procedure. The UNHCR Regional Representation for Northern Europe offers training, advice and information to NGOs and lawyers who have direct contact with asylum seekers.

Due to provisions in the Swedish Secrecy Act, which aim to protect sensitive information regarding asylum seekers, UNHCR and NGOs must have power of attorney in order to have access to information regarding a specific asylum seeker and his or her case.

8.1.4 NGOs

The Swedish Refugee Advice Centre is an NGO that aims to provide refugees and asylum seekers with professional legal assistance. Advisers at the centre may 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 Agency is responsible for overseeing the reception of asylum seekers. During the asylum procedure, applicants receive a document – the so-called LMA[10] card – identifying them as asylum seekers. The LMA card is not, however, an identification document and it can be issued even if the person's identity is not clear.

8.2.1 Accommodation

Asylum seekers awaiting a decision on their claim may choose to arrange their own private accommodation or to stay in housing arrangements provided by the Swedish Migration Agency. Two thirds of asylum seekers choose the latter alternative. The majority of the accommodation provided by the Swedish Migration Agency is made up of rented apartments in average housing estates in small or medium-sized towns across Sweden. The municipalities are responsible for providing suitable accommodation for unaccompanied minors.

8.2.2 Social Assistance

The Migration Agency provides asylum seekers in need of financial assistance with a daily cash allowance to cover expenses such as food, clothing and other necessities. The daily cash allowance rate is as follows:

- SEK 71 (EUR 8) for adults, or SEK 24 (EUR 3) if the Migration Agency provides the asylum seeker with food. For adults who cohabitate, the rates are SEK 61 (EUR 6.50) and SEK 19 (EUR 2).
- Between SEK 37 (EUR 4) and SEK 50 (EUR 5,50) for children, adjusted according to age.

Financial assistance is also provided for some additional expenses, such as medical prescriptions, eyeglasses, winter clothing or provisions for infant care.

Persons who fail to cooperate with authorities during the asylum procedure (for example, they miss appointments for scheduled interviews or do not cooperate in disclosing their identity) may have their daily allowance reduced.

8.2.3 Health Care

Asylum seekers are entitled to a voluntary medical examination free of charge.[11] They are also entitled to emergency or urgent medical and dental care and have the right to gynaecological and prenatal care, as well as care in accordance with the Swedish Communicable Diseases Act. Minors are entitled to the same health and medical care as children who are resident in the country.

[10] The acronym LMA is based on the Swedish name of the Act governing the reception of asylum seekers: *Lagen om mottagande av asylsökande m.fl.*
[11] The medical examination is not mandatory for the completion of the asylum application.

With funding from the Swedish Migration Agency, the municipal administrative board is responsible for covering most of the health care costs of asylum seekers.

8.2.4 Education

The municipality is responsible for offering education. Asylum-seeking children up to 18 years of age who wish to attend school may do so according to the same rules governing Swedish citizens.

All asylum seekers between 16 and 65 years of age, regardless of their accommodation arrangements, are obligated to take part in activities organized by the Migration Agency. Examples of these activities include Swedish language classes, maintenance tasks and practical placements in the reception centres. The Migration Agency may reduce the amount of the daily allowance if the asylum seeker does not take part in these activities.

8.2.5 Access to the Labour Market

On condition that an asylum applicant cooperates in establishing his or her identity, he or she can be exempt from the requirement of having a work permit and is able to work without such a permit (the Swedish Migration Agency issues a document indicating that the asylum seeker is exempt from the requirement). The asylum seeker is then entitled to work until he or she leaves Sweden or is granted a residence permit.

Once an asylum application has been turned down and this has gained legal force (that is, all appeal possibilities have been exhausted), the person is obligated to cooperate with the authorities in the return. 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 Swedish Migration Agency does not provide accommodation, he or she will be provided with a housing allowance.

New rules on labour migration came into force in 2008, stipulating that asylum seekers whose applications have been denied may be granted a residence permit and a work permit if they have been employed continuously for at least four months and a position lasting at least one year has been offered.

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 whose asylum application has been turned down continue to have access to these benefits until their departure from Sweden. Those who have received a negative decision on their asylum application are obliged to cooperate with authorities on the implementation of their return to the country of origin in order to have access to these reception benefits.

UNHCR/J. Bävman/January 2014

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 Swedish Migration Agency 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. Children may be granted residence permits 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.

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.

Temporary suspensions of removal may be put in place for certain countries, due to changes in conditions in the country.

9.2 Regularization 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, it is not possible to obtain a legal recognition of stateless status. Travel documents may be issued to a stateless person, as well as to refugees.

10 RETURN

10.1 Pre-departure Considerations

A person can choose whether he or she wishes to leave Sweden with the help of the Swedish Migration Agency (voluntary return) or if his or her return journey will require the intervention of the Police (non-voluntary return).

The Migration Agency provides assistance and information to facilitate voluntary returns. In addition to covering the cost of the return journey, the Migration Agency may also provide certain groups of returnees with a reintegration allowance. In general, persons are eligible for the voluntary return allowance if their asylum applications have been rejected, they opt for voluntary return and they are returning to countries with very limited preconditions for reintegration. The allowance is transferred to the asylum seeker upon his or her arrival in the country of origin. The allowance amounts to SEK 30,000 (about EUR 3,200) per adult, SEK 15,000 per child (about EUR 1,600) and a maximum of SEK 75,000 (about EUR 8,000) per family.

10.2 Procedure

An asylum seeker who is refused entry into Sweden has, in general, 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 and Detention

Persons who have obtained a final negative decision on their asylum claims may be detained prior to removal, in accordance with the Aliens Act.[12] A person may be detained for a maximum of two months if a refusal-of-entry or an expulsion order has been issued. The period may, however, be extended if there are exceptional grounds for doing so. The maximum period for detention is 12 months. The vast majority of rejected asylum seekers are not detained prior to removal.

10.4 Readmission Agreements

As of 1 September 2014, Sweden had 20 bilateral readmission agreements in force.[13] However, several of those agreements have been superseded by the EU readmission agreements concluded with the same third countries. A protocol agreement is in place with Russia regarding cooperation in order to establish identity and citizenship and for the issuing of travel documentation.

Furthermore, 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.

11 INTEGRATION

The Swedish Introduction Act entered into force on 1 December 2010. This was the first time that efforts and responsibilities regarding the introduction of new arrivals into

[12] See the section on freedom of movement during the asylum procedure.

[13] Sweden has signed bilateral readmission agreements with the following countries: Armenia, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Estonia, the former Yugoslav Republic of Macedonia, France, Germany, Iraq, Kosovo, Latvia, Lithuania, Montenegro, Poland, Romania, Serbia, Slovakia, Switzerland and Viet Nam. Sweden has also concluded a bilateral implementing protocol to the readmission agreement between the EU and Russia.

Swedish society were collectively regulated in a single Act. Target groups covered by the Act are:

- Refugees or others between 20 and 64 years of age who are in need of protection, including family members who arrived within six years of the protected person
- Newly arrived youth 18 or 19 years of age, without parents in Sweden
- Persons eligible for introduction activities can receive support for a maximum of two years after having obtained a residence permit.

The main objective of the Act is to underscore the "work first" principle and help newcomers to learn the language, obtain employment and become self-sustaining in the shortest time possible.

The important reforms include the following:

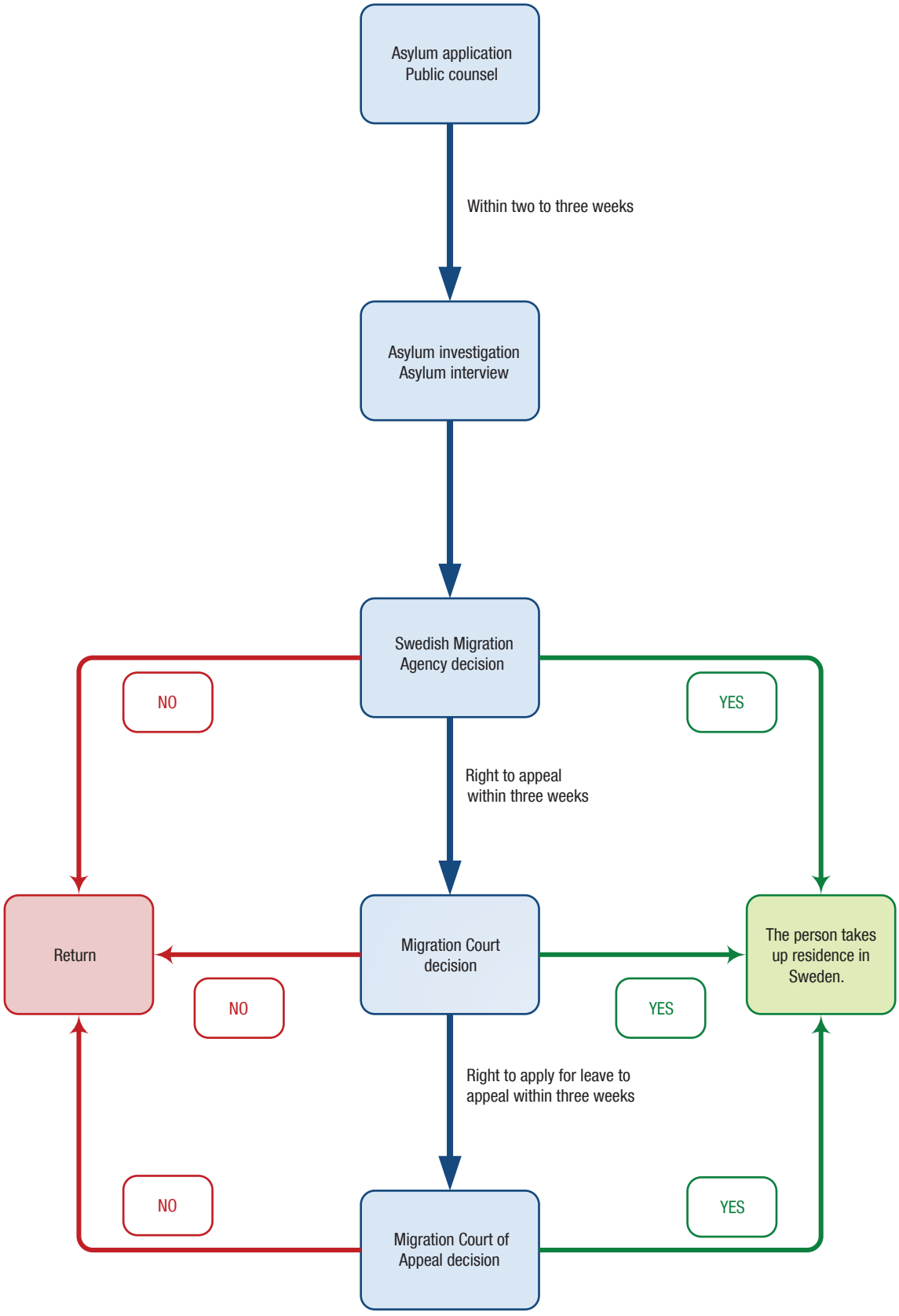
- The responsibility for coordinating the introduction of new arrivals has been devolved from municipalities to the government agency Public Employment Service to place emphasis on the "work first" principle.
- A uniform, individual public allowance scheme has been introduced, entitling all new arrivals to the same amount of financial assistance irrespective of where in the country the individual chooses to settle.
- To be eligible for an allowance, the individual is required to participate actively in the customized initiatives supporting his or her introduction.
- A new service provider, called the "introduction guide", guides and assists new arrivals during the introduction period. New arrivals are entitled to choose their own introduction guide.
- New arrivals are required to participate in a civic orientation programme regarding basic knowledge of the society's underlying democratic values as well as rules and principles that govern how Swedish society functions.

The responsibility for the various initiatives is divided among several government agencies and municipalities:

- In addition to its coordinating responsibilities, the Public Employment Service is responsible for drawing up a customized introduction plan together with the newly arrived person based on an assessment of the individual's educational background, work experience and other relevant credentials. The agency is also responsible for assessing and granting the introduction allowance, providing settlement and accommodation, and procuring and providing introduction guides based on the choice of the individual.
- Municipalities retain specified essential responsibilities, including providing Swedish language classes for immigrants, civic orientation programmes, access to schools, childcare for newly arrived immigrants with children, and accommodation. Municipalities receive a state compensation for these operations.
- The Swedish Migration Agency is responsible for assigning the location for residence/settlement in a municipality for quota refugees, unaccompanied minors and new arrivals who are not entitled to an introduction plan.
- The Migration Agency also decides on and pays state compensation to municipalities and county councils for the reception of newly arrived persons.
- A newly arrived immigrant with a child or children living at home is entitled to an additional introduction benefit. In certain cases, single persons without children living at home may be entitled to a special housing allowance. Decisions concerning these additional benefits are made by the Swedish Social Insurance Agency, which is also responsible for making the payments.
- The County Administrative Boards are in charge of assessing the readiness and capacity of municipalities to receive new arrivals. They sign reception agreements with the municipalities and stimulate regional partnerships between municipalities.

12 ANNEX

12.1 Asylum Procedure Flow Chart



12.2 Additional Statistical Information

SWE. Fig. 4 | Asylum Applications from Top 10 Countries of Origin in 2012, 2013 and 2014

	2012		2013		2014	
1	Syria	7,814	Syria	16,317	Syria	30,583
2	Somalia	5,644	Stateless	6,921	Eritrea	11,499
3	Afghanistan	4,755	Eritrea	4,844	Stateless	7,863
4	Serbia	2,697	Somalia	3,901	Somalia	4,831
5	Eritrea	2,356	Afghanistan	3,011	Afghanistan	3,104
6	Stateless	2,289	Serbia	1,669	Iraq	2,666
7	Bosnia & Herz.	1,549	Iraq	1,476	Albania	1,699
8	Iran	1,529	Kosovo	1,209	Serbia	1,513
9	Albania	1,490	Iran	1,172	Kosovo	1,474
10	Iraq	1,322	Albania	1,156	Ukraine	1,332

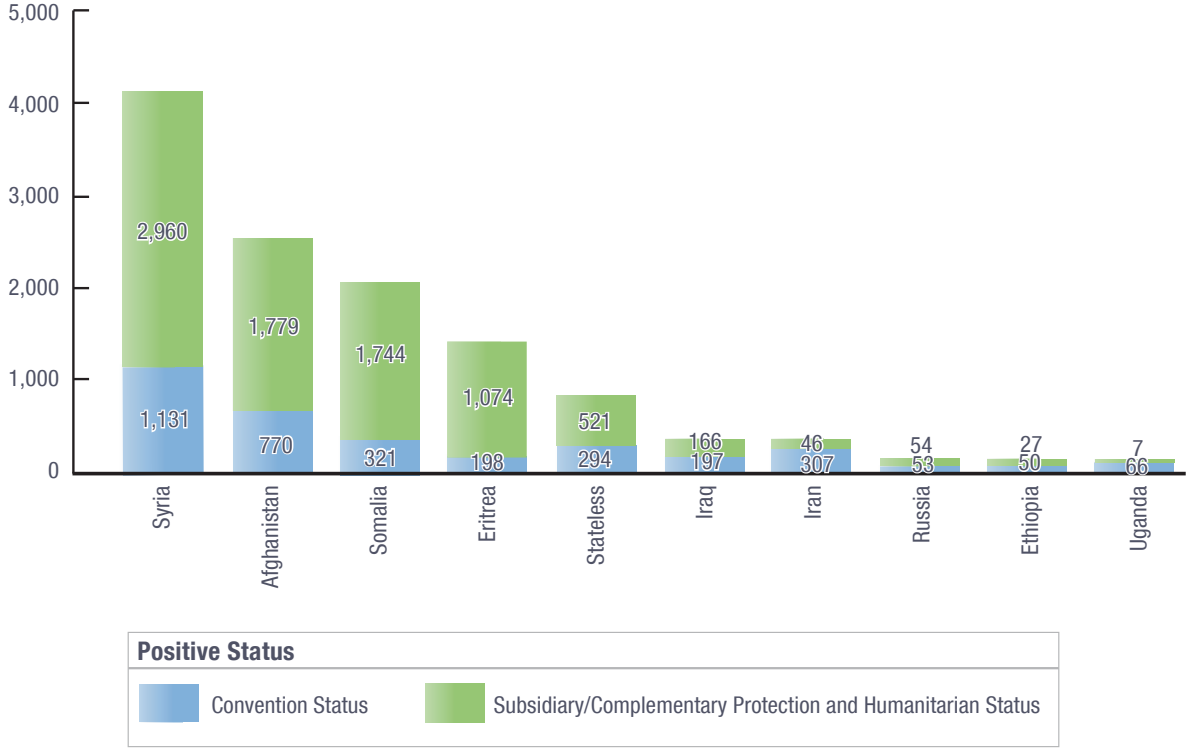
SWE. Fig. 5 | Decisions Taken at the First Instance in 2012, 2013 and 2014

	Convention Status		Humanitarian Status and Subsidiary/Complementary Protection		Rejections		Withdrawn, Closed and Abandoned Cases		
Year	Number	%	Number	%	Number	%	Number	%	Grand Total
2012	3,749	10%	8,832	24%	19,147	52%	4,798	13%	36,526
2013	6,751	14%	17,753	36%	21,078	42%	4,288	9%	49,870
2014	10,263	19%	20,958	39%	17,299	32%	4,983	9%	53,503

SWE. Fig. 6.a Positive First-Instance Decisions, Top 10 Countries of Origin in 2012[14]

	Country of Origin	Total Positive	Total Decisions	Rate
1	Syria	4,091	4,472	91.5%
2	Afghanistan	2,549	4,206	60.6%
3	Somalia	2,065	4,102	50.3%
4	Eritrea	1,272	1,780	71.5%
5	Stateless	815	1,367	59.6%
6	Iraq	363	1,041	34.9%
7	Iran	353	995	35.5%
8	Russia	107	596	18.0%
9	Ethiopia	77	284	27.1%
10	Uganda	73	149	49.0%

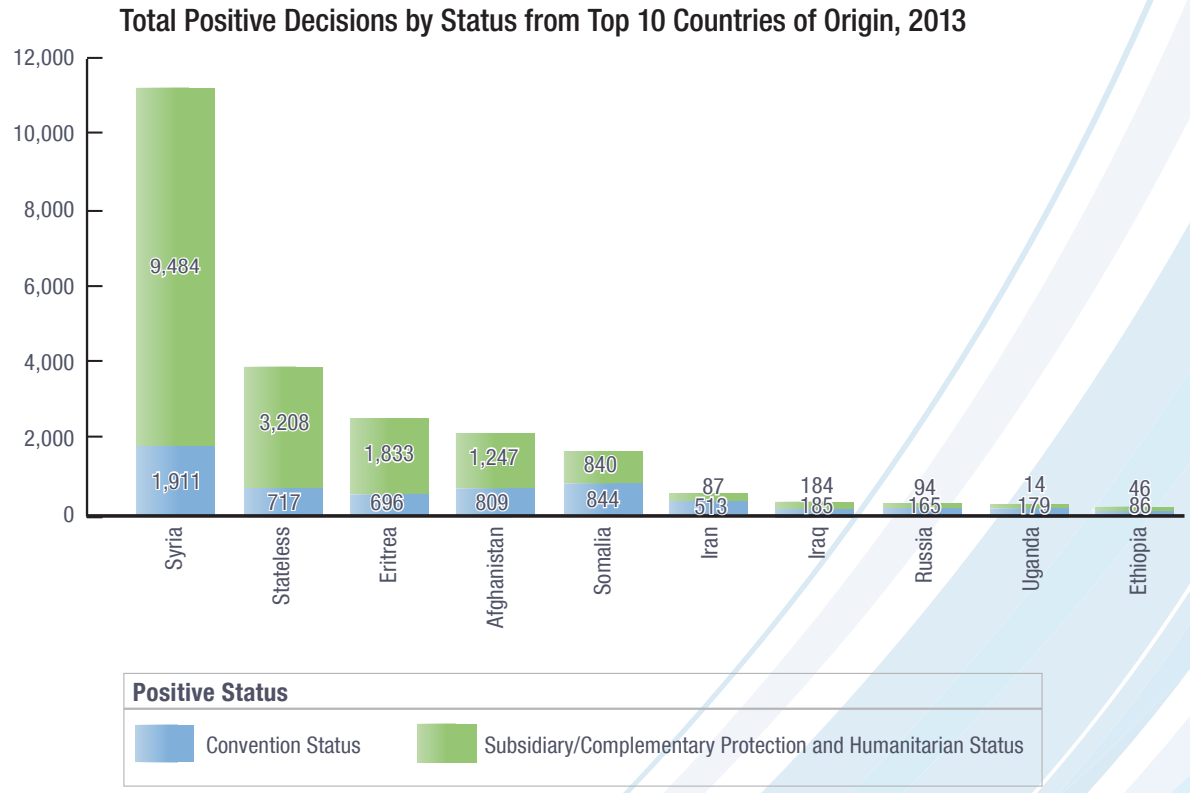
Total Positive Decisions by Status from Top 10 Countries of Origin, 2012



[14] For the purpose of this exercise, positive decisions include decisions to grant Convention status, subsidiary/complementary protection and other humanitarian statuses. Excluding withdrawn, closed and abandoned claims.

SWE. Fig. 6.b Positive First-Instance Decisions, Top 10 Countries of Origin in 2013[15]

	Country of Origin	Total Positive	Total Decisions	Rate
1	Syria	11,395	12,872	88.5%
2	Stateless	3,925	5,005	78.4%
3	Eritrea	2,529	3,657	69.2%
4	Afghanistan	2,056	3,320	61.9%
5	Somalia	1,684	4,345	38.8%
6	Iran	600	1,436	41.8%
7	Iraq	369	1,199	30.8%
8	Russia	259	829	31.2%
9	Uganda	193	251	76.9%
10	Ethiopia	132	378	34.9%

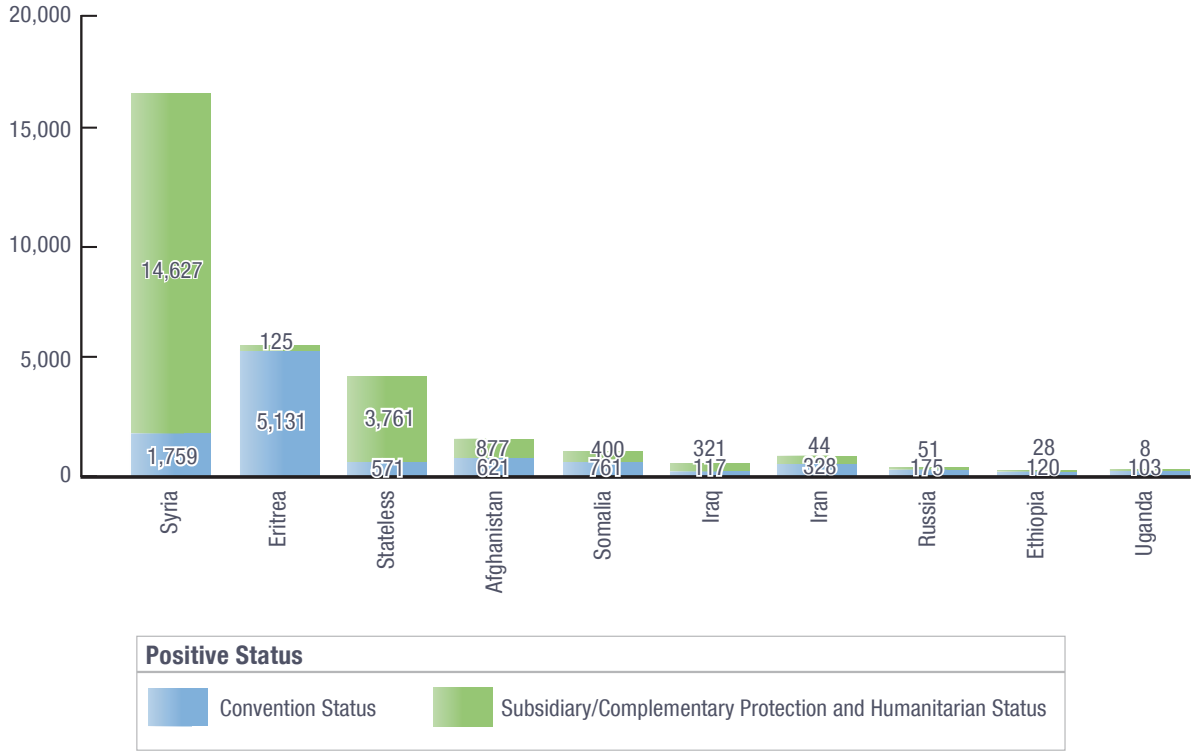


[15] For the purpose of this exercise, positive decisions include decisions to grant Convention status, subsidiary/complementary protection and other humanitarian statuses. Excluding withdrawn, closed and abandoned claims.

SWE. Fig. 6.c Positive First-Instance Decisions, Top 10 Countries of Origin in 2014[16]

	Country of Origin	Total Positive	Total Decisions	Rate
1	Syria	16,386	17,672	92.7%
2	Eritrea	5,256	6,416	81.9%
3	Stateless	4,332	5,199	83.3%
4	Afghanistan	1,498	2,359	63.5%
5	Somalia	1,161	2,841	40.9%
6	Iraq	438	1,143	38.3%
7	Iran	372	686	54.2%
8	Russia	226	704	32.1%
9	Ethiopia	148	424	34.9%
10	Uganda	111	203	54.7%

Total Positive Decisions by Status from Top 10 Countries of Origin, 2014



[16] For the purpose of this exercise, positive decisions include decisions to grant Convention status, subsidiary/complementary protection and other humanitarian statuses. Excluding withdrawn, closed and abandoned claims.

Two young girls from Southern Somalia seeking shelter in a transit facility in Ethiopia.

UNHCR/P. Wiggers/March 2000

SWITZERLAND

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1 BACKGROUND: MAJOR ASYLUM TRENDS AND DEVELOPMENTS

Asylum Applications

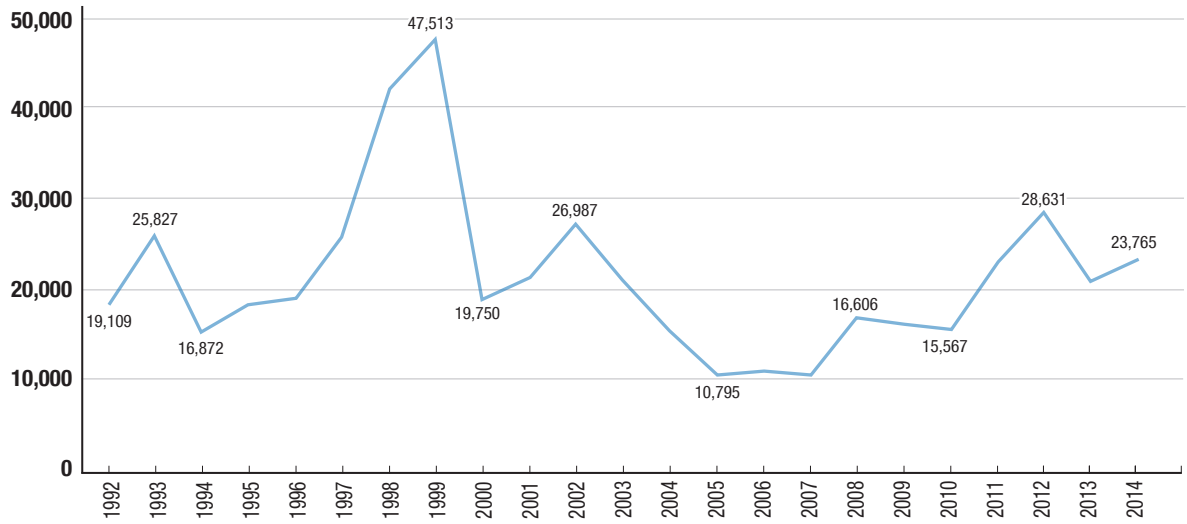
In the mid-1980s, the number of asylum applications made in Switzerland stood at fewer than 10,000 each year. This began to change in the late 1980s, with significant increases in numbers reaching a peak of 41,600 applications in 1991. Afterwards there was a sharp drop in applications until 1998 and 1999, when numbers peaked again at 43,000 and 47,000, respectively. Starting in 2001, there was a marked decline in application numbers, with 10,800 in 2007 and 16,600 in 2008. Over the last four years, however, numbers have always been above 20,000. In 2011, the number of applications increased to 22,551, while in 2012 there was a further increase to 28,631. Numbers remained high in 2013 with 21,465 applications, and in 2014 with 23,765.

Important Reforms

A number of developments between the 1980s and 2005 helped to shape the current framework for asylum procedures. In 1990, Switzerland introduced a policy to dismiss an application without entering into the substance of the case (DAWES), based on a set of criteria that included the "safe country of origin" principle.[1] The same year, the Government began to 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 was also aimed at addressing claims that were clearly abusive of the system by, for example, expanding the criteria for applying the DAWES policy to include applications made without the submission of the required documents.

SWI. Fig. 1 **Total Asylum Applications by Year, 1992–2014**



Top Nationalities

In the 1990s, 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). The top three nationalities in 2013 were Eritrea, Syria and Nigeria, while in 2014 they were Eritrea, Syria and Sri Lanka.

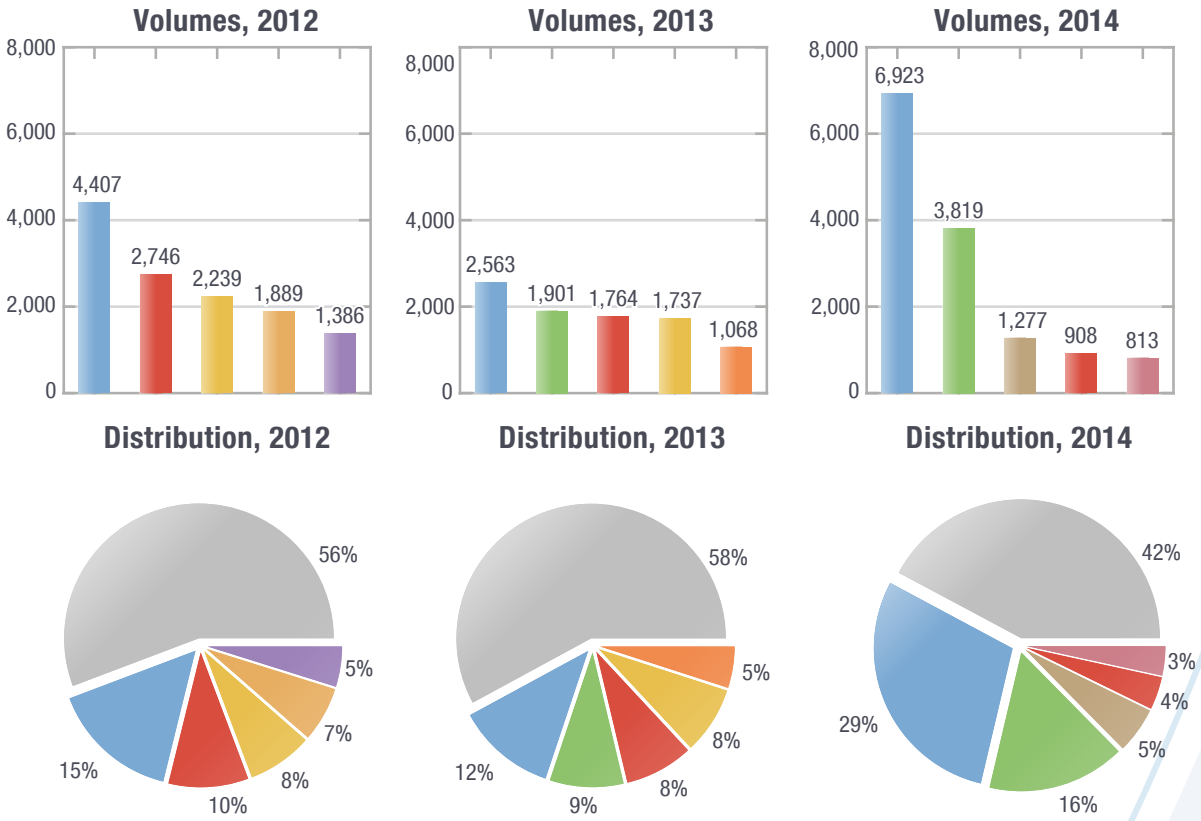
There were further developments to the DAWES policy in 2003 and 2004. Asylum seekers whose applications were subject to a dismissal without entering into the substance of the claim were no longer entitled to state welfare benefits, although emergency assistance remained available to them. Meanwhile, the time limit for making an appeal against a decision not to enter into the substance of the claim was reduced.

Further reforms to asylum legislation came into force in 2007 and 2008.[2] In January 2007, the new Federal Administrative Tribunal replaced the Asylum Appeal Commission as the second instance decision-making body.

[1] See the section on accelerated procedures for more information.
[2] See the section on recent reforms.

SWI. Fig. 2

Asylum Applications Received from Top Five Countries of Origin in 2012, 2013 and 2014



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 Act[3] 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 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 in 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

[3] The text of the Asylum Act of 26 June 1998 is available in French, German and English on the website of the Federal Office for Migration: http://www.admin.ch/ch/f/rs/1/142.31.fr.pdf (French), http://www.admin.ch/ch/d/sr/14.html (German) and http://www.admin.ch/ch/e/rs/c142_31.html (English).

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. 343/2003[4]
- The transfer of responsibility for all asylum interviews from the cantons to the Federal Office for Migration (FOM)[5]
- The introduction of a residence permit in cases of hardship.

An amendment to the Asylum Act was passed by Parliament and passed urgently into law on 29 September 2012 (decree 3). Changes include in particular:

- Removing desertion and conscientious objection as grounds for granting asylum. These applicants would have to provide evidence of direct persecution
- Removing the possibility of applying for diplomatic protection at Swiss diplomatic missions abroad
- Creation of specific centres for asylum seekers who cause public nuisance. To have better control over these persons, they will be separated from other asylum seekers and their freedom of movement will be restricted
- Possibility to test fast-track procedures in preparation of the future introduction of a new, accelerated asylum system in centralized federal centres (which will include a preparation phase)
- The time frame for making an appeal against a negative decision by FOM (after entering into the substance) will be reduced from 30 days to 5 working days when the applicant is from a country designated by the Federal Council to be a safe country of origin. Before this, a time frame of 5 working days was applicable only for appeals against DAWES decisions.

On 14 December 2012, another part of the asylum law revision (decree 1) was adopted by the Swiss Parliament. This amendment to the Asylum Act passed into law on 1 February 2014. The key changes are as follows:

- Introducing an accelerated procedure with a decision on the substance of the claim to replace the current system of decisions without entering into the merits
- The obligation to disclose all health problems at the start of the asylum procedure, with medical investigations provided for health problems that may have repercussions on the procedure
- Accelerated processing of repeat applications and requests for review, with no social welfare assistance and only emergency assistance available for repeat applicants
- Granting priority to the processing of applications from unaccompanied minors
- The creation of a preparation phase prior to the asylum procedure
- Provision of free legal assistance at the appeals stage
- Exchange of information between FOM (first instance) and the Federal Administrative Tribunal (Appeals) in order to simplify the administrative process.

Concerning the rejected part of the revision, the Federal Council is currently elaborating a new proposal that will contain further measures in order to accelerate the asylum procedures (decree 2: restructuring the Swiss asylum system). The modifications are aimed specifically at speeding up asylum procedures and improving the legal protection of asylum seekers.

3 INSTITUTIONAL FRAMEWORK

3.1 Principal Institutions

The State Secretariat for Migration (SEM), which falls within the Federal Department of Justice and Police, is responsible for examining and making determinations on asylum claims. Within SEM, the Asylum Directorate deals with all tasks tied to the field of asylum, including the determination of claims, and may issue removal orders or a grant of temporary admission if asylum is not granted. The Asylum Directorate is also responsible for overseeing the initial reception of asylum seekers at federal reception centres. The precursor to SEM – FOM – was created in 2005 to bring together the functions of the Federal Office for Refugees and the Federal Office of Immigration, Integration and Emigration. On 1 January 2015, FOM became SEM.

The Federal Council determines the safe countries of origin and the safe third countries.

The cantonal migration offices, often with the assistance of, or in consultation with, the competent federal authority, are responsible for the removal of rejected asylum seekers. The cantons are responsible for providing social assistance. In some cantons, this task is delegated to the communal authorities, while in other cantons relief organizations undertake this task. The costs are reimbursed by the federal Government.

The Federal Administrative Tribunal hears appeals of decisions made by SEM.

Since September 2013, the asylum procedure (Asylum Directorate) has again been separated from the return operations in order to correct structural and organizational changes that were introduced in 2010 and have been proven

[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).

[5] On 1 January 2015, the Federal Office for Migration (FOM) was changed to the State Secretariat for Migration (SEM). All references to FOM in this chapter are referring to what is now SEM.

unsuccessful. As a consequence, a newly created return unit has been integrated into the directorate for international cooperation, thus seeking to reinforce cooperation and coherence between these areas.

4 PRE-ENTRY MEASURES

In 2004, Switzerland signed an agreement with the EU to take part in the Schengen acquis. Switzerland began to apply Schengen rules on 12 December 2008. Being a Schengen Member State implies that Switzerland follows the legal provisions of the Schengen acquis established in the EU Visa Code (Community Code on Visas, No. 810/2009). Thus, Switzerland protects its national borders as well as the Schengen borders in applying the legally and formally standardized visa application process of the Schengen countries. Furthermore, Switzerland also shares the Schengen area's common anti-crime IT systems.

4.1 Visa Requirements

Switzerland grants Schengen visa type "C" for stays of up to 90 days within a 180-day period. Any visa application to Switzerland must fulfil requirements of locality and date (where and when to be handed in). The application process follows common European standards. Where the European Visa Information System is already implemented, the applicant's identity is ascertained by electronically recording biometric features (photo, fingerprints). Further elements of a bona fide application are a valid travel document, sufficient financial means to finance the stay, travel insurance to cover costs in case of an accident or health problems, visa fee to be paid, no denial by the visa consultation network (VISION), and no hit on the Schengen Information System.

Switzerland grants a national visa "D" for stays of over 90 days. This visa also provides the right to travel as a tourist in the Schengen area during 90 days within a 180-day period, which corresponds to the Schengen visa "C".

Switzerland keeps visa statistics and archives all application documents.

4.2 Carrier Sanctions

With the coming into force of the agreement to apply the Schengen acquis, the Aliens Act 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".[6] Companies transporting passengers to whom entry is denied are obliged to remove the inadmissible passenger and to take care of uncovered costs for maintenance and care. They may be subject to a fee of CHF 4,000 (about EUR 3,890), or in serious cases CHF 16,000 (about EUR 15,550), per passenger. Carriers failing to respect their due diligence may be exempted from sanctions if grounds for refusal of entry are not related to a travel document, if a travel document falsification was not detectable, or if the carrier is able to prove that they took all reasonable measures to avoid the transportation of an improperly documented passenger.

4.3 Interception

Border control authorities at land border posts and airports carry out interception activities. Interception measures include refusal of entry, removal or a 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.[7] Referral to a reception centre may take place following an asylum request at a land border. Entry may also be granted as a consequence of a successful appeal against a refusal-of-entry decision.

Airline Liaison Officers

As of 2012, Switzerland deploys its own airline liaison officers. They are normally deployed for a minimum period of 12 months. They operate in line with the code of conduct established by the IATA/Control Authorities Working Group and integrate themselves – where available – in existing local airline liaison officer networks.

Swiss airline liaison officers are deployed at duty stations in Dubai (United Arab Emirates), Pristina and Nairobi.

Immigration Liaison Officers

As provided in Council Regulation (EC) No. 377/2004 of 19 February 2004 on the creation of an immigration liaison officer network, Switzerland currently has eight immigration liaison officers deployed in Ankara, Pristina, Beirut, Colombo, Dakar, Abuja, Rabat and Khartoum.

5 ASYLUM PROCEDURES

5.1 Application Possibilities and Requirements, Procedures and Legal Remedies

Asylum applications may be made at border posts and at the airport. Inside the territory, asylum applications may be made at one of five reception and procedure centres of SEM. Asylum applications can be made orally or in writing.

The majority of asylum claims in Switzerland are made at the reception centres.

Informational leaflets on the asylum procedure are available in various languages at the reception centres.

6 Article 92 of the Aliens Act.
7 See section 5.1.2.

5.1.1 Outside the Country

Resettlement

On 4 September 2013, the Swiss Federal Council decided to reinstall a regular resettlement programme for persons with UNHCR refugee status.

Regarding resettlement, Switzerland has the following:

- Three-year pilot phase
- Quota of 500 persons over three years
- 40 to 60 per cent of the quota is for women and girls
- 7 per cent of the quota is for disabled, sick or elderly refugees
- Selection missions by Switzerland
- Special integration programme for resettled refugees in Switzerland.

Switzerland is currently concentrating its resettlement activities on the Syrian crisis. In 2014, two groups of approximately 50 Iraqi and Palestinian (originally from Iraq) refugees were evacuated out of Syria to Switzerland. Switzerland is also resettling about 140 Syrians out of Lebanon (113 individuals) and Jordan (between 20 and 30 individuals). For 2015, Switzerland is planning to resettle mainly Syrians out of Lebanon.

IN FOCUS

ON SYRIA

On 4 September 2013, the Federal Department of Justice and Police ordered an easing of visa requirements for Syrian nationals with relatives in Switzerland. This measure was aimed at facilitating temporary stay for war-afflicted relatives of Syrians living in Switzerland. As most of the relatives who were in direct need and therefore entitled to facilitated visa requirements have since made use of the measure, the directive was lifted on 29 November 2013 by the Federal Department of Justice and Police. As of July 2014, the Swiss authorities had issued 4,300 visas.

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 authorized 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.[8]

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 SEM examines the asylum claim. SEM must make a decision on the claim within 20 days of the application.

If SEM rejects the application within the 20-day period, the asylum seeker may make an appeal to the Federal Administrative Tribunal within 5 days of the decision. The Tribunal must in principle make a decision on the appeal within 5 days. If the Tribunal's decision is negative and a return to the country of origin or a third country is judged to be reasonable 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 time frame 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 III 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 EU to take part in the Dublin system. The Dublin rules came into force on 12 December 2008.

Asylum applications that are treated within the scope of the Dublin procedure are prioritized.

Since 20 April 2012, a person is not permitted to lodge an asylum request in Switzerland within six months of his or her transfer to the responsible Dublin State. If the person is found to be living in Switzerland, a request to take him or her back will be sent to the authorities of the Dublin State responsible if the competent cantonal authority requests SEM to do so. After the change in practice, the number of Dublin multiple requests has clearly declined. With the new legislation coming into force on 1 February 2014, new regulations for multiple asylum claims (multiple applications

[8] See the section on application and admissibility for information on the procedure at the reception centres.

or repeated applications that state the same grounds shall be dismissed without a formal decision) were established; these overruled the provision stipulated in April 2012. Applications for asylum lodged within five years of the asylum decision or removal order becoming legally binding must be submitted in writing with a statement of the grounds.

Application and Procedure
SEM is the competent authority for applying the Dublin III Regulation and thus determining whether Switzerland is responsible for examining an asylum claim. The Dublin III Regulation has been in force in Switzerland since January 2014. The new Regulation provides overall safeguard measures for applicants for international protection. If SEM determines that another State is responsible for examining the asylum claim, it rejects the asylum application and issues an expulsion order to the asylum seeker. If an appeal against this decision is lodged at the court of appeal within five working days, the court decides within five working days whether or not the suspensive effect is to be granted. If the asylum claimant does not appeal to the court, the expulsion order becomes enforceable after one week.

Freedom of Movement and Detention
There are no specific detention policies for the enforcement of Dublin transfers. The same provisions are applicable to subjects of other removal orders. Usually, transfers to the State responsible are made shortly after the expulsion order is enforceable.

Conduct of Transfers
Most of the Dublin transfers from and to Switzerland are made by air transportation. Persons leaving Switzerland for another State are escorted to the airplane. Persons arriving from other States are received and registered at the international airport and allocated to the district authority responsible. With the neighbouring countries of Switzerland, SEM aims to transfer people at local border check-points. However, this transfer policy is not accepted by Italy. The transportation expenses are covered by SEM.

Suspension of Dublin Transfers
The court of appeal decides within a time limit of five working days whether or not to grant a suspensive effect to appealed decisions. If the court grants a suspensive effect, the State determined responsible is informed immediately about the delayed transfer. If the court does not grant a suspensive effect within the given time limit, the expulsion order is enforceable.

Review/Appeal
The court of appeal is the Federal Court of Administration. An appeal against a negative decision must be done in writing, in one of the three official languages of Switzerland (French, German and Italian) and has to be filed within five days of notification of the decision. If the court does not grant a suspensive effect, the expulsion order is enforceable. In this case, the appellant awaits the results of the proceedings in the other State. If an appeal is successful, SEM examines the asylum application on its merits.

Application and Admissibility

Application at a Reception Centre

Asylum seekers not holding a valid residence permit for Switzerland and applicants who have been granted entry into the country in order to lodge an asylum claim have to register at a reception centre. At the reception centre, asylum seekers are asked to declare their particulars and to provide the authorities with valid travel and identity documents. The asylum seekers' fingerprints are taken and a medical examination is completed. SEM is responsible for examining claims made at reception centres. The maximum period of stay at a reception centre is 90 days.

During an initial interview with the asylum seeker, SEM obtains personal data such as identity and nationality, as well as information on the journey. The asylum seeker may also briefly explain his or her motives for the application. He or she is assisted by an interpreter, if necessary, and is provided with a copy of the interview minutes once the examination process is completed.

Usually, SEM will conduct a second, more in-depth interview with the applicant to gather additional information on the claim. This second interview also takes place with asylum claimants who are subject to safe country decisions and safe third country policies. The second interview is held at the reception centre or at SEM headquarters in Bern, if the asylum seeker has been assigned to a canton.

The asylum seeker is interviewed for the second time in the presence of a representative from a non-governmental organization (NGO) whose role is to monitor the proceedings. The asylum seeker may request that an official interpreter be present as well. The interview is recorded in writing and the report is translated for the asylum seeker, who is required to sign the report and to confirm that all statements were recorded completely and correctly.

With the information gathered, SEM determines whether to employ the accelerated procedure (DAWES) or the regular procedure. The claim will be streamed through one of these two procedures if Switzerland is determined to be the State responsible under the Dublin III Regulation.[9]

Applicants whose claims cannot be heard or decided within 90 days at a reception centre are assigned to a canton. In these cases, most claims continue to be processed by SEM headquarters.

[9] 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 an SEM reception centre or the SEM headquarters, after either the initial interview or the second interview.

Accelerated Procedures

DAWES

Following the initial interview or the second interview, the authorities may decide to use the DAWES policy. In such cases, the application is examined on a priority basis under an accelerated procedure.

DAWES 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 an in-depth interview).
- The asylum seeker is able to travel to a safe third country where he or she can find protection (right to be heard without an in-depth interview).

According to the Aliens Act and the Asylum Act, once a DAWES decision has been reached, SEM must examine whether there are any obstacles to the removal of the asylum seeker to his or her 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.[10]

A DAWES decision is usually made while the asylum seeker is at the reception centre (that is, within the 90-day period of stay), but may in certain cases be made by SEM headquarters. As a rule, decision-making under the accelerated procedure is made within a shorter time frame than under the normal procedure. In addition, the time frame for making an appeal on a DAWES decision is shorter.[11]

Other Accelerated Procedures

Some applications are also examined on a priority basis, but may not be dismissed without entering into the substance of the claim. In certain cases, SEM will reject the application for asylum if refugee status has neither been proven nor credibly demonstrated in an accelerated procedure after granting the right to be heard without an in-depth interview. These cases are:

- The asylum seeker has made misrepresentations about his or her identity.
- The asylum seeker has committed a serious breach of his or her duty to cooperate with authorities on the asylum claim.
- The asylum seeker bases his or her application primarily on forged or falsified evidence.

The time frame for making an appeal against a negative decision by SEM is reduced from 30 days to 5 working days when the applicant is from a country designated by the Federal Council to be a safe country of origin.

In August 2012, FOM carried out accelerated asylum procedures (48-hour procedure) for persons from visa-exempt European countries for the first time (Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia and Serbia). Since then, asylum applications from the countries concerned have declined significantly. Since 25 March 2013, FOM/SEM has also been applying the 48-hour procedure to asylum seekers from Kosovo and Georgia. Rapid repatriation can be carried out to both countries of origin. The 48-hour procedure is carried out at reception and procedure centres. The interview teams conclude the procedure within 48 hours of their initial interview with the person, unless further investigations are deemed necessary. Immediately after issuing a negative asylum decision, the process of procuring replacement travel documents begins and departure instructions are issued directly from a reception and procedure centre whenever possible.

An entry ban is usually imposed in the case of rejected applications from individuals who allow their departure deadline to pass. The same applies to people who have disturbed public security or filed multiple unfounded applications.

IN FOCUS

TEST OF ACCELERATED PROCEDURES

Since January 2014, FOM/SEM has been testing accelerated procedures in order to prove the effectiveness of the new asylum procedures. New elements, such as a legal representative free of charge for every asylum seeker, have been introduced. According to the regulatory framework, the maximum stay during the accelerated procedures is 140 days.

In 2014, approximately 1,500 cases went through the test of accelerated procedures, slightly more than originally planned. The testing phase of the new accelerated procedures showed positive results and in the future these kinds of accelerated procedures will be applied across the country.

Normal Procedure

Following the second interview, asylum claims may be streamed through the normal procedure at SEM 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:

[10] 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 in the section on decision-making.

[11] See the section on appeals of asylum decisions.

- The type of decision that can be made on the application
- The way in which information is taken into consideration
- The time frame for making an appeal.

If after the second (in-depth) interview, it is obvious to the SEM decision-maker that the asylum seeker has not provided credible evidence that he or she meets the criteria for refugee status, SEM may reject the claim without further investigation (article 40 of the Asylum Act).

However, if the facts presented are incomplete, SEM 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.

If the decision-maker determines that the person does not meet the criteria for asylum, SEM must proceed to an examination of whether the asylum seeker can be removed from Switzerland. Under the normal procedure, the examination has three steps:

- First, whether the removal of a person is admissible (that 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 met, SEM may grant that person temporary admission to Switzerland.[12]

Appeal of Asylum Decisions

An appeal before the Federal Administrative Tribunal may be made against any negative decision or a DAWES decision made by SEM.

Appeals may be made within 30 days of a negative decision made by SEM under the normal procedure, while DAWES decisions may be appealed within 5 working days.

The appeal is a paper process and will take into account 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 a suspensive effect.[13]

Freedom of Movement during the Procedure

Detention
As a rule, asylum seekers whose claims are examined under the accelerated procedure or the normal procedure are not detained. The Aliens Police have the authority to detain persons who have entered Switzerland without proper authorization. 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 between repeat applications and requests for the review of initial asylum applications.

Multiple Applications
A foreign national whose original asylum application was rejected may make a repeat or subsequent application for asylum.

Applications for asylum made within five years of the asylum decision or removal order becoming legally binding must be submitted in writing with a statement of the grounds. Multiple applications or repeat applications that state the same grounds shall be dismissed without a formal decision being taken (article 111c of the Asylum Act).

Re-examination
A request for a review of an original asylum application 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 time frames, the presentation of sufficiently substantiated information, and the presentation of new information (rather than a new appreciation of already-known facts). According to article 111b of the Asylum Act, an application for re-examination must be submitted to SEM in writing and with a statement of grounds within 30 days of identifying the grounds for re-examination. In addition, applications for re-examination without a statement of grounds or repeat applications that state the same grounds shall be dismissed without a formal decision being taken.

[12] See the section on decision-making for further information on the criteria for obtaining refugee status and temporary admission.
[13] The only appeals that do not have a suspensive effect are (a) those 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 (b) those made against negative decisions on a request for review.

According to the revised Asylum Act, SEM may impose a fee in the form of an advanced payment for repeat applications and 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 from the outset that the application or request for review will be successful.

Persons whose repeat applications and requests for review have been rejected by SEM may make an appeal before the Federal Administrative Tribunal. Appeals of decisions to reject a request for review do not have a suspensive effect while appeals of negative decisions on repeat applications do.

5.2 Safe Country Concepts

5.2.1 Safe Country of Origin

According to article 6a of the Asylum Act, the Federal Council shall identify States in which, on the basis of its findings, there is protection against persecution as a safe native country or country of origin. SEM may reject an application on this basis if no further investigations are necessary. In these cases, the time frame for making an appeal against a negative decision is five working days.

The Federal Council establishes a list of safe countries according to a specific set of criteria. When considering whether or not to include a country on the safe country list, it must 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
- Stability of the political situation in the country
- Progress with regard to the human rights situation and admission of monitoring by independent organizations
- Assessments of other western States and the United Nations High Commissioner for Refugees (UNHCR)
- A large number of asylum claims from applicants from 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 EU Member States, Iceland, Liechtenstein and Norway. 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 DAWES decision.

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.

In addition, according to the revised Federal Act on Foreign Nationals, the Federal Council designates native countries or countries of origin or areas of these countries to which return is reasonable. If foreign nationals being removed or expelled come from one of these countries or from an EU Member State or a European Free Trade Association country, enforcement of removal or expulsion is reasonable.

5.3 Special Procedures

5.3.1 Unaccompanied Minors

SEM makes special arrangements for unaccompanied minors seeking asylum in relation to the asylum procedure, reception and final decisions.

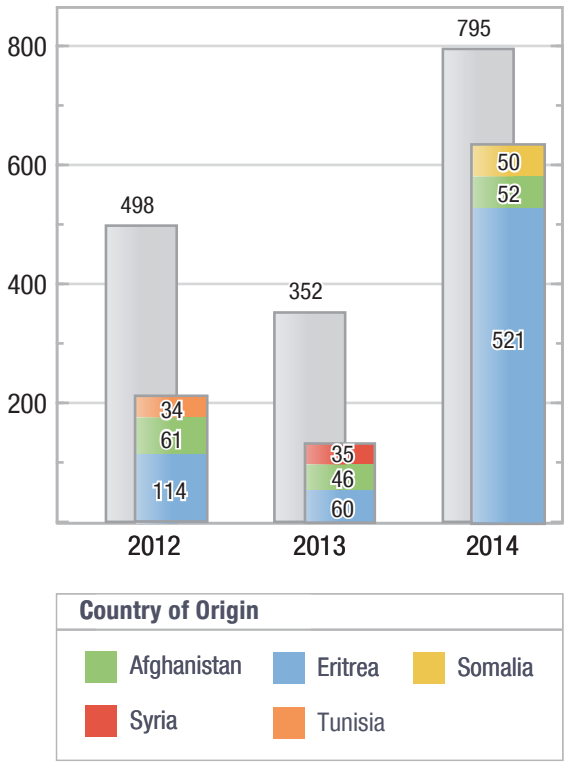
An unaccompanied minor seeking asylum is assigned a representative who will be responsible for looking after the minor’s interests during the asylum procedure. When interviewing the minor, SEM takes into account the child’s age and mental development and may adjust the interview method accordingly. The officers conducting the interview may request the assistance of SEM staff such as psychologists or lawyers who have been specially trained to cater to the needs of minors.

If an unaccompanied minor does not meet the criteria for refugee status, SEM assesses whether it is reasonably justified for the unaccompanied minor 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 would 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.

SWI. Fig. 3 | Asylum Applications by Unaccompanied Minors in 2012, 2013 and 2014

	2012	2013	2014
Total Asylum Applications	28,631	21,465	23,765
Applications by Unaccompanied Minors	498	352	795
Percentage	2%	2%	3%



5.3.2 Stateless Persons

Applications for asylum made by stateless persons are examined by SEM in the same manner as all other asylum applications.

IN FOCUS

GENDER-SENSITIVE PROCEDURES

FOM/SEM has made various improvements to its practice regarding the treatment of gender-specific asylum applications:

- In the field of human trafficking, a concept was adopted in 2014 to regulate the processing of asylum applications. The new approach places emphasis on the identification of potential victims of trafficking during the asylum procedure (national and Dublin) and on collaboration among the other authorities concerned (cantonal and federal). To implement these principles, SEM is undertaking various training programmes starting in autumn 2014, which are open to a wide array of collaborators.
- In December 2013, FOM confirmed various principles related to the treatment of gender-specific asylum applications (claims based on grounds related to sexual orientation or gender identity) and clarified its practice when determining a refugee's status based on such motive.
- Further to the entry into force of the Federal Act on Measures against Forced Marriage as well as the introduction of a new provision in the Asylum Act, SEM is required to pay special attention to elements that may indicate absolute nullity of a marriage (on the basis that it was forced or with a minor) and inform the competent authorities and suspend treatment of the case until further notice.

6 DECISION-MAKING AND STATUS

The asylum procedure at the first instance is a single procedure. Thus, SEM considers whether the asylum seeker meets the 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 SEM 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 the criteria for exclusion contained in articles 53 and 54 of the Asylum Act.

IN FOCUS

SPOTLIGHT ON THE SYRIA CRISIS

Deserters and draft evaders – refusing military service since the beginning of the uprising in March 2011 – are granted asylum. Since March 2011, the Government of Syria has considered deserters and draft evaders as state enemies. Therefore, Syrian deserters and draft evaders risk disproportional punishment at the hands of the Syrian regime. For this reason, persecution as a consequence of desertion or draft evasion is grounds for the recognition of refugee status according to the 1951 Convention.

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 the 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 European Convention on Human Rights.
- 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 (for example, the country of origin refuses to take back its national).

As a rule, at the earliest opportunity after 12 months has elapsed since 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 SEM 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 at 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, Statuses and Benefits Granted

SEM 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 the 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 the criteria for refugee status but cannot be removed for one of the reasons outlined above)
- Reject the claim for asylum
- Make a DAWES decision
- Close the asylum claim (for example, after the asylum seeker has withdrawn his or her claim).

As described above, SEM must also consider whether removal is admissible, reasonable and practicable if a claim for asylum has been rejected. Thus, SEM may make decisions at the end of the asylum procedure either to issue a removal order or to grant temporary admission, if removal is not possible or practicable.

SEM 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 annually. After 10 years, a permanent residence permit can be granted by the canton in accordance with article 60 of the Asylum Act and article 34 of the Aliens Act. 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.[14] The cantonal authorities may decide which additional benefits to offer. These include the right to obtain a work permit. Persons granted temporary admission with refugee status are entitled to the same benefits as refugees with asylum status regarding a work permit, place of residence and social benefits. After five years of regular stay, an annual residence permit can be granted to persons with a temporary admission in accordance with the provisions of article 84(5) of the Aliens Act.

[14] These benefits are outlined in the section on assistance and benefits for asylum seekers.

In accordance with the 1951 Convention, persons granted temporary admission with refugee status are entitled to a travel document. Beneficiaries of temporary admission without refugee status are allowed to travel outside of Switzerland only after being granted a visa of return by SEM. Three years after a temporary admission has been granted, an application for family reunification can be submitted at the competent cantonal authority.

Asylum seekers who are not eligible for refugee status and whose removal from Switzerland is admissible, reasonable and practicable, are given 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, SEM will consider whether article 3 of the European Convention on Human Rights 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, SEM must consider Switzerland's obligations under article 3 of the European Convention on Human Rights 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 one year, 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
- For reasons falling under section 1C, subparagraphs 1 to 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 analysts within the Analysis Unit of SEM collect, analyse, prepare and circulate information on the situation in countries of origin. They produce country of origin information (COI) products, such as reports on human rights conditions in countries of origin, relevant to the specific needs of SEM and its decision-makers.

Any SEM official, including asylum decision-makers, may make an information request to the country analysts. Decision-makers may also search for COI and migration-related documents on the internal database, Kompass. COI specialists carry out fact-finding missions in order to improve their knowledge of countries of origin and of countries of transit. In case of incompleteness of information, they revert to the services of Swiss embassies in countries of origin.

Analytical independence, transparency and high quality are of utmost importance. The country analysts are therefore united again in a separate unit together with migration analysts. The production is subject to periodic assessment by the quality assurance manager (see In Focus in section 7).

With the fusion in 2005 of the former Federal Office for Refugees and the Federal Office of Immigration, Integration and Emigration into FOM (which is now SEM), both the type of COI customers and the range of COI products changed. The country analysts receive an increasing number of research requests from cantonal migration authorities, mainly regarding medical issues and documents.

In recent years, the Analysis Unit has intensified information-exchange partnerships with a number of European and non-European States. These efforts resulted in the production of several public reports, written together with European partners after joint fact-finding missions. In addition, country analysis has been very active in the development of the European Asylum Curriculum and in bilateral cooperation.

6.7.2 Language Analysis

The LINGUA section of SEM provides asylum authorities with language analysis services 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. This system enables SEM to compare the data against other fingerprints gathered by SEM, 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 used during the asylum procedure.

7.1.3 Forensic Testing of Documents

The country analysts of SEM test identification documents and, to a lesser extent, judicial and civil status documents of countries of origin and countries of transit as far as knowledge and infrastructure allow. The country analysts are provided with basic technical training comparable to that taught to the border control agents. In order to adequately fulfill their tasks, they resort to basic professional instruments at their disposal (such as Docutest) and a broad specimen database for the comparison of checked documents.

If the authenticity 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 reception centre, SEM verifies whether the asylum seeker is registered in the Central Aliens Register or in the automated central police search system, RIPOL. The asylum seeker's personal data are also entered and stored in the Central Information Migration System.

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 to two to three months for DAWES to about six months on average for cases in the normal procedure.

7.3 Pending Cases

As of 31 August 2014, there were 17,406 pending cases at the first instance. Following the increase in the number of asylum claims in 2012, FOM decided to handle the cases according to an order of priority, with a general focus on presumably negative decisions accompanied by a removal order. Decisions concerning applicants from safe countries, repeat applications or Dublin decisions have top priority.

In addition, as of 31 August 2014, 5,730 asylum claims made at Swiss diplomatic missions before 29 September 2012 still have to be treated. They are also being managed according to a sequence of priorities, based on the degree of urgency of the claim.

7.4 Information Sharing

Switzerland does not currently have any information-sharing agreements 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 organizations guaranteeing data protection equivalent to that provided for under Swiss law.

IN FOCUS

QUALITY ASSURANCE

Quality assurance – understood to be an ongoing process of improvement – concerns all activities, products and tools of the asylum procedure. The aim is to identify needs for optimization as early as possible, with targeted resources. Improvements in daily business should be quickly realized and generate a real benefit for superiors and employees alike. The quality assurance efforts of the Asylum Directorate of SEM is practically oriented and based on a pragmatic approach.

The main areas of quality assurance are determined on the basis of actual needs and integrated in the annual planning. The main focus is on the core activities within the asylum procedure – the quality of the asylum interviews and the asylum decisions. This work is supported through the development of the working tools and the relevant procedures. Management takes quality very seriously, and for this reason, supervisors periodically observe the interviews carried out by their staff and evaluate their asylum decisions. The quality assurance in other thematic and area-specific fields (for instance, COI, medical cases or cases involving unaccompanied minors) follows a decentralized concept, and its implementation is the responsibility of the heads of the various units within the Asylum Directorate. Supervisors and staff alike can count on the support of a special appointee for quality matters.

Through mandatory quality standards for the central products and through periodic internal and external evaluations, it is ensured that the defined quality criteria are being observed. Fair and efficient interviews, coherent and well-reasoned asylum decisions and a significant decrease in avoidable cassations by the Federal Administrative Court are indications of the success of the quality assurance efforts.

8 ASSISTANCE AND RECEPTION BENEFITS FOR ASYLUM SEEKERS

8.1 Procedural Support and Safeguards

8.1.1 Legal Assistance

In principle, there is no ex officio free legal aid during the first instance procedure.

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 SEM. 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 requires payment 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

SEM uses interpreters for German, French and Italian when necessary during interviews. As a rule, the appeal procedure is paper-based and the appeal must be made in one of the three official languages of Switzerland.

8.1.3 UNHCR

The UNHCR Liaison Service for Switzerland has no direct role in the determination procedure. However, upon the request of SEM or another party involved in the procedure, UNHCR may provide up-to-date COI or UNHCR recommendations and positions. The Liaison Service meets with representatives from SEM 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. 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 organizations and social institutions.

8.1.4 NGOs

NGOs that form part of the umbrella organization the Swiss Refugee Council may obtain authorization 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.

When a person has made a claim for asylum at an airport or a reception centre, SEM provides information on and facilitates contact with NGOs that may act as advisers or consultants for the asylum seeker. NGO representatives acting as advisers have access to reception centres during visiting hours.

Furthermore, 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 are responsible for providing social welfare, which must be accorded to any person in need.

The provision of social assistance granted to asylum seekers is overseen by the cantons and may be delegated to communities, welfare organizations and private businesses. The cantons are reimbursed by the central Government for social assistance payments to asylum seekers.

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 reductions 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 reception 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 assigned to one of the cantons according to a distribution key and will be provided with accommodation in that area. Members of the same family are assigned 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 those 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 an old age pension, a disability pension, unemployment insurance or 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 1, of the Swiss law on health insurance, every person residing in Switzerland must be covered by health insurance. Basic health 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.

Social assistance, including health insurance, is covered primarily by the cantons. The costs borne by the cantons in providing asylum seekers with such social assistance are reimbursed by the Swiss Confederation (federal subsidy based on fixed sum per person).

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 16 years of age claiming asylum in Switzerland have the right to be enrolled in school.[15]

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. Education is compulsory and under public direction and control. Each canton has laws and regulations concerning the details of education.

8.2.5 Access to the Labour Market

Asylum seekers do not have permission to work in the first three months after an asylum application has been 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 that 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 per cent) 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 the integration programmes offered or paid for by the cantons or the Confederation. As noted above, some Swiss NGOs provide asylum seekers with integration activities.

8.2.8 Access to Benefits by Rejected Asylum Seekers

Since April 2004, asylum seekers who are subject to a DAWES decision 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 the same 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.

[15] Education is compulsory for nine years, typically from 7 to 16 years of age.

9 STATUS AND PERMITS GRANTED OUTSIDE THE ASYLUM PROCEDURE

As explained above, Switzerland applies a single asylum procedure, which includes examining a claim for the granting of Convention refugee status or a complementary form of protection known as temporary admission, if there are obstacles to return. The types of status and permits described in the sections below 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 Regularization of Status of Stateless Persons

According to Swiss law (article 24 of the Federal Law on International Private Law), 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 relating to the Status of Stateless Persons. While this Convention 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 Act 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. Since the review of the Aliens Act in 2007, stateless persons are essentially entitled to the same status and the same benefits as refugees with asylum status.

An application for the recognition of status as a stateless person can be submitted to SEM during the asylum procedure or after the asylum procedure has been closed.

Between 1 January 2004 and 31 December 2013, FOM processed 443 applications for the status of a stateless person. Of these, 166 applications were approved and 251 were rejected. Seven more applications have been formally closed.

9.3 Hardship Cases

In 2007, three categories of cases of hardship were introduced into the Asylum Act and the Aliens Act. The criteria for determining the presence of grave hardship are defined in article 31 of the Decree on Admission, Sojourn and Employment 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 country of origin.

As per article 31(2) of the Decree on Admission, Sojourn and Employment, persons who are being considered for a residence permit based on grave 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 Act 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 repatriation would cause grave hardship. This regulation is applicable to, among others, persons whose applications for asylum have been rejected. In 2011, 202 persons were granted an annual residence permit on these grounds. Between 1 January 2012 and 30 June 2012, 60 persons were granted the same.
- Article 84, paragraph 5, of the Aliens Act stipulates that persons benefiting from temporary admission for at least five years must have their cases examined. This examination is aimed 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 SEM. In 2011, 1,866 persons benefited from this legal provision. As of June 2012, 852 persons had been granted such a permit.

- Article 30, paragraph 1, lit. b, of the Aliens Act provides that persons who have resided in Switzerland without proper authorization for a prolonged period of time (so-called "sans-papiers") and whose repatriation would cause grave hardship may be granted an annual residence permit. In 2011, 163 persons benefited from this legal provision. Between January 2012 and June 2012, 168 persons obtained such a permit.

10 RETURN

SEM is the competent authority for the formulation and implementation of return policies, while the cantons are responsible for the execution of the return. SEM, and more specifically the Return Division, provides the cantons with assistance by helping to establish the person's identity, to obtain valid travel documents and to organize the return by air.

10.1 Procedure

Voluntary Return

The purpose of return assistance is to foster the voluntary and mandatory return of rejected asylum seekers through a system of benefits. SEM implements the return assistance in conjunction with the Swiss Agency for Development and Cooperation, the International Organization for Migration, and the competent cantonal agencies and relief organizations.

The service areas of return assistance are:

- Return counselling services in the cantons and in the federal reception centres
- Individual return assistance
- Country-specific programmes
- Return assistance for certain other categories of migrants (such as victims of human trafficking)
- Structural aid in the countries of origin
- Prevention of irregular migration.

Any person from the field of asylum may apply for return assistance at return counselling centres in the cantons, at reception centres and in airport transit areas. Even persons who have been granted refugee status may receive assistance if they would like to return to their home country. However, return assistance is not granted to convicted offenders, to persons who have misused the asylum system either during or after proceedings, or those who had previously received return assistance.

Certain groups of persons falling under the category of "foreign nationals" also have access to return assistance. These groups include victims and witnesses of human trafficking, and cabaret dancers who are being exploited in Switzerland.

In coordination with the Swiss Agency for Development and Cooperation, SEM can also finance structural aid programmes in the countries of origin, which benefit the local population and the returnees alike. Such programmes may include projects that discourage irregular migration.

UNHCR/R. Arnold/June 2014

Forced Return

People who are in Switzerland illegally must leave the country. If they refuse to return home voluntarily, they risk being repatriated. The cantons are responsible for enforcing such measures.

The existence of valid travel documents is a prerequisite for returning to the home country. If valid travel documents are not available, SEM, at the request of the cantons, tries to establish the identity and nationality before applying to the diplomatic mission of the home country for substitute travel documents.

Once substitute documents have been issued, the canton concerned is informed accordingly. At the request of the canton, the SEM unit responsible for travel arrangements – swissREPAT located at the airports in Zurich and Geneva – books a flight and organizes the return journey. If the person in question refuses to be returned home on a regular flight, SEM organizes a special flight at the request of the cantonal authorities.

10.2 Freedom of Movement and Detention

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 administrative detention. This is done in order to prepare the return 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 18 months of administrative detention on foreign nationals without proper authorization 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 person concerned, 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).

10.3 Readmission Agreements

As instruments of the return policy, readmission agreements are aimed at guaranteeing a quick and safe readmission to the country of origin of persons who are illegally present in Switzerland by clearly defining enforcement modalities, procedures and deadlines for Switzerland and the country of origin. The Swiss policy of signing readmission agreements with countries of origin or transit is in line with the policy of the EU and its Member States. The Member States conclude readmission agreements or include return clauses in association and cooperation agreements with many countries of origin and transit in order to manage irregular migration more effectively.

While the obligation to readmit one's own citizens is not contested in principle, its fulfilment often goes against important national interests of the countries of origin. These conflicting interests often make the negotiation process more difficult.

Currently, Switzerland has concluded 47 readmission agreements.

In addition to readmission agreements, Switzerland has recently developed various additional instruments, such as migration partnerships, migration dialogues, cooperation agreements on migration, and the programmes "Protection in the region" and "Prevention of irregular migration", as well as an assisted voluntary return programme.

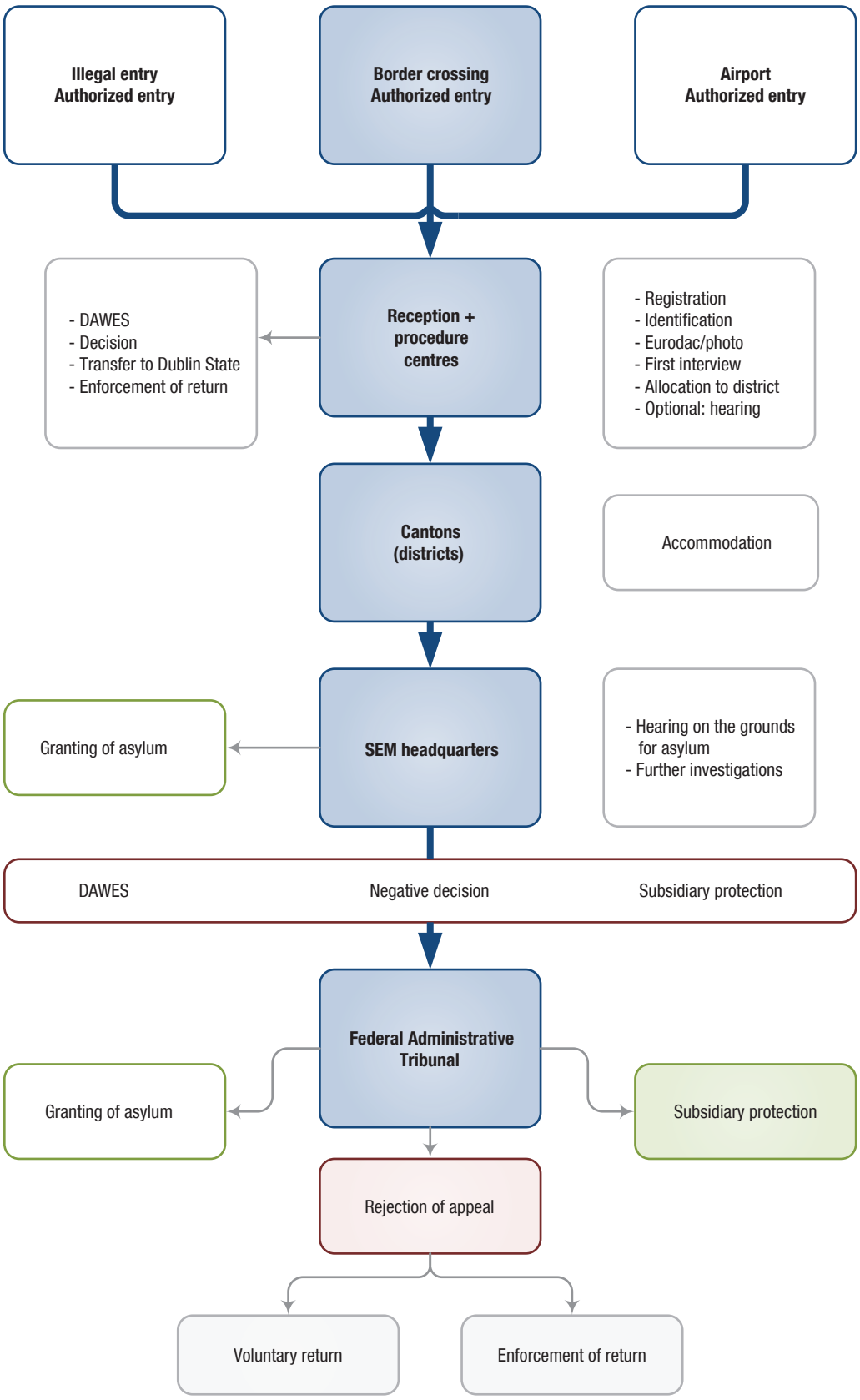
11 INTEGRATION

The Aliens Act, which was passed in January 2008, defines 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, among other things, language, vocational training, the labour market and urban development. The federal Government defines a programme for integration as one 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 temporary residence (article 94 of the Asylum Act). The cantons, communities and third-party organizations are required to participate financially in the integration programmes. In addition, people with temporary admission have, through the new law, better access to the labour market.

12 ANNEX

12.1 Asylum Procedure Flow Chart



12.2 Additional Statistical Information

SWI. Fig. 4 Asylum Applications from Top 10 Countries of Origin in 2012, 2013 and 2014

	2012		2013		2014	
1	Eritrea	4,407	Eritrea	2,563	Eritrea	6,923
2	Nigeria	2,746	Syria	1,901	Syria	3,819
3	Tunisia	2,239	Nigeria	1,764	Sri Lanka	1,277
4	Serbia	1,889	Tunisia	1,737	Nigeria	908
5	Afghanistan	1,386	Morocco	1,068	Somalia	813
6	Syria	1,229	Afghanistan	892	Afghanistan	747
7	FYROM	1,137	Algeria	792	Tunisia	733
8	Morocco	931	Kosovo	698	Morocco	699
9	China	808	Sri Lanka	684	Georgia	466
10	Somalia	808	China	675	Kosovo	405

Note: FYROM – former Yugoslav Republic of Macedonia.

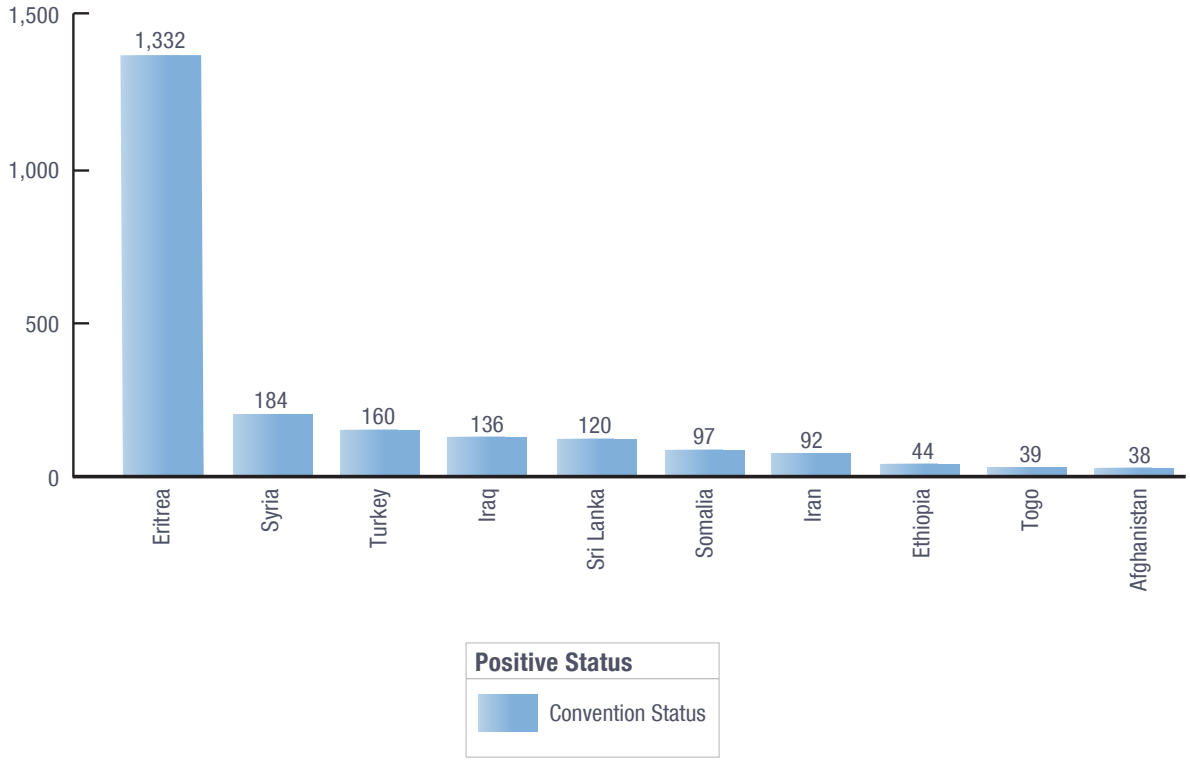
SWI. Fig. 5 Decisions Taken at the First Instance in 2012, 2013 and 2014

	Convention Status		Humanitarian Status and Subsidiary/Complementary Protection		Rejections		Withdrawn, Closed and Abandoned Cases		
Year	Number	%	Number	%	Number	%	Number	%	Grand Total
2012	2,507	10%	0	0%	4,928	20%	17,506	70%	24,941
2013	3,167	13%	0	0%	6,404	27%	14,395	60%	23,966
2014	6,199	23%	0	0%	12,139	45%	8,377	31%	26,715

SWI. Fig. 6.a Positive First-Instance Decisions, Top 10 Countries of Origin in 2012[16]

	Country of Origin	Total Positive	Total Decisions	Rate
1	Eritrea	1,332	1,567	85.0%
2	Syria	184	397	46.3%
3	Turkey	160	347	46.1%
4	Iraq	136	363	37.5%
5	Sri Lanka	120	720	16.7%
6	Somalia	97	273	35.5%
7	Iran	92	200	46.0%
8	Ethiopia	44	102	43.1%
9	Togo	39	60	65.0%
10	Afghanistan	38	188	20.2%

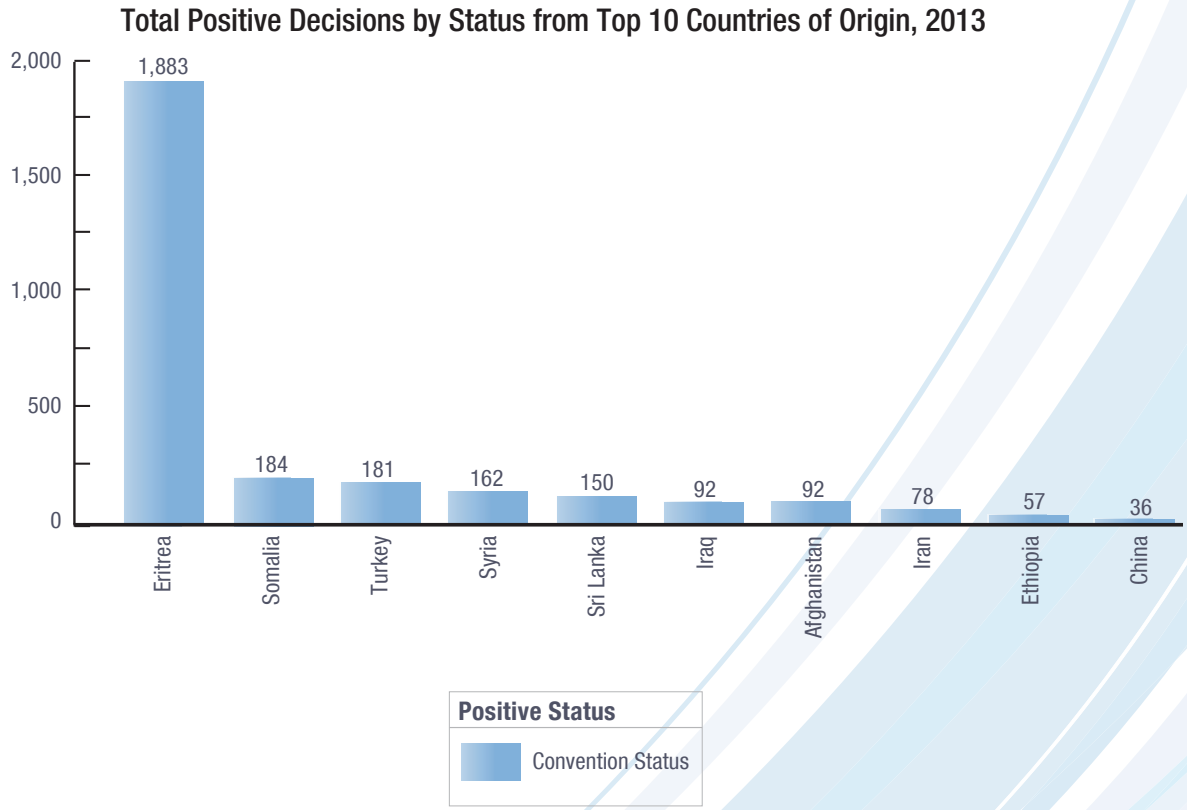
Total Positive Decisions by Status from Top 10 Countries of Origin, 2012



[16] Excluding withdrawn, closed and abandoned claims.

SWI. Fig. 6.b Positive First-Instance Decisions, Top 10 Countries of Origin in 2013[17]

	Country of Origin	Total Positive	Total Decisions	Rate
1	Eritrea	1,883	2,475	76.1%
2	Somalia	184	536	34.3%
3	Turkey	181	463	39.1%
4	Syria	162	662	24.5%
5	Sri Lanka	150	600	25.0%
6	Iraq	92	315	29.2%
7	Afghanistan	92	749	12.3%
8	Iran	78	194	40.2%
9	Ethiopia	57	134	42.5%
10	China	36	268	13.4%

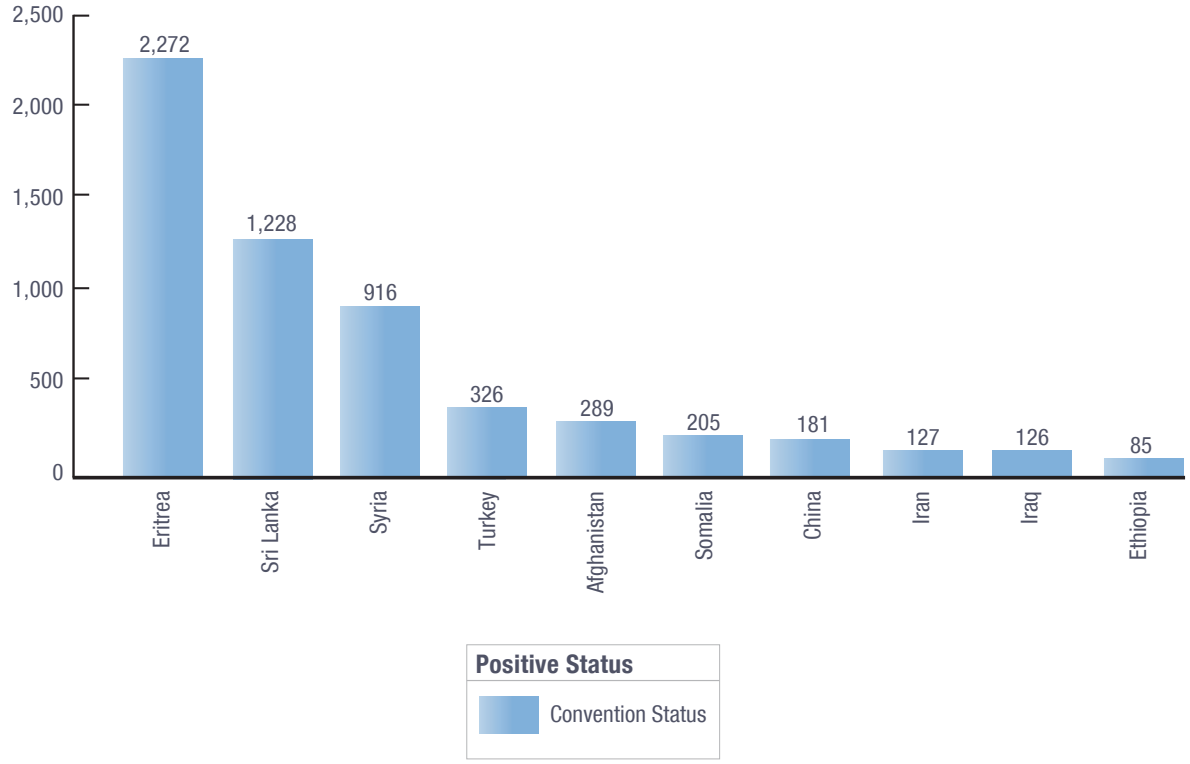


[17] Excluding withdrawn, closed and abandoned claims.

SWI. Fig. 6.c Positive First-Instance Decisions, Top 10 Countries of Origin in 2014[18]

	Country of Origin	Total Positive	Total Decisions	Rate
1	Eritrea	2,272	3,775	60.2%
2	Sri Lanka	1,228	1,518	80.9%
3	Syria	916	2,877	31.8%
4	Turkey	326	613	53.2%
5	Afghanistan	289	1,980	14.6%
6	Somalia	205	760	27.0%
7	China	181	1,376	13.2%
8	Iran	127	380	33.4%
9	Iraq	126	383	32.9%
10	Ethiopia	85	411	20.7%

Total Positive Decisions by Status from Top 10 Countries of Origin, 2014



[18] Excluding withdrawn, closed and abandoned claims.

Toys for Syrian Children. Rima, a Syrian girl of four years, lives with her family in Nizip-2. She said she likes cats and playing with baby dolls.

UNHCR/A.Akad/April 2013

UNITED KINGDOM

igc

1 BACKGROUND: MAJOR ASYLUM TRENDS AND DEVELOPMENTS

Asylum Applications

In the early 1980s, the United Kingdom was receiving fewer than 10,000 asylum claims per year. The numbers started to increase in 1990, when annual claims reached over 38,000. Numbers then fluctuated and reached new peaks from 2000 to 2002, when annual claims ranged between 98,900 and 103,081. Since 2003, numbers have decreased significantly.

There were 25,000 asylum claims in the year ending March 2015, an increase of 5 per cent from the number of the previous year (24,000).

Top Nationalities

In the 1990s, the majority of asylum seekers arriving in the United Kingdom originated from Somalia, the former Yugoslavia, Sri Lanka, Turkey, Pakistan and Nigeria. Since 2000, most claims have tended to originate from Afghanistan, Zimbabwe, Iran, Pakistan, Eritrea, Sri Lanka, China, Iraq, Somalia, Nigeria, Sudan, and most recently, Syria.

In the year ending March 2015 (fiscal year), the largest number of asylum claims were from nationals of Eritrea (3,552) followed by Pakistan (2,421). The number of claims from Eritrean nationals had more than doubled from 1,578 in the year ending March 2014.

Top Five Nationalities to Claim Asylum, Year Ending March 2015 Compared with Year Ending March 2014

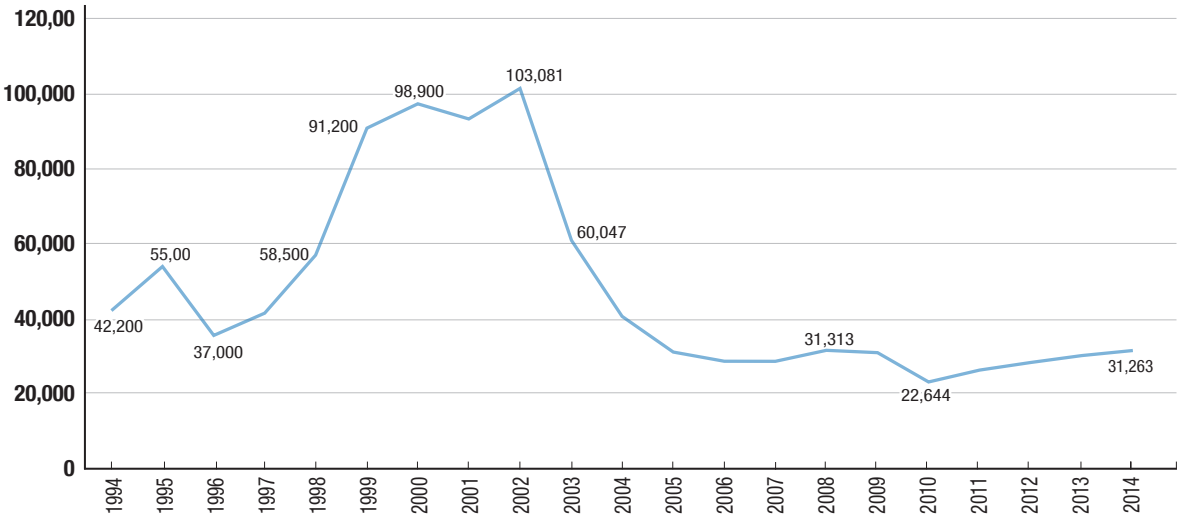
Year Ending March 2015 (Year Ending March 2014)	Nationality	Year Ending March 2014	Year Ending March 2015
1 (5)	Eritrea	1,578	3,552
2 (1)	Pakistan	3,294	2,421
3 (4)	Syria	1,709	2,222
4 (2)	Iran	2,234	2,000
5 (11)	Sudan	776	1,603

Reforms 2010–2014

The coalition Government, which took office in May 2010, tended to concentrate on targeted changes to specific immigration routes, in particular to reduce net migration to the United Kingdom and to clarify the country's approach to family and private life claims to remain in the United Kingdom.

In 2011, the United Kingdom introduced into the Immigration Rules specific provisions for both post-flight spouses of refugees and extended family members of refugees. These changes were designed to clarify the position for these groups and to provide them with the opportunity to join the refugee family member in the United Kingdom, where the refugee sponsor is able to satisfy similar rules as those that apply to citizens of the United Kingdom, including requirements to support and accommodate family members without recourse to public funds.

UK. Fig. 1 **Total Asylum Applications by Year, 1994–2014**[1]



[1] All figures cited include dependents. Between 2000 and 2002, the UK was the top destination country among all IGC Participating States for asylum-seekers. Data refer to first applications only.

With effect from 2 September 2011, all individuals excluded from the protection of the Convention Relating to the Status of Refugees (1951 Convention) by virtue of article 1F but who could not be immediately removed from the United Kingdom due to article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, also known as the European Convention on Human Rights (ECHR), were made subject to a new, tighter restricted leave policy. Such individuals would usually be granted restricted leave to remain only for a maximum of six months at a time, with some or all of the following restrictions:

- Restrictions on the person's employment or occupation in the United Kingdom
- Restrictions on where the person can reside
- A requirement to report to an immigration officer or the Secretary of State at regular intervals
- A prohibition on the person studying at an educational institution.

Changes Related to Article 8

Since 9 July 2012, the Immigration Rules have contained a new framework for considering applications and claims engaging article 8 of ECHR (right to respect for private and family life). Appendix FM and paragraph 276ADE(1) of the Immigration Rules provide the basis on which a person can apply for entry clearance to, or leave to remain in, the United Kingdom on family life grounds or leave to remain in the country on private life grounds.

The Immigration Rules, together with the policy on exceptional circumstances, provide a clear basis for considering immigration cases in compliance with ECHR article 8. In particular, the Immigration Rules reflect the qualified nature of article 8, setting requirements that correctly balance the individual right to respect for private or family life with the public interest in safeguarding the economic well-being of the United Kingdom by controlling immigration, in protecting the public from foreign criminals and in protecting the rights and freedoms of others. The Rules also take into account the need to safeguard and promote the welfare of children in the United Kingdom.

The Immigration Act 2014 received Royal Assent on 14 May 2014. From 28 July 2014, section 19 of the Act amended the Nationality, Immigration and Asylum Act 2002 to set out Parliament's view of what the public interest requires in immigration cases engaging the qualified right to respect for private and family life under ECHR article 8. It requires the courts to give due weight to that public interest when deciding such cases. This means that the public interest in family migrants being financially independent and able to speak English, as required by the family Immigration Rules, is now underpinned in primary legislation.

Changes to the Casework Model

A "case-owner" operating model (known as the "new asylum model") began to be used in March 2007. With this model, each new asylum claim was dealt with by the same person throughout the process, from registration to final resolution of the claim, and either integration or removal.

Following the decision to abolish the former UK Border Agency and move its functions back to the Home Office, this casework model was changed on 1 April 2013. Decision-makers continue to focus on the main asylum interview and on consideration of the evidence, but they are no longer required to present asylum appeals in the Immigration and Asylum Tribunal[2] – this is now done by presenting officers of the national Appeals and Litigation Directorate. Neither are decision-makers required to work on lifting barriers to removal once a case reaches the stage when appeal rights are exhausted. This is done by removals caseworkers of the Removals and Compliance Casework Directorate.

Reforms 2015

On 26 February 2015, changes were made to the Immigration Rules regarding asylum decision-making. Two of these changes are set out below. A change to the process is also described below under "Further submissions".

Implicit Withdrawal of an Asylum Claim

Asylum claims may be formally withdrawn by the claimant at any time and may be treated as withdrawn if the person fails to attend an interview. In addition, from 26 February 2015, claims may also be treated as withdrawn where a claimant fails to provide a witness statement setting out his or her reasons for the claim if requested to do so, or he or she leaves the United Kingdom without informing the Home Office of his or her intentions. This represents a change in policy from the previous approach of taking a decision to reject such claims. Treating them as withdrawn and discontinuing any consideration accurately reflects the fact that the person has chosen not to comply with the requirements of the asylum process and did not genuinely intend to make a legitimate claim for asylum.

Residence Permits

Article 24 of Council Directive 2004/83/EC[3] requires that a residence permit be issued to persons granted asylum or humanitarian protection. The Directive necessitates that permits be granted for a minimum of not less than three years unless compelling reasons of national security or public order otherwise require. The current grant of five years was introduced in 2005, replacing the previous policy of granting immediate indefinite leave to remain.

[2] In February 2010, the Immigration and Asylum Chambers were established in both tiers of the Unified Tribunals framework, replacing the Immigration and Asylum Tribunal. The Upper Tribunal (Immigration and Asylum Chamber) is a superior court of record dealing with appeals made by the First-tier Tribunal (Immigration and Asylum Chamber).

[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).

As a result of changes to the Immigration Rules in February 2015, those granted asylum as refugees (or subsidiary protection) whose character, conduct or associations are of concern but not serious enough to engage article 1F or article 33(2) of the 1951 Convention can now be granted leave to remain for less than five years, though not less than three years, in accordance with article 24(1) of the Qualification Directive 2004/83/EC.

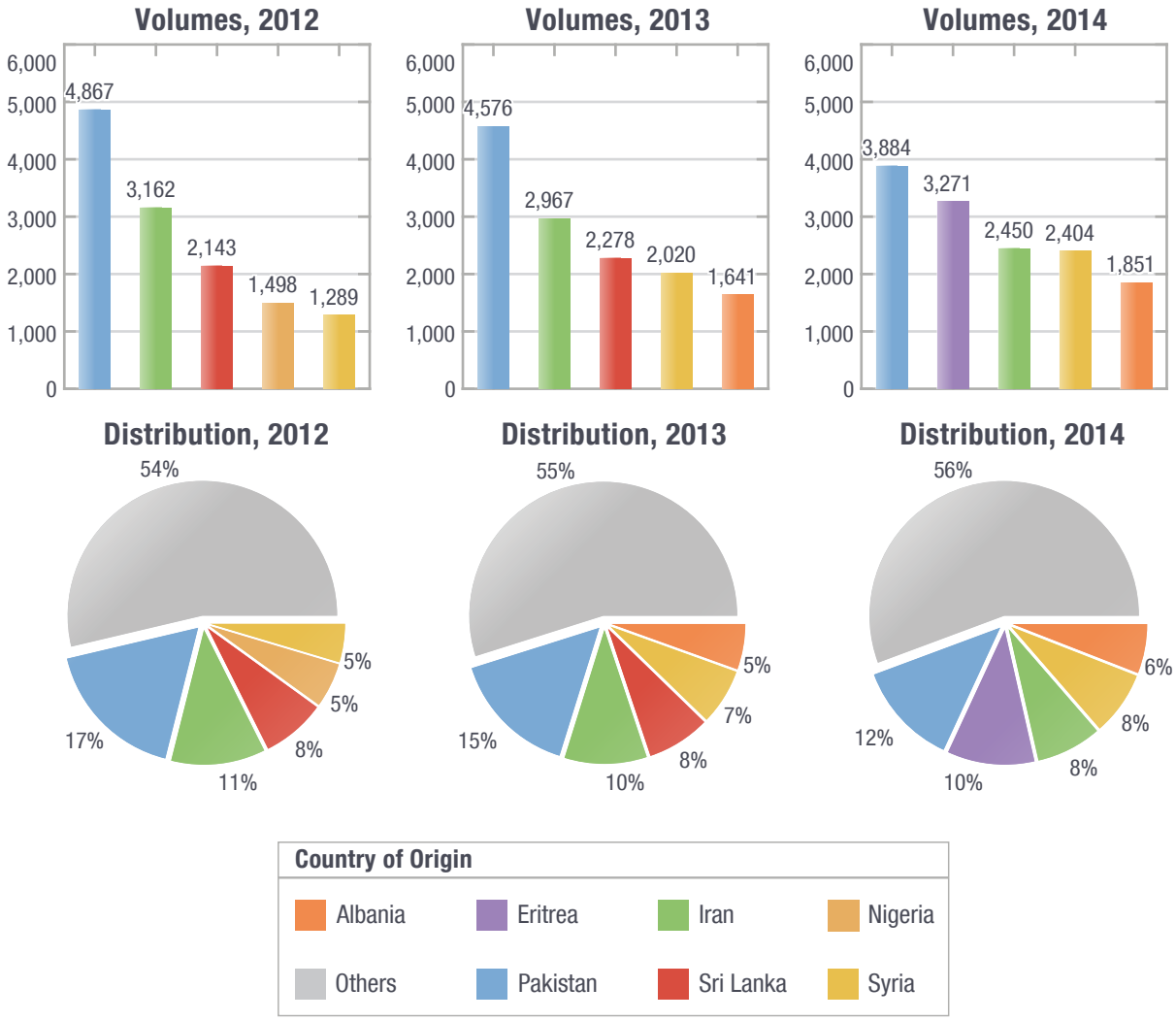
These changes mean that, where the person cannot be denied asylum or excluded from the grant of subsidiary protection, a shorter period of leave with a slower route to settlement and nationality may be granted. Such cases will also be subject to active monitoring and review with a view to revocation or cessation of status in response to bad behaviour or a change in the country situation. It will also be possible to delay the grant of settlement to those whose behaviour is of concern but falls short of the severity necessary for the denial of asylum or exclusion from the 1951 Convention.

Further Submissions

Further evidence or representations may be put forward at any point in the asylum process, but once a claim has been withdrawn or refused with no appeal pending on that claim, any further application to remain, citing asylum or human rights grounds, will normally be treated as further submissions under the procedures in paragraph 353 of the Immigration Rules regulating "fresh claims".

Since 30 March 2015, all further submissions must be lodged in person at a single centralized location unless exceptional circumstances apply (for example, the inability to travel due to a disability or severe illness). Centralizing the process allows decisions to be made within five working days in most cases.

UK. Fig. 2 Asylum Applications Received from Top 5 Countries of Origin in 2012, 2013 and 2014[4]



[4] Data refer to first applications only.

Pending Reforms

Reception

The United Kingdom is committed to fulfilling its international obligations (Council Directive 2003/9/EC)[5] to meet minimum standards for asylum seekers who would otherwise be destitute until their asylum claim has been finally determined, including the outcome of any appeal. However, the Government believes that public funds should not be used to support illegal migrants, including failed asylum seekers, who are able to leave the United Kingdom and should do so.

Subject to a consultation launched on 4 August 2015, the United Kingdom proposes to reform the current legislation with the aim to curtail the scope for such support, and to remove incentives for migrants to remain in the United Kingdom where they have no lawful basis for doing so. The United Kingdom will ensure that the country's international and human rights obligations to meet minimum standards for asylum seekers are fulfilled.

2 NATIONAL LEGAL FRAMEWORK

2.1 Legal Basis for Granting Protection

The 1951 Convention is given effect under British law by references in the Nationality, Immigration and Asylum Act 2002, the Asylum and Immigration Appeals Act 1993, the Refugee or Person in Need of International Protection (Qualification) Regulations 2006, and the Immigration Rules.

The concept of subsidiary protection as laid down in Council Directive 2004/83/EC is mandated in the Immigration Rules as "humanitarian protection". The United Kingdom has added "unlawful killing" as an explicit category of serious harm when granting humanitarian protection.

Council Directive 2005/85/EC[6] has been implemented through the Asylum (Procedures) Regulations 2007 (SI 3187/2007) and changes to the Immigration Rules.

ECHR takes effect under British law in the Human Rights Act 1998.

The United Kingdom is not bound to either the recast Qualification Directive of 2011 or the recast Asylum Procedures Directive of 2013.

3 INSTITUTIONAL FRAMEWORK

The Home Office is the lead government department on immigration and passports, drugs policy, crime, counter-terrorism and policing.

3.1 Principal Institutions

The UK Border Agency was created as an executive agency of the Home Office in April 2009 under the direction of a chief executive responsible to Home Office ministers. On 1 March 2012, the Home Secretary announced that the Border Force would be split from the UK Border Agency to become a separate operational command within the Home Office, led by its own director general and accountable directly to the Home Office ministers. On 26 March 2013, the abolition of the UK Border Agency was announced by the Home Secretary in Parliament, as part of a broader reorganization that encompassed the reintegration of the agency back into the Home Office and the creation of two new operational commands: UK Visas and Immigration (UKVI), and Immigration Enforcement.

Since then, UKVI has had responsibility for making decisions about who has the right to visit or to stay in the country, with a firm emphasis on national security and a culture of customer satisfaction for persons who arrive legally. It has a workforce of 7,500 people based in locations around the United Kingdom and overseas.

UKVI's responsibilities are:

- To manage the United Kingdom's visa service, dealing with approximately 3 million applications per year from overseas nationals who wish to go to the United Kingdom to visit, study or work.
- To consider applications for British citizenship from overseas nationals who wish to settle in the United Kingdom permanently.
- To manage the country's asylum service, offering protection to those eligible for refugee status or subsidiary protection under the 1951 Convention and the 2004 EU Qualification Directive.
- To decide applications from employers and educational establishments who wish to join the register of sponsors or to gain highly trusted sponsor status.
- To manage appeals from unsuccessful claimants.

Asylum Operations is responsible for managing the majority of asylum claims, dealing with all aspects of a claim, from reception and screening to decision-making. Other sections of UKVI implement the return of rejected asylum seekers and assist the integration of recognized refugees and those granted subsidiary protection.

[5] Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers. Council Directive 2005/85/EC of 1.

[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).

Appeals of negative decisions on asylum claims are heard by the independent First-tier Tribunal (Immigration and Asylum Chamber), or FTIAC, part of the United Kingdom's Courts and Tribunals Service.

3.2 Cooperation between Government Authorities

Immigration Enforcement works closely with the police, the National Crime Agency, local government partners and other government bodies, such as the Department of Work and Pensions, the Driver and Vehicle Licensing Agency and the National Health Service, to tackle immigration-related crime, to enforce compliance with immigration laws, to remove those unlawfully present in the United Kingdom and to deny the privileges of the United Kingdom to those in the country illegally.

Immigration Enforcement uses a multilayered approach: Immigration Compliance and Enforcement teams are responsible for the detection and removal of illegal migrants; the Interventions and Sanctions Unit is responsible for liaising with other government agencies to identify those unlawfully in the United Kingdom and deny them the benefits of residency; and Immigration Enforcement, Criminal Investigation is responsible for investigating immigration-related crime, including people smuggling, human trafficking and identity fraud. Immigration Enforcement, Criminal Investigation comprises mixed teams of specialist immigration investigators and seconded police officers and works in partnership with local police forces and the National Crime Agency to tackle organized immigration crime and to seize criminal assets.

4 PRE-ENTRY MEASURES

4.1 Visa Requirements

Nationals of certain countries, including European Union (EU) Member States, the European Economic Area countries 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.[7] UKVI is the competent authority for dealing with visa applications.

4.2 Carrier Sanctions

Under the carriers' liability legislation, air and sea carriers may be liable for a charge of GBP 2,000 for each person they carry to the United Kingdom 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.

4.3 Interception

The strategic aims of the UK Border Force are to protect the country's borders and national interests, to tackle border tax fraud, smuggling and immigration crime, and to implement fast and fair decisions.

Juxtaposed controls exist where United Kingdom immigration controls are alongside those of France and Belgium. Border Force officers are able to exercise full examination powers for immigration purposes (as opposed to pre-clearance checks) at all juxtaposed controls. Checks take place just before passengers embark on the final stage of their journey to the United Kingdom. The arrangements enable the French and Belgian authorities to mount reciprocal controls in the United Kingdom for passengers entering the Schengen area.

Juxtaposed controls were first established in respect of the Eurotunnel's shuttle trains operating between Coquelles and Cheriton in 1994 in order to speed up entry and exit procedures on the Channel Tunnel route. They were then extended to the Eurostar train terminals in France (Paris, Lille and Calais) in June 2001 and Belgium (Brussels) in October 2004 in order to stem the flow of inadequately documented arrivals at Waterloo (St Pancras has since replaced Waterloo as the international terminal) with a French presence in the United Kingdom at Ashford, Ebbsfleet and St Pancras International Stations. Subsequently, as part of the deal to close the Sangatte Red Cross Centre, France agreed to allow controls to be extended to cover Calais and other French seaports serving Dover.

4.4 Immigration Liaison Managers

UKVI has an overseas network of immigration liaison managers, who have no legal enforcement powers and who do not operate pre-clearance but act as document advisers to airlines. Their role is to provide information and training on United Kingdom passport and visa requirements and forgery awareness, with a view to preventing the carriage of inadequately documented passengers to the United Kingdom and to assisting airlines to comply with carrier liability legislation. Immigration liaison managers 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.

Immigration liaison managers based overseas offer carriers training and advice on documentary requirements for travel to the United Kingdom 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 United Kingdom, those who may be trafficked or smuggled, and those who may pose a security threat.

[7] The Immigration Rules are available at www.gov.uk/government/organisations/uk-visas-and-immigration.

5 ASYLUM PROCEDURES

5.1 Application Possibilities and Requirements, Procedures and Legal Remedies

5.1.1 Outside the Country

Applications at diplomatic missions are not accepted. There is no provision for a person to claim asylum while outside the territory of the United Kingdom.

Resettlement

The United Kingdom's formal resettlement plan is the Gateway Protection Programme, managed by UKVI in cooperation with the United Nations High Commissioner for Refugees (UNHCR). It has been operational since 2004. Through this programme, the United Kingdom currently accepts an annual quota of 750 refugees for resettlement, on the basis of applications submitted by UNHCR. Applications cannot be made to British diplomatic posts abroad or to UKVI directly. Claimants are interviewed by UKVI officials during organized missions, and the final decision is made by UKVI. In addition to UNHCR's resettlement criteria, the United Kingdom requires that claimants cooperate with UKVI officials and other organizations involved in the Gateway Protection Programme, that they are not in polygamous marriages and that they have not been involved in any fraudulent activity. There are no official sub-quotas within the programme, although UKVI aims to accept at least 10 per cent of cases falling under the category of women at risk, and resettles medical needs cases from each caseload.

Another arrangement for resettlement, known as the Mandate Refugee Scheme, allows UKVI to resettle refugees who have been referred by UNHCR and who have close ties to the United Kingdom, which normally means immediate family members. These family members in the United Kingdom must have residence or immigration status leading to settlement in order to be eligible (but they do not have to be refugees themselves). The applicant must have been granted mandate refugee status by UNHCR and must demonstrate a resettlement need in accordance with the UNHCR resettlement criteria. Decisions are made on a dossier basis without an interview. About 60 refugees from around the world are resettled annually through the Mandate Refugee Scheme.

In January 2014, the Home Office established the Syrian Vulnerable Persons Relocation Scheme, which prioritizes help for survivors of torture and violence, women and children at risk, and those in need of medical care. The Home Office works with UNCHR to identify suitable cases. Although the scheme is based on need rather than a quota, it is expected to support several hundred people over a three-year period. The first group arrived through this scheme in March 2014, and groups have been arriving on a regular basis since then.

5.1.2 Inside the Territory

At Ports of Entry

Asylum claims can only be made in the United Kingdom, either at a point of entry – a seaport or an airport – or inside the United Kingdom after lawful admission or unlawful entry.

At a point of entry, the asylum seeker may communicate to the immigration official at passport control that he or she wishes to claim asylum. A screening process similar to the one at an asylum intake unit takes place.

Upon completion of the screening process, a decision based on the available information is made regarding the most appropriate route for the case, including through third country (Dublin) procedures.

Screening and Registration

Upon making known his or her intention to claim asylum, the claimant must go through a screening and registration process. Most asylum claims made after entry are lodged at the main asylum intake unit, located in Croydon, but the process can also be carried out in detention or with an immigration compliance and enforcement team.

The purpose of the screening process is to establish identity, immigration status, any particular special needs that the individual may have, and a brief understanding of what the asylum claim is based upon. The interview is conducted in a language that the claimant can reasonably be expected to understand. Basic biodata are recorded and the claimant's fingerprints and photographs are taken. Claimants are requested to produce any travel documentation or national identity documents at this stage.

Security and system checks are completed during the screening process. The claimant must also complete an application for a biometric residence permit. These measures assist in establishing identity, identifying third country cases, detecting fraudulent claims, and identifying those who may have committed a criminal or immigration offence.

Upon completion of this process, and depending on the individual circumstances, the claimant may be routed to one of the asylum team hubs located across the United Kingdom for substantive consideration of the asylum claim, or entered into the detained asylum process, or processed under third country procedures (see next section).

The asylum seeker and any dependants are issued with an Application Registration Card, which shows that he or she

has claimed asylum in the United Kingdom (however, it is not issued if an individual is detained). This is not an official identity document but contains basic biodata and is used for contact management purposes and to issue any asylum support.

Information about seeking asylum is published on the government website,[8] as is information on immigration law and operational guidance.[9]

Length of Procedures

There are no specific time limits for making an asylum claim, but an unexplained delay in making a claim following arrival in the United Kingdom is likely to damage a claimant's general credibility, unless the claimant is a refugee *sur place*.

Responsibility for Processing the Claim

The Dublin System

The Third Country Unit of UKVI is responsible for considering asylum claims that come under the Dublin system.

Application and Procedure

Once an individual claims asylum in the United Kingdom, fingerprints are taken at screening and transmitted to the Eurodac databases in accordance with Eurodac Regulation (EU) No 603/2013. If Eurodac finds a match, the Third Country Unit will examine this evidence to determine if another State party to the Dublin Regulation is responsible for considering the claim under the terms of the Regulation.

If other evidence suggests that another State is responsible for examining the claim, this evidence is also considered. Such evidence includes: a visa, residence permit or other reliable documentary evidence (such as pay slips or utility bills); information establishing family relationships (to determine whether family unity or humanitarian provisions apply); and credible statements from the claimant.

If the Third Country Unit considers that another State is responsible for examining the asylum claim under the terms of the Dublin Regulation, it will decide whether to detain the claimant or to enforce reporting restrictions while a formal request is made to the State concerned.

Detention

An immigration officer has the authority to admit temporarily any 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 the examination of the asylum claim, the implementation of removal directions or the resolution of an outstanding appeal. The immigration officer may at any time decide to resume detention (for example, if the person fails to observe the place of residence, employment or reporting restrictions).

Each third country case is considered for detention and is considered on its individual merits. For detention to be justified, there must be a significant risk of absconding and there must also be a realistic prospect of removal within a reasonable period.

Conduct of Transfers

Once another State has accepted responsibility for a claimant, the United Kingdom respects the provisions of the Dublin system that govern the making of transfers, namely articles 26, 28 and 29–32 of the Dublin Regulation (EU) No 604/2013 and the Dublin Implementing Regulations (EC) No 1560/2003 and (EU) No 118/2014. The Third Country Unit will also ensure that, when a claimant is transferred to the State, he or she will arrive 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 United Kingdom does not have a policy whereby transfers under Dublin to a particular State or States are suspended in general, other than with regard to Greece, in common with other EU countries following the European Court of Human Rights decision in *M.S.S. v. Belgium and Greece* confirmed by a judgement of the Court of Justice of the European Union and in other decisions (for example, the Court of Justice of the European Union cases of *N.S. v. Secretary of State for the Home Department* and *M.E.* and *Others v. Refugee Applications Commissioner and Minister for Justice, Equality and Law Reform*). Where a transfer cannot be made to Greece, the United Kingdom follows the provisions in article 3(2) of the Dublin III Regulation (EU) No 604/2013.

If the claimant has absconded or been imprisoned, the Third Country Unit will contact the State and request a 12-month extension (to the original 6-month deadline) for the claimant's transfer in accordance with article 19(4) or article 20(2) of the Dublin Regulation (EC) No 343/2003. If the claimant has a legal application pending, the Third Country Unit will request a suspension of the deadline until the application has been concluded. It 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 asylum claim, the Third Country Unit will certify the asylum claim in the United Kingdom under schedule 3 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004. The relevant Immigration Rule applicable in third country cases is paragraph 345 of the Immigration Rules (HC 395).

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 (that is, the appeal can only be exercised from abroad after removal) unless a human rights challenge

[8] See www.gov.uk/claim-asylum.
[9] See www.gov.uk/topic/immigration-operational-guidance/asylum-policy.

to removal (not based on onward removal in breach of article 3 of ECHR) is not certified as "clearly unfounded". Such appeals must be lodged with FTIAC 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. The appeal must be lodged with FTIAC not later than 10 days after the person is served with the notice of decision. The Tribunal has discretion to accept out-of-time appeals. Furthermore, a claimant may seek to challenge the transfer decision by judicial review in the civil administrative courts, which has a suspensive effect.

Freedom of Movement during the Asylum Procedure

Although some asylum seekers may be detained, a person is not routinely detained simply for having claimed asylum. The majority of non-detained claimants are required to maintain contact by regular reporting to regional reporting centres, and there are provisions in the law for UKVI to maintain contact with asylum seekers throughout the asylum procedure. Reporting centres are located throughout the country. Immigration officials are also posted at some police stations to facilitate reporting.

The frequency with which a claimant 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 18 years of age, and persons with serious medical conditions, may be required to report less frequently. UKVI also employs other forms of contact management for asylum seekers (such as tagging and voice recognition technology).

Detention

Asylum seekers may be detained if they meet published detention criteria and all reasonable alternatives have been considered. Detention may be appropriate in the following circumstances:

- To effect removal (including deportation)
- Initially, while establishing a person's identity and basis of claim
- Where there is reason to believe that the person will fail to comply with the conditions attached to the grant of temporary admission or release
- As part of a fast-track asylum process in which it is considered that an application can be decided quickly.

Accelerated Procedures in Detention

Claims That May Be Decided Quickly

In general, an asylum claim is considered potentially suitable for the Detained Fast Track procedure if, after the screening process, it appears that it may be decided quickly. With the exception of certain categories of vulnerable groups, there is a general presumption that the majority of asylum claims are ones on which a quick decision may be made, unless there is evidence to suggest otherwise.

All asylum seekers in the fast track procedure have access to free legal advice and interpreters. Claimants are interviewed and served with a decision, usually within 7 to 14 days of entering the process. There are safeguard mechanisms in place to ensure that process timescales can be extended if fairness requires it, or for the claimant to be transferred to the non-detained procedure if it emerges that he or she is no longer suitable for the process.

If the claim results in a negative decision, two possible routes may follow, both of which reflect non-detained processes. If the claim is considered to be so lacking in merit as to be "clearly unfounded", it may be certified under section 94 of the Nationality, Immigration and Asylum Act 2002. Such a decision requires the authority of a second trained officer. The right of appeal of a certified decision may be exercised only from the country of origin (the claimant must appeal within 28 days of removal).

For negative decisions that are not certified, the claimant has the same in-country appeal rights as in the non-detained system, but to an accelerated timetable.

Asylum Procedures

The decision-maker at the regional UKVI office to which the claimant is assigned has responsibility for dealing with the initial decision-making process, 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 claim.

At screening, the claimant is offered the choice of having either a female or a male interviewer and an interpreter provided by UKVI, and any request will normally be met. At the interview, the asylum seeker may be assisted by a legal representative at the claimant's expense or if legally aided. 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 rejected as unsubstantiated or treated as withdrawn.

Some asylum claimants assume a nationality that is not their own. A language analysis process operates, on a case-by-case basis, to assist in identifying whether an asylum claimant is actually from the claimed country of nationality

and in deterring fraudulent claims. The process involves the asylum claimant undertaking a telephone interview with a linguistic expert. Initial verbal results are followed by a written report and transcription of the interview, which are available in the case of any appeal.

When reviewing the merits of a claim, the decision-maker must consider whether the asylum seeker meets the criteria for Convention refugee status, for humanitarian protection (subsidiary protection), for leave to remain under article 8 of ECHR, or for leave outside the Immigration Rules (discretionary leave), in that order (see the section below).

If the claim is considered to be so lacking in merit as to be "clearly unfounded", it may be certified under section 94 of the Nationality, Immigration and Asylum Act 2002. Such a decision requires the authority of a second trained officer. The right of appeal of a certified decision may be exercised only from the country of origin (the claimant must appeal within 28 days of removal).

Section 94(4) of the Nationality, Immigration and Asylum Act 2002 also makes provision for a list of States from which asylum or human rights claims that are rejected 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.

As the United Kingdom does not currently have a general procedure in place through which to declare an asylum claim inadmissible, a national from the European Economic Area is not excluded from applying for asylum. However, the Immigration (European Economic Area) 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.

Special Procedures

Consideration of Unaccompanied Minors

An unaccompanied minor is a child (under 18 years of age) who applies for asylum in his or her own right and who is separated from both parents and is not being cared for by an adult who in law or by custom has the responsibility to do so.

The Immigration Rules make specific provision for asylum-seeking children and the safeguarding and promotion of their welfare during key parts of the asylum process. An asylum claim can be made by, or on behalf of, a child and must be assessed only by a specially trained caseworker who has received the requisite children's training.

Unaccompanied minors are entitled to support from the local authorities' Children's Services Departments, which operate under the 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 unaccompanied minor with his or her asylum claim. The adviser will not offer any legal advice.

As many asylum seekers who claim to be children do not have any definitive documentary evidence to support their claimed age, a decision on their age may be required. Many are clearly children while some are very clearly adults. In other cases the position is more doubtful and a careful assessment of the applicant's age is required. All available sources of relevant information and evidence are considered, as no single assessment technique, or combination of techniques, is likely to determine the applicant's age with precision.

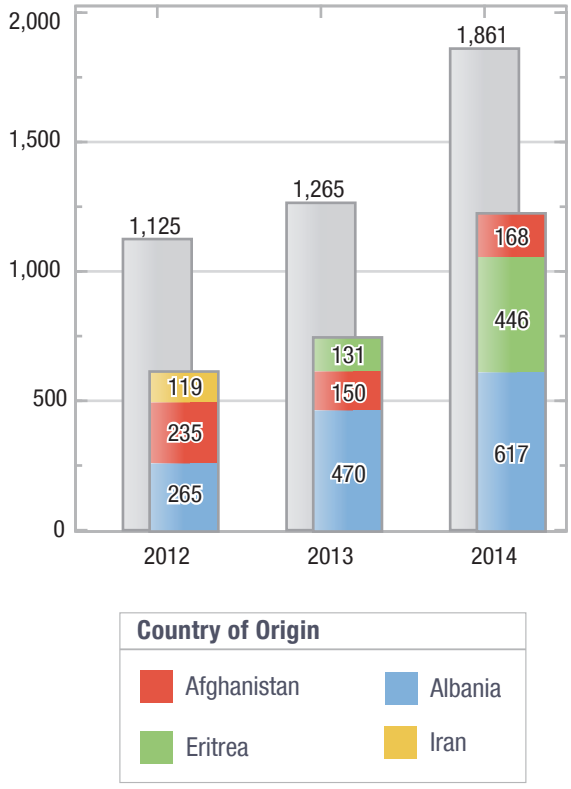
Where there is little or no reliable evidence to support the claimed age and the claim to be a child is in doubt, the claimant is treated as an adult if his or her physical appearance and demeanour very strongly suggest that he or she is significantly over 18 years of age. In such cases, the asylum claim will be considered under adult procedures unless relevant new evidence is received.

All other claimants will be afforded the benefit of the doubt and treated as children, in accordance with the policy guidance until a careful assessment of their age has been completed. This policy is designed to safeguard the welfare of children. It does not indicate final acceptance of the claimed age, which will be considered in the round together with all of the relevant evidence, including the view of the local authority to whom unaccompanied minors or those who are being given the benefit of the doubt and temporarily treated as unaccompanied minors, should be referred.

The Home Office and the local authorities' Children's Services Department have the legal duty to safeguard children who are in the United Kingdom and to promote their welfare. An age assessment by the local authority's Children's Services Department may also be required when there is significant reason to doubt an individual's claimed age, in order to be sure that he or she is treated age-appropriately and receives the necessary services and support. In many cases, this will be in the context of an asylum claim from an individual claiming to be an unaccompanied child, but could also be relevant in other circumstances, for example a trafficked young person who has not claimed asylum.

UK. Fig. 3 Asylum Applications by Unaccompanied Minors in 2012, 2013 and 2014[10]

	2012	2013	2014
Total Asylum Applications	27,978	29,875	31,263
Applications by Unaccompanied Minors	1,125	1,265	1,861
Percentage	4%	4%	6%



Interview

Minors aged 12 years or over will normally be interviewed about the substance of their asylum claim. Children invited to attend an asylum interview are interviewed by a specially trained decision-maker. The child must be accompanied by a responsible adult whom the child trusts. A responsible adult could be the child's legal representative, social worker, guardian/relative, foster care parent, doctor, priest, vicar, teacher, charity worker or Refugee Council representative. However, another individual could also assume this role. The interview is conducted using child-sensitive techniques.

Unaccompanied minors are entitled to legal aid to help them with their asylum claim, which includes funding for a legal representative to attend a screening event and a substantive interview. The Panel of Advisers usually assists in finding a legal representative for the child.

All the processes followed and the decisions taken by the Home Office must take into account the effect of the circumstances of each case as they would impact on children or on those with children.

Arising out of the United Kingdom's treaty obligations under the 1989 Convention on the Rights of the Child and other international commitments (including the relevant EU Directives, which require the best interests of the child to be a primary consideration for Member States when implementing the provisions involving children), section 55 of the Borders, Citizenship and Immigration Act 2009 requires the Home Office to carry out its immigration functions in a way that takes into account the need to safeguard and promote the welfare of children in the United Kingdom.

The statutory duty to children includes the need to demonstrate that, when children are involved, asylum claims are dealt with in a timely and sensitive fashion. The best interests of the child will be a primary consideration (although not necessarily the only consideration) when making decisions affecting children, whether the child is the direct subject of the application or an adult applicant is the primary parent or guardian of a child in the United Kingdom or has a genuine and subsisting family life with a child in the United Kingdom.

Asylum claims made by children are processed by specially trained staff.

Claims Based on Sexual Identity

Asylum staff are provided with separate guidance on interviewing and decision-making for claims based on sexual identity (previously known as sexual orientation). This has been followed up with mandatory and refresher training, which has been incorporated into the Foundation Training Programme for new asylum staff.

Key Court Judgements

The Supreme Court of the United Kingdom, in *HJ (Iran) and HT (Cameroon) v. Secretary of State for the Home Department* [2010] UKSC 31, made a ruling on the approach to take when considering applications for asylum on the grounds of a well-founded fear of persecution due to the claimant's sexual identity.

Previously, it was permissible to refuse asylum to a homosexual person who, if returned to his or her home country, would deny his or her identity and conceal his or

[10] Data refer to first applications only.

her sexuality in order to avoid being persecuted, provided that the homosexual person's situation could be regarded as "reasonably tolerable". Only if the hardship that would be suffered were deemed to exceed this threshold would an individual be entitled to protection under the 1951 Convention.

The Supreme Court ruled that one of the fundamental purposes of the 1951 Convention was to counteract discrimination and that the Convention did not permit, or indeed envisage, applicants being returned to their home country "on condition" that they took steps to avoid offending their persecutors. The Court said that persecution did not cease to be persecution for the purposes of the Convention because those persecuted could eliminate the harm by taking avoiding action. It ruled that the previous test no longer applied and should not be used.

In December 2014, the Court of Justice of the European Union ruled in the cases of C-148/13, C-149/13 and C-150/13 on the issue of the evidence used to assess asylum claims brought on the basis of sexual identity. This ruling has important implications for the relationship between the Qualification Directive and the EU Charter of Fundamental Rights. The Court of Justice of the European Union ruled that:

- Questions based solely on stereotypical behaviour cannot be relied on in order to assess evidence put forward by a claimant.
- Detailed questioning in regard to sexual practices must not be asked.
- Sexually explicit evidence, even if it is provided voluntarily by the claimant, must not in any circumstances be accepted.
- An adverse credibility finding cannot be made merely because a claimant did not raise issues of sexual identity on the first occasion in which he or she claimed asylum.

The Court of Justice of the European Union also made it clear at the outset that it did not accept the claimant's assertion that sexual identity should be accepted as an established fact solely on the basis of the declarations of the claimant. It held that such declarations merely constituted the starting point in the process and were subject to a proper assessment of the facts and circumstances.

Review/Appeal of the Asylum Decision

Before April 2015, appeal rights were related to the relevant immigration decision that accompanied the refusal of asylum. For instance, an asylum seeker who was refused asylum but given humanitarian protection (subsidiary protection) or discretionary leave could appeal against the asylum decision if the status granted provided for a residence permit of 12 months or more.

The situation for those refused asylum or humanitarian protection changed with the coming into force of the Immigration Act 2014 in April 2015. The Immigration Act 2014 reduced the number of grounds for appeal from 17 to 4. From April 2015, the only grounds for appeal, under section 82 of the Nationality, Immigration and Asylum Act 2002 (as amended by the Immigration Act 2014), are that the decision breaches the person's fundamental rights. A fundamental right is defined as where a human rights claim is made, a protection claim (refugee status or humanitarian protection) is made, a decision is taken to revoke protection status, or a claim is made on European Economic Area free movement grounds.

Where new matters that have not been considered by the Home Office are raised at appeals, the Home Office is required to consent to the new matter being considered by the Tribunal.

FTIAC hears and decides appeals against decisions made by the Home Office. Usually a judge from FTIAC 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 Upper Tribunal (Immigration and Asylum Chamber) and to the Court of Appeal against a decision made by FTIAC. However, appeals against decisions by FTIAC are possible only when there has been a material error in law.

Appeals before FTIAC are given a suspensive effect unless the claim is certified as clearly unfounded.

Repeat/Subsequent Applications

Further evidence or representations may be put forward at any point in the asylum process but once a claim has been withdrawn or refused with no appeal pending on that claim, any further applications to remain, citing asylum or human rights grounds, will normally be treated as further submissions under the procedures described in paragraph 353 of the Immigration Rules regulating "fresh claims".

These procedures require the UKVI decision-maker to decide first whether the further submissions justify the grant of asylum or other forms of leave and if they do not, to decide whether they amount to a fresh asylum or human rights claim. Further submissions will constitute a fresh asylum or human rights claim if the most recently submitted material on the case is "significantly different" from that which had been previously considered and there is a realistic prospect of success at appeal notwithstanding refusal.

If the further submissions amount to a fresh asylum or human rights claim based on the application of paragraph 353, the claimant will have the right to appeal against the decision to reject the further submissions. This will have a suspensive effect and prevent removal, unless the claim is certified as clearly unfounded under section 96 of the

Nationality, Immigration and Asylum Act 2002. The claimant will have no right to appeal where the further submissions do not constitute a fresh asylum or human rights claim.

Claimants 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, if the further submissions are accepted as a fresh asylum or human rights claim. 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 individual may be eligible for support under section 4 of the 1999 Act.[11]

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 United Kingdom if he or she is a refugee as defined in regulation 2 of the Qualification Regulations. Regulation 2 defines a refugee as a person who falls within article 1(A) of the Convention and to whom regulation 7 does not apply. Regulation 7 provides that a person is not a refugee if he or she falls within the scope of one of the three exclusion clauses – articles 1D, 1E or 1F – of the 1951 Convention.

Asylum will not be granted if there are grounds for regarding the claimant as a danger to the security of the United Kingdom or if, having been convicted by a final judgement of a particularly serious crime, he or she constitutes a danger to the community of the United Kingdom.

6.1.2 Complementary Forms of Protection

Humanitarian Protection (Subsidiary Protection)

Humanitarian protection may be granted where the claimant does not have a well-founded fear under the 1951 Convention but where there is 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.

Humanitarian protection will not be granted if the claimant is excluded by virtue of provisions similar to those that apply to the grant of asylum, with the exception of article 1D of the 1951 Convention, for which there is no equivalent in the subsidiary protection regime.

6.2 The Asylum Decision

The decision is based on an assessment of the merits of the claim, which begins with an assessment of the credibility of oral and documentary evidence provided by the claimant as well as country of origin information (COI), and ends with an assessment of the risk on return in light of the established facts about the individual.

Decisions are provided in writing. If asylum is granted, the reasons are summarized briefly for the Home Office file. If asylum and humanitarian protection are refused, the reasons are fully explained in a "reasons for refusal" letter to the claimant (and the legal representative if he or she has one), whether or not other forms of leave to remain are being granted.

6.3 Types of Decisions, Statuses and Benefits Granted

Upon reviewing the merits of an asylum claim, the decision-maker can take one of the following decisions:

- Recognize Convention refugee status and grant asylum
- Refuse asylum but grant humanitarian protection
- Refuse asylum and humanitarian protection due to exclusion from refugee status and from subsidiary protection
- Refuse asylum and humanitarian protection, but grant leave under ECHR article 8 on the right to respect for private and family life rules
- Refuse asylum, humanitarian protection and leave under article 8, but grant discretionary leave outside the Immigration Rules
- Refuse asylum and all other forms of leave to enter or remain.

6.3.1 Convention Refugee Status and Humanitarian Protection

Persons who have Convention refugee status or humanitarian protection are normally given a residence permit valid for five years, which entitles them to the same rights as permanent residents of the United Kingdom. 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 under certain circumstances:

- If grounds for the revocation of status come to light
- If there has been a significant and non-temporary change in conditions in the country of persecution

[11] Section 4 support is a short-term form of support provided to failed asylum seekers who are destitute and unable to leave the United Kingdom 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.

- When the refugee applies for indefinite leave to remain or reaches the five-year mark of his or her residence permit.

IN FOCUS

FAMILY REUNIFICATION BENEFITS

Family reunion is intended to allow pre-flight dependent family members (that is, those who formed part of the immediate family unit before the person fled to seek protection) to reunite with their family members who have been granted asylum as recognized refugees or who have five years' humanitarian protection leave in the United Kingdom. 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).

6.3.2 Leave to Remain Related to Article 8

Since 9 July 2012, if asylum and humanitarian protection are refused, the decision-maker must next consider, taking into account all of the factors raised by the application, whether there are exceptional circumstances that mean refusal of the application would result in unjustifiably harsh consequences for the applicant or his or her family such that refusal would not be proportionate under ECHR article 8.[12]

Unlike grants of asylum or humanitarian protection, article 8 leave is granted for 30 months (2.5 years) at a time, without eligibility for public funds unless the applicant is assessed as destitute.[13] Subsequent periods of leave can be granted providing the claimant continues to meet the relevant criteria. An individual needs to have been granted at least 120 months (a total of 10 years normally consisting of four 2.5 year periods) of leave before being eligible to apply for settlement.

6.3.3 Discretionary Leave

If an individual does not qualify for leave to remain on protection grounds or under article 8-based Immigration Rules, the caseworker must consider whether there are any other exceptional circumstances that may justify a grant of leave outside the Rules.

Prior to 9 July 2012, persons granted discretionary leave were given a renewable residence permit valid for a period of up to three years, depending on the basis for the grant. Following six years or more of discretionary leave (10 years or more for excluded cases), beneficiaries would be eligible to apply for indefinite leave to remain. Discretionary leave, when granted, may be subject to periodic review. Beneficiaries are entitled to work and to receive social benefits and assistance.

With effect from 9 July 2012, the duration of discretionary leave granted is determined by the individual facts of the case but is not granted for more than 30 months (2.5 years) at a time. Subsequent periods of leave can be granted providing the claimant continues to meet the relevant criteria. From 9 July 2012, a claimant needs to have been granted at least 120 months (a total of 10 years normally consisting of four 2.5 year periods) of leave before being eligible to apply for settlement.

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 30 months (2.5 years) or until the minor reaches the age of 17.5 years, whichever is the shorter period of time.

6.4 Exclusion

6.4.1 Exclusion from Refugee Status and Subsidiary Protection

The grounds for exclusion are those set out in articles 1D, 1E and 1F of the 1951 Convention, as replicated in articles 12 and 17 of Council Directive 2004/83/EC.

UKVI asylum caseworkers will consider cases that raise matters relevant to article 1D, but when asylum claims raise exclusion issues under article 1F or under article 17 of the Directive, they are referred by UKVI caseworkers for consideration (and further research if necessary) by the Special Cases Unit of the Office for Security and Counter-Terrorism. In respect of article 1F(a), the United Kingdom 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".

The evidential burden of proof rests with the Secretary of State to show that article 1F applies, not for the claimant to show that it does not. In British case law, the phrase "serious reasons for considering" means what it says: evidence that is not tenuous or inherently weak or vague, and that supports a case built around more than mere suspicion or speculation.

The individual clauses overlap. Reasons for exclusion should normally relate to the most relevant clause: 1F(a), 1F(b) or 1F(c). It is possible, however, for more than one clause to apply; for example, persons who engage in certain acts of terrorism should be considered for exclusion under article 1F(b) as well as 1F(c).

Where asylum is refused on the basis that article 1F applies, 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 a claimant makes an appeal. Should those hearing the appeal agree to do so, the asylum element of the appeal will be dismissed.

[12] See section 1 on changes related to article 8.

[13] A claimant is deemed to appear destitute if he or she and his or her dependants do not have adequate accommodation or any means of obtaining it (irrespective of whether other essential living needs are met), or he or she has adequate accommodation or the means of obtaining it, but cannot meet other essential living needs.

Where removal would place the United Kingdom in breach of article 3 of ECHR, the United Kingdom would consider a grant of six months restricted leave (subject to review at the end of the six-month period), with some or all of the following restrictions:

- On the person's employment or occupation in the United Kingdom
- On where the person can reside
- A requirement to report to an immigration officer or the Secretary of State at regular intervals
- A prohibition on the person studying at an educational institution.

6.5 Cessation

With regard to clauses 1 to 4 of article 1C of the 1951 Convention, the United Kingdom applies the cessation clauses where 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 United Kingdom 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 United Kingdom also requires that a ministerial statement be issued in the Houses of Parliament announcing that the requisite changes have occurred. This would be done after consultation with UNHCR. Cases would still be looked at on an individual, case-by-case basis.

In practice, the United Kingdom would consider the cessation of refugee status only for persons who obtained protection less than five years prior to the change in circumstances. Only in exceptional cases – normally as a result of serious criminal behaviour that brings about a review of the individual's status – would cessation be considered for persons who have been granted indefinite leave to remain after having completed five years' limited leave.

The United Kingdom first presents the person with an opportunity to comment on the intention to cease his or her refugee status, to provide grounds as to why his or her status should not be ceased, and to provide any other reasons he or she has for wishing to remain in the United Kingdom. Such an opportunity is generally provided for in writing, although an interview may be applicable in certain circumstances. Once the person has responded, the caseworker looks at those grounds and makes a decision on whether to proceed with cessation. If the cessation procedure is to go forward, the caseworker contacts UNHCR with its proposal and allows them the opportunity to respond. A consideration of the grounds advanced by UNHCR is considered before a final decision is taken. There will normally be a right of appeal against a proposal to withdraw immigration status.

6.6 Revocation

Revocation of status can also occur when the person comes within the scope of article 1F(a) or 1F(c) exclusion provisions after he or she has been granted refugee status. Asylum 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 United Kingdom also has provision to cancel refugee status when, after a person has been recognized 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 described above for cessation is adopted.

6.7 Support and Tools for Decision-Makers

6.7.1 Country Policy and Information

On 1 April 2014, the country policy and COI functions within the Home Office were restructured and the Country Policy and Information Team was formed. The functions of the COI service and the country-specific litigation team were merged within the new unit, whose role includes:

- Conducting research and providing officials of the United Kingdom with accurate, up-to-date and balanced COI.
- Publishing and updating country information and guidance (CIG), which provides relevant COI and guidance on handling the most common types of asylum and human rights claims and on other complex or high-profile issues.
- Operating an information request service, providing rapid responses to country-specific queries not answerable from information in existing products.
- Conducting and producing reports on fact-finding missions to obtain information not available from existing sources.

The team's principal products are CIG reports, which are published on the government website. CIG reports replace COI reports and operational guidance notes, and provide decision-makers of the United Kingdom with relevant COI and guidance on handling the main categories of asylum claims from countries of origin. CIG reports are updated on a regular basis to ensure that decision-makers have up-to-date information and guidance, reflecting changes in country situations, relevant case law and particular business needs.

The purpose of CIG products is not to replace other asylum guidance but to supplement it and to ensure the consistent application of policies and information contributing to the quality and consistency of asylum decision-making.

IN FOCUS

EXTERNAL OVERSIGHT OF THE HOME OFFICE'S COI

In March 2009, the newly appointed Independent Chief Inspector of Borders and Immigration established the Independent Advisory Group on Country Information,[14] which is composed of academics, representatives from UNHCR and the United Kingdom's immigration courts, and the country's legal practitioners. This advisory group makes recommendations to the Chief Inspector about the COI content of the United Kingdom's country information products. It continues to review the COI component of the new CIG products, but it is not mandated to look at the guidance and policy content of these products.

The review process is transparent: reviews of the CIG products, including thematic reviews, and minutes of meetings are published on the Chief Inspector's website.

The independent and robust oversight of the Independent Advisory Group on Country Information has led to a steady improvement in the Home Office's standards of research and the quality of information with which decision-makers in the United Kingdom are provided.

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 (Section 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. The purposes of fingerprinting asylum claimants are to positively identify them and to identify and deter multiple asylum claims at the national and international levels. The fingerprints of all claimants 14 years of age or older are recorded in, and checked against, the Eurodac database for Dublin regulation purposes.

7.1.2 Forensic Testing of Documents

The National Document Fraud Unit leads the forensic examination (looking for evidence of fraud, forgery or counterfeiting) of suspect travel and identity documents in the United Kingdom. The unit is responsible for training forgery detection teams, including by developing their document examination skills, throughout the UK Border Agency. It is a centre of excellence regarding document examination and information on document fraud. The unit's document examiners are accepted as expert witnesses by British courts and are developing knowledge and examination skills concerning supporting non-travel related documentation.

7.1.3 Database of Asylum Claims and Claimants

The Casework Information Database is used to record details of all asylum claims received. All management information is

IOM/Taryn Fivek/2014

[14] For more details, see http://icinspector.independent.gov.uk/country-information-reviews/.

organized in a way that it can be extracted from the system only according to a strict methodology in order to ensure an accurate measurement of the Public Service Agreement targets.

7.1.4 Reporting Technology

To facilitate reporting by asylum seekers, the United Kingdom employs RepARC, an IT reporting system that uses the Application Registration Card, which is linked to the automatic payment of asylum support. UKVI is responsible for overseeing the reporting of asylum seekers. Paragraph 21(2) of schedule 2 to the Immigration Act 1971 gives UKVI the power to require any asylum seeker to report to an immigration reporting centre or a police station. The decision-maker and the reporting centre responsible agree upon the frequency of reporting on a case-by-case basis.

7.1.5 Information Sharing

The United Kingdom has the following agreements or arrangements with other States for sharing information on asylum claims:

- The Dublin III Regulation between EU Member States, Iceland, Norway and Switzerland (through separate agreements) concerning asylum claimants' details and fingerprints. The Dublin system is supported through information provided by the fingerprint database established by Eurodac Regulation (EU) No 603/2013.
- Each Five Country Conference partner has a bilateral memorandum of understanding (MOU) on data exchange with each partner. The United Kingdom has four MOUs – one with each Five Country Conference partner (Australia, Canada, New Zealand and the United States) – for the purpose of identifying persons who have made immigration applications in more than one of these States. The aim is to establish identity, prevent fraudulent applications and obtain information about travel documents to aid removal.
- An MOU for intelligence sharing with France and Belgium around juxtaposed controls.
- An MOU on the exchange of information on war criminals, signed in April 2007 with the other countries of the Four Country Conference (Australia, Canada and the United States). It is intended to identify persons who have been convicted for, or are suspected of, committing war crimes or crimes against humanity or genocide, for the purpose of making casework decisions and complying with international law.
- The United Kingdom has an arrangement with Ireland whereby the fingerprints of any individual applying for an Irish visa are sent to the United Kingdom in order to check his or her immigration history in the United Kingdom. Any information found is sent to the Irish Immigration Service

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COOPERATION WITH UNHCR

The Home Office has developed a relationship with UNHCR over a number of years through the Quality Initiative Project, which ran from 2004 to 2009, and through consultation and cooperation in areas concerning EU Directives, access to protection and resettlement.

The Home Office acknowledges UNHCR's assistance in the development and integration of quality assurance mechanisms within the asylum process. The Quality Initiative Project was aimed at positively influencing the quality of first instance decision-making and related asylum procedures in the United Kingdom.

Quality Integration Project

UNHCR continues to work with the Home Office to implement recommendations arising out of collaborative work under the Quality Initiative. As a result of the progress made in developing the area of quality assurance in asylum, the project moved into a phase of supporting the continued development and integration of quality assurance mechanisms in various areas of asylum-related work. This phase is known as the Quality Integration Project. It covers three areas: quality integration in the United Kingdom, asylum management in Greece, and resettlement. For quality integration in the United Kingdom, the quality of asylum decisions at the first instance is monitored. UNHCR staff members have been based in the Home Office since August 2004; they are involved in a range of work streams aimed at continually improving the quality of decision-making.

Towards Improved Asylum Decision-Making in the EU (CREDO)

The Home Office regards UNHCR as its key partner in developing asylum guidance for its caseworkers and regularly consults UNHCR when drafting or revising guidance. This was particularly the case in the revision of guidance on the assessment of credibility, arising out of the CREDO research project launched by UNHCR in 2011 in partnership with the International Association of Refugee Law Judges and two European non-governmental organizations. In May 2013, the resulting report, *Beyond Proof*,[15] which compared credibility assessment in a number of EU Member States including the United Kingdom, confirmed earlier findings about certain shortcomings in the United Kingdom's approach. The findings of the report influenced the revision of the United Kingdom's guidance on the assessment of credibility and the conduct of asylum interviews.

[15] UNHCR, *Beyond Proof: Credibility Assessment in EU Asylum Systems* (Brussels, 2013). The report can be accessed at: www.refworld.org/docid/5191fb54.htm.

to decide whether or not a visa can be issued. The aim is to increase protection of the Common Travel Area.

- The United Kingdom, the Channel Islands, the Isle of Man and Ireland collectively form a common travel area. A person who has been examined for the purpose of immigration control at the point at which he or she entered the area does not normally require leave to enter any other part of it. However, certain persons subject to the Immigration (Control of Entry through the Republic of Ireland) Order 1972 (as amended) who enter the United Kingdom through Ireland do require leave to enter. They are:
  - Persons who merely passed through Ireland
  - Persons requiring visas
  - Persons who entered Ireland unlawfully
  - Persons who are subject to directions given by the Secretary of State for their exclusion from the United Kingdom on the ground that their exclusion is conducive to the public good
  - Persons who entered Ireland from the United Kingdom, the Channel Islands or the Isle of Man after entering there unlawfully or overstaying their leave.

8 ASSISTANCE AND RECEPTION BENEFITS FOR ASYLUM SEEKERS

8.1 Procedural Support and Safeguards

8.1.1 Legal Assistance

UKVI provides all asylum seekers with information on how to obtain legal representation. It is strongly recommended that a legal representative be either a qualified lawyer who is a member of the Law Society of England and Wales, the Law Society of Scotland, the Law Society of Northern Ireland, or an adviser who is officially recognized by the Office of the Immigration Services Commissioner as being qualified to provide advice on asylum claims.

A fully qualified duty lawyer is always provided if the claimant is detained under accelerated procedures.

Destitute asylum seekers may qualify for legally aided representation. Non-governmental organizations such as Asylum Aid and the Refugee Council, which represent the interests of asylum seekers, also offer advice.

8.2 Reception Benefits

UKVI has overall responsibility for the reception of asylum seekers. The office responsible for the examination of an asylum claim is competent for facilitating the provision of reception benefits to the asylum seeker (for example, by providing information on access to benefits and on the steps required to access these benefits).

8.2.1 Accommodation

Asylum seekers who are destitute are provided with support in the form of subsistence or accommodation or both. Those asylum seekers provided with accommodation are dispersed around the United Kingdom, 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 in the south-east of England for specialist health care reasons.

Those asylum seekers who are not provided with supported accommodation are free to live where they wish. However, since 2007, all claimants 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 per 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 reporting any changes in circumstances. Pregnant women and mothers with children under three years of age are entitled to supplementary financial assistance.

8.2.3 Health Care

Asylum seekers and their dependants are eligible to receive health care from the National Health Service, which entitles them to free medical treatment by a general practitioner or at a hospital. Asylum seekers who are receiving housing and social assistance may obtain supplementary free health care services, such as National Health Service prescriptions and dental care. Other asylum seekers may apply to receive these services free of charge.

8.2.4 Education

In England, all three- and four-year-olds, and two-year-olds whose parents receive support under part 6 of the Immigration and Asylum Act, are entitled to a funded early education place on the same basis as other children. Scotland, Wales

and Northern Ireland also provide funded early education but arrangements may differ.

Minor asylum seekers between 5 (4 in Northern Ireland) and 16 years of age have the same rights as all other children in the United Kingdom during the period of compulsory education. From 2015, in England, it will be compulsory for children to be enrolled in some form of education or training until they are 18 years of age.

All asylum seekers between 16 and 18 years of age are eligible for funding from United Kingdom educational funding agencies (such as the Education Funding Agency, the Welsh Department for Education and Skills, the Northern Ireland Department for Employment and Learning, and the Scottish Funding Council) for their attendance in a further education course, as are British students.

For further education, asylum seekers 19 years of age or over are treated as British students for the purpose of fees for further education if they have been legally in the United Kingdom 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 funding, under certain circumstances, from the skills funding agencies of the United Kingdom (such as the Skills Funding Agency, the Welsh Department for Education and Skills, the Northern Ireland Department for Employment and Learning, and the Scottish Funding Council), 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, a further education college or provider has discretion over the level of fee that they actually charge.

For higher education, asylum seekers have access to 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 the Labour Market

Claimants do not have permission to work while awaiting a decision on their claim. There is an exception for those who have been awaiting a decision for more than 12 months, if the delay is through no fault of their own. In such cases, a claimant can request permission to work while awaiting a final decision on the claim. This is in line with Council Directive 2003/9/EC on the reception of asylum seekers. Any permission granted is withdrawn once the asylum claim has been rejected and all appeal rights are exhausted.

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ACCESS TO BENEFITS AND SERVICES BY REJECTED ASYLUM SEEKERS

Rejected asylum seekers are entitled to receive free medical treatment in accident and emergency departments of hospitals and clinics and for specified infectious diseases such as tuberculosis. They may also receive immediately any 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 United Kingdom.

Rejected asylum seekers who had been receiving asylum support during the procedure 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 UKVI. However, asylum seekers with dependants under 18 years of age continue to receive asylum support until the date of departure. Similarly, support continues for children and vulnerable adults who qualify for local authority care provision.

Rejected asylum seekers are expected to leave the United Kingdom 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 a cashless allowance is issued once per week via a pre-payment card.

Minor asylum seekers are entitled to continue to receive an education between the rejection of an asylum claim and the return to their home country (forced or voluntary).

9 STATUS AND PERMITS GRANTED OUTSIDE THE ASYLUM PROCEDURE

9.1 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 United Kingdom enforces the return of unsuccessful asylum seekers only if it is satisfied that it is safe to do so.

9.2 Stateless Process

Since 6 April 2013, the United Kingdom has operated a procedure whereby an individual with no protection needs and no other legitimate reason for staying in the country can apply for leave to remain as a stateless person if he or she meets the definition of a stateless person according to the 1954 Convention Relating to the Status of Stateless Persons and if it is not possible for him or her to be admitted to another country (usually the country of previous habitual residence). This is entirely separate from the asylum process, which takes precedence over the stateless process.

10 RETURN

UKVI is responsible for the initial consideration of asylum claims but once a claimant has exhausted all avenues of appeal and is required to leave, the majority of returns are the responsibility of Immigration Enforcement.

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 known barriers to removal. If there are known complications to removal (such as those related to family members or health issues), further enquiries may be made to ensure removal remains appropriate, and any arrangements made to enable the removal are as dignified as possible.

10.2 Procedure

A person may be removed from the United Kingdom in accordance with section 10 of the Immigration and Asylum Act 1999 (as amended by section 1 of the Immigration Act 2014) where he or she requires leave to enter or remain in the United Kingdom but does not have it. Persons are notified in advance of a set period or window during which they may be removed through the service of a notice of liability for removal, informing them that they do not have the leave required to remain in the United Kingdom. This notification can be served in person at an immigration reporting centre, a police station or a detention centre, by post, or electronically following refusal of their application (where there is no right of appeal) or once appeal rights are exhausted.

A minimum time frame applies between the service of this notice, and the start of the removal window, which may be 72 hours, 5 working days or 7 calendar days; the two shorter periods will apply where the person is detained or the right of appeal can be exercised only from abroad.

The purpose of the notice period is to allow those liable to removal the opportunity to seek legal advice either to make further representations or applications or to apply for judicial review. The removal window lasts for three months, during which time the individual may be removed without further notice. This does not apply to persons identified as vulnerable who will either be notified of the specific date and time of their removal, or be given a shorter window of approximately two weeks.

Where persons provide new information or put forward submissions that exceptional circumstances apply in their case such that they should not be removed, this will be considered in line with guidance on further submissions, and a decision as to whether removal can proceed will be made.

The Home Office no longer automatically suspends removal in cases where a judicial review is lodged, where removal occurs within three months of the conclusion of previous litigation (either judicial review or statutory appeal), where the grounds are identical or virtually identical, or where those grounds could have been raised in previous litigation. 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.

In addition, the Home Office may notify persons in advance that removal will not be suspended in the event of a judicial review being lodged (usually in cases where removal arrangements are complex). In these instances, a minimum of five working days' notice will be given before removal in order to allow the person the opportunity to seek a court injunction prohibiting removal until the decision has been judicially reviewed.

10.3 Freedom of Movement and Detention

Where it is believed that a person will not voluntarily comply with the removal instructions, he or she may be detained. The decision as to whether detention is necessary is made on a case-by-case basis, taking into account the circumstances of each case. The presumption is not to detain unless there are good reasons for doing so, with an alternative option of placing the person on reporting restrictions (also known as temporary admission) under paragraph 21 of schedule 2 to the Immigration Act 1971. This allows restrictions to be placed on the person as to his or her place of residence, employment or occupation, and requires reporting to the police or an immigration officer. The time and frequency of reporting may be varied but they must be notified to the person in writing.

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 time frame, the person will usually be released.

All detainees arriving at an immigration removal centre are advised within 24 hours of arrival of their right to legal representation, and they are able to apply for bail as often as they wish. A copy of the Bail for Immigration Detainees 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 Voluntary Return

Voluntary return is offered and is considered an effective means to return to the country of origin for those who no longer have a legal basis to remain in the United Kingdom.

The current package of reintegration assistance for asylum seekers under the Voluntary Assisted Return and Reintegration Programme (VAARP) 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, and returnees are offered a range of practical options and services to meet their varying reintegration needs.

There are four main strands of reintegration assistance:

- Business set-up
- Education
- Vocational training
- Job placements.

In addition to the above, reintegration assistance can be used for the following:

- Accommodation: Assistance can be used to pay for building materials and labour either to build new accommodation or to 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.
- Childcare fees.
- Medical assistance: Requests for medical assistance are considered on a case-by-case basis, and reintegration assistance can help in paying for a limited period of medication. It does not pay for elective surgery, such as cosmetic surgery.

Assisted Voluntary Return for Irregular Migrants assists those individuals who are in the United Kingdom illegally and who 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 the Assisted Voluntary Return for Irregular Migrants programme. However, exceptions can be made on a case-by-case basis for particularly vulnerable groups, such as unaccompanied minors and victims of trafficking. In these cases, reintegration assistance is made available and 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.

10.5 Readmission Agreements

Readmission agreements are a means whereby EU Member States 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 through 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 individuals who no longer have a legal basis to stay in the participating States.

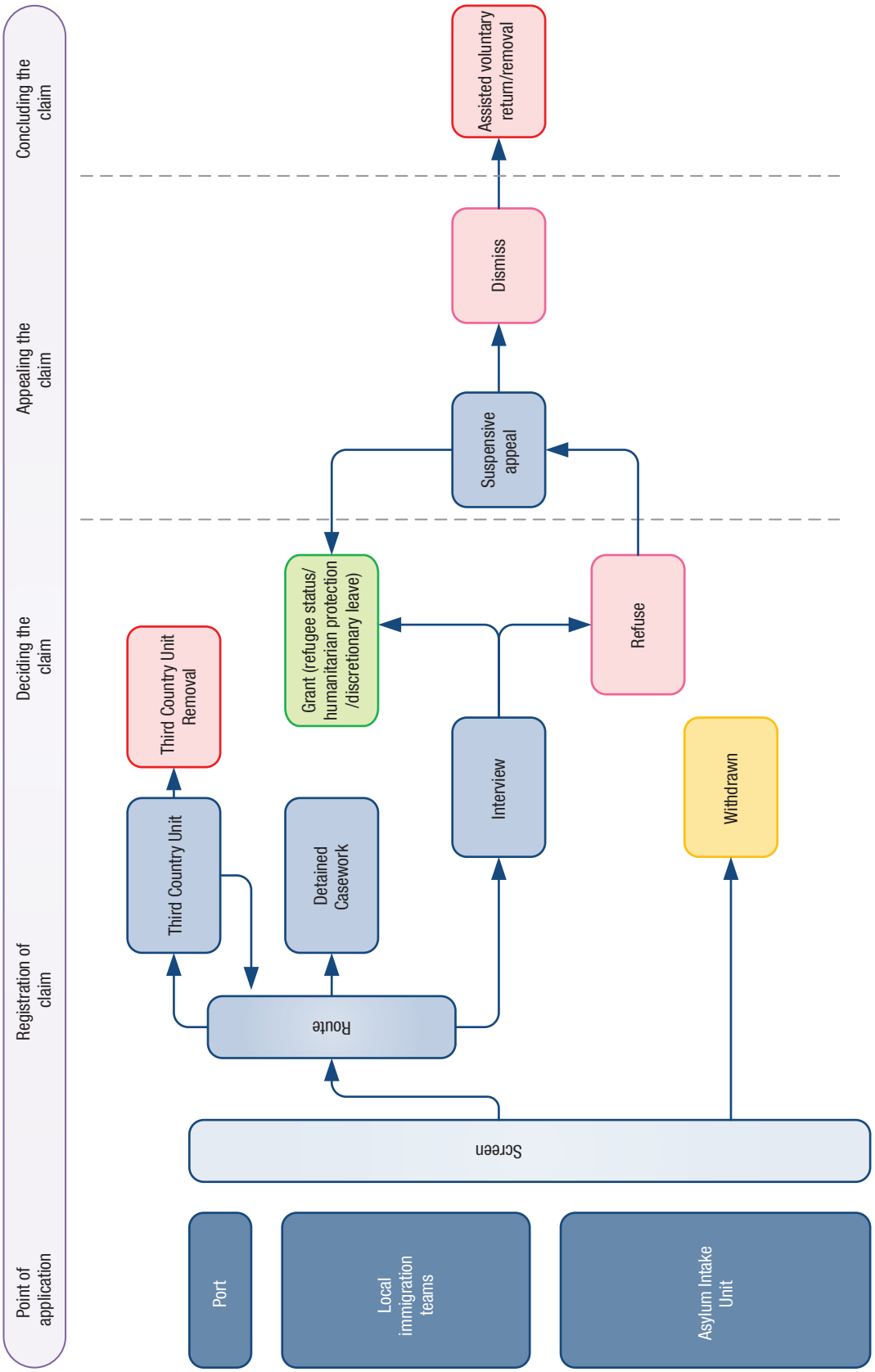
The United Kingdom supports the European Community's policy on readmission agreements and has opted into all 16 European Commission negotiating mandates agreed so far. European Community readmission agreements can support the United Kingdom when conducting enforced returns, and by underpinning and reinforcing a good enforcement policy. This can make voluntary return more attractive. Voluntary return, even when supported by an assisted voluntary return package, is considered a more cost-effective way to return an unsuccessful asylum seeker to his or her country of origin.

11 INTEGRATION

No information provided.

12 ANNEX

12.1 Asylum Procedure Flow Chart



12.2 Additional Statistical Information

UK. Fig. 4 | Asylum Applications from Top 10 Countries of Origin in 2012, 2013 and 2014[16]

	2012		2013		2014	
1	Pakistan	4,867	Pakistan	4,576	Pakistan	3,884
2	Iran	3,162	Iran	2,967	Eritrea	3,271
3	Sri Lanka	2,143	Sri Lanka	2,278	Iran	2,450
4	Nigeria	1,498	Syria	2,020	Syria	2,404
5	Syria	1,289	Albania	1,641	Albania	1,851
6	Afghanistan	1,242	Afghanistan	1,456	Afghanistan	1,709
7	India	1,195	Nigeria	1,450	Sri Lanka	1,670
8	Bangladesh	1,169	Eritrea	1,431	Sudan	1,602
9	Albania	1,017	Bangladesh	1,246	Nigeria	1,425
10	China	977	India	1,111	China	934

UK. Fig. 5 | Decisions Taken at the First Instance in 2012, 2013 and 2014

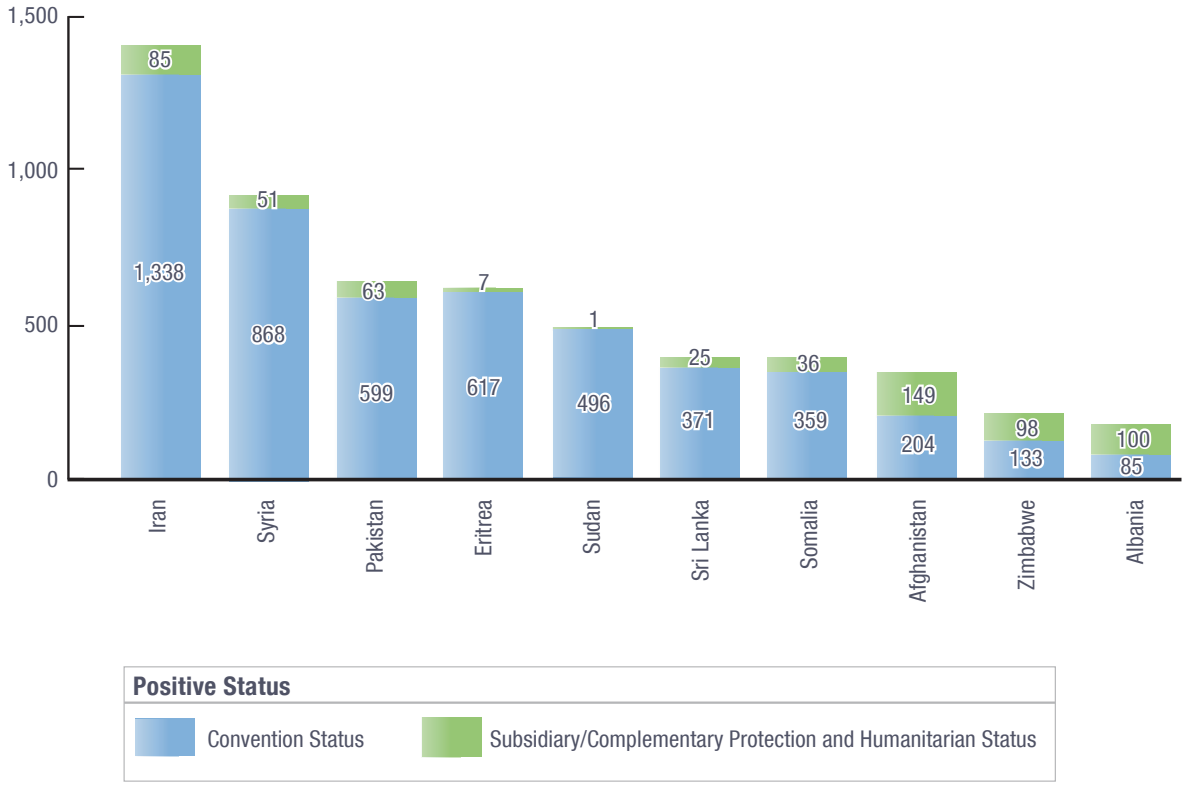
	Convention Status		Humanitarian Status and Subsidiary/Complementary Protection		Rejections		Withdrawn, Closed and Abandoned Cases		
Year	Number	%	Number	%	Number	%	Number	%	Grand Total
2012	6,542	30%	1,255	6%	14,062	64%	0	0%	21,859
2013	7,509	33%	1,007	4%	13,918	62%	0	0%	22,434
2014	8,981	35%	1,043	4%	15,956	61%	0	0%	25,980

[16] Data refer to first applications only.

UK. Fig. 6.a Positive First-Instance Decisions, Top 10 Countries of Origin in 2012[17]

	Country of Origin	Total Positive	Total Decisions	Rate
1	Iran	1,423	2,696	52.8%
2	Syria	919	1,145	80.3%
3	Pakistan	662	3,846	17.2%
4	Eritrea	624	748	83.4%
5	Sudan	497	683	72.8%
6	Sri Lanka	396	1,701	23.3%
7	Somalia	395	550	71.8%
8	Afghanistan	353	1,066	33.1%
9	Zimbabwe	231	468	49.4%
10	Albania	185	537	34.5%

Total Positive Decisions by Status from Top 10 Countries of Origin, 2012

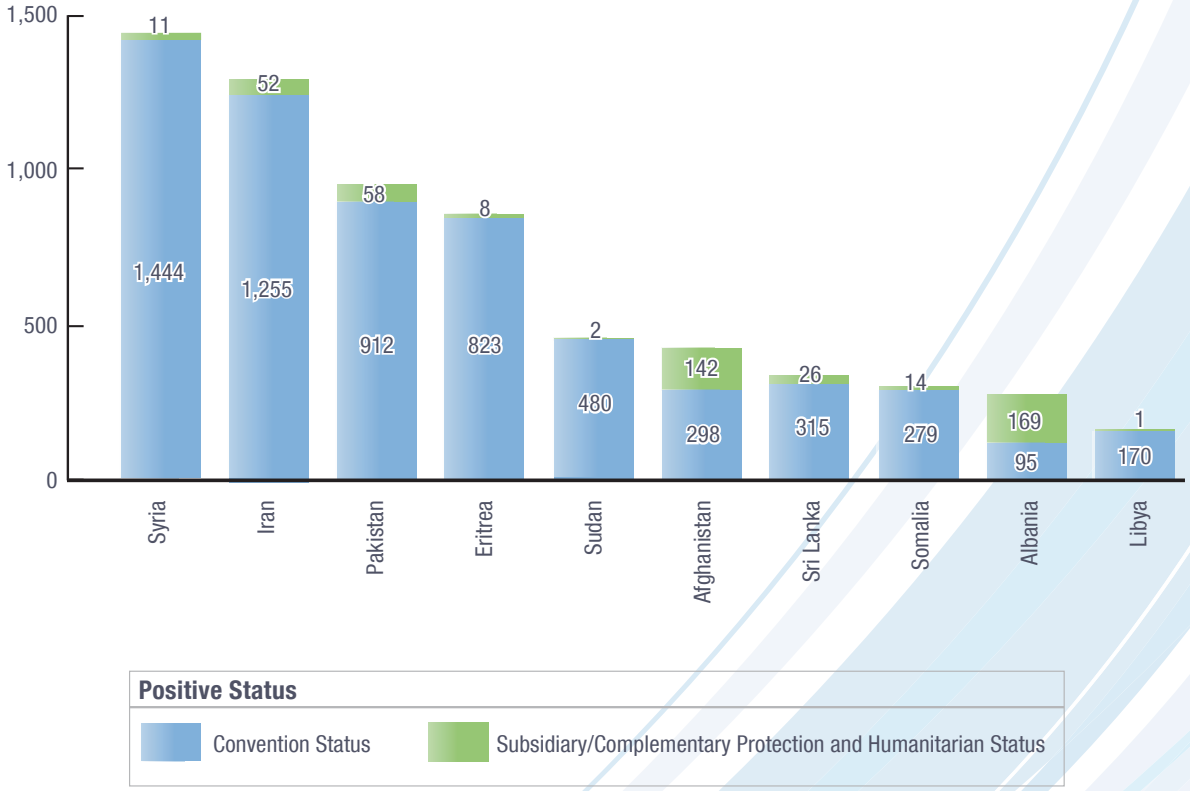


[17] For the purpose of this exercise, positive decisions include decisions to grant Convention status, subsidiary/complementary protection and other humanitarian statuses. Excluding withdrawn, closed and abandoned claims.

Positive First-Instance Decisions, Top 10 Countries of Origin in 2013[18]

	Country of Origin	Total Positive	Total Decisions	Rate
1	Syria	1,455	1,683	86.5%
2	Iran	1,307	2,334	56.0%
3	Pakistan	970	3,611	26.9%
4	Eritrea	831	1,010	82.3%
5	Sudan	482	674	71.5%
6	Afghanistan	440	1,173	37.5%
7	Sri Lanka	341	1,635	20.9%
8	Somalia	293	464	63.1%
9	Albania	264	932	28.3%
10	Libya	171	353	48.4%

Total Positive Decisions by Status from Top 10 Countries of Origin, 2013

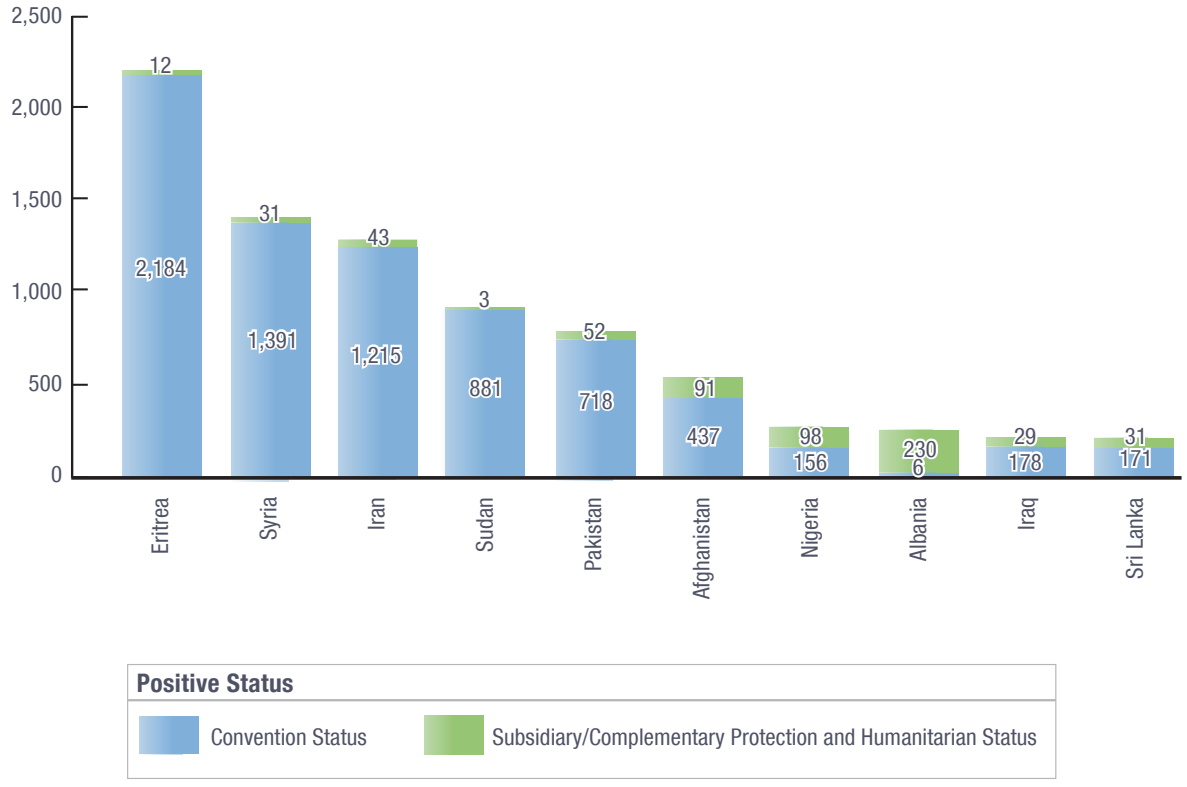


[18] For the purpose of this exercise, positive decisions include decisions to grant Convention status, subsidiary/complementary protection and other humanitarian statuses. Excluding withdrawn, closed and abandoned claims.

UK. Fig. 6.c Positive First-Instance Decisions, Top 10 Countries of Origin in 2014[19]

	Country of Origin	Total Positive	Total Decisions	Rate
1	Eritrea	2,196	2,542	86.4%
2	Syria	1,422	1,636	86.9%
3	Iran	1,258	2,316	54.3%
4	Sudan	884	1,139	77.6%
5	Pakistan	770	3,407	22.6%
6	Afghanistan	528	1,429	36.9%
7	Nigeria	254	1,317	19.3%
8	Albania	236	1,318	17.9%
9	Iraq	207	588	35.2%
10	Sri Lanka	202	1,615	12.5%

Total Positive Decisions by Status from Top 10 Countries of Origin, 2014

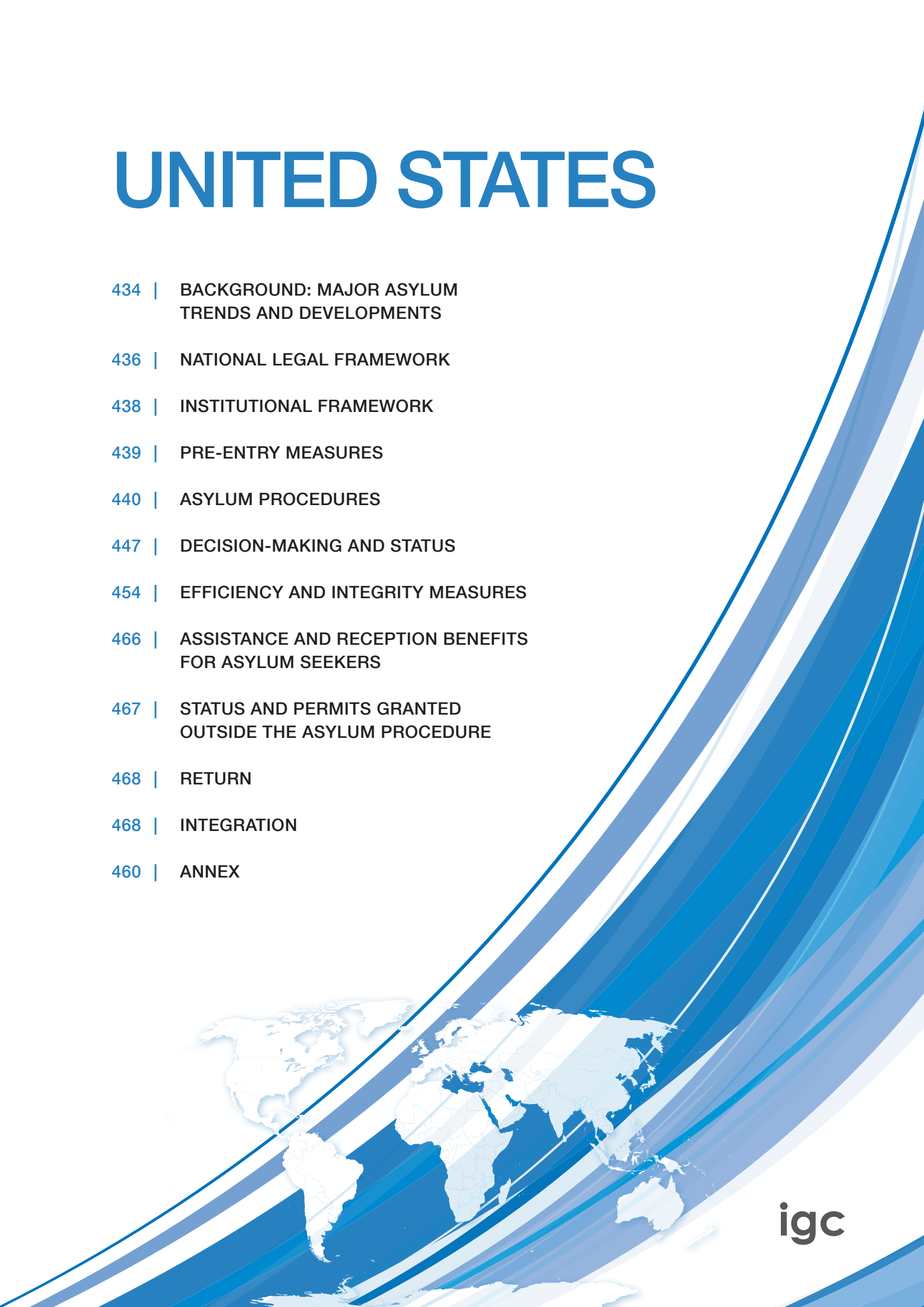


[19] For the purpose of this exercise, positive decisions include decisions to grant Convention status, subsidiary/complementary protection and other humanitarian statuses. Excluding withdrawn, closed and abandoned claims.

Refugee children from Myanmar living in Umpiem Refugee Camp in Thailand.

UNHCR/R. Arnold/January 2008

UNITED STATES



igc

1 BACKGROUND: MAJOR ASYLUM TRENDS AND DEVELOPMENTS

Asylum Applications[1]

In the mid-1980s, the United States received between 16,000 and 26,000 asylum claims per year. The annual number of claims started to increase significantly from 1988, reaching a peak of about 160,500 applications in 1993. Annual claims started to decrease significantly from 1996. From 2004 to 2013 between 31,000 and 46,000 claims were received annually. Numbers rose to almost 65,000 claims in 2014.[2]

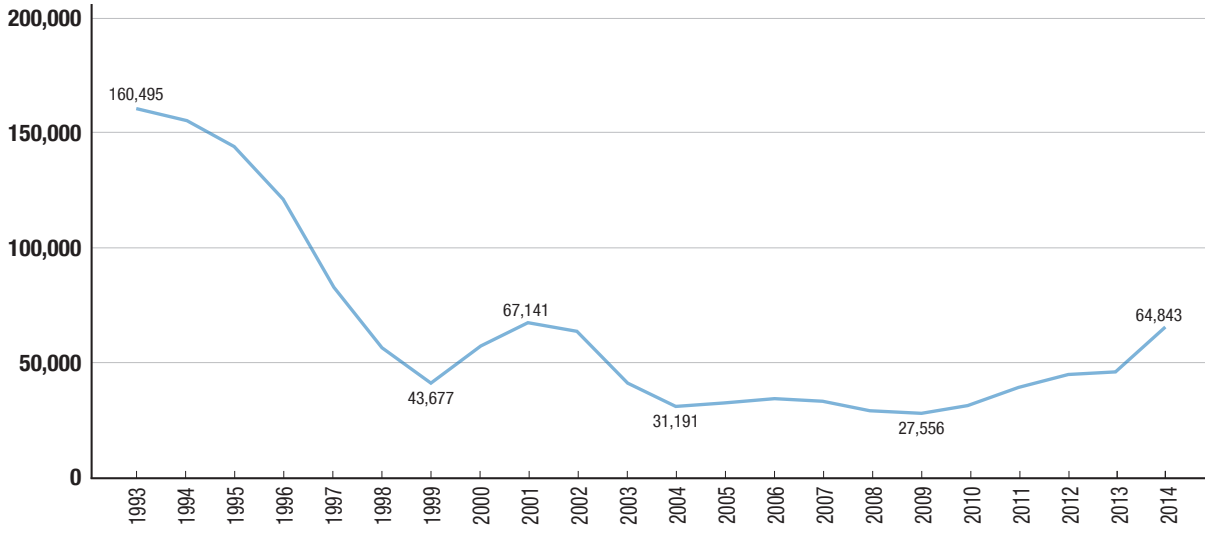
Top Nationalities

In the 1990s, the majority of asylum claims came from El Salvador, Guatemala, Mexico, China and Haiti. Since 2000, most claimants have originated from China, Haiti, Mexico and Colombia.

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 United States immigration decision-making, a final rule on the asylum 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 to adjudicate affirmative asylum claims.
- Those applicants not eligible for asylum who did not have legal immigration status were allowed to renew their applications for asylum when in deportation or exclusion proceedings before an immigration judge.
- Information on country conditions would be compiled from multiple sources and would be maintained in a human rights documentation centre managed by the INS Office of International Affairs.

USA. Fig. 1 **Total Asylum Applications by Year, 1993–2014[3]**



Important Reforms

The Refugee Act of 1980 was passed with the primary purpose of bringing United States refugee law in line with the country's obligations under the 1967 Protocol relating to the Status of Refugees, which entered into force for the United States 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.

The rule also made asylum applicants eligible for employment authorization so long as their applications were deemed "non-frivolous".

In July 1993, President Clinton directed the Department of Justice (DOJ) 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

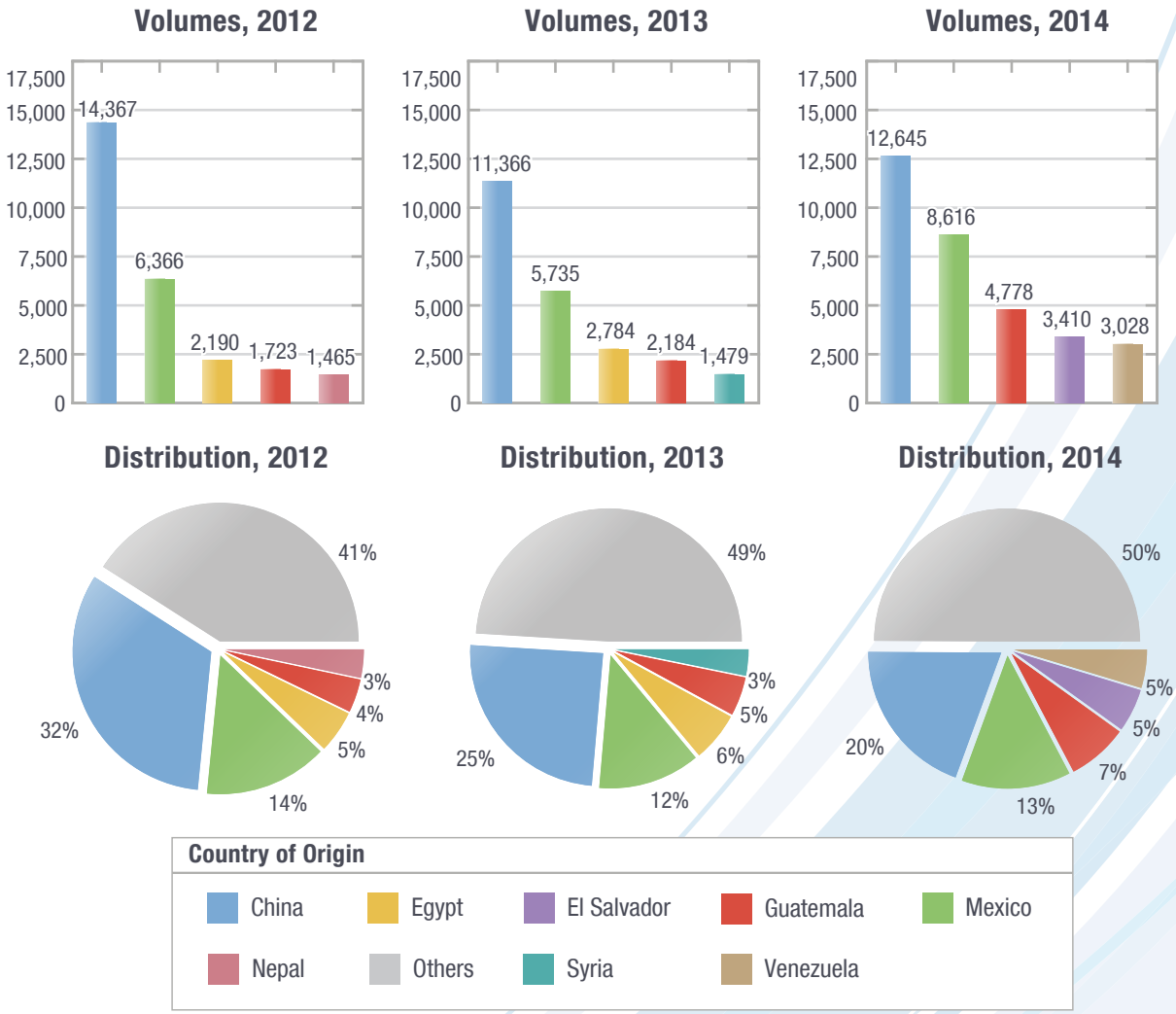
1 Numbers in graph (Figure 1) refer to calendar years (Jan. – Dec.).
2 The numbers in this paragraph include both newly filed asylum applications and previously received asylum applications that were reopened during the fiscal year. These numbers also reflect "affirmative" filings before United States 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 (EOIR).
3 These numbers do not include "defensive" filings by persons in removal hearings before an immigration judge of EOIR. All statistics refer to cases, not persons.

representatives and members of the non-governmental organization (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 had been, 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 on 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.

USA. Fig. 2 Asylum Applications Received from Top Five Countries of Origin in 2012, 2013 and 2014[4]



[4] These numbers do not include "defensive" filings by persons in removal hearings before an immigration judge of EOIR. All statistics refer to cases, not persons.

Prior to reform, asylum applicants who were found ineligible for asylum were sent written explanations for the decision and provided with 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 with a Notice of Intent to Deny, which explains the negative determination and provides the applicant with 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 the reforms, most applicants are required to pick up decisions in person, ensuring that if the applicants are placed in removal proceedings they are served with the charging documents, which inform 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.

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.

Key Recent Developments

The Asylum Division of the United States Citizenship and Immigration Services (USCIS) continues to see an increase in credible fear cases. Credible fear screening is conducted when individuals who are subject to streamlined expedited removal procedures (and thus would not normally be placed in full removal proceedings where they could apply for asylum) express a fear of return to the country of removal. When such an individual expresses such a fear, he or she is referred to an asylum officer to determine whether he or she has a credible fear of persecution or a credible fear of torture. If the credible fear determination is positive (or if an immigration judge reviews the asylum officer's negative determination and does not concur with it), the individual is placed in full removal proceedings where he or she can apply for asylum and other forms of immigration benefits. During fiscal year 2014, the Asylum Division received 51,001 credible fear cases, nearly 10 times more cases than received five years before. Most of these cases originate from increased apprehensions along the southern border of the United States. The majority of those apprehended are nationals of Guatemala, El Salvador or Honduras.

To address the increased credible fear workload, the Asylum Division continues to divert officers from other asylum offices to the Houston asylum office, where the workload is the highest due to its proximity to the southern border. Also, the Asylum Division has deployed former asylum officers – now working for other parts of the Department of Homeland Security (DHS) – and refugee officers to asylum offices to assist with the credible fear screening determinations. As a consequence of the Asylum Division's diversion of resources to the credible fear workload, the affirmative asylum backlog increased for the first time in a number of years. In response to the increase in asylum backlogs nationwide, the Asylum Division received approval to hire additional asylum officers, significantly increasing the total number of authorized positions from 273 in July 2013 to 448 currently. To address the even greater than expected volume of benefit requests, additional staffing increases may be permitted.

On 26 December 2014, the USCIS Asylum Division began prioritizing asylum applications for interview scheduling as follows:

- First, applications that were scheduled for an interview but the applicant requested a new interview date.
- Second, applications filed by children.
- Third, all other pending asylum applications are scheduled for interviews in the order they were received, with oldest cases scheduled first.

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 United States acceded to the 1967 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 INA and brought United States domestic law into conformity with the 1951 Convention. The United States counterpart to the refugee definition in article 1 of the Convention is section 101(a)(42) of INA, which also provides for the granting of asylum status, covering issues such as who is eligible to apply for asylum, the conditions for granting asylum and the asylum procedure.

Additionally, the federal agencies responsible for asylum adjudications have expanded upon the asylum sections of INA by providing federal regulations, incorporated in the Code of Federal Regulations (CFR) in 8 CFR section 208, which further explain asylum eligibility requirements and procedures.

The United States offers a number of other forms of humanitarian protection that are granted either inside or outside the asylum procedure. These include:

- Withholding of removal under article 33 of the 1951 Convention (INA section 241(b)(3), 8 CFR section 208.16 and 8 CFR section 1208.16)
- Protection under article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as implemented in United States law (8 CFR sections 208.16(c) to 208.18 and 8 CFR sections 1208.16(c) to 1208.18)
- Temporary Protected Status (TPS), codified in INA section 244, 8 CFR section 244 and 8 CFR section 1244
- Deferred Enforced Departure, 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 United States.

The various types of protection are described later in the chapter.[5]

2.2 Recent Reforms

Terrorism-Related Inadmissibility Grounds

Terrorism-related inadmissibility grounds apply to all applicants for refugee resettlement and are incorporated by reference as a bar to a grant of asylum. Since 2000, the United States Congress has passed three major pieces of legislation expanding the grounds and the underlying definitions. The grounds provisions in INA consist of four basic areas:

- The inadmissibility grounds themselves (section 212(a)(3)(B)(i) of INA)
- The definition of "terrorist activity" (section 212(a)(3)(B)(iii) of INA)
- The definition of "engaging in terrorist activity" (section 212(a)(3)(B)(iv) of INA)
- The definition of "terrorist organization" (section 212(a)(3)(B)(vi) of INA).

First, there are nine terrorism-related inadmissibility grounds, including "engaging in terrorist activity", membership in a "terrorist organization" and receiving "military-type training" from a "terrorist organization". Second, the definition of "terrorist activity" includes (among other activities) hijacking, kidnapping, assassination, and the use of any "explosive, firearm, or other weapon or dangerous device (other than for mere personal monetary gain), with intent to endanger, directly or indirectly, the safety of one or more individuals or cause substantial damage to property". Third, the definition of "engage in terrorist activity" includes, among other things, commission, incitement, and planning or preparing a "terrorist activity". It also includes providing "material support" for the commission of "terrorist activity" to an individual who has committed or plans to commit a "terrorist activity" or to a "terrorist organization". The definition of "material support" is read broadly. Finally, "terrorist organization" is defined as an organization designated by the United States Secretary of State for inclusion on the Foreign Terrorist Organizations list or the Terrorist Exclusion List, or as any group of two or more individuals that "engages in", or has a subgroup that "engages in" "terrorist activity".

Organizations that meet the latter definition are referred to as "undesignated terrorist organizations". Applicants who were members of an undesignated terrorist organization, who solicited funds or individuals for membership in an undesignated terrorist organization, or those who provided material support on behalf of a undesignated terrorist organization may be eligible for an exemption if they can show, by clear and convincing evidence, that they did not know and should not have reasonably known that the organization with which they had these certain activities or associations was a "terrorist organization".

There is a discretionary exemption provision[6] that allows for certain terrorism-related inadmissibility grounds not to be applied to certain applicants. This exemption authority can be exercised by the Secretary of Homeland Security or the Secretary of State after consultation with each other and the Attorney General. To date, exercises of this authority fall into one of three categories: "group-based" exemptions, which pertain to associations or activities with a particular group or groups; "situational" exemptions, which pertain to a certain activity, such as providing material support under duress or providing medical care; and "individual" exemptions, which pertain to a specific individual. In each of the exercises of exemption authority for group-based or situational exemptions, the Secretary of Homeland Security has delegated to USCIS the authority to determine whether a particular individual is eligible for exemption. This allows for exemptions to be granted as part of the adjudication of refugee or asylum applications.

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 necessitate 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.[7]

Additionally, the REAL ID Act amended the INA 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

5 See in particular section 9 on status and permits granted outside the asylum procedure.
6 INA section 212(d)(3)(B)(i).
7 INA section 208(b)(1)(B)(i).

specific facts sufficient to demonstrate that the applicant is a refugee".[8] 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."[9] 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 section 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, which came into force on 3 October 2008, created both criminal and immigration prohibitions on the recruitment or use of child soldiers. Specifically, the Child Soldiers Accountability Act established a ground of inadmissibility in INA section 212(a)(3)(G) and a ground of deportability in INA section 237(a)(4)(F). These parallel grounds set forth that any 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 deportable.

The statute also required that DHS and DOJ promulgate regulations establishing that a person who is subject to these grounds of inadmissibility or removability "shall be considered an alien with respect to whom there are serious reasons to believe that the alien committed a serious non-political crime", and is therefore ineligible for asylum pursuant to INA section 208(b)(2)(A)(iii). The regulations are in the process of being prepared for promulgation. In the interim, the Congressional intent in enacting the Child Soldiers Accountability Act, as well as the nature of the serious crime of using 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 Alien Children

On 23 December 2008, the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008 was signed into law.[10] TVPRA makes a number of changes to INA that affect unaccompanied alien children (UACs) who have filed for asylum. UACs are defined as individuals who are under 18 years of age, have no legal status in the United States and have no parent or legal guardian in the United States who is available to provide care and physical custody.

First, TVPRA amended INA so that the one-year filing deadline and Safe Third Country Agreement (STCA) bars to applying for asylum no longer apply to UACs.

Second, TVPRA provides USCIS asylum officers with initial jurisdiction over any asylum application filed by a UAC, regardless of whether the application was filed in accordance with INA section 208 or section 235(b). As a result, UACs filing for asylum who previously would have had their case heard by an immigration judge in the first instance now receive an interview with an asylum officer and initial adjudication of their application in the non-adversarial process with USCIS.

Third, TVPRA requires the Government of the United States to develop regulations for principal applicants for asylum and other forms of relief "which take into account the specialized needs of UACs and which address both procedural and substantive aspects of handling UACs' cases".

Fourth, TVPRA authorizes the Secretary of Health and Human Services to appoint independent child advocates, who advocate for the child's best interests, for child trafficking victims and other vulnerable UACs.

Generally, a small percentage of UACs apprehended at or near the border by the United States Customs and Border Protection (CBP) have applied for asylum. UACs apprehended at the border who subsequently file for asylum represent an increasing percentage of the total number of asylum applications filed with USCIS. Through the first quarter of fiscal year 2015, a total of 2,514 UACs applied for asylum with USCIS. This is approximately 13 per cent of the total number of asylum applications received by USCIS in 2015 during the same period. In fiscal year 2014, USCIS received 2,797 asylum applications from UACs apprehended at the border, which was 5 per cent of all asylum applications received by USCIS in fiscal year 2014.

3 INSTITUTIONAL FRAMEWORK

3.1 Principal Institutions

Asylum and refugee protection are governed by provisions outlined in INA, with a number of different bodies responsible for its implementation.

Department of Homeland Security

The Homeland Security Act of 2002 dismantled INS and separated the former agency into three components within DHS:

- United States Citizenship and Immigration Services (USCIS), which 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

[8] INA section 208(b)(1)(B)(ii).
[9] INA section 208(b)(1)(B)(ii).
[10] Public Law 110–457.

otherwise be returned to their country of origin without a hearing before an immigration judge
- United States Customs and Border Protection (CBP), which enforces United States immigration and customs laws at the border
- United States Immigration and Customs Enforcement (ICE), which enforces immigration and customs 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 of Health and Human Services is responsible for funding programmes administered by individual states and non-profit organizations to provide asylees[11] and refugees with cash and medical assistance, training programmes, employment and other support services. It is also responsible for the care and custody of UACs in United States custody.

Department of Justice

Within DOJ, the Executive Office for Immigration Review (EOIR) houses the immigration courts (administrative tribunals that adjudicate asylum applications filed in removal proceedings), the decisions of which may be appealed to the Board of Immigration Appeals (BIA) of EOIR.

Department of State

The Department of State (DOS) is responsible for issuing non-immigrant and immigrant visas to persons overseas, for formulating policies on population, refugees and migration, and for administering United States refugee assistance and admissions (resettlement) programmes. In addition, DOS (a) provides asylum officers and immigration judges with general country conditions reports and opinions on certain individual asylum cases, (b) facilitates the completion of the adjudication process for asylees' immediate family members overseas and (c) conducts overseas document and information verification in some asylum cases as part of fraud prevention efforts.

4 PRE-ENTRY MEASURES

4.1 Visa Requirements

Generally, a citizen of a foreign country who seeks to enter the United States must obtain a visa before applying for entry. Certain international travellers may be eligible to travel to the United States 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 programme was established in 1986 with the objective of eliminating unnecessary barriers to travel, stimulating the tourism industry and permitting DOS to focus consular resources in other areas. Not all countries participate in VWP,[12] and not all travellers from VWP countries are eligible to use the programme. VWP travellers are required to apply for authorization though the Electronic System for Travel Authorization, are screened at their port of entry into the United States and are enrolled in the United States Visitor and Immigration Status Indicator Technology Program of DHS.[13]

4.2 Interception

Neither United States immigration law nor international refugee law instruments are applicable to the interdiction and repatriation of undocumented migrants encountered on the high seas. Nevertheless, for over 20 years, the handling of migrants intercepted at sea has been guided by successive Executive Orders.

Executive Orders 12807 (24 May 1992) and 13276 (15 November 2002), as amended by Executive Order 13286 (28 February 2003), delegate appropriate responsibility to federal agencies for responding to the migration of undocumented aliens in the Caribbean region. The United States Coast Guard interdicts and repatriates undocumented migrants, many of whom are Cuban nationals. Cuban migrants interdicted at sea by the Coast Guard are returned directly to the Republic of Cuba under the provisions of the 2 May 1995 migration agreement between the United States and Cuba. Prior to such return, however, all Cuban migrants are provided with an opportunity to speak in confidence with a specially trained, Spanish-speaking USCIS protection screening officer regarding any concerns they may have about returning to Cuba. The United States Coast Guard also interdicts migrants of other nationalities who also have the opportunity to speak with a USCIS protection screening officer if they manifest a fear of return to their country of origin.

The Secretary of Homeland Security may decide that a person who is determined to have a protection concern not be returned without that person's consent. Since 1981, Attorneys General and now the Secretary of Homeland Security have exercised their authority to ensure that interdicted migrants who express a fear of return have the opportunity to speak to a USCIS officer before repatriation is considered. Migrants who have been found by a USCIS officer during the at-sea protection screening interview to have a credible fear of persecution or torture if returned to their country of origin receive a well-founded fear interview. Migrants who are found to have a well-founded fear of

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[11] Asylum seekers under the affirmative and defensive procedures who are granted asylum according to the criteria set out in INA section 208 are referred to as "asylees".

[12] To be admitted to 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 counter-terrorism, law enforcement, border control and document security standards. Designation as a VWP country is at the discretion of the Government of the United States. Meeting the requirements of VWP does not guarantee a successful candidacy for VWP membership. See http://travel.state.gov/visa/temp/without/without_1990.html.

[13] The Office of Biometric Identity Management was created in March 2013, replacing the United States Visitor and Immigration Status Indicator Technology Program. The Office of Biometric Identity Management is part of the National Protection and Programs Directorate. See www.dhs.gov/obim.

persecution or who are more likely than not to face torture if returned to their country of origin are referred to DOS for third country resettlement. The United States does not generally bring interdicted migrants who have a well-founded fear of persecution or torture to settle in the United States. 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. Those found not to have protection concerns are returned to their country of origin.

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 land border crossings) and in certain situations when apprehended near the border within 14 days of having entered illegally, through the credible fear screening process and, once inside the country, by filing an asylum application and sending it by mail to a USCIS service centre. In addition, asylum field offices may accept direct filings in limited circumstances. An asylum seeker may file an asylum application regardless of his or her immigration status.

Outside the country, certain individuals may access the United States Refugee Admissions Program (USRAP) for consideration for resettlement in the United States. Information on USRAP, including how individuals access the programme, is given later in the chapter.[14]

Access to Information

The USCIS website provides asylum applicants with information regarding the overall process and specific procedures. The Asylum Division of USCIS also publishes an information pamphlet on the asylum process, which is available on the Internet and in each of the eight asylum field offices. The pamphlet has been translated into the 10 languages most frequently encountered by the Asylum Division nationwide.[15]

Individuals who are detained pending a determination on a credible fear or a reasonable fear screening[16] are provided with an orientation regarding the screening process as well as a list of pro bono legal service providers. Applicants have a right to legal representation at their own expense.

Processes for Granting Asylum

The Government of the United States conducts asylum adjudications through two separate processes. The Asylum Division of USCIS adjudicates the asylum applications of persons who file for asylum affirmatively and are not in removal proceedings. These asylum applicants may be persons who have a valid immigration status in the United States or those who do 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 EOIR. This process is adversarial, with an ICE trial attorney representing the Government in a court proceeding. There are two main reasons that an asylum applicant's claim needs to be adjudicated by an immigration judge:

- The asylum applicant is placed by DHS in removal proceedings, at which time he or she files an asylum application.
- USCIS decides not to grant the asylum claim filed by a person who lacks legal immigration status and refers the case to the immigration court for removal proceedings and 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 United States are designated under a worldwide priority system. Only persons who qualify under this priority system are permitted to "apply" for refugee resettlement consideration through USRAP. The worldwide processing priority system (outlined in the section on priorities below) is the tool that DOS uses to manage overall refugee admissions and that helps to ensure that those refugees who are of greatest concern to the United States have access to the refugee programme. In special circumstances, and after appropriate consultations with Congress, the President may specify locations in which persons who are still inside their countries of nationality or last habitual residence may be considered for refugee resettlement. The United States currently conducts in-country refugee processing in Cuba, Iraq and the former Soviet Union and will soon begin in-country processing of minors in El Salvador, Guatemala and Honduras.

Currently, applicants for refugee status must fall under one of the following categories:

- They are referred by the United Nations High Commissioner for Refugees (UNHCR), a designated NGO or a United States embassy.
- They are members of specified groups with special characteristics in certain countries as determined periodically by the Government of the United States.

[14] See in particular the section on resettlement. (Section 5.1.1)

[15] The 10 languages are Amharic, Arabic, Armenian, Chinese, Haitian Creole, French, Indonesian, Nepali, Russian and Spanish.

[16] Similar to the credible fear screening, the reasonable fear screening is conducted in cases of individuals who are subject to streamlined removal processes who express a fear of being returned to the country where they are ordered to be returned, except that these are individuals who were convicted of certain crimes that are considered "aggravated felonies" pursuant to section 101(a)(43) of INA, or whose prior removal order is reinstated because they were found to have returned to the United States illegally after having been removed. Such individuals are not eligible for asylum, but if an asylum officer finds that they meet the reasonable fear screening standard (which is higher than the standard for credible fear), or if an immigration judge reviews and does not concur with the asylum officer's negative determination, they are referred to a limited proceeding before an immigration judge to determine whether they are entitled to withholding of removal or protection under the Convention against Torture.

- They are a national of a designated country with a close relative who was admitted as a refugee or granted asylum in the United States.

Humanitarian Parole

Humanitarian parole enables an otherwise inadmissible individual to enter the United States temporarily due to urgent humanitarian reasons. Parole is not intended to be used to avoid regular visa-issuing procedures or to bypass immigration procedures. Parole does not confer any permanent immigration status but in certain cases enables a recipient to apply for and receive employment authorization.

Humanitarian parole is typically granted for the duration of the emergency or compelling situation. Anyone granted humanitarian parole must depart the United States prior to its expiration date or risk being placed in removal proceedings. An individual paroled into the United States, however, may submit a request for re-parole to USCIS in order to extend his or her stay in the United States.

Anyone may file an application for humanitarian parole, including the prospective parolee, a sponsoring relative, an attorney or any other interested individual or organization.[17]

Applications at Diplomatic Missions

Applicants for refugee status may be referred by diplomatic missions through Priority 1 of the worldwide priority system.[18] A person who approaches a United States 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 to UNHCR. However, a United States diplomatic mission has the authority to refer individual cases to 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 USRAP.

Referrals made by a United States embassy are generally transmitted through the DOS cable system. While most refugee applicants must, by statute, be outside of their country of origin, the United States is authorized to process certain persons in-country, including applicants from Cuba, Iraq and the former Soviet Union, as well as those of any nationality referred by a United States embassy, though such in-country referrals are presented only in exceptional circumstances.

Resettlement

Competent Authorities

USRAP is an inter-agency partnership of several governmental agencies and NGOs, located both overseas and domestically, whose mission is to identify refugees for resettlement to the United States. Within DOS, the Bureau of Population, Refugees and Migration coordinates and manages USRAP overall. It is also responsible for determining which persons or groups are of humanitarian concern.

The Bureau of Population, Refugees and Migration works closely with its programme partners in administering USRAP. These partners and their duties are described below:

- USCIS is the agency authorized to interview refugee applicants and adjudicate refugee applications.
- UNHCR refers cases to USRAP for resettlement consideration and provides important information with regard to the worldwide refugee situation.
- Resettlement support centres, international organizations and NGOs under cooperative agreement with DOS carry out administrative functions, assist in preparing cases for interview (including filing forms and data collection), and perform a variety of post-DHS out-processing steps to prepare approved refugees to travel to the United States.
- The International Organization for Migration (IOM) arranges travel for all refugees bound for the United States, provides panel physicians and/or serves as the resettlement support centre in certain locations.
- The Office of Refugee Resettlement (ORR) of the Department of Health and Human Services provides arriving refugees with resettlement assistance.

Eligibility and Criteria for Resettlement as a Refugee

To be eligible for refugee admission to the United States, an applicant must satisfy all four criteria outlined in section 207 of INA, as follows:

- Fall under one of the categories of refugees deemed to be of special humanitarian concern to the United States as designated under the worldwide priority system.
- Meet the definition of a refugee under section 101(a)(42) of INA.
- Not be firmly resettled in a third country
- Be otherwise admissible (or granted a waiver of inadmissibility) to the United States under section 212(a) of INA.

An annual admissions ceiling is established each fiscal year by the President in consultation with Congress. For fiscal year 2015, the proposed admission ceiling is 70,000 refugees. At the end of fiscal year 2014, there were a total of 69,500 projected arrivals. In fiscal year 2013, there were 69,925 actual arrivals.

[17] Additional information on humanitarian parole, including on how to file for humanitarian parole, may be found on the USCIS website at www.uscis.gov.
[18] See the section on resettlement for further details on Priority 1.

Refugee Admissions in Fiscal Year 2013 and Fiscal Year 2014 and Proposed Refugee Admissions by Region for Fiscal Year 2015

REGION	FY 2013 : ACTUAL ARRIVALS	FY 2014 : PROJECTED ARRIVALS	PROPOSED FY 2015 : CEILING
Africa	15,980	15,800	17,000
East Asia	16,537	14,500	13,000
Europe & Central Asia	580	900	1,000
Latin America & the Caribbean	4,439	4,300	4,000
Near East & South Asia	32,389	34,000	33,000
Regional Subtotal	*69,925*	*69,500*	*68,000*
Unallocated Reserve			2,000
Total	**69,925**	**70,000**	**70,000**

Eligibility Criteria: Processing Priorities

Section 207(a)(3) of INA states that USRAP will allocate admissions among refugees "of special humanitarian concern to the United States in accordance with a determination made by the President after appropriate consultation". Which individuals are "of special humanitarian concern" to the United States for the purpose of refugee resettlement consideration is determined through the USRAP priority system. There are currently three priorities or categories of cases:

- Priority 1 – Individual cases referred to the programme by reason of their circumstances and apparent need for resettlement. UNHCR, a United States 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 designated nationalities granted access for purposes of reunification with anchor family members already in the United States.

Procedures

Resettlement support centres are international organizations or NGOs under cooperative agreement with DOS that carry out administrative and processing functions for the refugee programme. The centres conduct an initial screening of refugee applicants to collect biographical information and an account of the applicant's claim of persecution or fear of future harm. After the initial prescreening is completed, all forms are prepared and required name checks are requested by the centre. USCIS conducts an eligibility interview with the applicants.

Decisions

Eligibility for refugee status is decided on a case-by-case basis. A USCIS officer conducts a non-adversarial interview with the applicant in order to elicit the applicant's claim for refugee status, verify family relationships and determine if the applicant is admissible to the United States. During the interview, an officer confirms the basic biographical data of the applicant and his or her relatives, and determines whether the applicant has suffered past persecution or has a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group or political opinion. A USCIS officer conducts a credibility assessment of the applicant's testimony on all material facts under INA section 207(c) and confirms that the required security checks have been analysed and reviewed prior to approval.

If an applicant is conditionally approved for resettlement to the United States, resettlement support centre staff guide the refugee through the post-adjudication steps, including obtaining medical screening exams and attending cultural orientation programmes. The centre obtains sponsorship assurances and, once all the required steps have been completed, refers the case to IOM for transportation to the United States.

Request for Review Procedure

There is no opportunity to appeal the denial of an application for refugee status. However, 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 at least one of the following:

- An allegation of error in the adjudication
- New information that would merit a change in the determination.

USCIS will accept only one request that is postmarked or received by USCIS within 90 days of the date of the denial.

5.1.2 At Ports of Entry

Persons may make an application for asylum at a port of entry in various ways, depending on the type of removal proceeding to which they may be subject. Those subject to accelerated procedures may raise a claim through the credible fear process. Otherwise, they may apply for asylum before an immigration judge in full removal hearings. Each process is described below.

5.1.3 Inside the Territory

Responsibility for Processing the Claim

Safe Third Country Agreement (STCA)

Application and Procedure
The STCA between Canada and the United States came into effect on 29 December 2004.

The United States and Canada have agreed that the "country of last presence" is obligated to accept the return of an asylum seeker from the "receiving country" under certain circumstances. Specifically, aliens who request protection from the receiving country, either at a United States – Canada land-border port of entry or while being removed through the receiving country by the Government of the country of last presence, may generally be returned to the country of last presence. The country of last presence will then consider the alien's protection request under its legal system.

There are five exceptions to the STCA recognized by the United States. An individual subject to the STCA must demonstrate that she or he meets one of the following criteria:

- Has Canadian citizenship or, if stateless, habitual residency in Canada
- Is an unaccompanied alien child (UAC)
- Has a family member with a lawful immigration status other than a non-immigrant status or a family member who is over 18 years of age with a pending asylum application
- Has a validly issued United States visa, unless one is not required
- An exception may also be granted in the public interest, a determination that is discretionary.

If asylum seekers qualify for one of these exceptions, they are usually placed in the credible fear screening process, as described below.

Freedom of Movement and Detention
Persons subject to the STCA 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 Canada.

Conduct of Transfers
ICE is generally responsible for the transfer of persons to Canada if the asylum applicant's entry has been barred by the STCA.

Review/Appeal
Supervisory asylum officers and USCIS Asylum Division headquarters review all cases subject to the STCA. There is no administrative or judicial review of STCA determinations: persons subject to the STCA may not appeal the decisions and decisions are not reviewed by immigration judges.

Application

To apply for asylum in the United States, an applicant must ask for asylum or express a fear of return either at a port of entry or after being apprehended shortly after having entered illegally, 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 INA section 208(a)(2) under the following circumstances:

- The person failed to file an asylum claim within one year of his or her last arrival in the United States, unless he or she demonstrates the existence of changed circumstances that materially affect his or her eligibility for asylum, or the existence of extraordinary circumstances relating to the delay in filing.[19]
- The person previously applied for and received a final denial of asylum by an immigration judge or BIA, 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[20] 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 United States law or 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 the age of 21 years.

Extraordinary circumstances[21] 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 TPS or lawful immigrant or non-immigrant status or was given parole until a reasonable period before

[19] 8 CFR section 208.4.
[20] 8 CFR section 208.4(a)(4).
[21] 8 CFR section 208.4(a)(5).

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 an asylum seeker arrives at a port of entry without valid travel documents, or is apprehended near the international border within 14 days of having entered illegally, with few exceptions, he or she is subject to expedited removal without a hearing before an immigration judge. Upon issuance of an order of expedited removal by an immigration officer, and provided that the person expresses a fear of return to the country of origin, or an intention to apply for asylum, the asylum seeker is referred by a CBP or ICE official to a USCIS asylum officer for a credible fear screening interview. The aim of the screening interview is to determine if the asylum seeker has a credible fear of persecution or torture.[22] At this stage of the process, the asylum officer does not consider any bars (that is, 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 of the protection claim and any other type of relief from removal for which the asylum seeker may be eligible during the course of removal proceedings. If USCIS determines that the applicant has not established a credible fear and the immigration judge sustains the negative determination, the removal order may be executed.

Normal Procedure

Asylum seekers making claims at the border or inside the United States 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 by filing an asylum claim "affirmatively" with USCIS.

Application

When an asylum seeker is eligible to apply for asylum under INA section 208(a), he or she files an application form (Form I-589, "Application for Asylum and for Withholding of Removal") at the USCIS service centre that has jurisdiction over his or her place of residence. Asylum field offices also accept direct filings in limited circumstances.

Applicants between the ages of 12 years and 9 months of age and 75 years of age must have their fingerprints taken at a USCIS application support centre.[23] At that time, the applicant's photograph and signature are captured. The fingerprints are automatically submitted for checks against United States criminal and immigration databases.

Interview

An "affirmative" asylum applicant is interviewed by an asylum officer at one of eight asylum offices, or at another USCIS field office if the applicant lives far from the asylum office that has geographic jurisdiction over his or her place of residence. The interview is conducted in a non-adversarial manner. During the interview, the asylum officer verifies the asylum seeker's identity, records basic biographical information and elicits detailed information regarding the applicant's claim for asylum. The asylum seeker has an opportunity to present evidence in support of the asylum claim and to explain inconsistencies or other types of credibility concerns.

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 application is either referred to the immigration court (for those without legal status) or 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 years who are included in the application must also appear for the interview.

The asylum seeker must bring the following documents to the interview (if available):

- 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
- Copies of Form I-589 and other supplementary material 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 a USCIS asylum officer when the applicant is found ineligible for asylum following the affirmative procedure
- After being placed in removal proceedings by a DHS agency

[22] An asylum seeker establishes a credible fear of persecution or torture 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) in proceedings before an immigration judge.

[23] Application support centres offer fingerprinting services, usually after the filing of a benefit request such as an asylum application.

- After having been placed in the expedited removal process and having been found to have a credible fear of persecution or torture.

The asylum seeker appears before an immigration judge with EOIR in removal proceedings that are adversarial in nature. In these proceedings, DHS is represented by an attorney; the asylum seeker may be assisted by a legal representative, but is not afforded representation at the Government's expense. The immigration judge hears the applicant's claim along with any concerns about the validity of the claim raised by the Government and renders a decision.

Review/Appeal of the Normal Procedure

The immigration judge's decision may be appealed to BIA, an agency within EOIR and DOJ. The decision of BIA may in turn be appealed to the United States Court of Appeals with geographic jurisdiction.

Freedom of Movement during the Normal Procedure

Asylum seekers, including those who are referred to an immigration judge by USCIS, are generally free to live in a place of their choosing in the United States pending the completion of the asylum procedure. If an asylum seeker wishes to travel outside the country, he or she may request 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 United States port of entry or near the border and who are not found to have a credible fear of persecution or torture are generally kept in detention until their removal from the United States. Asylum seekers who are found to have a credible fear of persecution or torture and are placed in the defensive procedure may also be kept in detention but may be considered for discretionary release by ICE enforcement and removal officers pursuant to standardized guidelines.

Reporting

An asylum seeker has an obligation to inform USCIS or the immigration court within 10 days of a change of address. The applicant should notify separately 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 for asylum with USCIS after the issuance of a final denial by an asylum office (which occurs only in cases where the applicant has another legal status in the United States), the dismissal of a motion to reopen or reconsider a previous application or the withdrawal of a previous application, provided that he or she is not under the jurisdiction of the immigration court. The new application will be subject to a one-year filing deadline. In addition, the previous adjudication by the asylum office will be considered in the adjudication of any repeat application.

Defensive Procedure

An asylum seeker who received a final denial of asylum by EOIR is prohibited from filing a new application for asylum; however, the individual may seek to reopen proceedings if there are changed circumstances that materially affect the applicant's asylum eligibility.

5.2 Safe Country Concepts

5.2.1 Safe Country of Origin

There is no safe country of origin provision in the United States 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 United States 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 in either of the following circumstances:

- The applicant establishes that his or her entry into that country was a necessary consequence of his or her flight from persecution, that he or she remained in that country only as long as was necessary to arrange onward travel, and that he or she did not establish significant ties in that country.
- The applicant establishes that the conditions of his or her residence in that country 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 applicant (whether permanent or temporary), the types and extent of employment available to the applicant, and the extent to which the applicant received permission to hold property and to enjoy other rights and privileges.

5.2.3 Safe Third Country

The United States applies the STCA with Canada, as described in section 5.1.3.

IN FOCUS

CHILD-FRIENDLY ASYLUM PROCEDURES

Recognizing the unique vulnerability of children, the Refugee, Asylum and International Relations Directorate (RAIO) – in collaboration with UNHCR and reputable NGOs – has issued instructions for asylum and refugee officers on international guidance, interviewing considerations, evidence evaluation and legal analysis of asylum and refugee claims raised by children.

In order to ensure that issues related to minors receive proper attention, the Asylum Division provides asylum officers with additional training on child-specific procedures and law. 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 UACs 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 UACs. The 2007 initial memorandum has been augmented several times with specific instructions for asylum officers and others within USCIS who have a role in the acceptance and processing of asylum claims raised by children.

EOIR also has in place a number of child-sensitive procedures and has trained immigration judges on children's issues with the help of experts from other federal agencies and NGOs. 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 from the EOIR Legal Orientation and Pro Bono Program, together with immigration judges and other court staff, have worked closely with others inside and outside the Government of the United States to identify children in need of legal government custody have access to basic legal immigration programmes.

Through TVPRA of 2008, Congress gave USCIS initial assistance and to facilitate pro bono legal services. Due to these partnership efforts, a large majority of UACs in jurisdiction over any asylum application filed by a UAC.

This law took effect on 23 March 2009. As a result, UACs filing for asylum who previously would have had their case heard by an immigration judge in the first instance now receive an affirmative, non-adversarial interview with an asylum officer. The Homeland Security Act of 2002 defines a UAC as a person under 18 years of age who has no lawful immigration status in the United States and who either has no parent or legal guardian in the country or has no parent or legal guardian in the country who is available to provide care and physical custody.

In most cases in which a UAC in proceedings before an immigration judge files an asylum application with USCIS pursuant to TVPRA, another DHS entity – either CBP or ICE – has already made a determination of UAC status after apprehension, as required for the purpose of placing the individual in the appropriate custodial setting. Effective 10 June 2014, in those cases in which either CBP or ICE has already made a determination that the applicant is a UAC, and that status determination was still in place on the date the asylum application was filed, asylum officers adopt that determination without another factual inquiry. Unless there was an affirmative act by the Department of Health and Human Services, ICE or CBP to terminate the UAC finding before the applicant filed the initial application for asylum, asylum officers adopt the previous DHS determination that the applicant was a UAC. In cases in which a determination of UAC status has not already been made, asylum officers make determinations of UAC status. Prior to 10 June 2014, asylum officers made independent factual inquiries under the UAC definition to support their determinations of UAC status, which was assessed at the time of the UAC's filing of the asylum application, in every case.

5.3 Special Procedures

5.3.1 Unaccompanied Alien Children

Asylum Procedure

In recent years, the Asylum Division of USCIS has put in place a number of procedures in order to address the special concerns that arise with minor principal applicants for asylum.

Care and Custody

ORR at the Department of Health and Human Services has statutory authority over the custody and care of UACs. It is responsible for case management and provides UACs with accommodation, health care and education.

5.3.2 Group-Based Protection

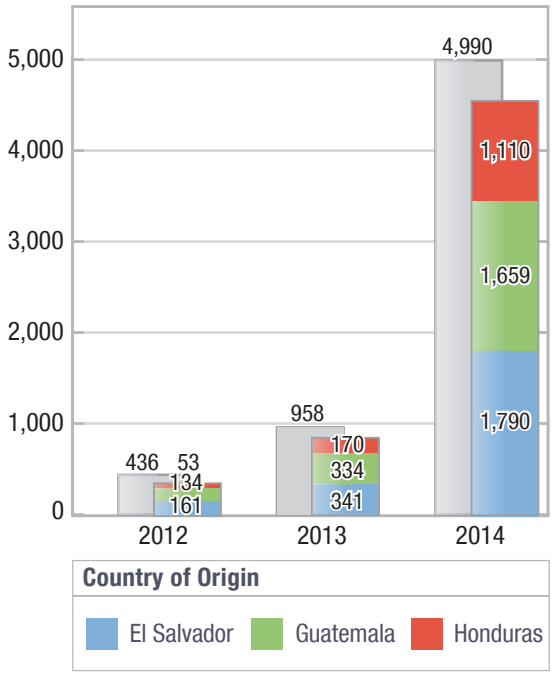
There are no grounds under United States law upon which a group may be granted asylum. However, under United States regulations, an applicant may establish individual eligibility for asylum if the applicant establishes that there is a pattern or practice of persecution against persons similarly situated to the applicant (that is, a group) and the applicant establishes his or her inclusion in, and identification with, this group of persons.[24]

Within USRAP, Priority 2 designations are used for specific groups who are of special humanitarian concern to the United States. Priority 2 groups are designated by DOS in consultation with USCIS, NGOs, UNHCR and other experts.

[24] 8 CFR section 208.13(b)(2)(iii)(B).

USA. Fig. 3 | Asylum Applications by Unaccompanied Minors in 2012, 2013 and 2014

	2012	2013	2014
Total Asylum Applications	44,216	46,196	64,843
Applications by Unaccompanied Minors	436	958	4,990
Percentage	1%	2%	8%



Only those members of the specifically identified groups are eligible for processing under Priority 2. Individuals within this designation must still individually establish eligibility for resettlement by meeting the definition of a refugee under INA section 101(a)(42) and by establishing that they are not inadmissible to the United States or that they are eligible for a waiver of the ground of inadmissibility.

5.3.3 Stateless Persons

Stateless persons are required to establish past persecution, or a well-founded fear of persecution, in the country determined to be their place of last habitual residence.

5.3.4 Gender-Based Applications

Lesbian, Gay, Bisexual, Transgender, Intersex Persons

Under United States law it is well established that sexual orientation, as well as sexual minority statuses, can form the basis for asylum under the "membership in a particular social group" ground.[25] In addition, the United States has recognized claims from lesbian, gay, bisexual or transgender activists under the political opinion rubric.

On 26 June 2013, the Supreme Court in *United States v. Windsor*, 133 S. Ct. 2675, struck down section 3 of the Defense of Marriage Act, Pub. L. No. 104–199, section 3(a), 110 Stat. 2419 (codified as amended at 1 U.S.C. section 7 [2000]), which had limited the terms "marriage" and "spouse" to opposite-sex marriages for purposes of all federal laws. As a result, USCIS may now interpret "spouse" in section 208 of INA to include an applicant's same sex spouse. USCIS now recognizes same-sex marriage as a basis for derivative asylum status.

6 DECISION-MAKING AND STATUS

6.1 Inclusion Criteria

6.1.1 Convention Refugee

An asylum seeker must fit the definition of a refugee in INA section 101(a)(42)(A) in order to qualify for asylum. There is a large body of case law about the refugee definition, some of which is highlighted below.

Two Supreme Court cases have had a substantial impact on eligibility standards for asylum. 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.

[25] See *Matter of Toboso-Alfonso*, 20 I&N Dec. 819 (BIA 1990). Designated by the Attorney General as a precedent decision on 16 June 1994. See also *Boer-Sedano v. Gonzales*, 418 F.3d 1082, 1089 (9th Cir. 2005).

BIA, the administrative 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, BIA held that persecution means harm or suffering inflicted upon a person in order to punish him or her for possessing a belief or characteristic a persecutor seeks to overcome, and does not encompass the harm that arises solely 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 recent years, BIA has added the requirement that a "particular social group" be cognizable, meaning that it must be perceived as socially distinct and with well-defined boundaries (must have "particularity") within the society from which the asylum applicant is seeking protection.[26]

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.

Resistance to a Coercive Population Control Programme

The definition in INA section 101(a)(42) was amended in 1996 to provide that an individual is deemed to have been persecuted on account of political opinion if he or she has been subject to any the following:

- Forced abortion of a pregnancy
- Involuntary sterilization
- Persecution for failure or refusal to undergo one of the procedures listed 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 will also be deemed to have a well-founded fear of persecution on account of political opinion.

Withholding of Removal under the 1951 Convention

Withholding of removal under INA section 241(b)(3) implements article 33 of the 1951 Convention. To receive a grant of withholding of removal, an applicant 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.

In *INS v. Stevic*, 467 U.S. 407 (1984), the Supreme Court held that to establish eligibility for withholding of removal (that is, non-refoulement), there must be evidence establishing that it is more likely than not that the applicant would be persecuted 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.[27]

Withholding of removal is specific to the country of removal and allows removal to a third country where it would not be more likely than not that the individual would be persecuted.

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 under INA section 241(b)(3) and protection under the Convention against Torture.

Protection under article 3 of the Convention against Torture may be granted in one of two forms:

- Withholding of removal, which allows the person to remain in the United States with work authorization until such time as an immigration judge terminates the status
- In cases where the applicant is barred from receiving withholding of removal or deferral of removal.

Neither withholding of removal nor deferral of removal leads to any lawful or permanent status in the United States or necessarily results in the person's release from detention. Neither of these provides the grantee's family members with derivative status. In most instances, however, a grant of withholding of removal or deferral of removal results in the person's eventual release from custody (if detained) and a grant of employment authorization. That person's status may be assessed periodically as to any changes of circumstances that may determine custody status or any changes allowing for the removal of the person to the original country, or to a third country.

6.2 The Decision

Affirmative Procedure

At the completion of their asylum interviews, most asylum applicants receive a notice,[28] which has been translated into the 10 languages most commonly spoken by asylum applicants,[29] informing them of the next steps in the asylum process and the date and time that the applicant is to

[26] *Matter of C-A-*, 23 I&N Dec. 951, 959 (BIA 2006) and *Matter of A-M-E- & J-G-U-*, 24 I&N Dec. 69, 74 (BIA 2007).
[27] See the discussion on *INS v. Elias-Zacarias*, 502 U.S. 478 (1992) for the Court's later interpretation of the well-founded fear standard.
[28] Asylum applicants with a lawful immigration status are generally notified of the asylum decision by mail.
[29] These languages include Spanish, French, Chinese, Haitian Creole, Arabic, Russian and Amharic.

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 persons with a 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 also translated into these 10 languages. USCIS does not issue final decisions to grant asylum until background security checks have been completed. If a case is not granted and is instead referred to the immigration court, at a minimum the security checks must have been initiated.

Under the affirmative procedure, asylum officers record asylum decisions in a written assessment that is based on interview notes and information on country conditions as well as any documentation or other evidence provided by the asylum applicant. A supervisory asylum officer reviews all decisions before they are issued. In addition, training officers in each asylum office conduct random case reviews to ensure quality. Certain cases require quality assurance review and concurrence by the Asylum Division headquarters.

Defensive Procedure

Under the defensive procedure, immigration judges from 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 BIA, the records of the hearing and oral decision are transcribed. Decisions of BIA are provided to the parties in writing.

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IN FOCUS

USCIS QUALITY ASSURANCE

Supervisory Review

Supervisors review all proposed decisions for legal sufficiency and consistency with established Asylum Division procedures and policies, and discuss any concerns regarding the legal analysis or decision in a case with the asylum officers. Disputes are elevated to the deputy director of the asylum office for review.

Training Officers

Training officers are present in each of the asylum offices. They are responsible for developing local training for the asylum officers each week and for conducting random reviews of a sampling of cases on a regular basis to identify any issues or concerns with quality and the supervisory review process. Training officers are required to attend an instructor training course to learn methodologies for adult student-centred instruction and to improve their skills as training coordinators for the field offices.

Quality Assurance Review

Certain sensitive or difficult cases are submitted to the Quality Assurance Branch at USCIS headquarters for review before a decision is issued. The categories of cases include certain asylum claims filed by minors; claims that have been, or are likely to be, publicized; claims involving persecutor-related issues; and cases involving issues of national security. The Quality Assurance Branch at headquarters also reviews a random sampling of credible fear and reasonable fear determinations and all STCA determinations from all asylum offices prior to issuing a decision.

Quality Assurance Initiative

In 2010, RAIO developed a "quality checklist" for affirmative asylum applications based on existing procedures and post-decisional review of a statistically generated sample of cases. The checklist was employed in a pilot programme during fiscal year 2010 and put into effect permanently in fiscal year 2011.

The data from the quality checklist are reviewed by a local training or supervisory asylum officer, or by a member of the Quality and Training Branch at headquarters. The reviewer enters the data directly into an online database, allowing for instantaneous review and reporting. The Quality Assurance Initiative has been expanded for application into other types of Asylum Division adjudications and has allowed the Asylum Division to target specific problem areas to ensure adjudicative quality, including procedural compliance. The results from the Quality Assurance Initiative have resulted in the development of additional adjudicative aids and training to address issues in those areas. During fiscal year 2014, the focus of the Quality Assurance Initiative was compliance with affirmative asylum security-check procedures. The focus of the fiscal year 2015 Quality Assurance Initiative is credible fear determinations.

6.3 Types of Decisions, Statuses and Benefits Granted

Under the affirmative procedure, an asylum officer may make one of the following decisions:

- Grant asylum: The applicant is provided with the date from which he or she has asylee status and with information about eligibility for certain benefits.
- Recommended approval: The applicant receives a recommended approval when USCIS has made a preliminary determination to grant 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 USCIS does not determine that the applicant is 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 and the asylum application will be adjudicated de novo by an immigration judge.
- Notice of Intent to Deny: If USCIS determines that the applicant is ineligible for asylum and the applicant has a lawful status, the asylum office issues a Notice of Intent to Deny explaining the reasons that the applicant has been found ineligible for asylum. The applicant may rebut the findings in writing within 16 days before the final decision is made. The process may result in a grant or a final denial of asylum.
- Denial: An applicant who receives a Notice of Intent to Deny is sent a Final Denial letter if he or she fails to submit a rebuttal to the Notice of Intent to Deny within the time limit or if the applicant submits rebuttal evidence or an argument that fails to overcome the grounds for denial as stated in the Notice of Intent to Deny. The applicant cannot appeal the decision, but may reapply for asylum with USCIS at a later time.

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 (such as withholding of removal, or deferral of removal pursuant to the Convention against Torture).

Benefits

An asylee is entitled to the following benefits:

- Authorization to work, dependent upon 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 assistance
- Benefits funded by the Department of Health and Human Services, including refugee cash

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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 resident after one year of residence in the United States following the granting of asylum.

Most public benefits have time limits and are subject to other requirements.

Withholding of Removal

In most instances, withholding of removal or deferral of removal allows the individual to remain in the United States with work authorization until such time as an immigration judge terminates the status. These forms of protection cannot lead to permanent status within the United States and do not allow the recipients to petition for relatives to join them in the United States. In rare instances, an individual who is granted withholding or deferral of removal may be detained and as long as that person is detained, the grant does not result in any ancillary benefits.

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 is barred from a grant of asylum pursuant to INA section 208(b)(2) if it is determined that any of the following bars to asylum apply:

- The asylum seeker 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.[30] In *Negusie v. Holder*, 467 U.S. 837 (2009), the Supreme Court remanded the case to 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 alien's participation in persecutory acts.
- The asylum seeker was convicted of a particularly serious crime such that he or she is a danger to the United States. This includes an "aggravated felony" as defined under INA section 101(a)(43).
- There are compelling reasons to believe that the alien committed a serious non-political crime outside the United States.
- There are reasonable grounds for regarding the alien as a danger to the security of the United States.
- The asylum seeker was firmly resettled in another country prior to arriving in the United States.[31] A recent decision by BIA[32] established a four-step framework for adjudicating the firm resettlement bar to asylum.

Also, under INA section 208(B)(2), an asylum seeker is barred from a grant of asylum if he or she is inadmissible under the terrorism and national security-related inadmissibility grounds under INA sections 212(a)(3)(B)(i) and 237(a)(4)(B). An alien is inadmissible under these grounds in the following circumstances:

- He or she has engaged in terrorist activity as defined in INA section 212(a)(3)(B)(iv).
- A consular officer, the Attorney General or the Secretary of Homeland Security knows, or has reasonable grounds to believe, that he or she is engaged in, or is likely to engage after entry in, any terrorist activity as defined in INA section 212(a)(3)(B)(iii).
- He or she has, under any circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity.
- He or she is (a) a representative of a terrorist organization, (b) a representative of a political, social or other similar group that endorses or espouses terrorist activity, or (c) a member of a terrorist organization designated under INA section 219 (Tier I) or otherwise designated through publication in the Federal Register under INA section 212(a)(3)(B)(vi)(II) (Tier II).
- He or she is a member of an undesignated terrorist organization 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 organization was a terrorist organization.
- He or she endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization.
- He or she has received military-type training, defined under 18 U.S.C. section 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 organization that, at the time the training was received, was a terrorist organization.
- He or she is the spouse or child of a person who is inadmissible for the activities described above, if the activity causing the person to be found

30 This exclusionary language is part of the definition of a refugee in INA section 101(a)(42).
31 See 8 CFR section 208.15 for a definition of "firm resettlement".
32 *Matter of A-G-G-*, 25 I&N Dec. 486 (BIA 2011).

inadmissible occurred within the last five years. To qualify as a "child", the individual must be unmarried and under 21 years of age.

Under INA section 212(d)(3)(B)(i), the Secretary of Homeland Security or the Secretary of State, in consultation with each other and with the Attorney General, may conclude in his or her sole unreviewable discretion not to apply certain terrorism-related grounds of inadmissibility. The Secretary of State does not have the jurisdiction to grant an exemption to a terrorist-related ground of inadmissibility once removal proceedings have commenced against the person.

To date, exercises of this authority fall under one of the following three categories:

- Group-based exemptions, which pertain to associations or activities with a particular group or groups
- Situational exemptions, which pertain to a certain activity, such as providing material support under duress or providing medical care
- Individual exemptions, which pertain to a specific individual.

For group-based and situational exemptions, the Secretary of Homeland Security has delegated to USCIS the authority to determine whether a particular individual is eligible for exemption. This allows for exemptions to be granted as part of the refugee or asylum adjudication.

For immigration benefits adjudicated by DHS (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. For those applicants for immigration benefits in removal proceedings and subject to the jurisdiction of EOIR, all exemption determinations are also made by USCIS in consultation with ICE.

To be eligible for an exemption, an applicant must meet the specific threshold criteria and qualifying criteria for the exemption and be eligible in the totality of the circumstances. Additionally, to be granted an exemption, the applicant must pass the required security checks. Once a decision has been made to grant a particular applicant an exemption, that decision will continue to apply in other benefit adjudications involving the 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 under 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 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 United States.
- There are reasonable grounds to believe the applicant is a danger to the community (defined to include anyone who meets the terrorist bars outlined above).

In *Negusie v. Holder*, 467 U.S. 837 (2009), the Supreme Court found that BIA had incorrectly held that the Court's earlier decision in *Fedorenko v. United States*, 449 U.S. 490 (1981), which interpreted a different statutory provision, was controlling on the question of whether an alien who, under duress, participates in the 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 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 alien's participation in persecutory acts.

In *INS v. Aguirre-Aguirre*, 526 U.S. 415 (1999), the Supreme 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 arrival in the United States 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 were 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.

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 asylum or 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 United States law, asylum status may be terminated when prima facie evidence indicates that at least one of the following circumstances is present:

- There is a showing of fraud in the alien's application such that he or she was not eligible for asylum at the time it was granted.
- As to an application filed on or after 1 April 1997, one or more of the conditions described in INA section 208(c)(2) exist. These conditions are summarized below:
  - The alien no longer meets the definition of a refugee due to a fundamental change in circumstances.
  - The alien meets the definition of a persecutor, may reasonably be regarded as a danger to the security of the United States, is described in the terrorism-related inadmissibility grounds, was firmly resettled in another country prior to arriving in the United States, was convicted by final judgement of a particularly serious crime outside the United States prior to arrival, or there are serious reasons to believe the alien committed a serious non-political crime outside the United States prior to arrival.
  - The alien may be removed pursuant to a safe third country agreement.
  - The alien voluntarily re-availed himself or herself of the protection of the country of nationality, or in the case of an alien having no nationality, the country of the alien's 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 of other permanent residents of that country.
  - The alien has acquired a new nationality and enjoys the protection of that country.
- As to an application filed before 1 April 1997, the alien no longer has a well-founded fear of persecution due to a change in country conditions in the alien's country of nationality or last habitual residence, or the alien has committed any act that would have been grounds for a mandatory denial of asylum under 8 CFR section 208.13(c)(2), summarized below:
  - The alien was convicted of a particularly serious crime.
  - The alien was firmly resettled in another country.
  - The alien is a danger to national security.
  - The alien has been convicted of an aggravated felony.
  - The alien ordered, incited, assisted or otherwise participated in the persecution of others on account of one or more of the five protected grounds.
  - The alien is involved in terrorist activities as described in INA section 212(a)(3)(B)(i)(I) [engaged in], (II) [reasonably likely to engage in after entry], and (III) [incited with an intent to cause death or serious bodily harm], unless there are no reasonable grounds to believe the alien is a danger to national security.

Termination of asylum status for the principal asylee results in termination of any derivative status, whether derivative status was gained at the time of the original asylum grant or through the approval of an I-730 "Refugee/Asylee Relative Petition". The termination does not preclude the family member from applying for asylum or the withholding of removal on his or her own. When grounds for termination apply to a derivative alone, the derivative asylum status is terminated without effect on the principal asylee's status, and documents discussed in this section are issued to the derivative asylee alone.[33]

The government agency responsible for terminating asylum is the one that granted asylum in the first instance. For example, if asylum was granted by an immigration judge, only EOIR may terminate asylum (or withholding of removal) upon request by ICE.

If USCIS granted the asylum status, the asylum office may terminate the status after providing the asylee with 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 apply. If the asylum status is terminated and the individual is subject to a ground of inadmissibility or deportability, the individual is placed in removal proceedings.

In *Robleto-Pastora v. Holder*, 591 F.3d 1051 (9th Cir. 2010), the United States Court of Appeals for the Ninth Circuit held that, once an asylee adjusts status to lawful permanent resident, that status is retained until a final order of removal is entered. Accordingly, termination of asylum status would not affect the lawful permanent resident. USCIS has determined that an asylee who has adjusted status may be subject to removal without requiring termination of asylum status. Therefore, USCIS asylum offices no longer terminate the asylum status of lawful permanent residents. Although *Robleto-Pastora v. Holder* was binding only to asylum claims pending within the geographical jurisdiction of the Court of Appeals for the Ninth Circuit, USCIS has decided to apply the reasoning of the decision nationwide.

[33] See INA section 208(c)(2),(3) and 8 CFR section 208.24.

6.6 Support and Tools for Decision-Makers

6.6.1 Country of Origin Information

The Research Unit provides RAIO officers with credible and objective information from refugee and asylum-seeker producing countries. This helps RAIO officers to adjudicate claims accurately. As one of DHS's primary country-condition research units, the Research Unit provides other components of USCIS and DHS agencies with information on international natural disasters, conflicts, migration and displacement.

RAIO officers have access to country conditions information via on-site hard copy libraries and the RAIO virtual library. The RAIO headquarters hard copy library in Washington, D.C., contains more than 100 serials and other publications catalogued by country of origin. The RAIO Enterprise Collaboration Network Library[34] consists of materials generated by government agencies, NGOs, international organizations, human rights monitors, academics and news media, as well as research products of the Research Unit. The electronic database, which is organized by geographical region, country and thematic issues, is fully text-searchable and accessible to all RAIO staff.

Research Unit staff train new and veteran RAIO officers. New officers learn about the Research Unit at the asylum and refugee officer combined training courses. Researchers also conduct trainings at the Refugee Affairs Division and at various asylum field offices to ensure that adjudicators are informed of emerging humanitarian developments.

6.6.2 Procedures Manuals

The Asylum Division has procedures manuals for affirmative asylum adjudications, credible fear and reasonable fear screenings, and identity and security checks. These manuals are issued by Asylum Division headquarters and frequent updates are issued to the field and posted to the RAIO Enterprise Collaboration Network Library. The procedures for the adjudication of affirmative asylum applications are publicly available on the USCIS Internet site.

6.6.3 Training Materials

RAIO maintains a collection of 64 training modules that are shared among its components. The training modules are the basis for instruction at the RAIO combined training course and for the subsequent division-specific training. These modules, or "lesson plans", not only provide new officers with instruction on all aspects of the asylum and refugee adjudication, including legal analysis, decision writing and interviewing skills, they also form the core of RAIO guidance to all officers on the adjudication of protection cases. The lesson plans are regularly updated and distributed to all RAIO personnel.

IN FOCUS

COMBINED TRAINING COURSE

Since October 2012, under the directive of the RAIO Directorate, the divisions of RAIO have combined and consolidated training materials and instructions in order to promote the consistency, quality and flexibility of the RAIO workforce.

Over approximately six weeks, the RAIO combined training course covers refugee protection, international human rights law, international religious freedom, national security, grounds of inadmissibility and a range of other topics. Three of the six weeks consist of distance training, where RAIO officers follow courses through video conferencing from their workstations at different offices. The remaining three weeks are classroom-based, where officers from around the country come together. The combined course is immediately followed by approximately three weeks of division-specific classroom-based training in which each division separately covers topics and procedures specific to its work and focuses on the practical application of the broader lessons. In total, RAIO officers receive nine weeks of training.

The RAIO Training Unit has created a number of modules for the combined training by adapting existing training materials from both the Asylum Division and the Refugee Affairs Division. In addition to updating and adapting the modules from existing division-specific materials, RAIO has published a new module, entitled "Guidance for Adjudicating Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) Refugee and Asylum Claims". This new module provides guidelines for adjudicating and considering immigration benefits, petitions, protections and other immigration-related requests by LGBTI individuals.[35] The module addresses the legal analysis of claims that involve LGBTI applicants as well as related interviewing considerations.

7 EFFICIENCY AND INTEGRITY MEASURES

7.1 Technological Tools

7.1.1 Fingerprinting

Applicants between the ages of 12 years and 9 months and 75 years have their fingerprints taken at an application support centre. The fingerprints are sent to the Federal Bureau of Investigation 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.

[34] The USCIS Enterprise Collaboration Network is a collaborative electronic environment used to produce and manage information needed for the day-to-day "in-process" work of USCIS internal employees. It includes workflows, database services, customized lists and document libraries.

[35] See www.uscis.gov/sites/default/files/USCIS/About%20Us/Directorates%20 and%20Program%20Offices/RAIO/lgbtir-guidance-for-adjudicating-lesbian-gay-bisexual-and-intersex-claims.pdf.

At the time of the USCIS asylum interview, applicants between 14 and 79 years of age are fingerprinted using live scan equipment.

7.1.2 DNA Tests

USCIS field offices may suggest DNA testing as a means of establishing a family relationship when other forms of evidence have proven inconclusive and blood parentage testing does not clearly establish the claimed parental relationship. The applicant or petitioner has the burden of proof when the evidence submitted has not satisfied the evidentiary threshold and USCIS would otherwise deny the application or 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 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 analysis of documents is occasionally undertaken in the affirmative asylum process when the asylum officer believes that a government-issued travel, civil or identification document may be fraudulent. However, resources for forensic analysis are very limited. Asylum officers are trained to identify security features as well as fraud indicators in documents. They are also trained in interviewing techniques to probe into the materiality of the documents and any fraud concerns. In some cases, if the verification can be performed in a manner that ensures the protection of asylum confidentiality, a supporting document may be sent for overseas verification.

7.1.4 Database of Asylum Applications/Applicants

Data on affirmative asylum applicants and the subsequent decisions, including data on accompanying family members, 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 Others

A copy of the asylum application may be sent to DOS for comment or other information. The asylum seeker's biographical information is also sent to the Federal Bureau of Investigation and other government agencies for background checks. In addition, USCIS runs the asylum seeker's biographical information through the databases of other law enforcement agencies.

US-VISIT is a database that contains more than 80 million biometric identifying records, including DHS criminal and national security-related information, records of immigration-related encounters with USCIS, ICE, DOS and other agencies, and DHS entry and exit information. All asylum seekers over 14 years of age are registered in 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 for the timely adjudication of asylum applications. Until recently, asylum applications were generally adjudicated within 60 days from the date the complete application was filed with USCIS. Currently, however, USCIS is not generally able to adjudicate claims within that time frame. In response to increasing humanitarian caseloads, USCIS is taking numerous steps, including increasing staffing levels and reprioritizing applications for interview scheduling.

The USCIS Asylum Division is hiring an additional 175 asylum officers, increasing the number of authorized asylum officer positions to 448. This represents a 65 per cent staffing increase since July 2013. As of January 2015, the Asylum Division has 350 officers on board and continues to hire and train new personnel. During 2014, USCIS also trained and temporarily detailed officers to the Asylum Division to assist with the increasing workload.

On 26 December 2014, the USCIS Asylum Division began prioritizing asylum applications for interview scheduling as follows:

- First, applications that were scheduled for an interview, but the applicant requested a new interview date.
- Second, applications filed by children.
- Third, all other pending affirmative asylum applications are scheduled for interviews in the order they were received, with oldest cases scheduled first.

7.3 Pending Cases

At the end of fiscal year 2014 (1 October 2013 to 30 September 2014), there were 61,479 pending affirmative asylum applications.

7.4 Information Sharing

United States law prohibits the disclosure of information contained in or pertaining to asylum applications, except in certain circumstances. The former INS (and its successor agencies within DHS), DOS and the Department of Citizenship and Immigration Canada have signed agreements that permit the exchange of immigration-related information and

records between the Government of the United States and the Government of Canada. In addition, the United States has entered into a formal agreement with Canada to share case-specific asylum information, including biographical information pertaining to asylum applicants. 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 United States and Canada. In 2010, the United States began sharing biometric information with Australia, Canada and the United Kingdom, and in 2011 with New Zealand, on a systematic basis.

United States law further provides that asylum-related information may be disclosed to the United States Intelligence Community, or any other federal, state or local governmental agency having a counterterrorism function, provided that the need to examine the information or the request is made in connection with its authorized intelligence or counterterrorism function or functions and the information received will be used for the authorized purpose for which it is requested.

8 ASSISTANCE AND RECEPTION BENEFITS FOR ASYLUM SEEKERS

8.1 Procedural Support and Safeguards

8.1.1 Legal Assistance

An asylum seeker may have an attorney or representative in proceedings before the asylum office or immigration court at his or her own expense (that is, not at the expense of the Government).

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. A government-funded interpreter monitor listens to asylum interviews by telephone in order to ensure that the asylum seeker's interpreter is interpreting accurately. In protection screening interviews (safe third country screening, credible fear and reasonable fear), USCIS provides interpreters. For claims before an immigration judge, EOIR provides interpreters.

Under cooperative agreement with DOS, resettlement support centres are responsible for providing interpreters for USCIS refugee interviews.

8.1.3 UNHCR

UNHCR in the United States has a general monitoring function and does not have a direct role in the determination of individual cases. UNHCR may also file advisory opinions or amicus briefs in particular asylum cases, but these are non-binding on decision-makers.

With the cooperation of the Government of the United States, UNHCR monitors detention facilities and ports of entry as resources permit. UNHCR shares its findings and recommendations with the relevant government agencies. The UNHCR office in Washington, D.C., meets regularly with the leadership of the various agencies whose policies may have an impact on asylum seekers and refugees.

Training from UNHCR is a regular component of the introductory courses for new RAIO officers, including refugee and asylum officers.

The address and telephone number of the UNHCR office in Washington, D.C., is included in the instructions section of the United States asylum application, and UNHCR responds to written and telephone 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 that offer legal or social services to asylum seekers in the United States.

8.1.4 NGOs

In the asylum context, NGOs may facilitate access to legal representation for applicants, particularly those in detention, and train pro bono or volunteer legal representatives on asylum law and procedures. NGOs may also provide asylum seekers with legal assistance by helping them to prepare their applications and by representing them in affirmative asylum interviews before an asylum officer, in proceedings before an immigration judge and in appeal processes. In addition, NGOs coordinate with the asylum offices to provide pro bono legal consultation in the credible fear process. RAIO includes reputable NGOs to assist in the training of refugee and asylum officers.

NGOs are also involved in domestic resettlement activities and, along with IOM, in resettlement activities overseas. IOM arranges travel to the United States for all refugees. NGO resettlement agencies offer refugees assistance with initial housing, furnishings, clothing, food, health screenings, medical care and employment referral services.

8.2 Reception Benefits

While the range of benefits available to asylum seekers is minimal, asylees are eligible for benefits and services funded through ORR. In addition, asylees are eligible for the full range of needs-based public benefits provided by the Government as described below in section 11 on integration.

For arriving refugees, sponsoring organizations provide initial reception and placement services under cooperative agreements with DOS. After 30 days, ORR takes over responsibility for administering assistance programmes. Refugees are eligible for a range of social service programmes.

8.2.1 Accommodation

No housing is provided to individuals on the basis of being an asylum seeker.

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 are a wide variety of private relief programmes, some of which are partially funded by the Government of the United States, available to asylum applicants. These programmes provide services ranging from language instruction to free legal representation. Generally, asylum applicants are not eligible for most federal benefit programmes; however, persons granted asylum may be eligible.

8.2.3 Health Care

Asylum seekers may be eligible for emergency medical services. Some states offer some form of 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 17 years of age.

8.2.5 Access to the Labour Market

Asylum seekers may apply for work authorization 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 authorization after they receive a recommended approval of asylum. Individuals granted asylum are authorized to work incident to their asylum status.

8.2.6 Family Reunification

Persons applying for asylum may include their spouse and children who are unmarried and under 21 years of age in their application, if those persons are in the United States. 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 United States 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 of age to join them in the United States. If the application is approved, the family members may then travel to the United States as asylees and join the approved principal applicant.

Under 8 CFR section 207.7, a person applying for refugee status may include his or her spouse and children who are unmarried and under 21 years of age in his or her application. A refugee admitted to the United States may request following-to-join benefits for his or her spouse and unmarried children under 21 years of age if the family was separated before the principal refugee was admitted into the United States.

8.2.7 Access to Benefits by Rejected Asylum Seekers

Asylum seekers whose applications have been denied receive emergency health care and access to primary and secondary education. They may be granted employment authorization if they cannot be returned to any of the countries listed by the asylum seeker or because the removal is otherwise impracticable or contrary to the public interest.[36]

9 STATUS AND PERMITS GRANTED OUTSIDE THE ASYLUM PROCEDURE

9.1 Withholding of Removal and Deferral of Removal

An application for asylum in the defensive procedure, raised as a defence to removal, is simultaneously an application for withholding of removal and deferral of removal under the Convention against Torture.[37]

9.2 Deferred Enforced Departure

Deferred Enforced Departure is within the President's discretion to authorize and arises from his or her power to conduct foreign relations. Although Deferred Enforced Departure is not a specific immigration status, persons covered by Deferred Enforced Departure 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 a certain group of persons with Deferred Enforced Departure, they have generally directed that Executive Branch agencies, such as DHS, take steps to implement the appropriate procedures to apply Deferred Enforced Departure and the related benefits, such as employment authorization, to those persons.

9.3 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 TPS under one or more of the following circumstances:

- Ongoing armed conflict
- An environmental disaster, if the country requests designation and is temporarily unable to adequately handle the return of nationals
- Extraordinary and temporary conditions in the country that prevent the safe return of nationals.

[36] See 8 CFR section 274a.12(c)(18).
[37] This is described in the section on decision-making.

An applicant for TPS must demonstrate the following:

- He or she is a national of a country designated for TPS (or person of no nationality who last habitually resided in a country designated for TPS).
- 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 the most recent designation.
- He or she is admissible as an immigrant except as provided under 8 CFR section 244.3(a).
- He or she is not subject to one of the criminal, security-related or other bars to TPS.
- He or she applies for TPS benefits within the initial registration period; 8 CFR section 244.2(f)(2) allows for late initial registration for TPS during any subsequent extension of such designation under 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 authorization. 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 valid status that they may have acquired while registered for TPS.

A person is ineligible for TPS in the following instances:

- He or she has been convicted of a felony or two or more misdemeanours committed in the United States.
- 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 criminal or national security bars.

9.4 Regularization of Status over Time

A person in removal proceedings who, prior to the initiation of removal proceedings, has been in the United States continuously for at least 10 years may be eligible for a form of relief called "cancellation of removal" if the following applies:

- The person has been a person of good moral character during the 10-year period.
- He or she has not been convicted of any crime that renders him or her inadmissible.
- 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.

9.5 Regularization of Status of Stateless Persons

There are no specific provisions in United States law to regularize the status of stateless persons.

10 RETURN

10.1 Pre-departure Considerations

The United States does not have a specific pre-departure review procedure for protection concerns for persons ordered removed. A person may file a motion to reopen or reconsider the case before the immigration court if there is new, previously unavailable information that merits consideration for protection or if he or she establishes an error of fact or law in the underlying decision.

10.2 Procedure

Returns of denied asylum seekers, as with all foreign nationals ordered removed, are executed by ICE.

10.3 Freedom of Movement and Detention

After being ordered to be removed, persons may be detained until their removal from the United States. However, in general, ICE cannot detain foreign nationals for longer than six months after the issuance of the order of removal, or if removal is no longer reasonably foreseeable.[38]

11 INTEGRATION

Asylees may be eligible to receive benefits and services through programmes funded by ORR. ORR funds and administers various programmes that are run by states and by private or non-profit organizations, NGOs and voluntary agencies throughout the United States. ORR benefits and services include refugee cash and medical assistance (for up to eight months from the date of the final granting of asylum), employment preparation and job placement, and English language training. Persons granted asylum under INA section 208 either defensively or affirmatively are eligible for ORR benefits and services to the same extent as refugees admitted under INA section 207.

Asylees and refugees are not subject to the five-year waiting period to apply for federal public benefits and may apply for the Supplemental Nutrition Assistance Program subsidy, the

[38] See *Zadvydas v. Davis*, 533 U.S. 678 (2001).

Temporary Assistance for Needy Families, Medicaid and Supplemental Security Income upon admission to the United States or upon being granted asylum. Asylees who are ineligible for the Temporary Assistance for Needy Families programme are eligible for the Refugee Cash Assistance programme. Asylees who are ineligible for Medicaid are eligible for the Refugee Medical Assistance programme.

Persons granted withholding of removal under INA or withholding or deferral of removal under the Convention against Torture are not eligible for ORR benefits and services by virtue of those statuses alone. However, persons whose deportation is being withheld under INA section 243(h), as in effect prior to 1 April 1997, or whose removal is being withheld under INA section 241(b)(3), as amended, may be eligible for other, non-ORR federal benefits. They may also qualify for ORR benefits and services, or other federal benefits and services, through a separate qualifying immigration status.

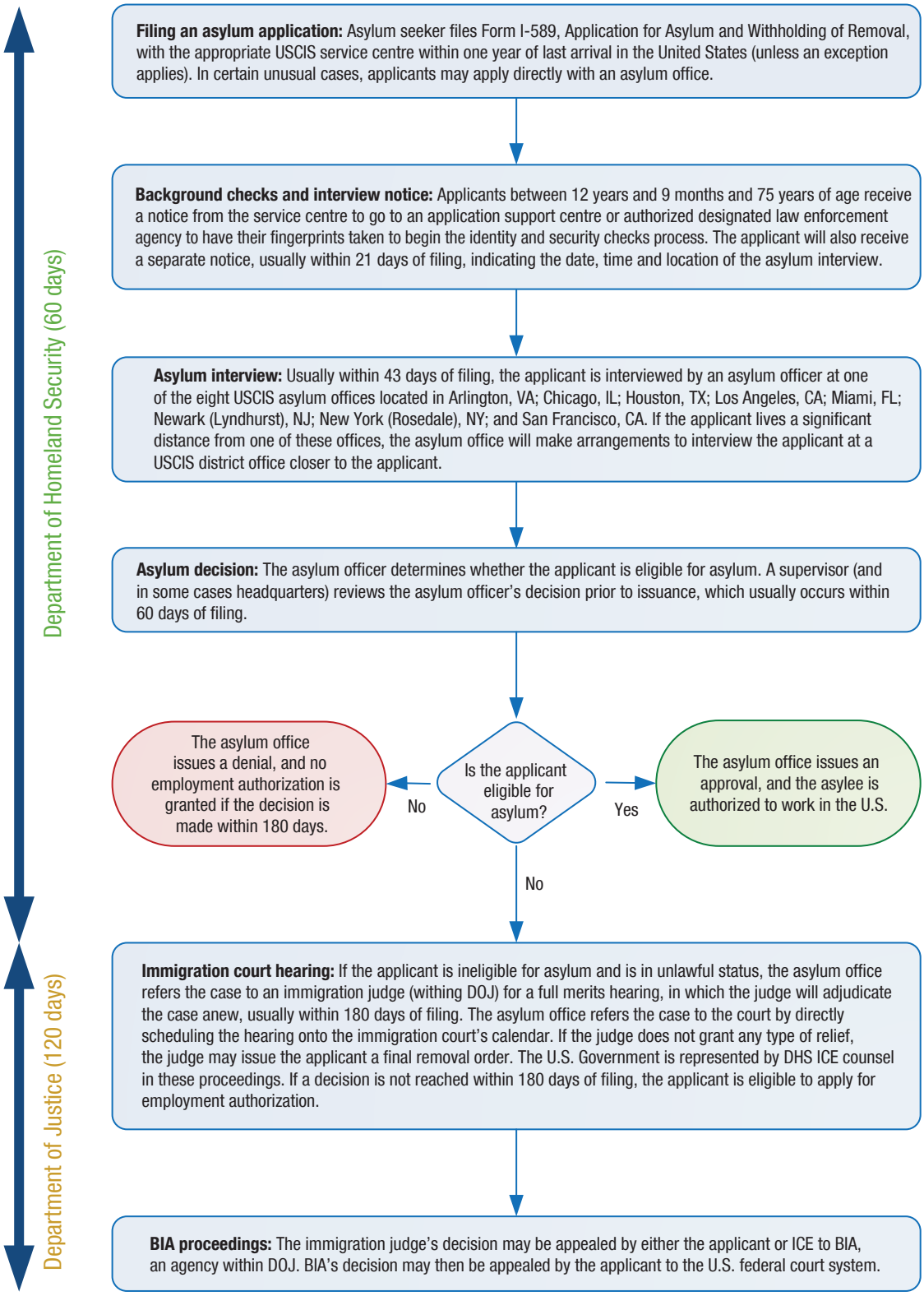
The USCIS Office of Citizenship was created by the Homeland Security Act of 2002 to foster immigrant integration and participation in American civic culture. The Office of Citizenship works to promote education and training on fundamental civic principles and on the rights and responsibilities of citizenship. 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 informational resources to assist permanent residents in learning about United States citizenship and the naturalization process. All such products are contained within the web-based Citizenship Resource Center,[39] designed to serve as the primary naturalization resource for immigrants and service providers.
- Providing monetary grants to organizations nationwide that are preparing permanent residents for citizenship through civics-based English instruction and immigration-related legal assistance.
- Building capacity for communities to assist immigrants who seek to become citizens by partnering with municipal governments, providing free resources in public libraries, and training English and citizenship instructors throughout the country.

[39] See www.uscis.gov/citizenship.

12 ANNEX

12.1 Asylum Procedure Flow Chart



12.2 Additional Statistical Information

USA. Fig. 4 | Asylum Applications from Top 10 Countries of Origin in 2012, 2013 and 2014[40]

	2012		2013		2014	
1	China	14,367	China	11,366	China	12,645
2	Mexico	6,366	Mexico	5,735	Mexico	8,616
3	Egypt	2,190	Egypt	2,784	Guatemala	4,778
4	Guatemala	1,723	Guatemala	2,184	El Salvador	3,410
5	Nepal	1,465	Syria	1,479	Venezuela	3,028
6	El Salvador	1,083	El Salvador	1,418	Ecuador	2,591
7	Ethiopia	1,022	Ethiopia	1,341	Honduras	2,325
8	Ecuador	985	Haiti	1,341	Haiti	1,612
9	Haiti	984	Ecuador	1,308	Syria	1,570
10	Russia	756	Nepal	1,279	India	1,552

USA. Fig. 5 | Decisions Taken at the First Instance in 2012, 2013 and 2014

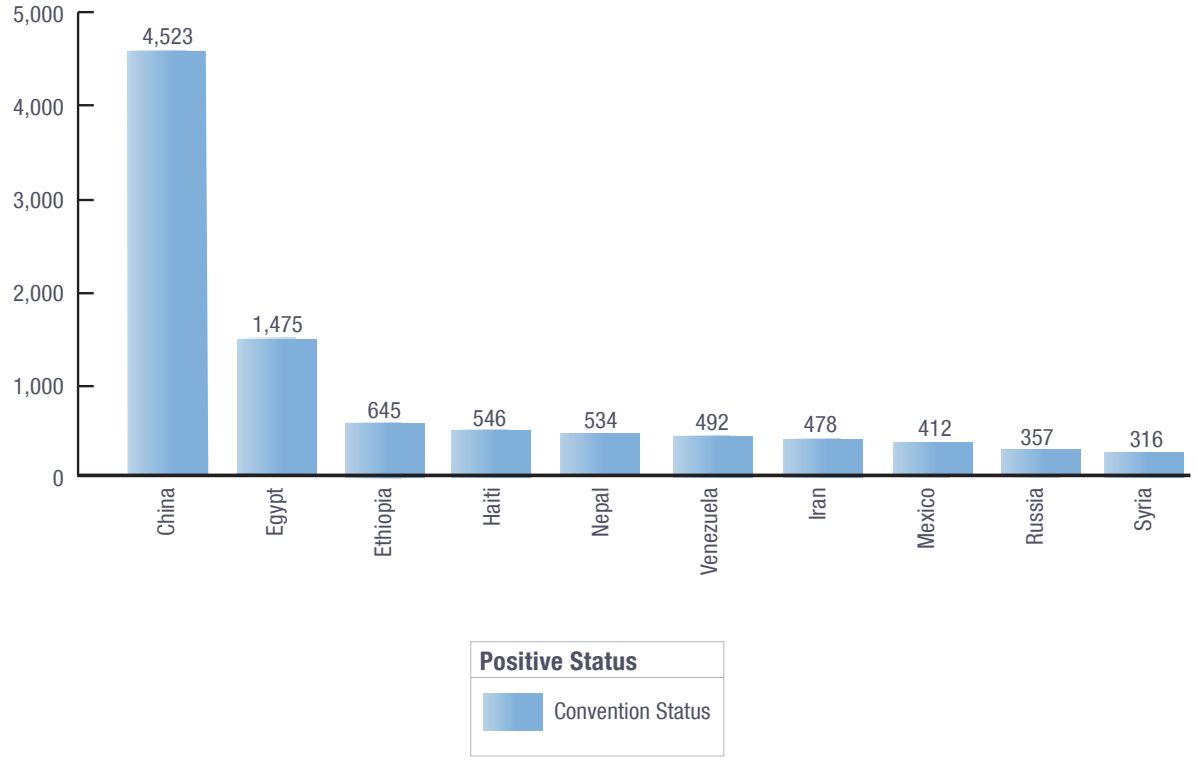
	Convention Status		Humanitarian Status and Subsidiary/Complementary Protection		Rejections		Withdrawn, Closed and Abandoned Cases		
Year	Number	%	Number	%	Number	%	Number	%	Grand Total
2012	14,350	38%	0	0%	18,705	49%	5,156	13%	38,211
2013	11,535	41%	0	0%	11,967	43%	4,421	16%	27,923
2014	12,742	39%	0	0%	14,270	43%	6,026	18%	33,038

[40] These numbers do not include "defensive" filings by persons in removal hearings before an immigration judge of EOIR. All statistics refer to cases, not persons.

USA. Fig. 6.a | Positive First-Instance Decisions, Top 10 Countries of Origin in 2012[41]

	Country of Origin	Total Positive	Total Decisions	Rate
1	China	4,523	12,329	36.7%
2	Egypt	1,475	1,730	85.3%
3	Ethiopia	645	967	66.7%
4	Haiti	546	820	66.6%
5	Nepal	534	1,112	48.0%
6	Venezuela	492	650	75.7%
7	Iran	478	550	86.9%
8	Mexico	412	3,349	12.3%
9	Russia	357	614	58.1%
10	Syria	316	414	76.3%

Total Positive Decisions by Status from Top 10 Countries of Origin, 2012

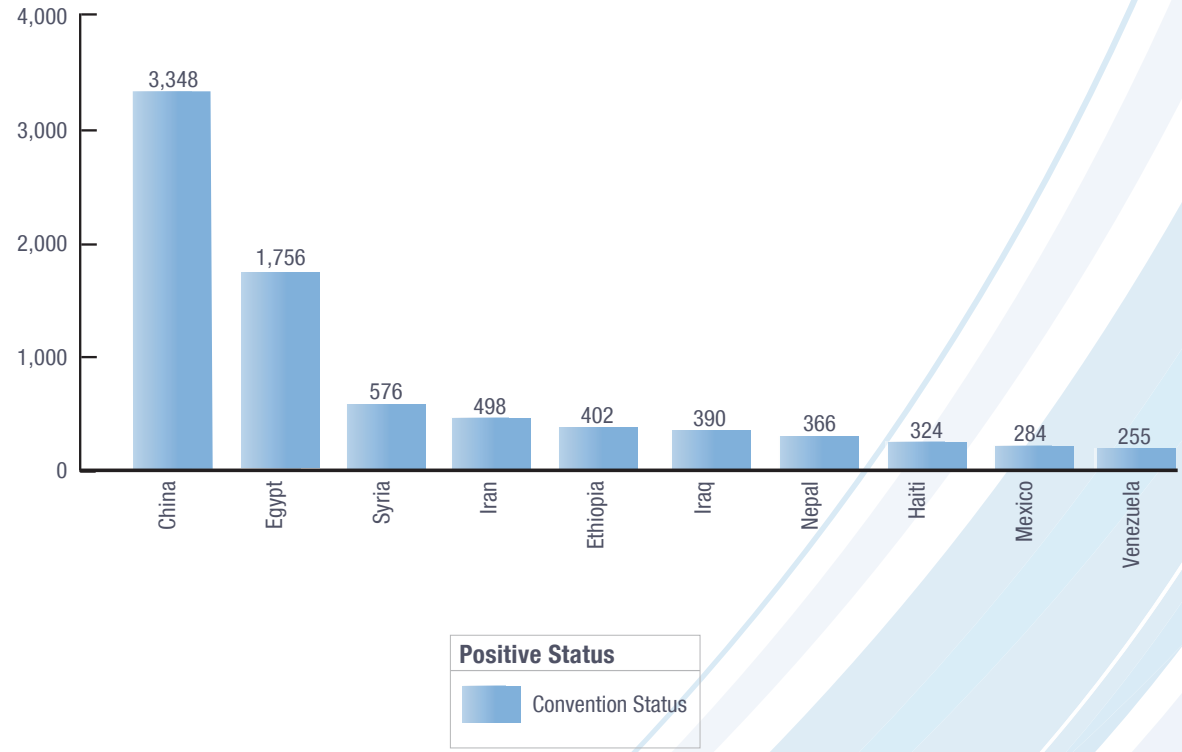


[41] Excluding withdrawn, closed and abandoned claims.

Positive First-Instance Decisions, Top 10 Countries of Origin in 2013[42]

	Country of Origin	Total Positive	Total Decisions	Rate
1	China	3,348	7,927	42.2%
2	Egypt	1,756	1,917	91.6%
3	Syria	576	743	77.5%
4	Iran	498	544	91.5%
5	Ethiopia	402	653	61.6%
6	Iraq	390	460	84.8%
7	Nepal	366	741	49.4%
8	Haiti	324	564	57.4%
9	Mexico	284	2,087	13.6%
10	Venezuela	255	350	72.9%

Total Positive Decisions by Status from Top 10 Countries of Origin, 2013



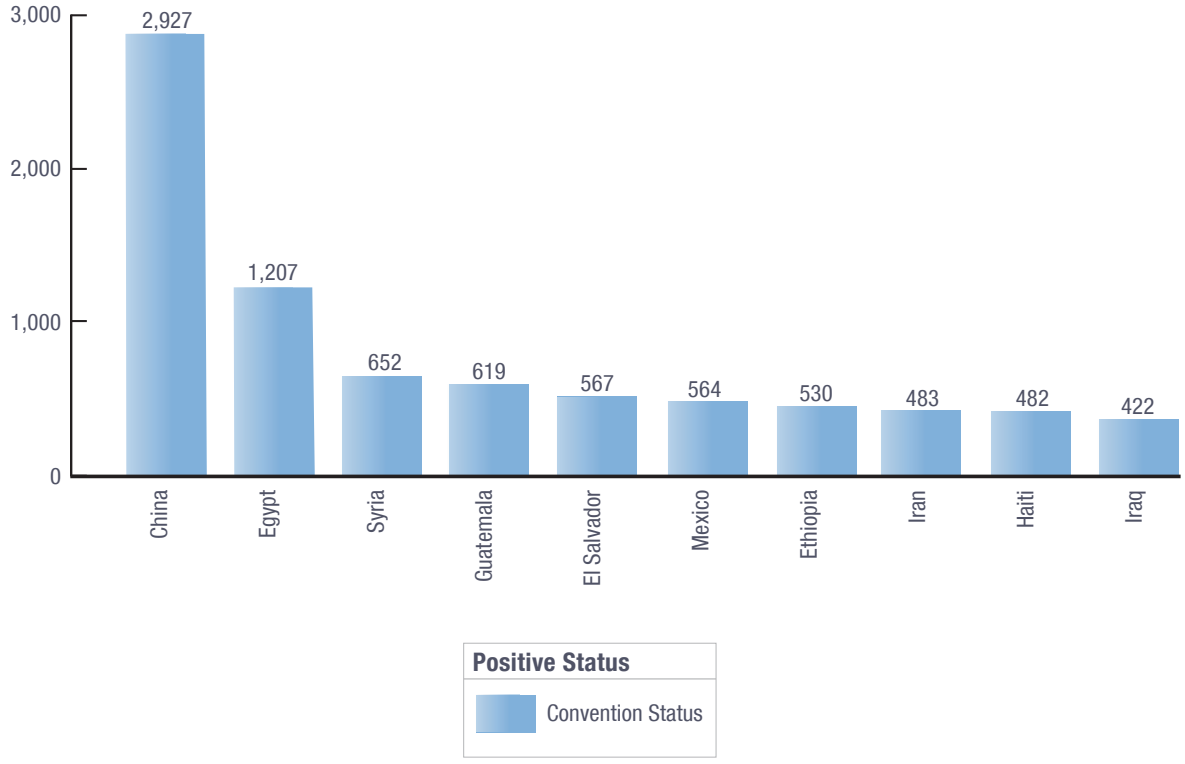
[42] Excluding withdrawn, closed and abandoned claims.

USA.
Fig. 6.c

Positive First-Instance Decisions, Top 10 Countries of Origin in 2014[43]

	Country of Origin	Total Positive	Total Decisions	Rate
1	China	2,927	7,732	37.9%
2	Egypt	1,207	1,380	87.5%
3	Syria	652	782	83.4%
4	Guatemala	619	1,348	45.9%
5	El Salvador	567	1,174	48.3%
6	Mexico	564	2,384	23.7%
7	Ethiopia	530	904	58.6%
8	Iran	483	583	82.8%
9	Haiti	482	894	53.9%
10	Iraq	422	514	82.1%

Total Positive Decisions by Status from Top 10 Countries of Origin, 2014



[43] Excluding withdrawn, closed and abandoned claims.

ANNEXES

ANNEX 1 - Statistical Information on Asylum Aplications and Decisions Made in IGC Participating States

ANNEX 2 - Basic Instruments of International Refugee Law and Human Rights Law: Relevant Extracts

ANNEX 3 - Selected UNHCR Executive Committee Conclusions on International Protection

ANNEX 1

Statistical Information on Asylum Applications and Decisions Made in IGC Participating States

igc

ANNEX 1

EXPLANATORY NOTE

The statistical information presented in this annex is collected by the IGC Secretariat directly from each government. Austria and France are included in all graphs, tables and maps in this annex, wherever the data are available.

Asylum Applications

Data on asylum applications are not available for certain Participating States for the full period covered in this publication. The graphs, maps and tables on asylum applications do not include data for Austria (1992–1998) Greece (1992–2005), Ireland and New Zealand (1992–1996), Spain and Sweden (1992–1993) and the United States (1992).

Data for Germany (1993–2014), the Netherlands (2007–2011) and the United Kingdom covers first applications only.

The Swedish system does not use the concept of repeat applications. Cases are instead re-opened.

Data for Denmark from 1983 to 1997 reflects applications under active consideration, and data for 1998–2012 reflect the gross number of applications received. Since 2001, data include persons who are returned to a safe third country and persons who are transferred or re-transferred to another State under the Dublin Regulations.

Data for the United States only refer to principal applicants making an affirmative application or requesting a reopening of their affirmative application with USCIS. Data refer to cases, not persons.

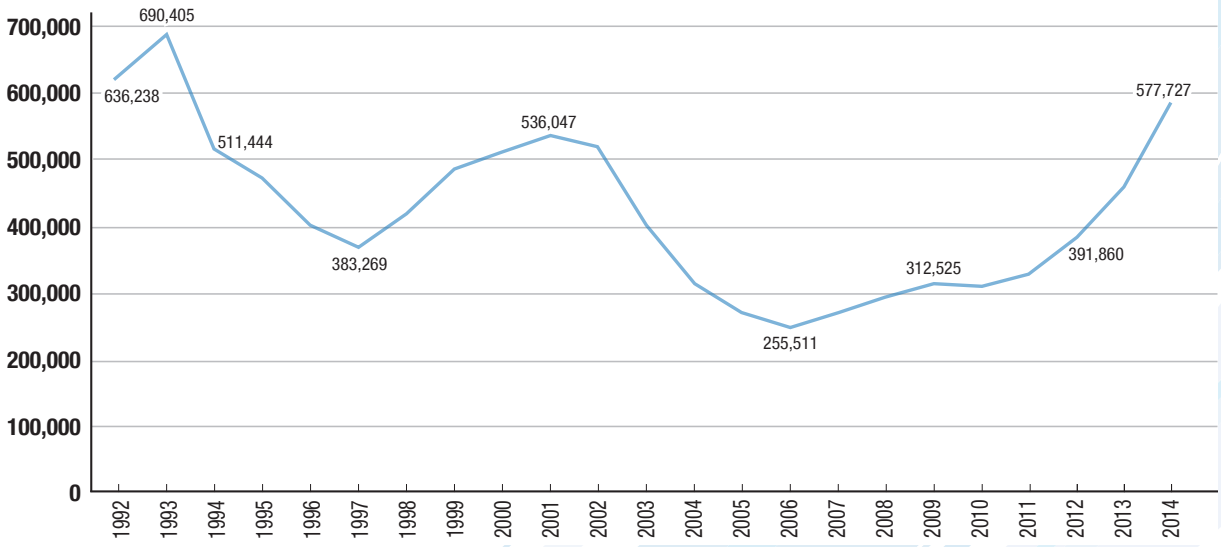
Data for Belgium and France (1992–2002) do not include unaccompanied minors.

Asylum Applications by Unaccompanied Minors

No data are available for the following IGC Participating States: Australia, Canada, Greece, Ireland (2014), the Netherlands (2014), New Zealand and Spain.

1 TOTAL ASYLUM APPLICATIONS IN IGC STATES

1a. Evolution of Asylum Applications in IGC Participating States by Year, 1992–2014 [1]



[1] See explanatory note. For differences with regard to counting applications, please refer to the individual country chapters.

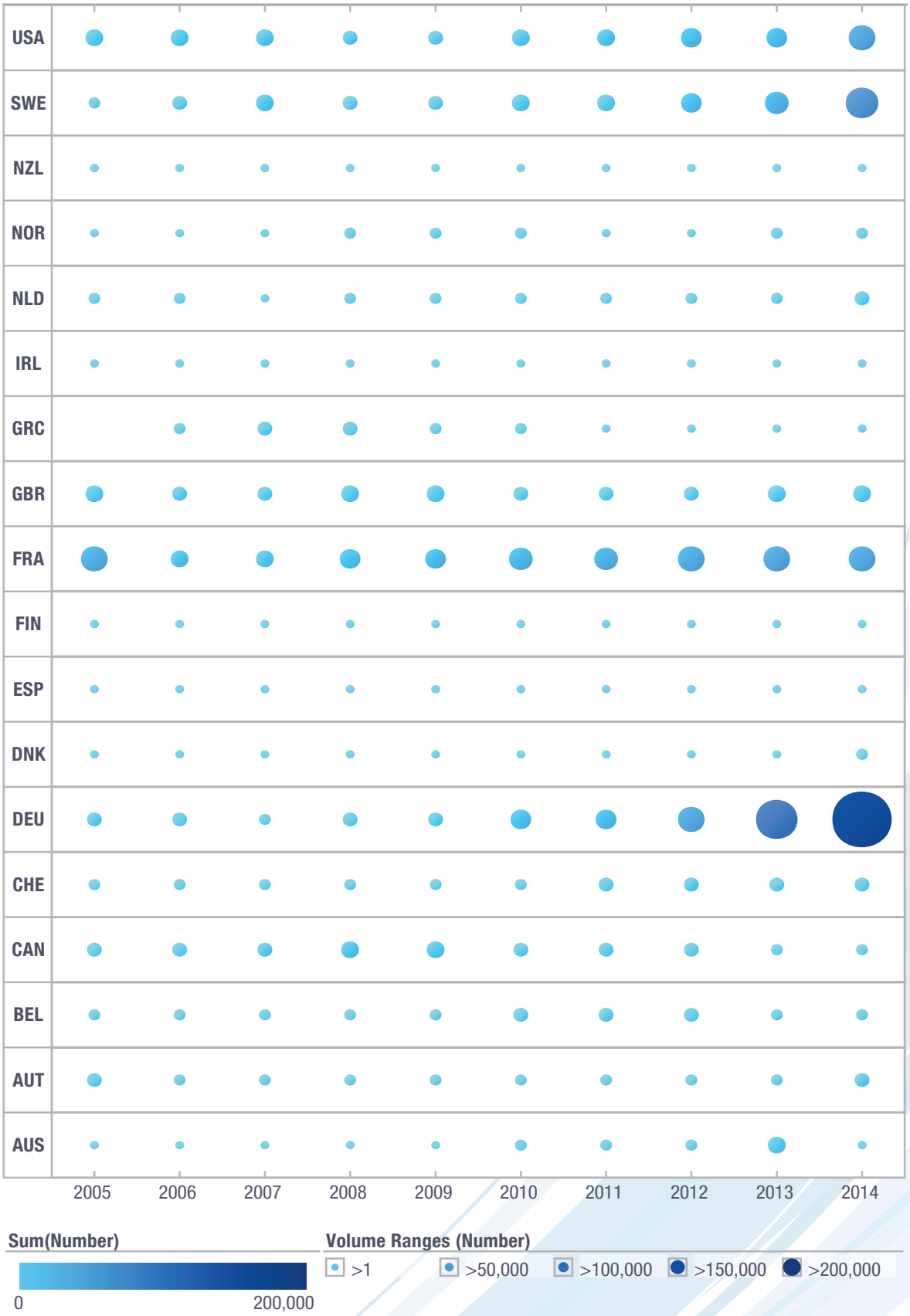
ANNEX 1

1b. Total Asylum Applications by IGC Participating States and by Year, 1992–2014[2]

YEAR	AUS	AUT	BEL	CAN	CHE	DEU	DNK	ESP	FIN	FRA	GBR	GRC	IRL	NLD	NOR	NZL	SWE	USA	GRAND TOTAL
1992	6,090		17,647	37,725	19,109	438,191	13,884		3,634	39,835	34,539			20,356	5,238				636,238
1993	7,215		26,882	21,193	25,827	320,742	14,347		2,023	35,406	28,000			35,399	12,876			160,495	690,405
1994	7,321		14,353	22,053	16,872	127,210	6,651	11,901	836	32,413	42,201			52,576	3,379		18,640	155,038	511,444
1995	7,803		11,420	25,938	18,067	127,937	5,104	5,678	854	25,036	54,988			29,258	1,460		9,047	147,686	470,276
1996	9,961		12,433	25,737	19,418	116,367	5,893	4,730	711	21,122	29,642			22,857	1,778		5,753	124,112	400,514
1997	9,751		11,788	24,326	25,507	104,352	5,092	4,975	977	22,63	41,500		3,883	34,443	2,273	2,669	9,662	79,454	383,289
1998	8,022		21,965	25,379	42,979	98,644	9,370	6,639	1,272	22,990	58,000		4,626	45,217	8,543	2,766	12,844	51,512	420,768
1999	9,430	20,129	35,778	30,897	47,513	95,113	12,331	8,405	3,106	31,855	71,158		7,724	39,299	10,160	1,777	11,231	43,677	479,583
2000	12,430	18,284	42,691	37,852	19,750	78,563	12,200	7,235	3,170	39,775	98,866		10,938	43,895	10,843	1,523	16,303	52,414	506,732
2001	12,790	30,135	24,549	44,705	21,854	88,287	12,512	9,219	1,650	48,660	91,553		10,325	32,579	14,782	1,791	23,515	67,141	536,047
2002	5,875	39,354	18,805	33,468	26,987	71,127	6,068	6,179	3,443	52,877	103,080		11,634	18,667	17,480	1,009	33,016	64,675	513,744
2003	4,286	32,364	16,940	31,899	21,759	50,563	4,593	5,918	3,221	61,993	60,047		7,900	13,402	15,613	846	31,355	43,589	406,288
2004	3,199	24,676	15,357	25,543	15,061	35,607	3,235	5,553	3,861	65,614	40,623		4,766	9,782	7,950	583	23,161	31,191	315,762
2005	3,193	22,471	15,957	19,770	10,795	28,914	2,281	5,049	3,574	59,221	30,841		4,323	12,347	5,402	348	17,530	31,460	273,476
2006	3,522	13,350	11,587	22,967	11,173	21,029	1,960	5,266	2,288	39,332	28,321	12,267	4,314	14,465	5,320	276	24,322	33,752	255,511
2007	3,985	11,879	11,115	28,531	10,844	19,164	2,246	7,477	1,505	35,520	28,299	25,113	3,985	9,731	6,528	248	36,207	32,307	274,684
2008	4,817	12,809	12,252	36,929	16,606	22,085	2,409	4,476	4,035	42,599	31,313	19,884	3,866	15,275	14,431	254	24,353	29,279	297,672
2009	7,385	15,827	17,186	33,250	16,005	27,649	3,855	3,007	5,910	47,686	30,673	15,928	2,689	16,163	17,226	336	24,194	27,556	312,525
2010	12,629	11,022	19,941	23,179	15,567	41,332	5,115	2,739	4,018	52,762	22,644	10,273	1,939	15,148	10,064	340	31,819	30,750	311,281
2011	11,530	14,426	25,479	25,356	22,551	45,739	3,806	3,415	3,088	57,337	25,898	9,311	1,290	14,631	9,053	305	29,648	38,513	341,376
2012	16,116	17,415	21,463	20,502	28,631	64,539	6,184	2,588	3,129	61,468	27,978	9,577	956	13,102	9,785	324	43,887	44,216	391,860
2013	32,521	17,503	15,840	10,390	21,465	109,580	7,557	4,493	3,238	66,251	29,875	8,224	946	17,189	11,983	292	54,259	46,196	457,802
2014	8,992	28,027	17,213	13,453	23,765	173,072	14,815	5,614	3,651	64,536	31,263	9,432	1,448	24,534	11,480	288	81,301	64,843	577,727
Grand Total	208,863	329,671	438,641	621,042	498,105	2,305,806	161,508	120,556	63,194	1,026,925	1,041,302	120,009	87,552	550,305	213,647	15,975	562,047	1,399,856	9,765,004

[2] See explanatory note.

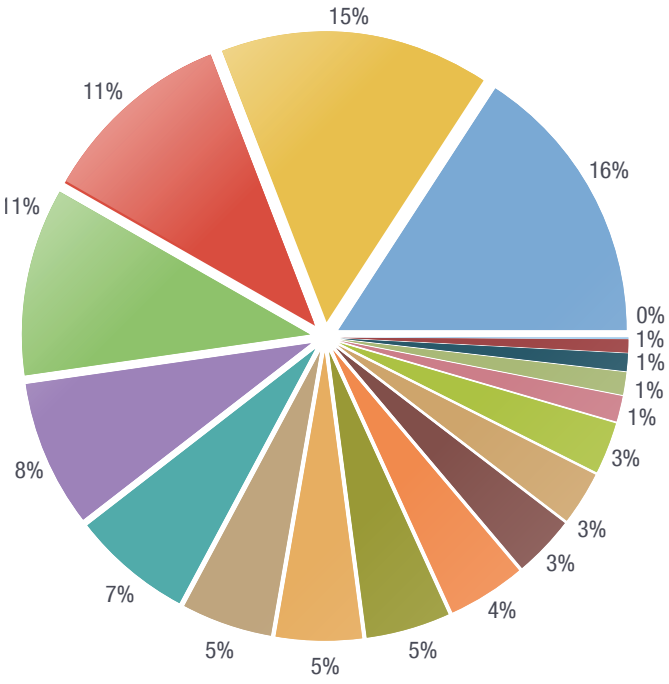
1c. Volume of Total Asylum Applications by IGC Participating States by Year, 2005–2014 [3]



[3] See explanatory note.

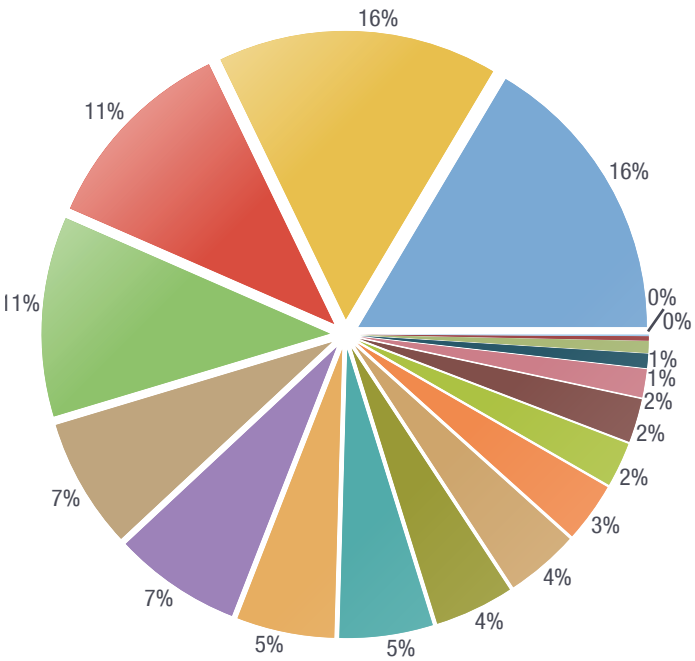
2 DISTRIBUTION OF ASYLUM APPLICATIONS IN IGC STATES

2a. Distribution of Asylum Applications in IGC Participating States, 2005–2014



Receiving Country	Applications	Distribution
Australia	104,690	3%
Austria	164,729	5%
Belgium	168,033	5%
Canada	234,327	7%
Denmark	50,228	1%
Finland	34,436	1%
France	526,712	15%
Germany	553,103	16%
Greece	120,009	3%
Ireland	25,756	1%
Netherlands	152,585	4%
New Zealand	3,011	0%
Norway	101,272	3%
Spain	44,124	1%
Sweden	367,520	11%
Switzerland	177,402	5%
United Kingdom	287,105	8%
United States	378,872	11%
Grand Total	**3,493,914**	

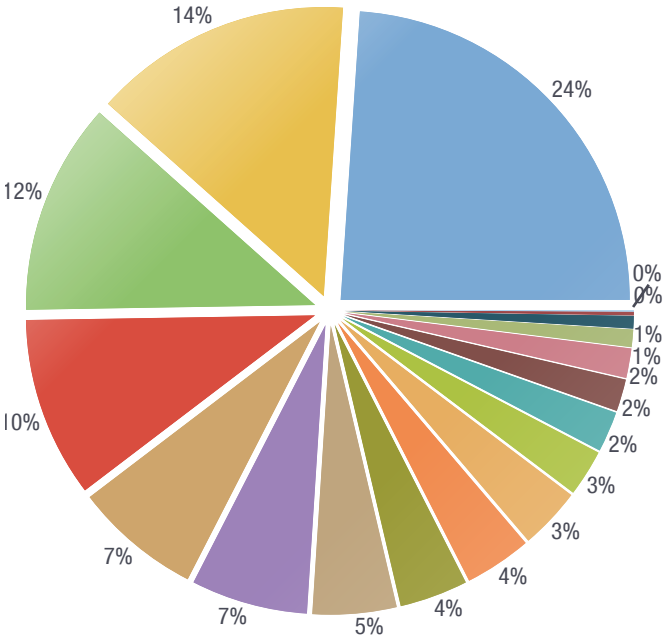
2b. Distribution of Asylum Applications in IGC Participating States, 2012[4]



Receiving Country	Applications	Distribution
Australia	16,116	4%
Austria	17,415	4%
Belgium	21,463	5%
Canada	20,502	5%
Denmark	6,184	2%
Finland	3,129	1%
France	61,468	16%
Germany	64,539	16%
Greece	9,577	2%
Ireland	956	0%
Netherlands	13,102	3%
New Zealand	324	0%
Norway	9,785	2%
Spain	2,588	1%
Sweden	43,887	11%
Switzerland	28,631	7%
United Kingdom	27,978	7%
United States	44,216	11%
Grand Total	**391,860**	

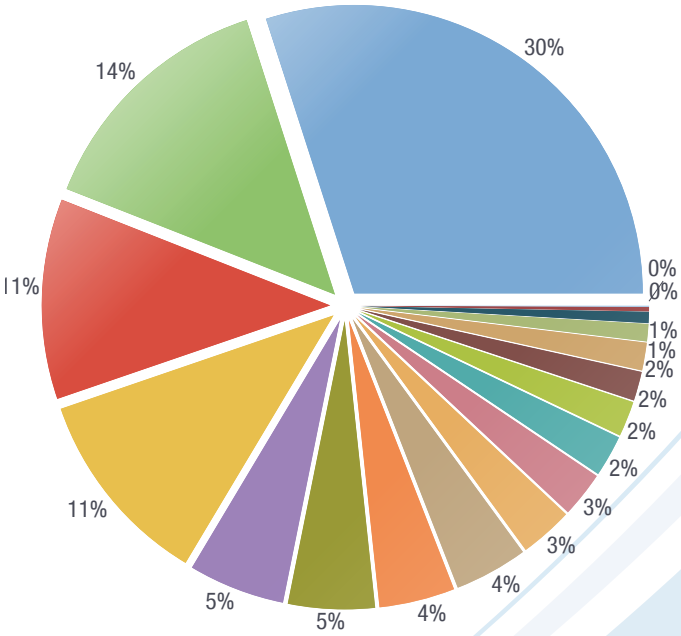
[4] Due to rounding, the total of percentages in the pie chart is below 100%.

2c. Distribution of Asylum Applications in IGC Participating States, 2013[5]



Receiving Country	Applications	Distribution
Australia	32,521	7%
Austria	17,503	4%
Belgium	15,840	3%
Canada	10,390	2%
Denmark	7,557	2%
Finland	3,238	1%
France	66,251	14%
Germany	109,580	24%
Greece	8,224	2%
Ireland	946	0%
Netherlands	17,189	4%
New Zealand	292	0%
Norway	11,983	3%
Spain	4,493	1%
Sweden	54,259	12%
Switzerland	21,465	5%
United Kingdom	29,875	7%
United States	46,196	10%
Grand Total	**457,802**	

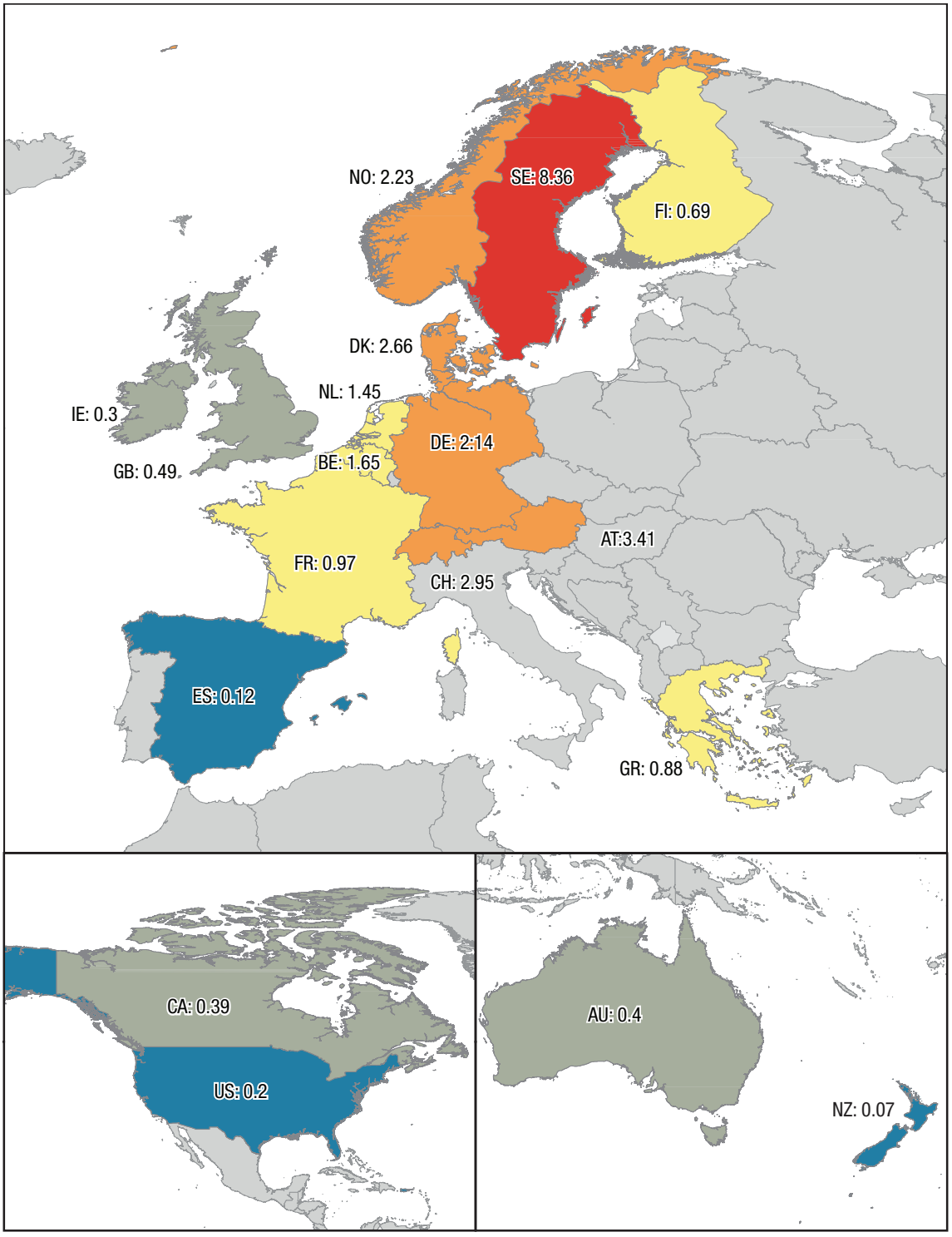
2d. Distribution of Asylum Applications in IGC Participating States, 2014



Receiving Country	Applications	Distribution
Australia	8,992	2%
Austria	28,027	5%
Belgium	17,213	3%
Canada	13,453	2%
Denmark	14,815	3%
Finland	3,651	1%
France	64,536	11%
Germany	173,072	30%
Greece	9,432	2%
Ireland	1,448	0%
Netherlands	24,534	4%
New Zealand	288	0%
Norway	11,480	2%
Spain	5,614	1%
Sweden	81,301	14%
Switzerland	23,765	4%
United Kingdom	31,263	5%
United States	64,843	11%
Grand Total	**577,727**	

[5] Due to rounding, the total of percentages in the pie chart is above 100%.

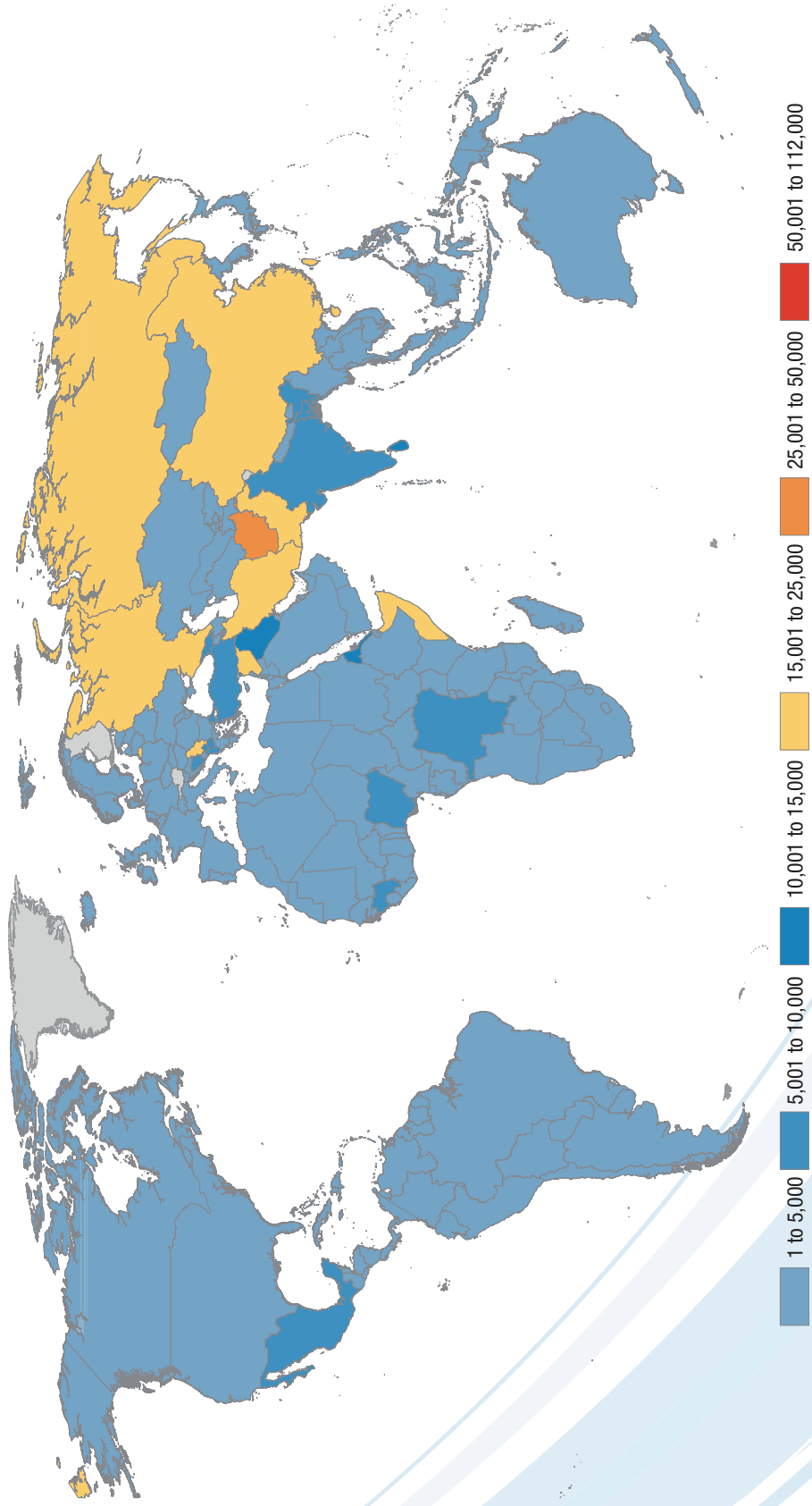
3 TOTAL ASYLUM APPLICATIONS IN IGC STATES RECEIVED PER 1,000 INHABITANTS, 2014[6,7]



[6] See explanatory note.
[7] Source of population data: CIA Factbook July 2014 estimates.

4 ASYLUM APPLICATIONS IN IGC STATES BY COUNTRIES OF ORIGIN[8]

4a. Asylum Applications in IGC Participating States by Countries of Origin, 2012

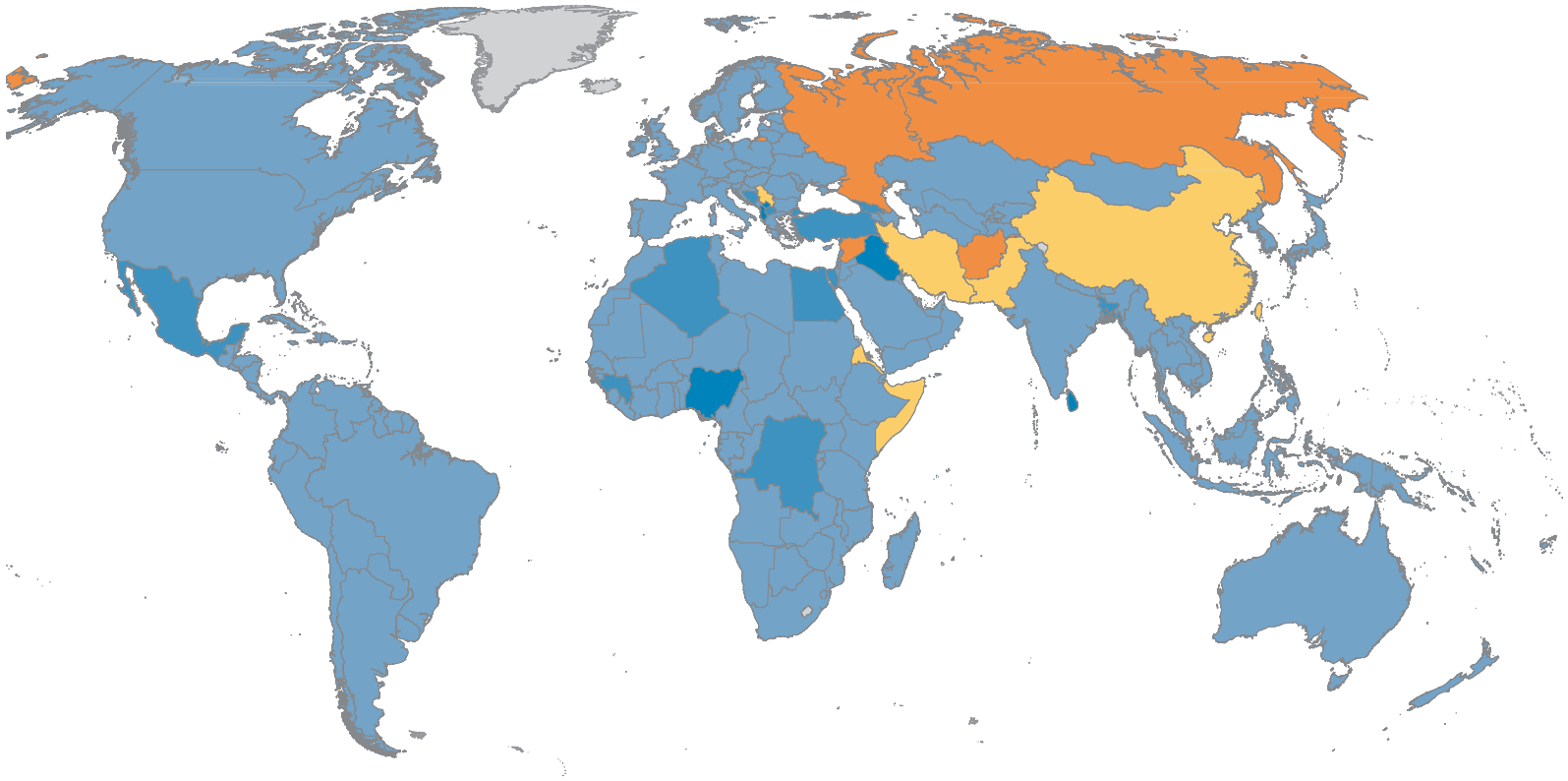


Top 10 Countries of Origin

1	2	3	4	5	6	7	8	9	10
Afghanistan	China	Syria	Pakistan	Russia	Iran	Serbia	Somalia	Iraq	Eritrea
29,755	22,751	22,490	19,116	18,202	16,256	15,687	15,150	13,883	10,968

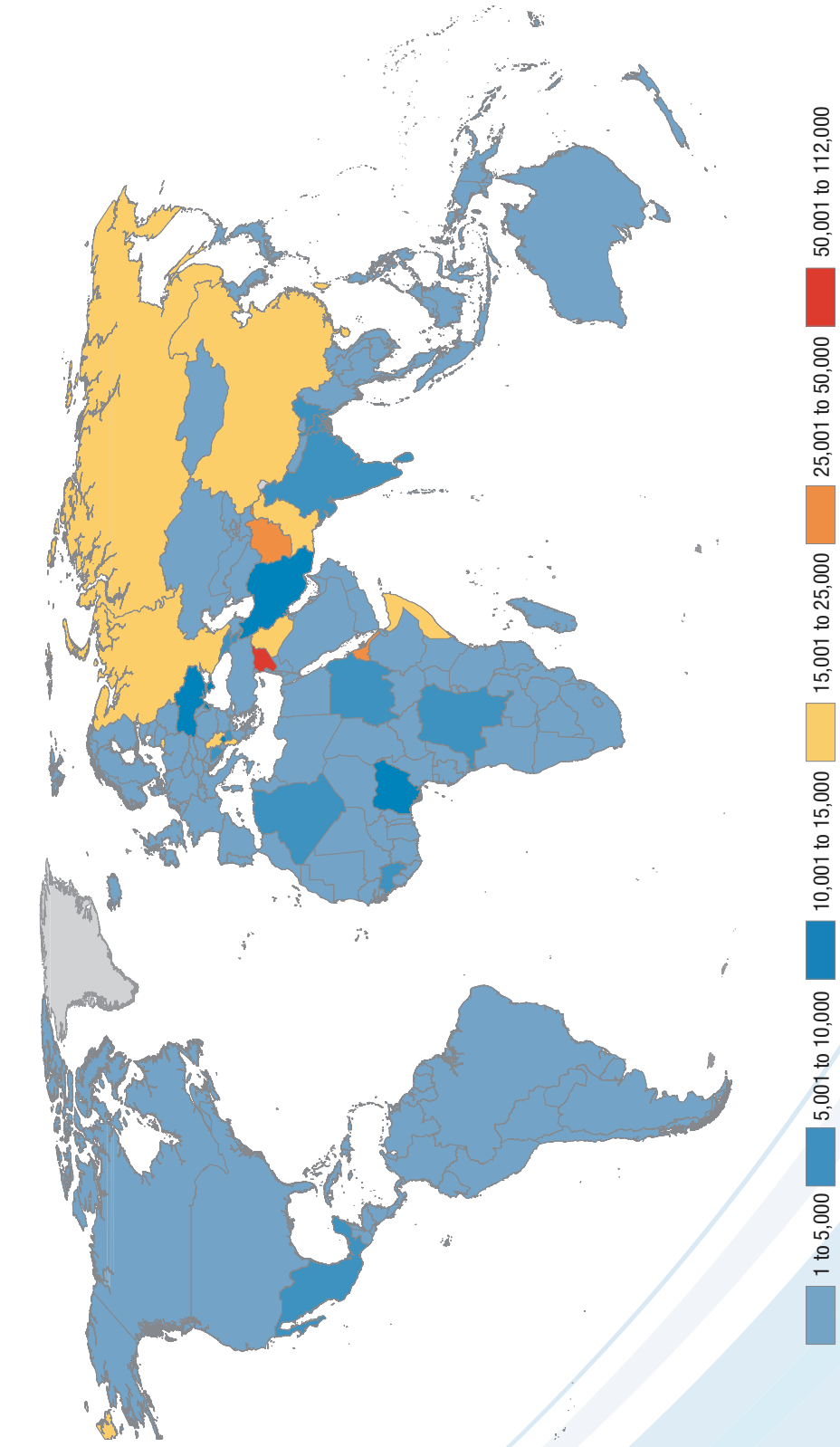
[8] See explanatory note.

ANNEX 1



Top 10 Countries of Origin

1	2	3	4	5	6	7	8	9	10
Syria	Russia	Afghanistan	Iran	China	Pakistan	Eritrea	Somalia	Serbia	Kosovo
45,136	28,606	26,068	20,800	19,245	18,121	17,962	16,955	15,360	13,240

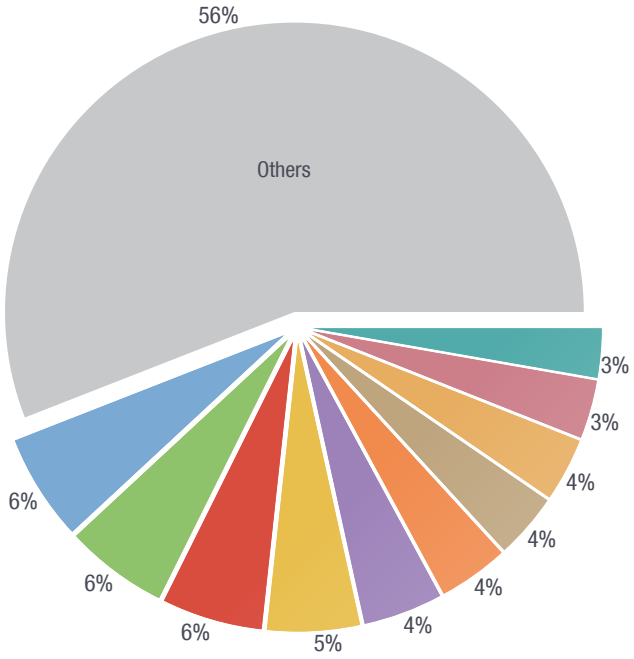


Top 10 Countries of Origin

1	2	3	4	5	6	7	8	9	10
Syria	Eritrea	Afghanistan	Serbia	China	Iraq	Somalia	Albania	Stateless	Pakistan
111,540	46,325	27,003	20,585	20,463	17,502	17,042	16,496	16,415	16,227

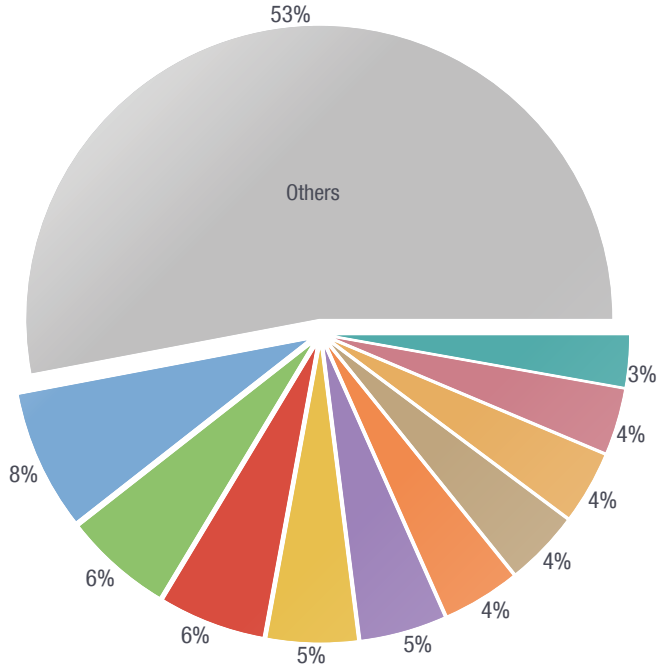
5 DISTRIBUTION OF ASYLUM APPLICATIONS FROM TOP COUNTRIES OF ORIGIN IN IGC PARTICIPATING STATES[9]

5a. Distribution of Asylum Applications in IGC Participating States, Top 10 Countries of Origin, 2005-2014[10]



Rank	Country of Origin	Applications	Distribution
1	Syria	208,482	6%
2	Iraq	200,628	6%
3	Afghanistan	196,752	6%
4	China	180,606	5%
5	Russia	155,485	4%
6	Somalia	136,859	4%
7	Eritrea	126,972	4%
8	Pakistan	123,726	4%
9	Iran	114,112	3%
10	Serbia	95,918	3%

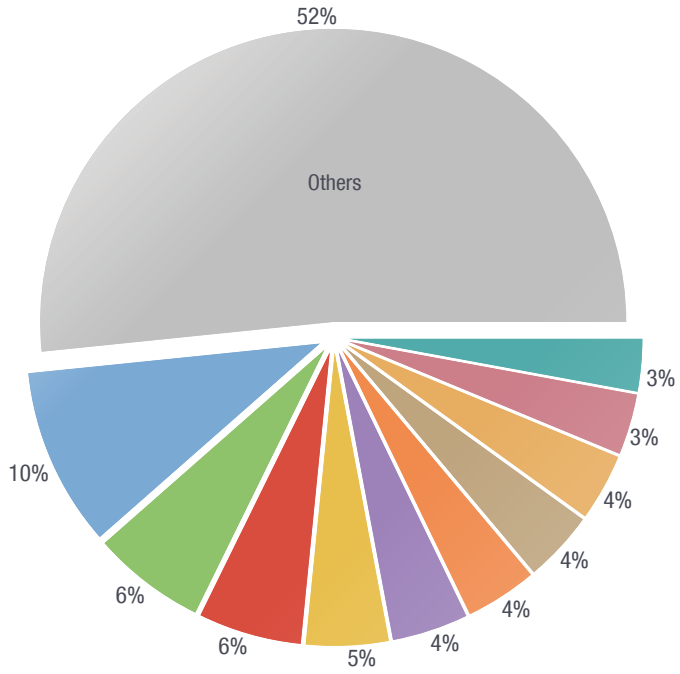
5b. Distribution of Asylum Applications in IGC Participating States, Top 10 Countries of Origin, 2012[11]



Rank	Country of Origin	Applications	Distribution
1	Afghanistan	29,755	8%
2	China	22,751	6%
3	Syria	22,490	6%
4	Pakistan	19,116	5%
5	Russia	18,202	5%
6	Iran	16,256	4%
7	Serbia	15,687	4%
8	Somalia	15,150	4%
9	Iraq	13,883	4%
10	Eritrea	10,968	3%

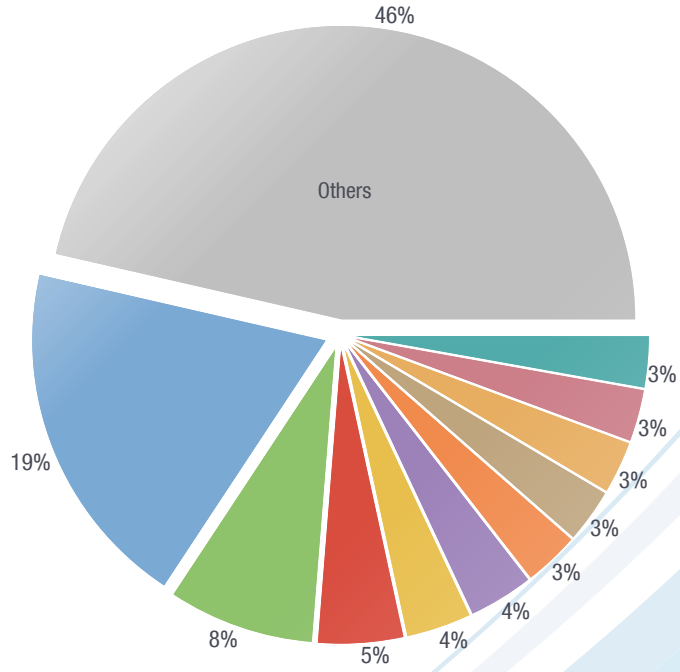
9 See explanatory note.
10 Due to rounding, the total of percentages in the pie chart is above 100%.
11 Due to rounding, the total of percentages in the pie chart is above 100%.

5c. Distribution of Asylum Applications in IGC Participating States, Top 10 Countries of Origin, 2013[12]



Rank	Country of Origin	Applications	Distribution
1	Syria	45,136	10%
2	Russia	28,606	6%
3	Afghanistan	26,068	6%
4	Iran	20,800	5%
5	China	19,245	4%
6	Pakistan	18,121	4%
7	Eritrea	17,962	4%
8	Somalia	16,955	4%
9	Serbia	15,360	3%
10	Kosovo	13,240	3%

5d. Distribution of Asylum Applications in IGC Participating States, Top 10 Countries of Origin, 2014[13]

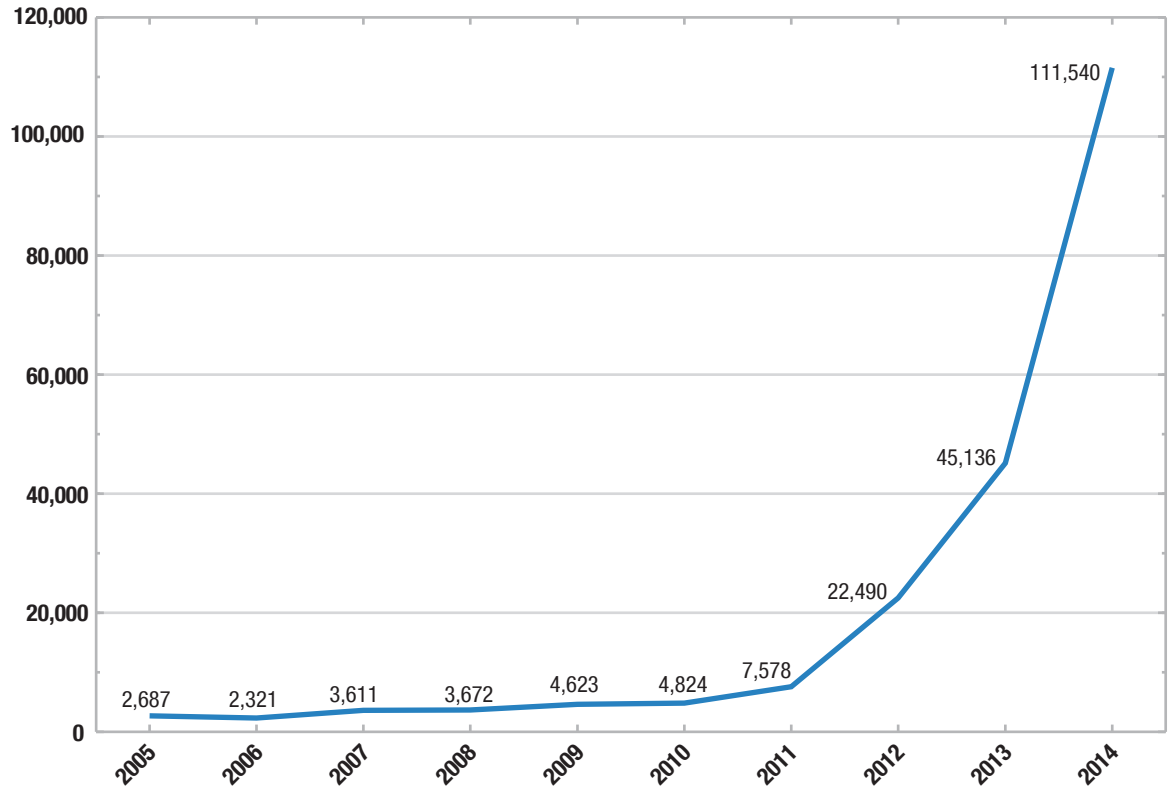


Rank	Country of Origin	Applications	Distribution
1	Syria	111,540	19%
2	Eritrea	46,325	8%
3	Afghanistan	27,003	5%
4	Serbia	20,585	4%
5	China	20,464	4%
6	Iraq	17,502	3%
7	Somalia	17,040	3%
8	Albania	16,496	3%
9	Stateless	16,408	3%
10	Pakistan	16,228	3%

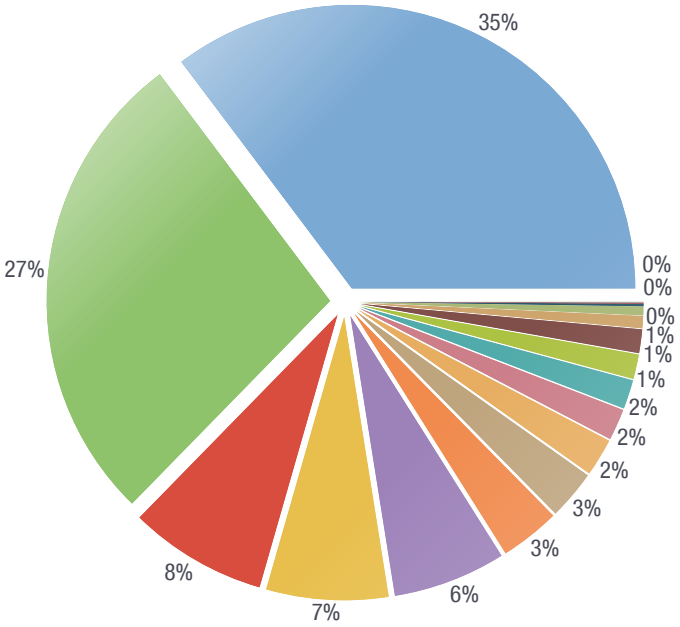
[12] Due to rounding, the total of percentages in the pie chart is above 100%.
[13] Due to rounding, the total of percentages in the pie chart is above 100%.

6 ASYLUM APPLICATIONS RECEIVED FROM SELECTED COUNTRIES OF ORIGIN IN IGC STATES[14]

6.1.a. Evolution of Asylum Applications from Syria in IGC Participating States by Year, 2005–2014



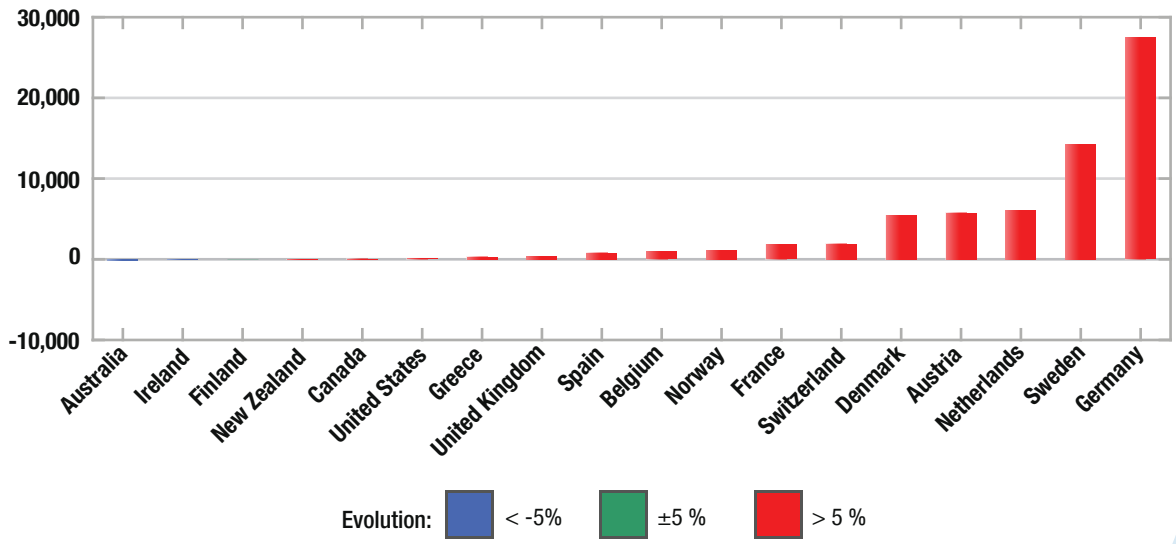
6.1.b. Distribution of Asylum Applications from Syria in IGC Participating States, 2014[15]



Receiving Country	Number	Percentage
Germany	39,332	35.3%
Sweden	30,583	27.4%
Netherlands	8,789	7.9%
Austria	7,754	7.0%
Denmark	7,185	6.4%
Switzerland	3,819	3.4%
France	3,141	2.8%
United Kingdom	2,404	2.2%
Norway	1,999	1.8%
Belgium	1,854	1.7%
United States	1,570	1.4%
Spain	1,510	1.4%
Greece	778	0.7%
Canada	558	0.5%
Finland	149	0.1%
Australia	78	0.1%
Ireland	25	0.0%
New Zealand	12	0.0%

[14] See explanatory note.
[15] Due to rounding, the total of percentages in the pie chart is above 100%.

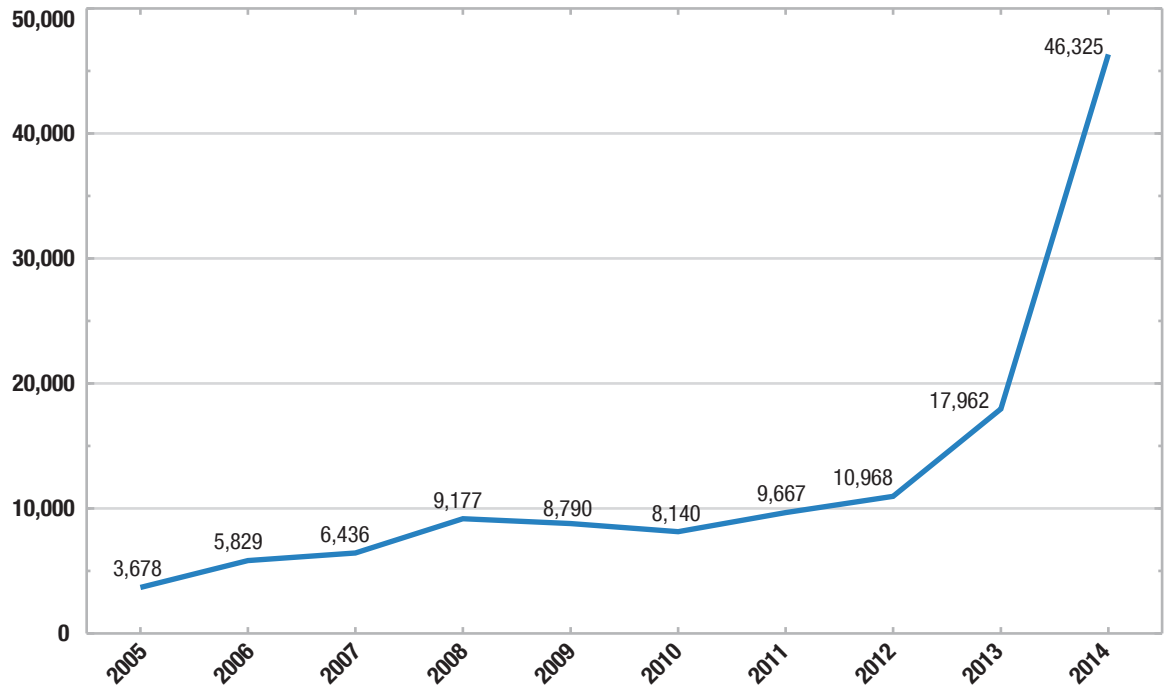
6.1.c. Evolution of Asylum Applications from Syria in IGC Participating States, 2014 Compared to 2013



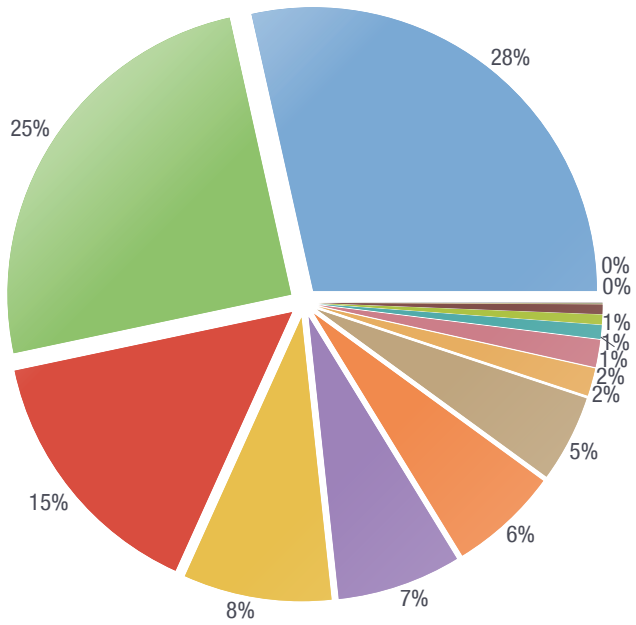
Jan-Dec 2013	Jan-Dec 2014	Evolution	Evolution %
45,136	111,540	66,404	147%

Receiving Country	Jan-Dec 2013	Jan-Dec 2014	Evolution	Evolution %
Germany	11,851	39,332	27,481	232%
Sweden	16,317	30,583	14,266	87%
Netherlands	2,706	8,789	6,083	225%
Austria	1,991	7,754	5,763	289%
Denmark	1,710	7,185	5,475	320%
Switzerland	1,901	3,819	1,918	101%
France	1,314	3,141	1,827	139%
United Kingdom	2,020	2,404	384	19%
Norway	856	1,999	1,143	134%
Belgium	877	1,854	977	111%
United States	1,479	1,570	91	6%
Spain	724	1,510	786	109%
Greece	481	778	297	62%
Canada	495	558	63	13%
Finland	149	149	0	0%
Australia	217	78	-139	-64%
Ireland	38	25	-13	-34%
New Zealand	10	12	2	-20%

6.2.a. Evolution of Asylum Applications from Eritrea in IGC Participating States by Year, 2005–2014



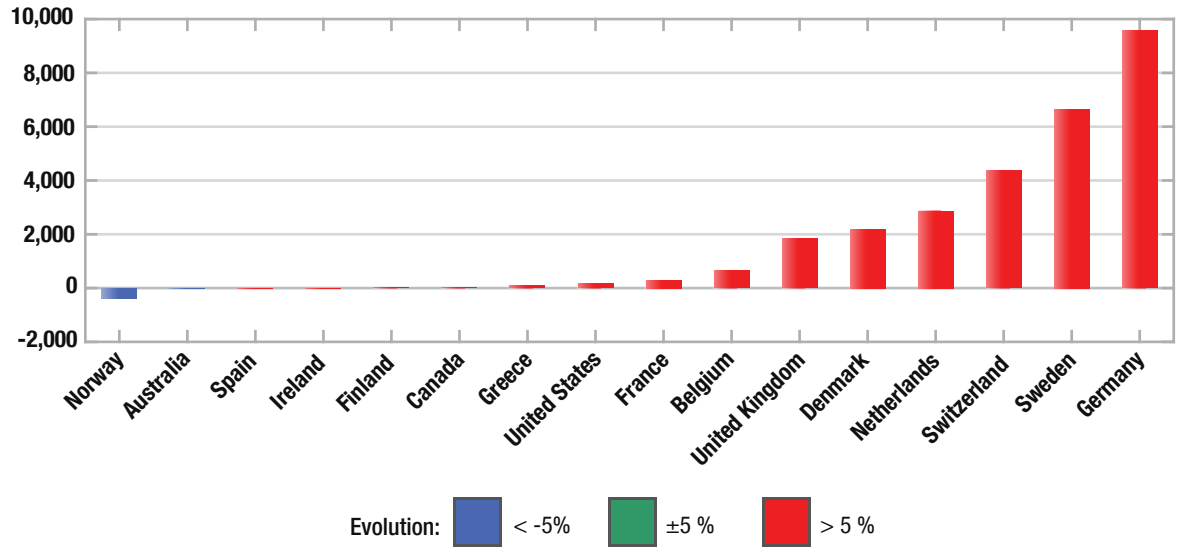
6.2.b. Distribution of Asylum Applications from Eritrea in IGC Participating States, 2014[16]



Receiving Country	Number	Percentage
Germany	13,198	28.5%
Sweden	11,499	24.8%
Switzerland	6,923	14.9%
Netherlands	3,908	8.4%
United Kingdom	3,271	7.1%
Norway	2,882	6.2%
Denmark	2,293	4.9%
France	730	1.6%
Belgium	716	1.5%
United States	359	0.8%
Greece	256	0.6%
Canada	252	0.5%
Australia	17	0.0%
Finland	9	0.0%
Spain	8	0.0%
Ireland	4	0.0%
New Zealand	0	0.0%

[16] Due to rounding, the total of percentages in the pie chart is above 100%.

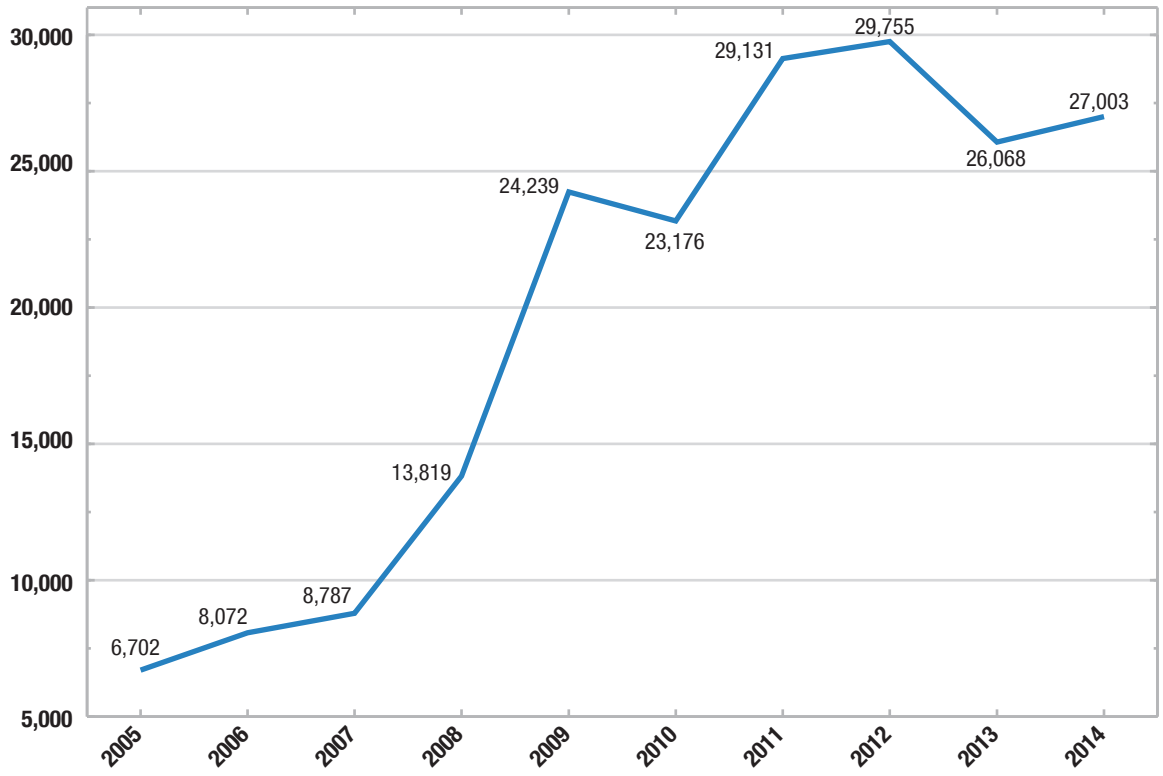
6.2.c. Evolution of Asylum Applications from Eritrea in IGC Participating States, 2014 Compared to 2013



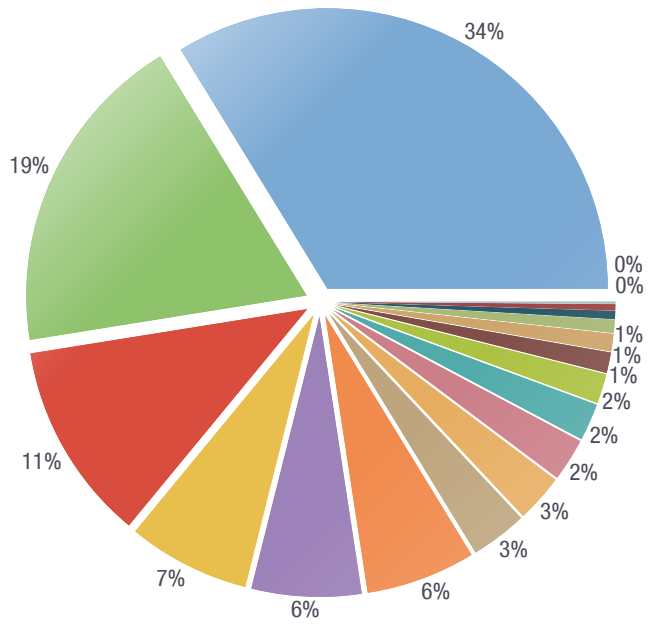
Jan-Dec 2013	Jan-Dec 2014	Evolution	Evolution %
17,962	46,325	28,363	158%

Receiving Country	Jan-Dec 2013	Jan-Dec 2014	Evolution	Evolution %
Germany	3,616	13,198	9,582	265%
Sweden	4,844	11,499	6,655	137%
Switzerland	2,563	6,923	4,360	170%
Netherlands	1,039	3,908	2,869	276%
United Kingdom	1,431	3,271	1,840	129%
Norway	3,258	2,882	-376	-12%
Denmark	98	2,293	2,195	2,240%
France	431	730	299	69%
Belgium	66	716	650	985%
United States	181	359	178	98%
Greece	158	256	98	62%
Canada	230	252	22	10%
Australia	37	17	-20	-54%
Finland	2	9	7	350%
Spain	7	8	1	14%
Ireland	1	4	3	300%

6.3.a. Evolution of Asylum Applications from Afghanistan in IGC Participating States by Year, 2005–2014



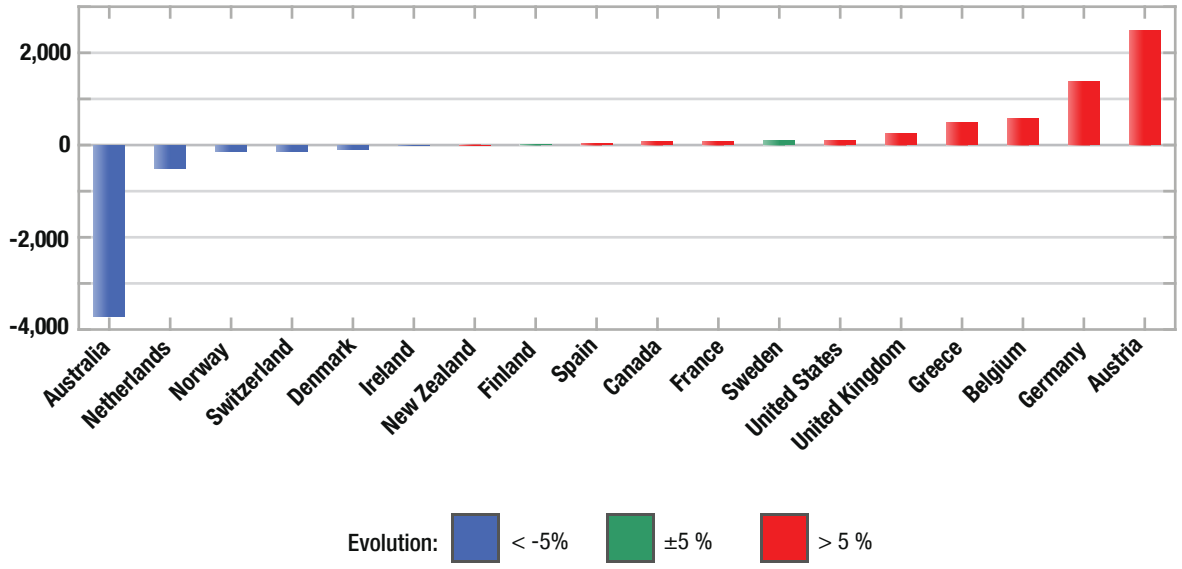
6.3.b. Distribution of Asylum Applications from Afghanistan in IGC Participating States, 2014[17]



Receiving Country	Number	Percentage
Germany	9,115	33.8%
Austria	5,070	18.8%
Sweden	3,104	11.5%
Belgium	1,907	7.1%
United Kingdom	1,709	6.3%
Greece	1,708	6.3%
Netherlands	879	3.3%
Switzerland	747	2.8%
France	667	2.5%
Norway	579	2.1%
Canada	461	1.7%
Denmark	321	1.2%
United States	273	1.0%
Finland	205	0.8%
Australia	127	0.5%
Spain	97	0.4%
Ireland	25	0.1%
New Zealand	9	0.0%

[17] Due to rounding, the total of percentages in the pie chart is below 100%.

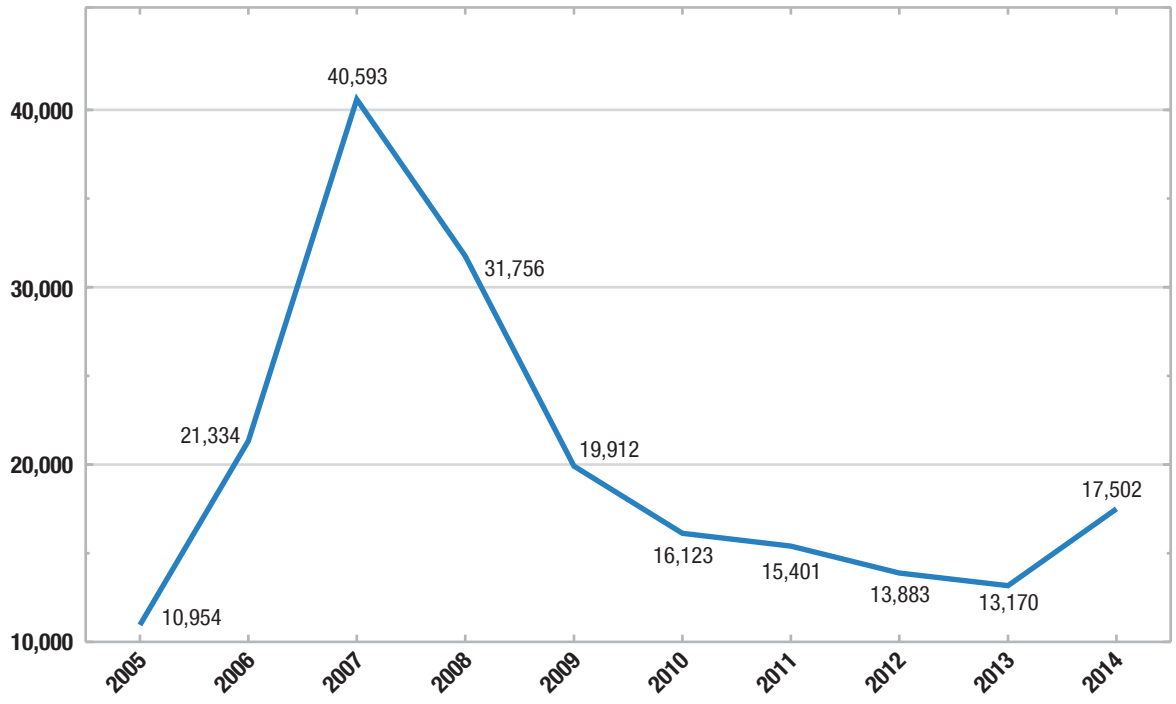
6.3.c. Evolution of Asylum Applications from Afghanistan in IGC Participating States, 2014 Compared to 2013



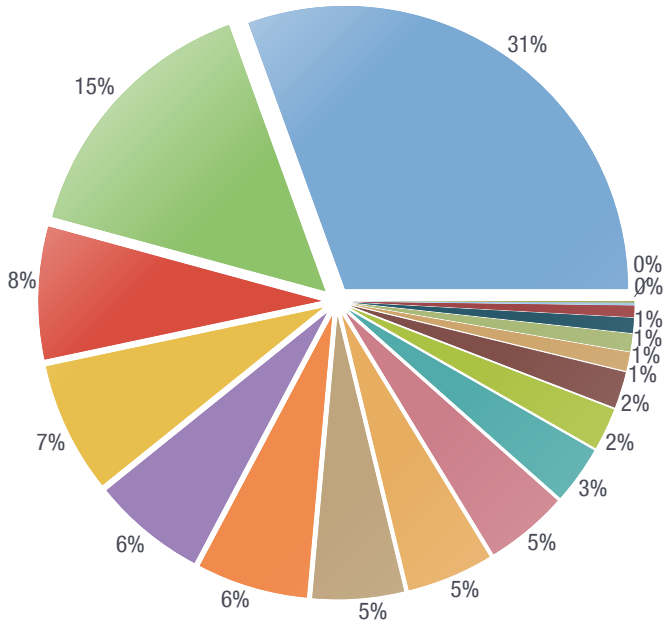
Jan-Dec 2013	Jan-Dec 2014	Evolution	Evolution %
26,068	27,003	935	4%

Receiving Country	Jan-Dec 2013	Jan-Dec 2014	Evolution	Evolution %
Germany	7,735	9,115	1,380	18%
Austria	2,589	5,070	2,481	96%
Sweden	3,011	3,104	93	3%
Belgium	1,327	1,907	580	44%
United Kingdom	1,456	1,709	253	17%
Greece	1,223	1,708	485	40%
Netherlands	1,382	879	-503	-36%
Switzerland	892	747	-145	-16%
France	590	667	77	13%
Norway	726	579	-147	-20%
Canada	386	461	75	19%
Denmark	426	321	-105	-25%
United States	175	273	98	56%
Finland	199	205	6	3%
Australia	3,846	127	-3,719	-97%
Spain	66	97	31	47%
Ireland	32	25	-7	-22%
New Zealand	7	9	2	2.9%

6 4.a. Evolution of Asylum Applications from Iraq in IGC Participating States by Year, 2005–2014



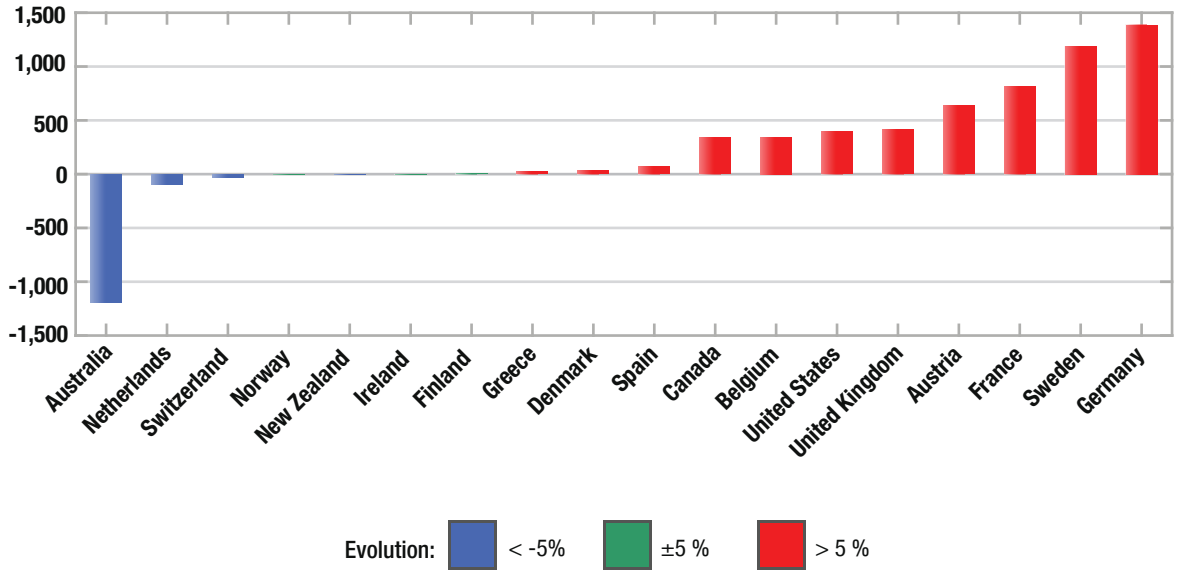
6.4.b. Distribution of Asylum Applications from Iraq in IGC Participating States, 2014[18]



Receiving Country	Number	Percentage
Germany	5,345	30.5%
Sweden	2,666	15.2%
Netherlands	1,322	7.6%
United States	1,306	7.5%
Belgium	1,131	6.5%
Austria	1,107	6.3%
France	912	5.2%
United Kingdom	865	4.9%
Finland	826	4.7%
Canada	576	3.3%
Australia	421	2.4%
Switzerland	363	2.1%
Norway	186	1.1%
Greece	174	1.0%
Denmark	150	0.9%
Spain	115	0.7%
Ireland	26	0.1%
New Zealand	11	0.0%

[18] Due to rounding, the total of percentages in the pie chart is below 100%.

6.4.c. Evolution of Asylum Applications from Iraq in IGC Participating States, 2014 Compared to 2013



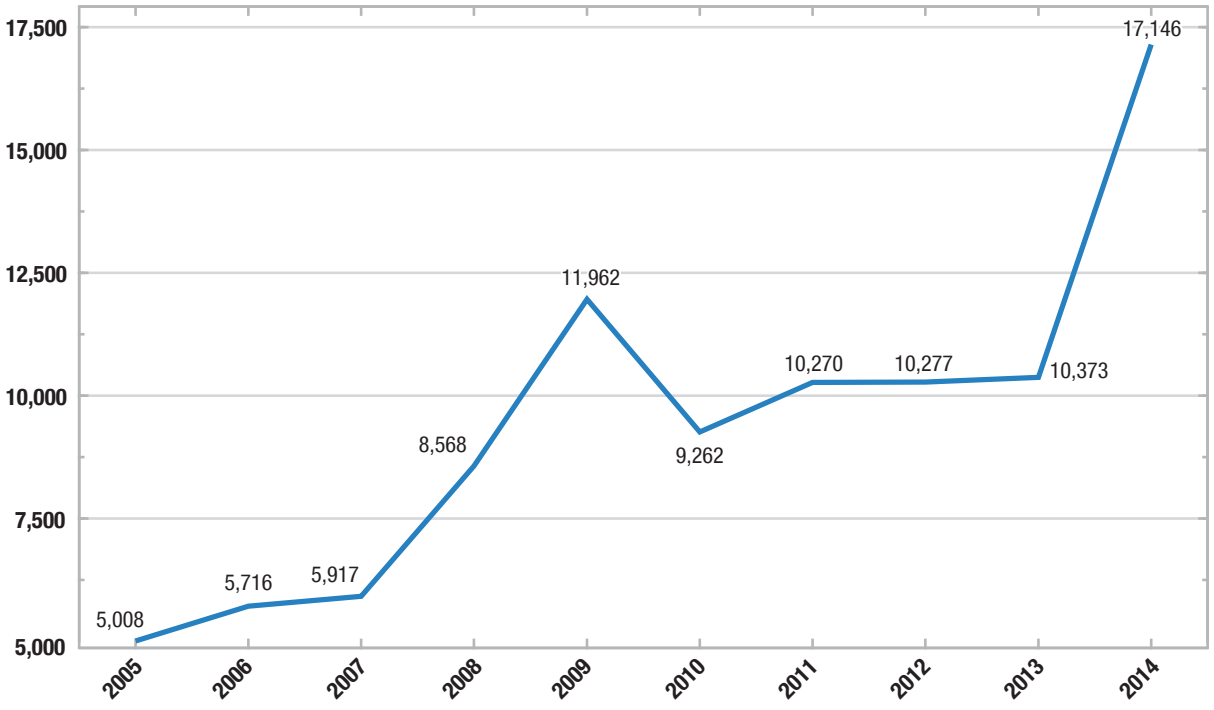
Evolution: < -5% ±5 % > 5 %

Jan-Dec 2013	Jan-Dec 2014	Evolution	Evolution %
13,170	17,502	4,332	33%

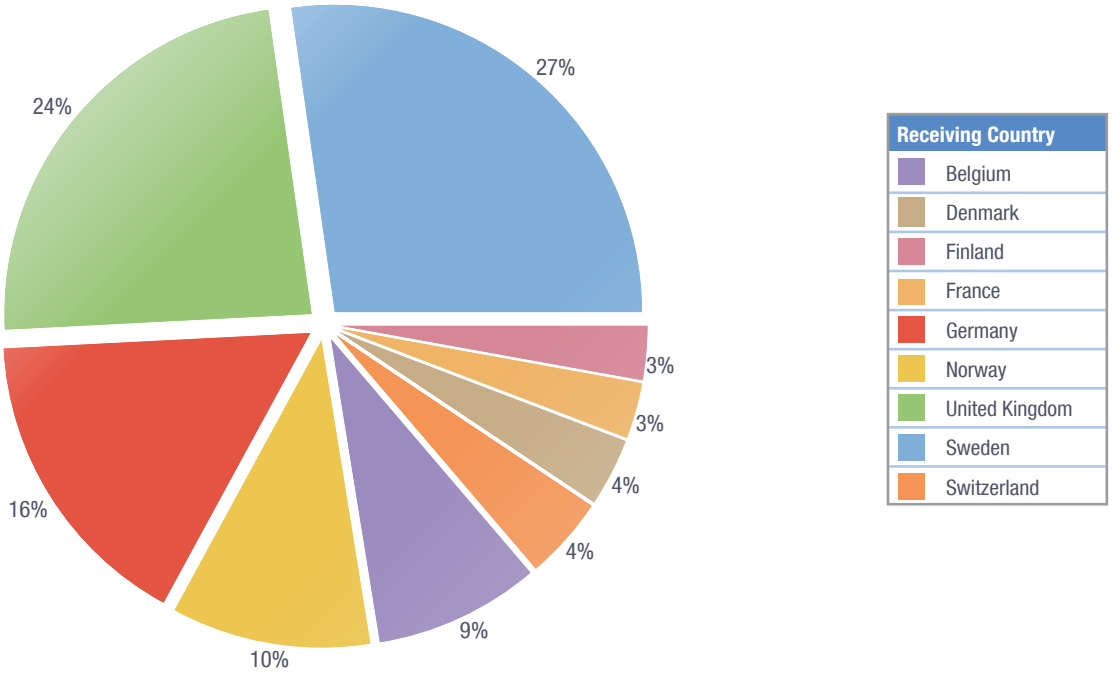
Receiving Country	Jan-Dec 2013	Jan-Dec 2014	Evolution	Evolution %
Germany	3,958	5,345	1,387	35%
Sweden	1,476	2,666	1,190	81%
Netherlands	1,418	1,322	-96	-7%
United States	909	1,306	397	44%
Belgium	787	1,131	344	44%
Austria	468	1,107	639	137%
France	97	912	815	840%
United Kingdom	450	865	415	92%
Finland	819	826	7	1%
Canada	237	576	339	143%
Australia	1,617	421	-1,196	-74%
Switzerland	397	363	-34	-9%
Norway	191	186	-5	-3%
Greece	148	174	26	18%
Denmark	113	150	37	33%
Spain	43	115	72	167%
Ireland	27	26	-1	-4%
New Zealand	15	11	-7	-27%

7 ASYLUM APPLICATIONS BY UNACCOMPANIED MINORS IN IGC STATES[19]

7a. Evolution of Total Asylum Applications by Unaccompanied Minors in IGC Participating States by Year, 2005–2014

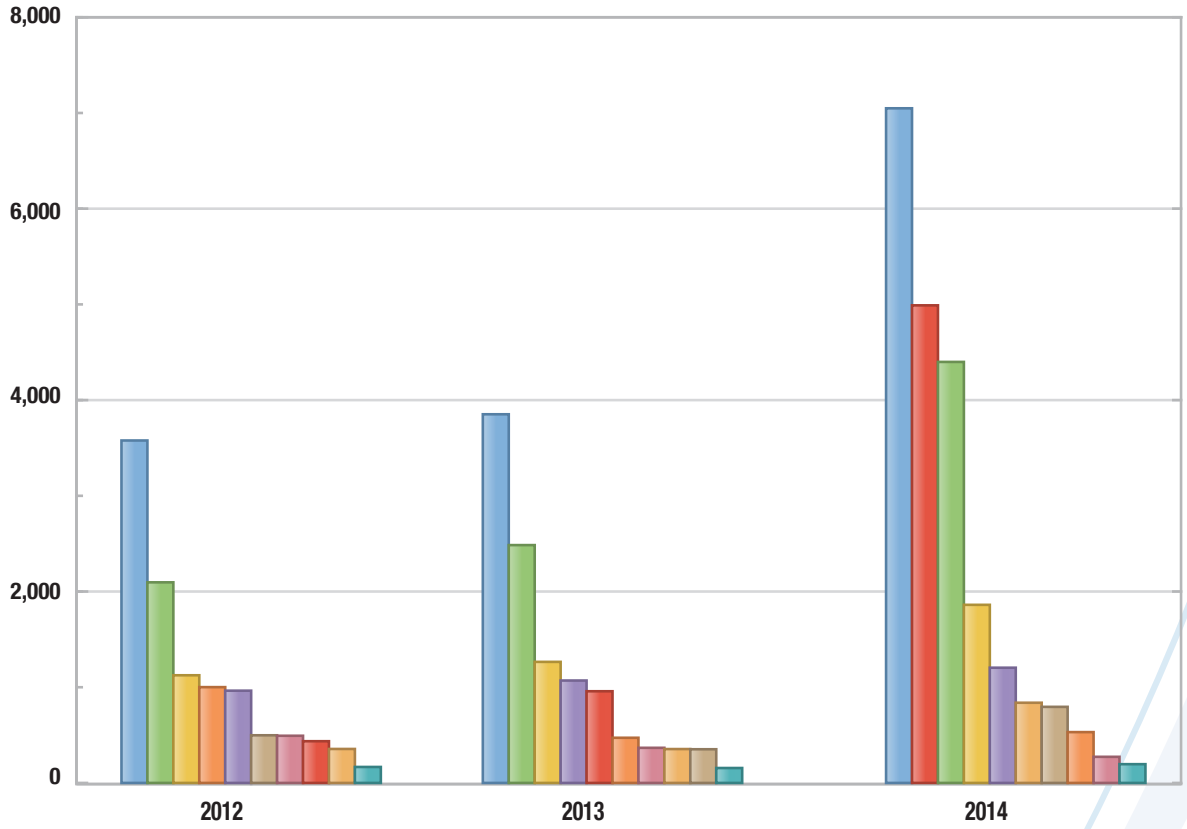


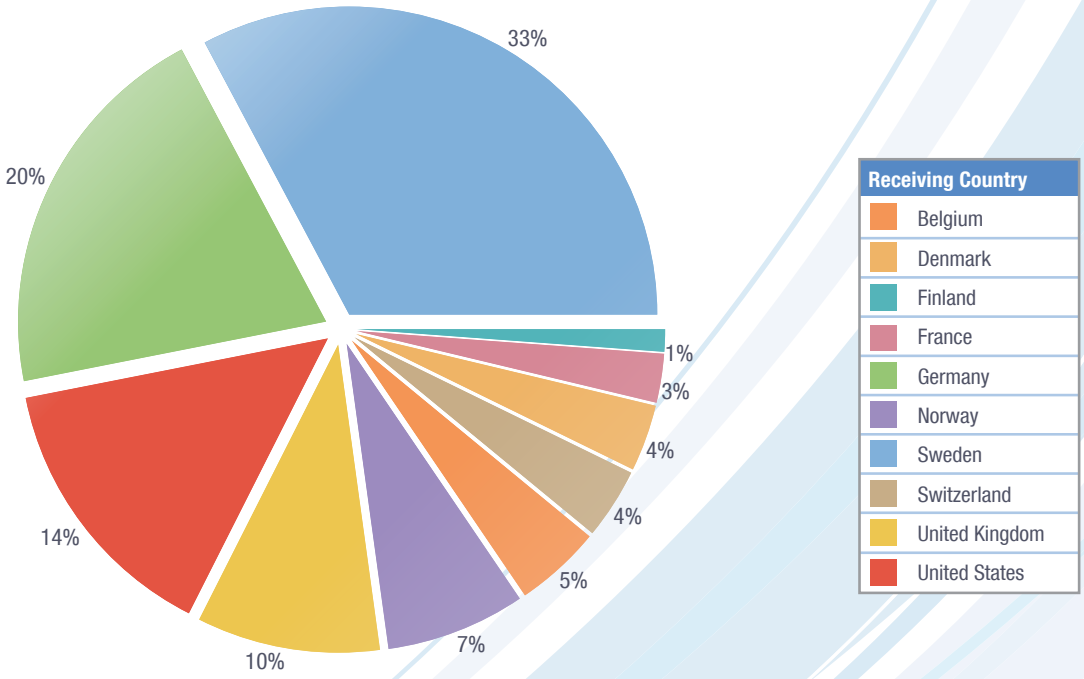
7b. Distribution of Total Asylum Applications by Unaccompanied Minors in IGC Participating States by Year, 2005–2014



[19] See explanatory note.

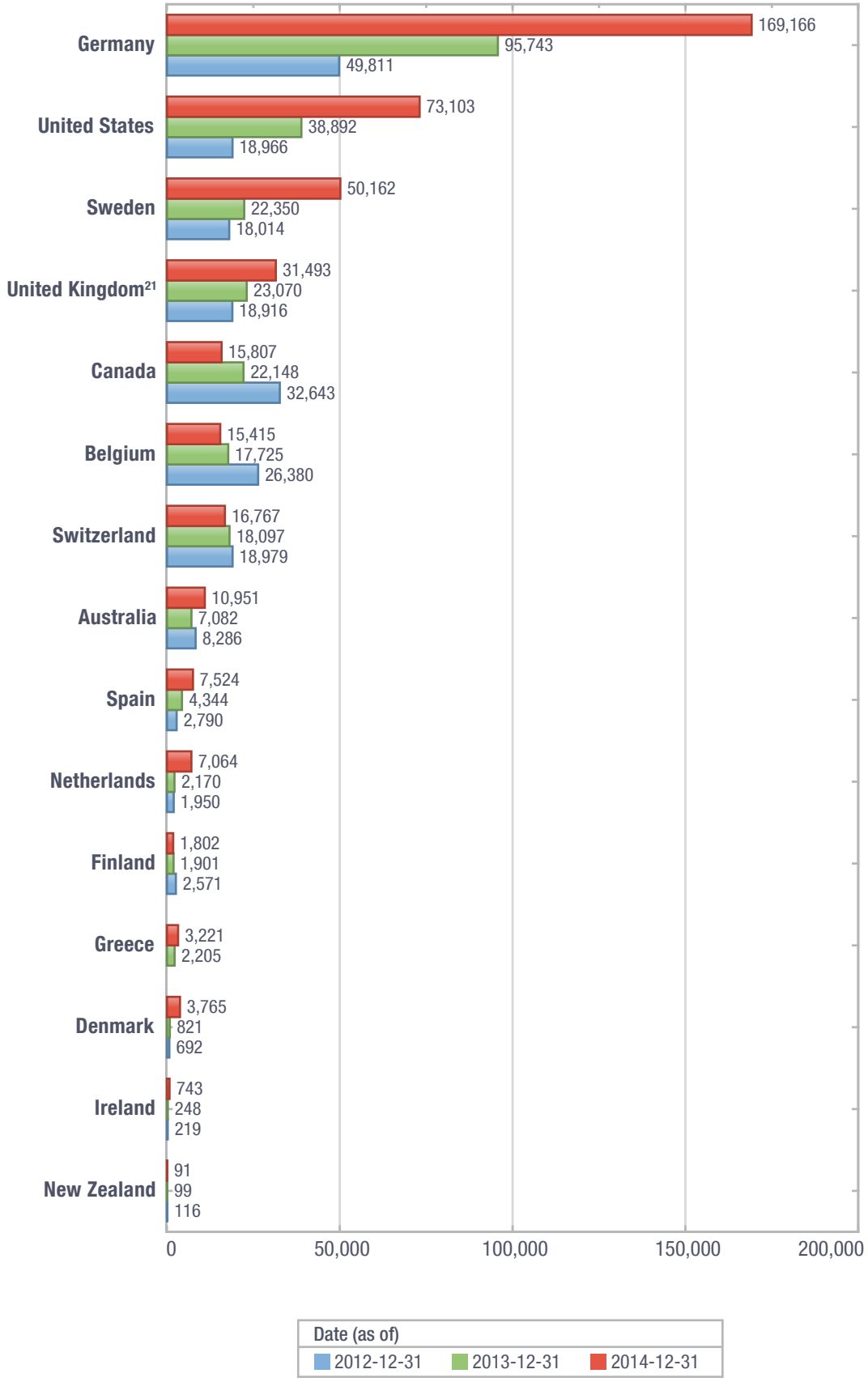
7c. Distribution of Total Asylum Applications by Unaccompanied Minors in IGC Participating States, 2012–2014 [20]





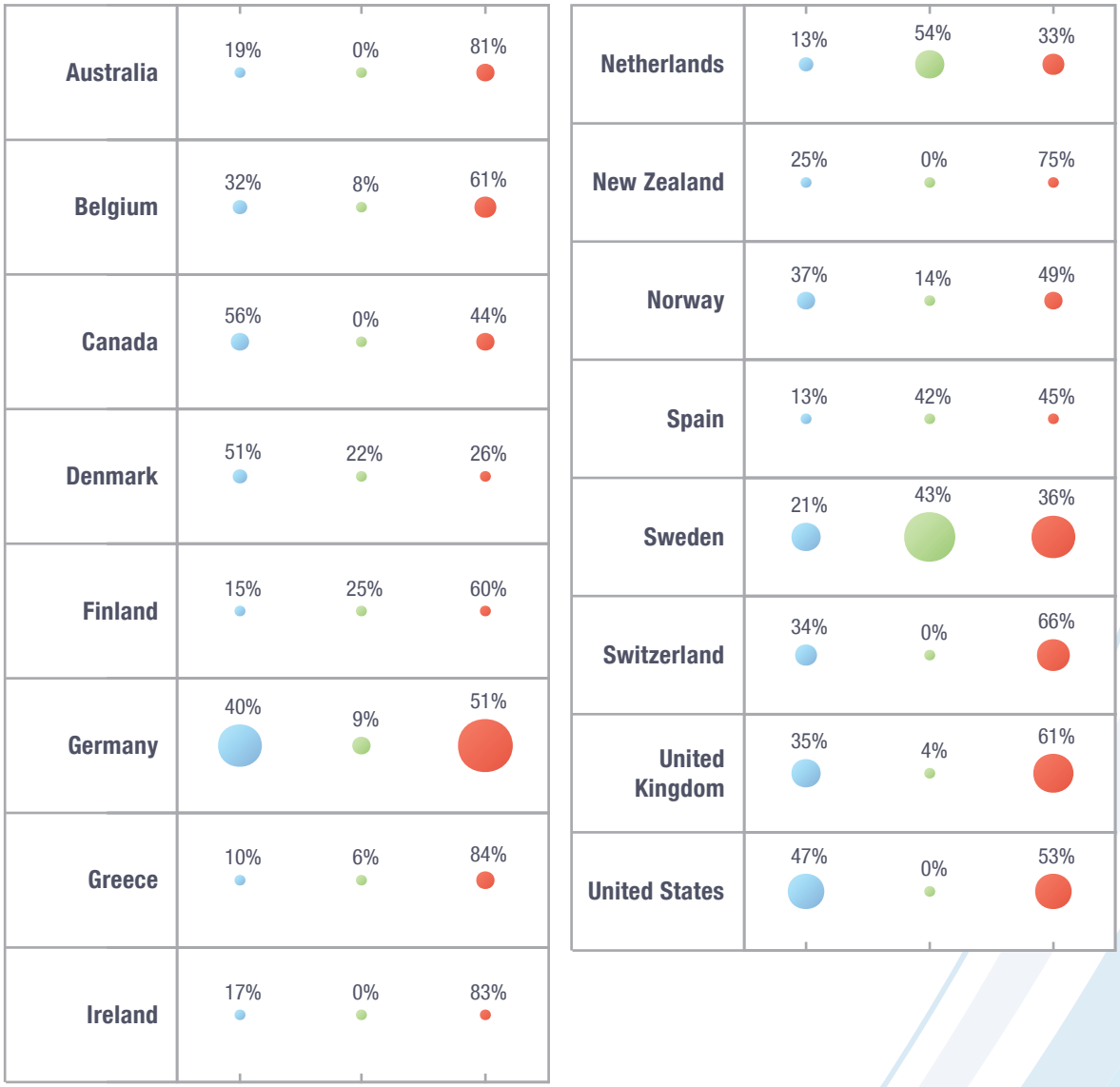
[20] Due to rounding, the total of percentages in the pie chart is above 100%.

8 TOTAL PENDING CASES IN THE FIRST INSTANCE OF THE ASYLUM PROCEDURE IN IGC STATES, AS OF 31 DECEMBER 2012, 2013 AND 2014



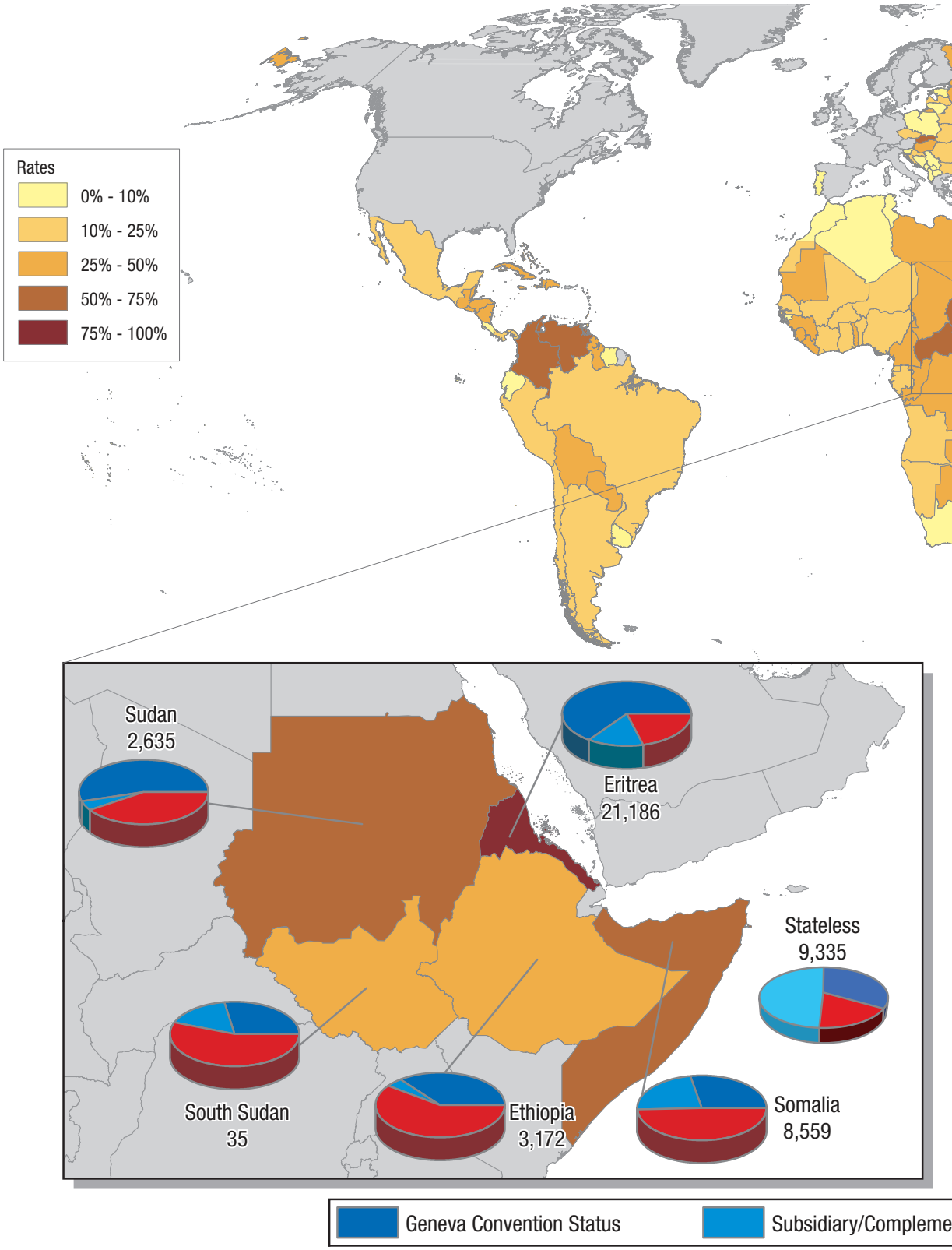
[21] Figures for December 2014 onwards exclude pending applications that have been withdrawn. This reflects a change in the Eurostat guidelines.

9 TOTAL FIRST-INSTANCE ASYLUM DECISIONS IN IGC STATES, PERCENTAGES BY CATEGORY, 2014

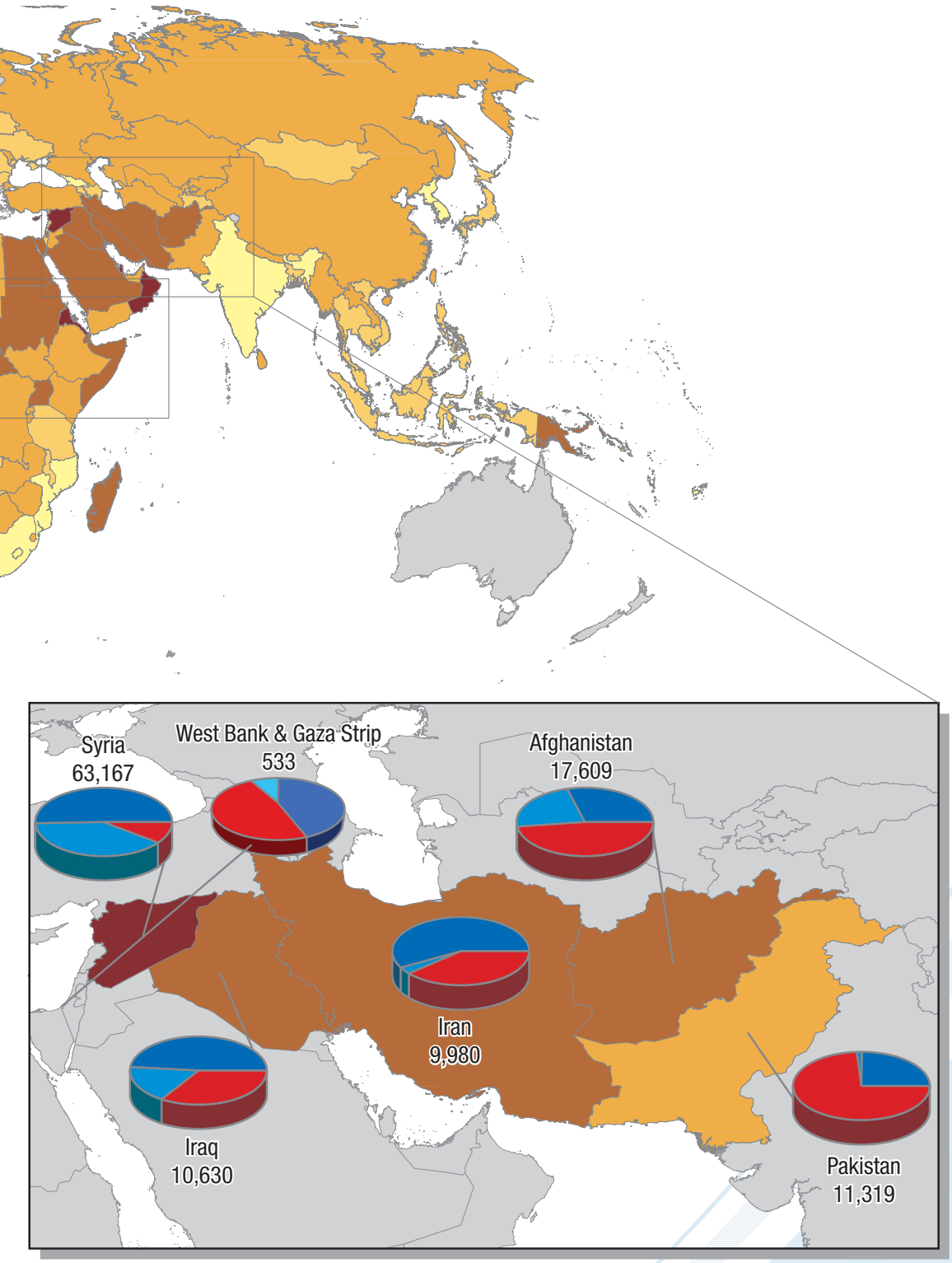


10 FIRST-INSTANCE ASYLUM DECISIONS IN IGC STATES, BY COUNTRIES OF ORIGIN, 2014

10a. Rates of Positive Decisions for All Countries of Origin

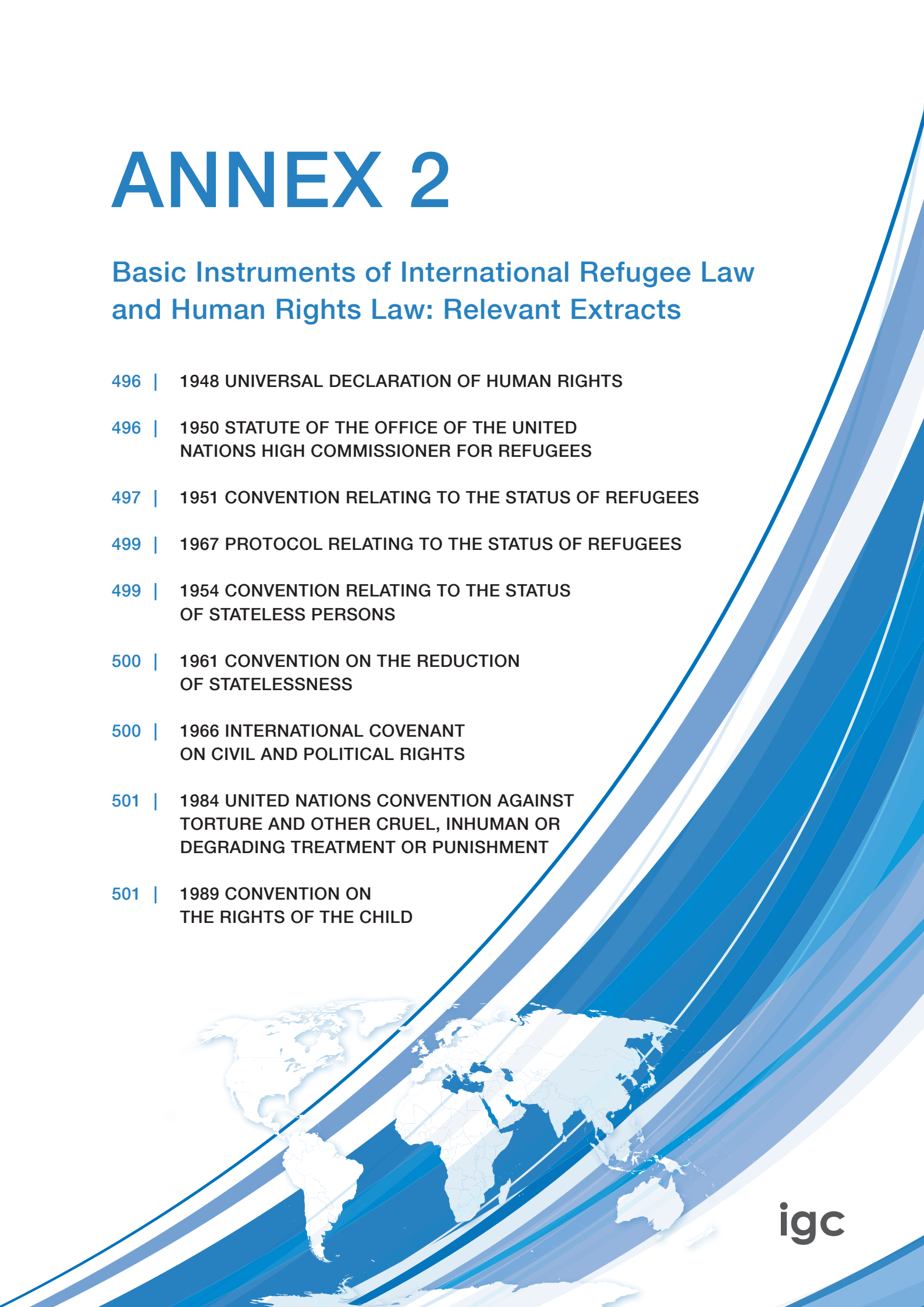


10b. Total Number of Decisions and Distribution by Category for Selected African and Asian Countries, Stateless, and West Bank and Gaza Strip



ANNEX 2

Basic Instruments of International Refugee Law and Human Rights Law: Relevant Extracts



igc

ANNEX 2

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

Definition of the Term "Refugee"

Article 1.A

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.

Cessation Clause

Article 1.C

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.

Rights and Obligations of Nationality

Article 1.E

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.

Exclusion Clause

Article 1.F

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.

General Obligations

Article 2

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.

Access to Courts

Article 16

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.

Refugees Unlawfully in the Country of Refuge

Article 31

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.

Expulsion

Article 32

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.

Prohibition of Expulsion or Return ("Refoulement")

Article 33(2)

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.

Co-operation of the National Authorities with the United Nations

Article 35

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 I - General Provisions

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 CONVENTION RELATING TO THE STATUS OF STATELESS PERSONS

Chapter I

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.

6 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 not be refused.

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.

7 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.

8 1984 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.

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.

ANNEX 3

Selected UNHCR Executive Committee Conclusions on International Protection

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 me 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 - 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) In 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) In 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,
(...)

(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:
(...)

(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;
(...)

The *Asylum Procedures: Report on Policies and Practices in IGC Participating States* is regularly published by the Intergovernmental Consultations on Migration, Asylum and Refugees (IGC) and provides an authoritative account of asylum procedures and policy approaches in IGC States today. With information and statistics sourced directly from governments, the objective of the publication is to describe and compare asylum policies and practices in states with a longstanding experience in granting international and other forms of protection to persons in need.

Since the last edition in 2012, IGC Participating States have pursued their efforts to adapt and improve their legal and procedural frameworks for asylum determination, in light of an increasing complexity in refugee-generating situations and in movements towards destination countries. While most of the focus remains on enhancing the quality, efficiency and integrity of asylum procedures, including the ongoing establishment of a common asylum system in the European Union, IGC States have taken additional measures and identified innovative approaches to managing considerable pressure on their status determination and reception systems. They also have paid continued attention to preventing and tackling abuses of the asylum system, often in national contexts with polarised immigration and asylum debates.

Based on the same structure used for the previous editions, the 2015 Asylum Procedures report contains standardised country chapters aimed at providing a comprehensive picture of asylum determination from entry to appeal, while also facilitating a comparison of policies and practices across the 16 IGC Participating States. The country chapters also include information on pre-entry measures, decision-making, reception, return and integration, as well as statistical data on applications, top countries of origin and first-instance decisions.

This publication remains an essential resource for asylum policy makers and practitioners, advocacy groups, academics and researchers, and any person interested in understanding and evaluating how IGC States practically meet their international protection obligations.

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