

Chapter 4

Asylum and refugee status determination

Introduction

An asylum-seeker is an individual who has sought international protection and whose claim for refugee status has not yet been determined. It is important to note, however, that a person is a refugee if he/she fulfils the criteria set out in the *1951 Convention Relating to the Status of Refugees*. The formal recognition of someone through individual refugee status determination (RSD) does not establish refugee status, but rather confirms it.

As part of its obligation to protect refugees on its territory, the country of asylum is normally responsible for determining whether an asylum-seeker is a refugee or not. The responsibility is often incorporated into the national legislation of the country and, in most cases, is derived from the 1951 Convention.

This chapter presents some of the main trends related to asylum applications lodged on an individual basis, and includes an overview of relevant decisions. Given the specific protection needs of unaccompanied and separated children who seek asylum, Box 7 provides information on recent trends for this population. This section, however, does not include mass refugee inflows nor does it make reference to people who have been accorded refugee status on a group or *prima facie* basis.⁴²

It should be stressed that even though the concepts of asylum and refugee status are sometimes used interchangeably in the Yearbook, asylum can only be accorded by States. UNHCR may grant refugee status under its mandate, but it cannot provide asylum.

Box 6

When does UNHCR conduct refugee status determination?

In some countries, UNHCR cooperates closely with governments in the determination of refugee status. This cooperation can take on a variety of forms, such as assisting in drafting asylum laws, registering asylum-seekers, providing legal training, attending hearings or participating in the decision-making process. In some cases, UNHCR conducts RSD under its mandate. This may be the case if a country is not a State party to the 1951 Convention and/or its 1967 Protocol or if it has not enacted refugee legislation. Another reason can be if the State's national refugee status determination procedure is a non-functioning one (including countries that have made geographic reservations related to the 1951 Convention); the State has a national RSD procedure that does not meet minimum standards for fairness and efficiency; and/or for a residual population of asylum-seekers after an RSD handover to the national authorities. In addition, in a few countries, UNHCR also undertakes RSD for the purpose of identifying refugees with resettlement needs.

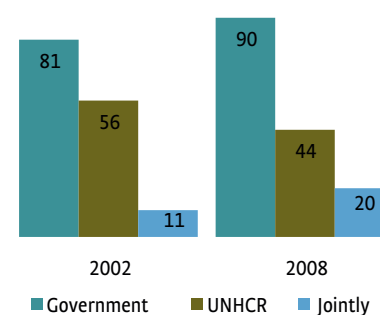
42 The decision not to record in asylum statistics people who were granted refugee status under UNHCR's mandate on a *prima facie* basis has been made to allow a direct comparison between State and UNHCR-conducted refugee status determination procedures. However, it should be noted that RSD procedures that provide for refugee status recognition on a *prima facie* basis generally go beyond the mere registration of applicants and usually involve in-depth screening and interviewing to establish the nationality of the applicants, the absence of likely reasons for exclusion and the identification of specific protection needs.

Responsibility for refugee status determination

Of the 154 countries for which data is available for 2008, governments were solely responsible for carrying out refugee status determination in 90 countries (58%). UNHCR was the only responsible body for RSD in 44 countries (29%), whereas a shared responsibility was reported for 20 countries (13%).⁴³ The latter includes asylum procedures which were either carried out jointly between UNHCR and the government, or where there were parallel procedures that were conducted independently.

As part of its efforts to strengthen States' capacity to conduct refugee status determination, over the last few years UNHCR has handed over the responsibility for assessing asylum claims to a number of States. For instance, while in 2002 UNHCR was responsible for assessing asylum claims in 56 countries, this number had dropped to 44 by 2008.

Fig IV.1. Responsibility for refugee status determination



Global trends

Applications

During 2008, at least 861,400 individual applications for asylum or refugee status were submitted to governments or UNHCR offices in 154 countries. This constitutes a 32 per cent increase compared to the previous year (653,800 claims) and is the second consecutive annual rise. The increase is due to two primary factors. The first is related to the increase of asylum applications in South Africa (+354%; 207,000 new claims); and second due to the higher number of certain populations seeking international protection during the year, particularly Afghans, Eritreans, Somalis, and Zimbabweans. If South Africa was excluded, the global increase in 2008 would have been only eight per cent.

Table IV.1: New and appeal applications received

	2005	2006	2007	2008
State*	586,500	499,000	548,000	751,900
UNHCR	89,300	91,500	79,800	73,400
Jointly**	7,900	23,800	26,000	36,100
Total	683,700	614,300	653,800	861,400
% UNHCR only	13%	15%	12%	9%

* Includes revised estimates.

** Refers to refugee status determination conducted jointly between UNHCR and the Government.

43 In countries where RSD is conducted either by the government or jointly by the government and UNHCR, the Office may occasionally carry out RSD under its mandate for specific protection and/or durable solution-related reasons.

Out of the total of 861,400 asylum claims, an estimated 768,600 were initial applications⁴⁴ lodged in first instance procedures, whereas the remaining 92,800 claims were submitted on appeal or with courts.⁴⁵

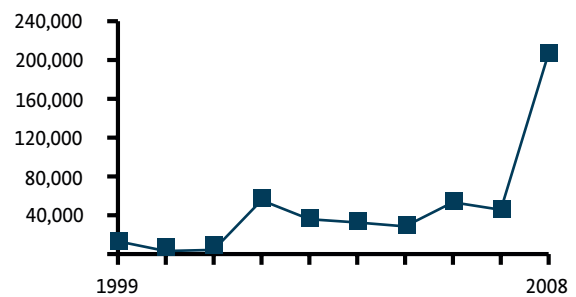
UNHCR offices registered some 73,400 applications out of the total of 861,400 claims in 2008. This number has decreased compared to 2007 (79,800 claims⁴⁶). The Office's share in the global number of applications registered stood at 9 per cent in 2008 compared to 15 per cent in 2006 and 12 per cent in 2007.⁴⁷ As the overall number of applications has continued to rise, States are increasingly taking responsibility for refugee status determination.

With a total of 355,500 asylum claims registered during the year, Europe remained the primary destination for individual asylum-seekers, followed closely by Africa (320,200).⁴⁸ The Americas and Asia recorded 109,300 and 68,700 respectively while Oceania received 7,700 claims.⁴⁹

New individual asylum applications received

With more than 207,000 asylum claims registered in 2008, or roughly one quarter of individual applications globally, South Africa was the main destination for new asylum-seekers worldwide.⁵⁰ The figure has more than quadrupled compared to 2007 when 45,600 individuals sought international protection in the country. Zimbabweans accounted for more than half of all claims submitted in 2008 (112,000 applications). With a cumulative total of more than 458,000 individual asylum applications since 2002, South Africa has rapidly evolved into one of the largest recipients of asylum-seekers in the world. The number of new asylum claims lodged in the United States of America has remained fairly stable in recent years; the United States of America received one quarter of the number of claims of South Africa, but was nevertheless in second position with 49,600 applications.⁵¹

Fig IV.2 Asylum claims in South Africa, 1999-2008



44 Despite the fact that statistical reporting on new asylum-seekers has improved in recent years, in particular in Europe, it should be borne in mind that the data include a significant number of repeat claims, i.e. the applicant has submitted at least one previous application in the same or another country.

45 Statistical information on the outcomes of asylum appeals and court proceedings is under-reported, particularly in developed countries, because this type of data is often either not collected by States or not published separately.

46 This figure included 14,200 Somali asylum-seekers who were granted refugee status on a prima facie basis.

47 The trend in the number of asylum applications received by UNHCR between 2005 and 2008 can be partly explained by how RSD statistics were recorded in these years by UNHCR's office in Kenya. In 2005, Kenya began to record in its Annual Statistical Report applications from Somali asylum-seekers who were processed on a prima facie basis. That year, the 22,400 applications concerned represented 25 per cent of all applications registered by UNHCR. In 2008, Kenya stopped recording these applications resulting in a decrease of 13,300 applications for that operation. Thus, while UNHCR's global RSD statistics show an 8 per cent decrease in applications from 2007 to 2008, UNHCR actually experienced a 7 per cent increase when excluding RSD statistics from Kenya.

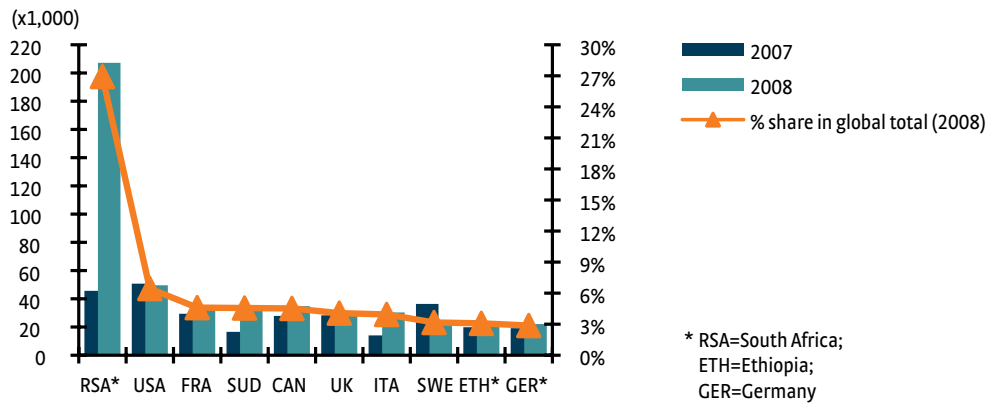
48 The geographical regions used are those of the United Nations Statistics Division, Department of Economic and Social Affairs, New York <http://unstats.un.org/unsd/methods/m49/m49.htm>.

49 For a detailed analysis of asylum trends in industrialized countries, see *Asylum Levels and Trends in Industrialized Countries, 2008*, UNHCR Geneva, March 2009, available at: <http://www.unhcr.org/statistics>.

50 This figure includes Zimbabweans arriving at South Africa's southern border and people who applied for asylum in the wake of the May 2008 xenophobic violence.

51 Estimated number of individuals based on the number of new cases (25,500) and multiplied by 1.4 to reflect the average number of individuals per case (Source: U.S. Department of Homeland Security); and number of new "defensive" asylum requests lodged with the Executive Office of Immigration Review (13,900, reported by individuals).

Fig IV.3 Main destination countries of new asylum-seekers, 2007-2008



France was the third largest recipient during 2008 (35,400 claims), a 20 per cent increase compared to 2007 (29,400 claims) and the first rise in four years. France was the main destination for asylum-seekers in Europe in 2008. The increase is due to additional asylum-seekers from Mali (2,700 claims), now the third most important country of origin of asylum-seekers in France; after the Russian Federation (3,600 claims); and Serbia (3,100). Sudan was the fourth most important destination country for new asylum-seekers in 2008 with more than 35,100 registered asylum claims, mostly from Eritrea (32,800). Other important destination countries for asylum-seekers were Canada (34,800)⁵², the United Kingdom (31,300), and Italy (30,300).

In 2008, UNHCR offices received 69,600 new applications for refugee status and 3,800 on appeal or for review. The office in Malaysia received the largest number of new requests (17,000). Turkey was the second largest operation in 2008 (13,000 new claims), followed by Kenya (8,100), the Libyan Arab Jamahiriya (4,900), and Cameroon (4,100). UNHCR offices in Malaysia, Turkey, the Libyan Arab Jamahiriya and Cameroon faced an increase in applications, while offices in Somalia, the Syrian Arab Republic and Hong Kong SAR, China, experienced a decrease. The top five receiving UNHCR offices together registered more than two thirds of all new applications in 2008. Moreover, 90 per cent of UNHCR’s refugee status determination work (in terms of applications received) was concentrated in 14 countries.

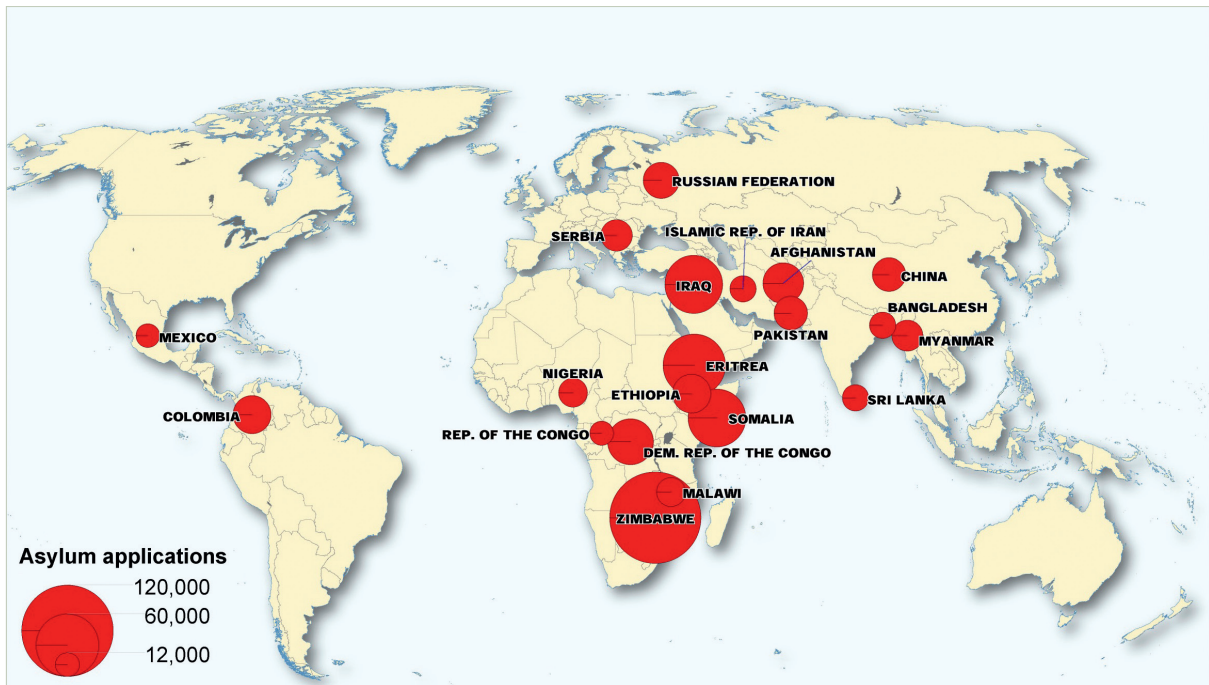
By nationality, the highest number of new asylum claims submitted to States or UNHCR was filed by individuals originating from Zimbabwe (118,500), Eritrea (62,700), Somalia (51,900), Iraq (43,900), the Democratic Republic of the Congo (32,700), and Afghanistan (28,900) (see Map 4).

Applications from different nationalities tend to be clustered in a limited number of asylum countries. For instance, 9 out of 10 Zimbabwean asylum claims were lodged in South Africa alone. Similarly, two thirds of all new Eritrean asylum claims were lodged in Sudan (32,800) and Ethiopia (8,700), while almost half of all Somali requests were submitted in Ethiopia (14,700) and South Africa (8,500). In the case of Iraqi asylum-

Table IV.2: New asylum claims lodged in 2008 in top 10 UNHCR offices*

Malaysia	17,000
Turkey	13,000
Kenya	8,100
Libyan Arab Jamahiriya	4,900
Cameroon	4,100
India	3,300
Egypt	2,300
Yemen	2,200
Somalia	2,200
Kuwait**	2,100

* Excludes appeal/review claims.
 ** This figure includes 1,770 Afghans who will undergo a preliminary screening/profiling to determine whether the members of this group will undergo individual refugee status determination.



Map 4 Country of origin of new asylum-seekers in 2008

Note: Data is shown if the total number of asylum applications lodged by nationals exceeded 10,000 during 2008.

seekers, Turkey (6,900 claims; UNHCR asylum procedure), Germany (6,800), Sweden (6,100) and the Netherlands (5,000) were prime destination countries, together accounting for more than half (57%) of all new Iraqi claims. Even though asylum-seekers from the Democratic Republic of the Congo sought protection in more than 80 countries, 8 out of 10 requested refugee status on the African continent, notably in South Africa (10,000) and Uganda (6,300).

Decisions

Available data indicate that close to 537,000 decisions on individual asylum applications were rendered during 2008, a 14 per cent increase as compared to 2007. UNHCR staff adjudicated close to 47,000, or 9 per cent of the total – a slightly lower relative share compared to previous years. In nine countries, including Ethiopia and Israel, more than 31,000 substantive decisions were taken jointly by UNHCR and the State concerned.

Table IV.3: Substantive decisions taken

	2005	2006	2007	2008
State	501,900	426,500	399,000	458,700
UNHCR	60,100	56,400	51,200	46,800
Jointly*	5,200	16,800	20,600	31,200
Total	567,200	499,700	470,800	536,700
% UNHCR only	11%	11%	11%	9%

* Refers to refugee status determination conducted jointly between UNHCR and the Government.

These figures exclude cases which were closed for administrative reasons⁵³ without taking a decision on the substance. In 2008, some 152,000 cases were closed without a substantive decision issued to the applicant.

Some 217,300 asylum-seekers were recognized as refugees (153,400) or given a complementary form of protection (63,900) in the course of 2008. This number includes an estimated 12,000⁵⁴ individuals who initially received a negative decision that was subsequently overturned at the appeal or review stage.

In absolute terms, the number of positive decisions issued to asylum-seekers has gone up in 2008 in all major regions except Europe. Nevertheless, with 86,200 asylum applicants being issued a positive decision during the year, European countries recognized the highest number of individual asylum-seekers.

In relative terms, however, Table IV.4 shows a different picture. Based on the ratio 'number of positive decisions rendered versus applications' received, the proportion of positive decisions was lower in 2008 than the year before. In Africa the proportion of positive decisions has decreased by almost half of that of the previous year although in absolute terms the number of positive decisions was greater. This may be due to the situation in South Africa where the high number of new asylum claims received during 2008 outpaced the number of positive decisions rendered. Following the xenophobic violence in South Africa, many displaced people applied for asylum or refugee status in the temporary places of safety. Among them, a large number were from non-refugee producing countries (e.g. Mozambique, Malawi) and had their asylum application rejected.

Table IV.4: Positive decisions rendered by region

Region	No. of positive decisions		Change		Ratio positive decisions/ applications	
	2007	2008	Total	%	2007	2008
Africa	51,100	60,200	9,100	18%	0.35	0.19
Asia	34,800	38,700	3,900	11%	0.57	0.56
Europe	94,000	86,200	-7,800	-8%	0.28	0.24
Latin America/ Caribbean	4,200	5,800	1,600	38%	0.19	0.23
Northern America	23,900	24,300	400	2%	0.35	0.29
Oceania	1,800	2,000	200	11%	0.27	0.26
Grand Total	209,800	217,200	7,400	4%	0.33	0.25

One fifth of all positive decisions in Europe in 2008 were issued to Iraqi asylum-seekers. In Africa, one third of all positive decisions were issued to Eritrean asylum-seekers; the same is true in Asia for asylum-seekers from Myanmar. In Latin America and the Caribbean, 90 per cent of all recognitions were granted to Colombians. In Northern America and Oceania, one fifth of the positive outcomes were issued to asylum-seekers from China.

Regarding negative decisions, close to 320,000 claims were rejected on substantive grounds, 58,400 more than in 2008. This number includes negative decisions at the first instance which may be appealed.

53 Also labeled as "non-substantive" decisions are those which might result from, among others, the death of the applicant, no-show for interview, withdrawal of the application, abandonment of the claim, or the determination that another country is responsible for the claim ('Dublin II' procedure).

54 This figure is likely to be substantially higher but a significant number of decisions rendered by States at the appeal or review stage of the asylum procedure is not available.

At the global level, the **Refugee Recognition Rate** (RRR) is estimated at 29 per cent of all decisions taken during 2008 while the **Total Recognition Rate** (TRR) was 40 per cent.⁵⁵ Both values are below the corresponding rates in 2007 (32 per cent for RRR and 45 per cent for TRR). However, global recognition rates are indicative as some States have not reported the relevant data. Also, the proportion of positive decisions is slightly higher as decisions for those rejected on appeal are often counted twice; both as an initial rejection and as an appeal rejection.

By the end of the year, at least 825,000 individuals were still awaiting a decision on their asylum claim; an 11 per cent increase over 2007. This figure includes people at any level of the asylum procedure; unfortunately the real number of pending asylum claims is unknown as many countries were not able to report this information.

At the end of 2008, the largest number of undecided cases at first instance and on appeal was reported by South Africa (227,000). This figure includes 138,000 undecided cases at first instance and 89,000 cases which were pending decision on appeal at the end of 2007. In the United States of America the number of pending cases at the end of its fiscal year totalled 69,200. Other countries with high numbers of pending cases included Canada (54,200), Greece (38,100), and Austria (36,700).



*A man with a small child crosses under a barbed wire fence on the Zimbabwe-South Africa border near Belt Bridge.
UNHCR/J. Oatway*

55 In the absence of an internationally agreed methodology for calculating recognition rates, UNHCR uses two rates to compute the proportion of refugee claims accepted during the year. The **Refugee Recognition Rate** divides the number of asylum-seekers granted Convention refugee status by the total number of accepted (Convention and, where relevant, complementary protection) and rejected cases. The **Total Recognition Rate** divides the number of asylum-seekers granted Convention refugee status and complementary form of protection by the total number of accepted (Convention and, where relevant, complementary protection) and rejected cases. Non-substantive decisions are, to the extent possible, excluded from both calculations. For the purpose of international comparability, UNHCR only uses these two recognition rates and does not report nationally calculated rates.

Box 7

Unaccompanied and separated children seeking asylum

Unaccompanied and separated children (UASC) who seek international protection continue to receive high attention from UNHCR, States, NGOs and the media in light of their special protection and assistance needs. Collecting accurate and reliable statistics on this group, however, poses a challenge. This is due to a lack of proper identification and registration mechanisms in place in a number of countries. Where it exists, data is often not disaggregated by sex and age. In addition, definitions, including age of majority, vary from country to country. In all, this makes comparison of data a difficult task.

Since 2006, UNHCR has been systematically collecting data on UASC claiming asylum, including their age, sex and country of origin. Despite this effort, the global number of UASC who annually submit individual asylum claims remains unknown, largely because important destination countries such as Canada, South Africa, and the United States of America do not provide this information.

Among the 130 countries reporting data in 2008, 68 countries (52%) registered at least one UASC applicant during the year. Some 16,600 asylum applications were lodged by UASC in these 68 countries, or 4 per cent of the total number of asylum claims lodged in those countries. This is the highest absolute value since 2006, the first year when UNHCR started collecting global data on UASC seeking asylum. In 2007, UNHCR reported 11,300 UASC claims in 58 countries and in 2006, the figure was 9,900 UASC claims in 64 countries.

Europe received close to 13,400 or four fifths of all UASC claims during 2008. Among the countries reporting, the United Kingdom received the highest number of UASC claims in 2008 (almost 4,300), followed by Sweden (1,500), Norway (1,400), and Austria (770). Kenya and Malaysia were important destination countries for UASC outside Europe with 990 and 630 asylum claims, respectively. In relative terms, however, the proportion of UASC claims compared to the total number of applications was highest in Luxembourg (23% of all claims), in New Zealand (17%; at appeal stage only), in Finland (16%), in the United Kingdom (14%), in Cambodia (13%), and in Denmark (13%).

The available data indicates that it is often unaccompanied or separated boys who claim asylum, in particular in industrialized countries where about two thirds of all UASC are male, and that the number of UASC boys seeking asylum is on the rise as compared to only two years ago. In developing countries, however, the sex distribution is more balanced.

Of the 68 countries reporting at least one asylum-seeking UASC during 2008, 52 provided the age breakdowns, covering some 9,000 individuals. The data shows that about eight out of ten (84%) UASC were between 15 – 17 years of age at the time of application. This figure is consistent with earlier observations.

Information available shows that in 2008 close to 2,700 UASC were recognized under the 1951 Convention while 3,300 were granted a complementary form of protection. These figures are consistent with those observed the year earlier. Between 2006 and 2008, more than 21,400 UASC were granted some form of protection in the countries reporting UASC statistics to UNHCR. The United Kingdom was the country recognizing the highest number of UASC over this 3-year period (6,400 in total), followed by Sweden (2,100), Malaysia (1,500), Kenya (1,300), Sudan (630; excluding 2008), and Norway (630).

Some 55 countries provided detailed country of origin information on UASC in 2008. Unaccompanied and separated children from Afghanistan submitted almost 3,300 asylum claims in 24 countries, more than half of them in the United Kingdom (1,800). Norway (580 claims), Sweden (350) and Denmark (160) were also among the prime destination countries for Afghan UASC in 2008.

Selected countries	UASC asylum claims			% UASC of total asylum claims			% female UASC claims			% children below 15 years		
	2006	2007	2008	2006	2007	2008	2006	2007	2008	2006	2007	2008
Austria	410	520	770	3%	4%	6%	..	..	..	13%	10%	8%
Belgium	450	590	490	4%	5%	4%	36%	9%	30%	30%	27%	..
Denmark	110	90	300	5%	5%	13%	10%	5%	4%	..	..	19%
Egypt*	60	70	50	1%	2%	2%	47%	56%	62%	12%	19%	14%
Finland	140	100	650	6%	7%	16%	31%	24%	21%	14%	18%	12%
France	570	460	410	2%	2%	1%	35%	37%	37%	7%	..	..
Germany**	190	180	730	1%	1%	3%	46%	33%	..	42%	..	..
Greece	170	40	240	1%	0%	1%	..	..	..	19%	9%	22%
Hungary	60	70	180	3%	2%	6%	..	..	9%	5%	..	1%
Ireland	130	90	100	3%	2%	3%	..	..	48%	..	..	21%
Italy	..	..	340	..	..	1%	..	..	..	..	..	..
Kenya*	80	430	990	0.2%	2%	11%	52%	48%	41%	10%	31%	12%
Luxembourg	10	..	110	2%	..	23%	..	..	50%	..	..	..
Malaysia*	250	820	630	3%	6%	4%	23%	39%	34%	12%	22%	18%
Malta	180	330	300	14%	24%	11%	8%	..	..	0%	0%	..
Netherlands	410	430	730	3%	6%	5%	35%	..	20%	..	..	..
Norway	350	400	1,380	7%	6%	10%	21%	19%	11%	15%	..	14%
Poland	270	320	70	6%	3%	1%	..	..	..	85%	..	..
Romania	10	30	70	2%	5%	6%	13%	3%	..	0%	0%	..
Slovakia	170	160	70	6%	6%	8%	..	..	..	..	..	..
Sudan	360	310	..	4%	2%	..	16%	15%	..	6%	10%	..
Sweden	820	1,260	1,510	3%	3%	6%	21%	20%	21%	16%	19%	20%
Switzerland	300	260	570	3%	2%	3%	21%	23%	16%	11%	11%	7%
Turkey*	100	190	360	2%	2%	3%	26%	26%	22%	0%	0%	3%
United Kingdom	3,450	3,530	4,290	12%	13%	14%	..	20%	..	..	..	..

* RSD under the UNHCR mandate.

** Refers to UASC claims up to the age of 16 years.

Two dots (..) indicate that data is not available.

Somalia was the second most important country of origin with roughly 1,900 UASC claims, of which 60 per cent were lodged in Kenya (450 claims), Sweden (350) or Finland (330). Iraqi UASC submitted more than 1,800 asylum applications in 17 countries, although one half of the claims were submitted in either the United Kingdom or Sweden. Other important countries of origin of asylum-seeking UASC in 2008 were Eritrea (800 claims), Myanmar (740), the Democratic Republic of the Congo (510), and the Islamic Republic of Iran (490).

Average recognition rates in 2008 were high in those countries where data is available. For Afghans, the total recognition rate was 76 per cent, for Somalis it was 90 per cent, and for Eritreans it was 77 per cent. For Iraqi UASC, the rate was lower: 56 per cent. Data suggest, however, that some countries are more likely to grant certain UASC refugee status under the 1951 Convention based on nationality than others. In the case of Afghan UASC, only 5 per cent of all positive decisions resulted in Convention refugee status while for Iraqi UASC it was 21 per cent. Conversely, for Somali and Eritrean UASC, rates were significantly higher with 65 and 75 per cent, respectively.