Voorstudies ten behoeve van het ACVZ briefadvies inzake categoriale bescherming

Mei 2009

Het betreft hier een samenvoeging (per land gerangschikt) van de voorstudies die door de European Council for Refugees and Exiles (ECRE) en het International Centre for Migration Policy Development (ICMPD) in opdracht van de ACVZ in 2008/2009 zijn uitgevoerd.

ECRE heeft onderzoek gedaan naar de ontwikkelingen in regelgeving met betrekking tot de verschillende vormen van subsidiaire dan wel categoriale bescherming in een aantal Europese landen; daarbij is ook gekeken naar de omzetting van Kwalificatierichtlijn 2004/83/EG.

ICMPD heeft onderzoek gedaan naar de ontwikkelingen in beleid en uitvoering van subsidiaire dan wel categoriale bescherming in een aantal Europese landen.

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AUSTRIA (ECRE)

Statuses of complementary/subsidiary protection

- Subsidiary Protection
- Inadmissibility of Deportation/Temporary Suspension of Deportation
- Residence Permits for Humanitarian Reasons

Austria transposed the Qualification Directive with the Federal Act Concerning the Granting of Asylum (2005 Asylum Act-Asylgesetz 2005)[1], which came in force on the 1st of January 2006. The Federal Act established the subsidiary protection status that substituted prior protection regimes. Furthremore, the Federal Act stipulates specific cases under which, despite the fact that an alien does not qualify for either refugee status or subsidiary protection status, his/her deportation is either inadmissible or should be temporarily suspended for reasons listed in the legislation. In addition to that, according to the Residence Act of 2005[2], aliens can be granted with residence permits for humanitrian reasons. These residence permits can take two forms, Aufenthaltsbewilligung (Residence Pemit) and Niederlassungsbewilligung (Establishment Permit) according to the degree of integration of the alien.

[1] Federal Law Gazette (FLG) I No. 100/2005, available in German at: http://www.unhcr.org/refworld/country,,,,AUT,4562d8b62,4416b2004,0.html
A translation in English (not legally binding) is available at: http://www.unhcr.org/refworld/type,LEGISLATION,,AUT,46adc62c2,0.html

[2] Bundesgesetz über die Niederlassung und den Aufenthalt in Österreich, (Niederlassungs- und Aufenthaltsgesetz – NAG), 16 August 2005, available at: http://www.unhcr.org/refworld/country,,,,AUT,4562d8b62,4416bfea8,0.html

SUBSIDIARY PROTECTION (*Status des subsidiär Schutzberechtigten)*

Legal basis: Section 4, Article 8, 2005 Asylum Act

Beneficiaries: Subsidiary protection status shall be granted to an alien:

1. who has filed an application for international protection in Austria, if such application is dismissed in regard to the granting of asylum status or
2. whose asylum status has been withdrawn

if the alien's rejection at the border, forcible return or deportation to his country of origin would constitute a real risk of violation of art. 2, art. 3 of the European Convention on Human Rights or of Protocol No. 6 or Protocol No. 13 to the Convention or would represent for the alien as a civilian a serious threat to his life or person as a result of arbitrary violence in connection with an international or internal conflict[3].

The decision concerning the granting of subsidiary protection status shall be issued in conjunction with the dismissal ruling or the asylum status withdrawal ruling[4].

Applications for international protection shall be dismissed in regard to the granting of subsidiary protection status if an internal flight alternative is available[5]. If the asylum seeker's country of origin cannot be established, the application for international protection shall be dismissed in regard to subsidiary protection status[6]. In such event, an order for expulsion from the federal territory shall be issued, if such expulsion is not inadmissible[7].

An alien's subsidiary protection status shall be withdrawn ex officio by administrative decision if:
1. the conditions required for the granting of subsidiary protection status do not or no longer exist;
2. the alien has the center of his vital interests in another country or
3. the alien has obtained the nationality of another State and his rejection at the border, forcible return or deportation to his new country of origin would not constitute a real risk of violation of art. 2, art. 3 of the European Convention on Human Rights or of Protocol No. 6 or Protocol No. 13 to the Convention or would not represent for the alien as a civilian a serious threat to his life or person as a result of arbitrary violence in connection with an international or internal conflict[8].

[3] Section 4, Article 8(1), 2005 Asylum Act
[4] Section 4, Article 8(2), 2005 Asylum Act
[5] Section 4, Article 8(3), 2005 Asylum Act
[6] Section 4, Article 8(6), 2005 Asylum Act
[7] Ibid
[8] Section 4, Article 9(1), 2005 Asylum Act

Duration: An alien who has been granted subsidiary protection status shall at the same time be accorded, by the authority granting such status, limited right of residence as a person eligible for subsidiary protection[9]. Right of residence shall be valid for one year and shall, upon application by the alien, be extended by the Federal Asylum Agency if the conditions required continue to exist[10]. Following an application by the alien, right of residence shall exist until a final decision has been rendered on the extension of residence entitlement if the extension application was filed prior to expiry of the right of residence[11].

Rights:

Rights	Y	N	Details
Access to wage-earning employment	✓		No requirement for a work permit since 01.01.2008[12].
Access to self-employment	✓		
Access to liberal professions	✓		
Access to housing	✓		In general there are insufficient housing facilities. However, it depends also on the respective region[13]
Access to public education	✓		Compulsory education from the ages of 6 to 15. Higher education is also possible.
Social security	✓		Provided through the social care of the Federal States. There are different conditions and benefits in every Federal State (duration of legal residence, benefit in cash or credit, etc.).
Health	✓		More than simply emergency care. Health insurance is obligatory if the person is employed.
Freedom of movement within the national territory	✓		Like Convention refugees.
Travel document		✓	An alien who has been granted subsidiary protection status shall be issued with a card which shall serve as proof of identity and lawfulness of residence in the federal territory[14]. The law does not mention anything about the issue of travel documents. In practice, travel documents, are practically never given to persons with subsidiary protection[15]
Voting rights in municipal election		✓	

[9] Section 4, Article 8(4), 2005 Asylum Act
[10] Ibid
[11] Ibid
[12] See also Section 1, Article 1(2)(a) of the Act on the Employment of Foreign Nationals, available at: http://www.jusline.at/Auslaenderbeschaeftigungsgesetz_(AuslBG).html
[13] ECRE, The Impact of the EU Qualification Directive in International Protection, at p.254
[14] Section 6, Article 52(1), 2005 Asylum Act
[15] ECRE, The Impact of the EU Qualification Directive in International Protection, at p.254

Right to stand for elections		✓	
Family reunification		✓	If the family member of an alien who has been granted subsidiary protection status is outside Austria, that person shall, upon application, be granted entry following the first extension of the limited right of residence of the alien who has already been granted subsidiary protection status unless it may be assumed, on the basis of certain facts, that the conditions required for the granting of subsidiary protection status no longer exist or will no longer exist in three months[16].
Vocational training	✓		The labour market service decides on a case-by-case basis if training would be useful to an unemployed individual.
Access to citizenship	✓		Same conditions as aliens in general (after 10 years)

Inadmissibility of Deportation/Temporary Suspension of Deportation[17]

Legal basis: Section 5, Article 10, 2005 Asylum Act

Beneficiaries: Individuals are issued with an expulsion order when[18]:

1. their application for international protection is rejected;
2. their application for international protection is dismissed in regard to the granting of both asylum status and subsidiary protection status;
3. their asylum status is withdrawn and the subsidiary protection status is not conferred or
4. their subsidiary protection is withdrawn

However, their expulsion is inadmissible if[19]:
1. in individual cases they hold a right of residence that is not based on the present federal act or
2. their expulsion would constitute a violation of art. 8 of the European Convention on Human Rights.

Furthermore, if execution of an expulsion order would constitute a violation of art. 3 of the European Convention on Human Rights for reasons relating to the person of the asylum seeker and such reasons are not long lasting, a pronouncement shall be made

[16] Section 4, Article 35(2), 2005 Asylum Act
[17] There is no specific term to define this category of beneficiaries. Article 10 which refers to the inadmissibility of deportation is entitled "Verbindung mit der Ausweisung"
[18] Section 5(1), Article 10, 2005 Asylum Act
[19] Section 5(2), Article 10, 2005 Asylum Act

simultaneously with the issue of the expulsion order that the execution thereof shall be postponed for the necessary period[20].

Duration: No legal status is foreseen. Ne regulations will come into force from 1 April on. The legal changes are still under negotiation, but it is clear, that aliens who may not be deported due to reasons of Art 8 ECHR shall get a residence permit, either with free access to the labour market (when they fullfill the integration contract, requirements which means German language knowledge level A2) or with restricted access to the labour market.

Rights:

Rights	Y	N	Details
Access to wage-earning employment		✓	
Access to self-employment		✓	
Access to liberal professions		✓	
Access to housing		✓	Insufficient housing facilities provided by the State, and the social aid differs in each Federal State. The responsibility mainly lies with NGOs.
Access to public education	✓		Compulsory education from the ages of 6 to 15. Higher education is also possible.
Social security	✓		Some social benefits are now accorded on a very low level. (Provision applied since 1 May 2004).
Health	✓		More than simply emergency care for persons receiving social aid, otherwise only emergency care. According to a provision applied since 1 May 2004, some health insurance is now provided.
Freedom of movement within the national territory	✓		
Travel document		✓	
Voting rights in municipal election		✓	
Right to stand for elections		✓	
Family reunification		✓	
Vocational training		✓	
Access to citizenship		✓	

[20] Section 5(3), Article 10, 2005 Asylum Act

Residence Permits for Humanitarian Reasons (Aufenthaltstitel aus humanitären Gründen)

Legal basis: Section 7, Articles 72-74 Residence Act of 2005

Beneficiaries: There are two different kinds of pemits for humanitarian reasons. A residence permit (Aufenthaltsbewilligung) is granted by the authorities of a region to third-country nationals whose individual cricumstances merit particular attention due to humanitarian considerations[21]. The authorities may also decide to grant to third-country nationals establishment permits (Niederlassungsbewilligung)[22]. A prerequisite to the attainment of this kind of permits is the fulfilment of the "Integration Agreement"[23]. These can either be establishment permits which provide the beneficiary with a right to work, if he is entitled to work according to the Act on the Employment of Foreign Nationals[24], or in any other case, establishment permits without the right to work[25]. In order for both types of residence permits to be granted on humanitarian reasons the Regional authorities must obtain the agreement of the Federal Ministry of the Interior[26].

The Constitutional Court has determined in its jurisprudence the relevant factors that should be taken into account for the granting of such types of permits[27]:

-Nature and Duration of the stay in the country till the time of the application, especially if the stay was legal
-Existence of family ties in Austria at the present time
-Existence of private life that is protected
-Level of Integration
-Ties with the Country of Origin
-Status of the Criminal Record
-Any offences against public order
-The fact of wheher the private and family life ties were created at a time when all the parties concerned were aware of the insecure status of residence of the alien.

The Council of Ministers has recently decided on a new regulation concerning residence permits of a humanitarian nature[28]. In order to avoid lengthy procedures in the future all applications of aliens to remain in the country will also be examined to ascertain whether a permit because of humanitarian considerations can be granted[29].

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[21] Section 7, Article 72, 2005 Residence Act

[22] Section 7, Article 73, 2005 Residence Act. The difference between the two types of residence permits is that the residence permit (Aufenthaltsbewilligung) is granted for a temporary stay, with a certain duration, for a particular reason; in this case humanitarian considerations. An establishment permit (Niederlassungsbewilligung) is again granted for certain duration and a particular reason but in this case the stay is not deemed to be merely temporary. This is due to the fact that the beneficiary has already begun to integrate in the society.

[23] Ibid. The details of this Integration Agreement are described in Section 7, Article 14, 2005 Residence Act

[24] Section 7, Article 73(2), 2005 Residence Act.

[25] Section 7, Article 73(3), 2005 Residence Act.

[26] Section 7, Article 75, 2005 Residence Act.

[27] As mentioned in the Press Release of the Ministry of the Interior," Ministerrat beschließt Neuregelung des Humanitären Aufenthalts", No. 5318, 24 February 2009, available at: http://www.bmi.gv.at/

[28] Ibid

[29] Ibid

The new procedure, which will include the recommendation by an Advisory Board and the possibility of an economic "sponsorship", is expected to enter into force on the 1st of April 2009[30].

Duration: Residence permits are granted for a certain period of time. The law stipulates, concerning residence permits (Aufenthaltsbewilligung), that in cases where aliens left their country as victims of an armed conflict, the permit is granted solely for the duration of the conflict, up to a maximum of three months[31]. In cases involving victims or witnesses of human trafficking, the permit lasts for the necessary time in order to guarantee the prosecution of punishable acts, up to a maximum of 6 months[32]

Rights:

Rights	Y	N	Details
Access to wage-earning employment	•		Only with a work permit, which is very hard to obtain**.**
Access to self-employment	•		
Access to liberal professions		•	
Access to housing		•	Insufficient housing facilities provided by the State and the social aid differs in each Federal State.
Access to public education	•		Compulsory education from the ages of 6 to 15. Higher education is also possible.
Social security	•		Provided through the social care of the Federal States. There are different conditions and benefits in every Federal State (duration of legal residence, benefit in cash or credit, etc.).
Health	•		More than simply emergency care. Health insurance is obligatory for those who are employed.
Freedom of movement within the national territory	•		Like Convention refugees.
Travel document		•	
Voting rights in municipal election		•	In Vienna, on district level after five years of residence.
Right to stand for elections		•	In Vienna, on district level with exceptions.
Family reunification		•	Extension of status to family members, but no family reunification for family members abroad.
Vocational training		•	
Access to citizenship	•		Like other foreigners (after 10 years of legal residence)

[30] Ibid
[31] Section 7, Article 72(1), 2005 Residence Act.
[32] Section 7, Article 72(2), 2005 Residence Act.

Answers as Provided by the Participating States

Austria (ICMPD)

Follow-up study on subsidiary/complementary ("categorized") protection: developments in actual implementation

Request

1. What has been the general implementation policy towards asylum seekers from the following four countries: Afghanistan, DR Congo, Iraq and Somalia?

Answer:

The Federal Asylum Office has no general implementation policy towards asylum seekers from specific countries of origin. Every application has to be considered in form of a case by case review upon the relevant facts that have emerged in the individual preliminary investigation. Therefore the COI – Unit can provide general and individual information relevant to a certain case.

2. Has there been during the 2006 – 2008 period a change of policy-implementation towards asylum seekers from the above – mentioned four countries? If so, what are they and when did they occur?

Answer:

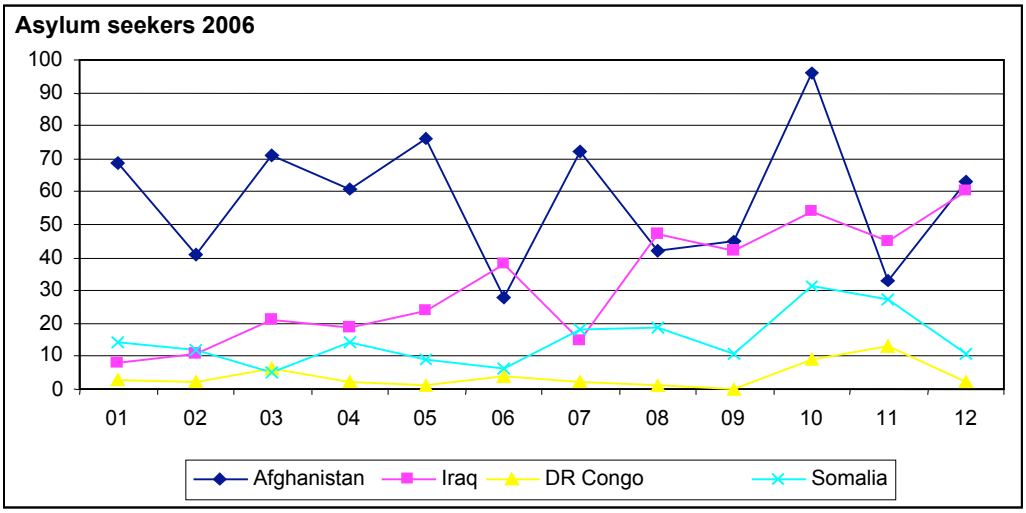
No general implementation policy as shown in answer to the first question.

3. Would it be possible to receive an overview (e.g. on a monthly or quarterly basis) of the influx of asylum seekers from the above-mentioned four countries (statistics) over the period 2006 – 2008 inclusively?

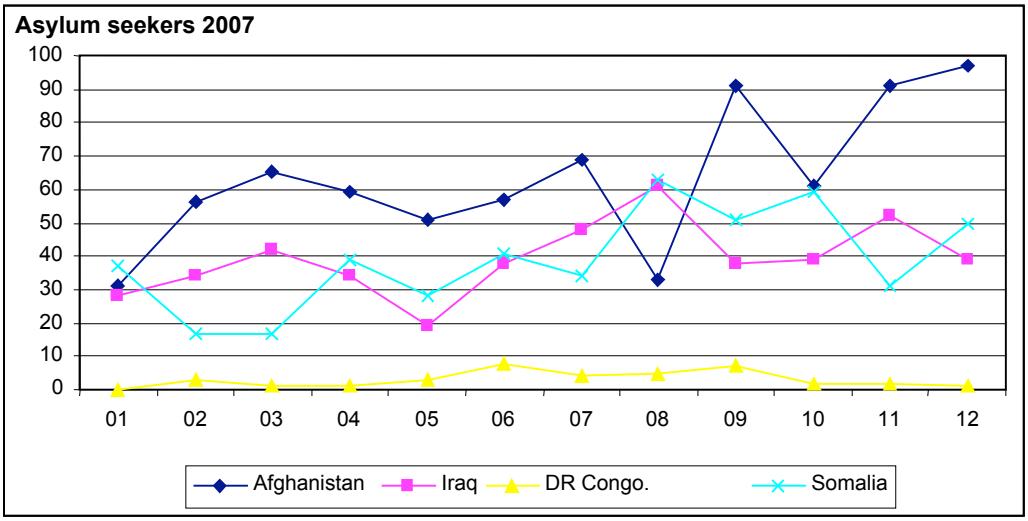
Answer:

The Federal Asylum Office may provide the following statistics, showing the numbers of asylum applications on a monthly basis:

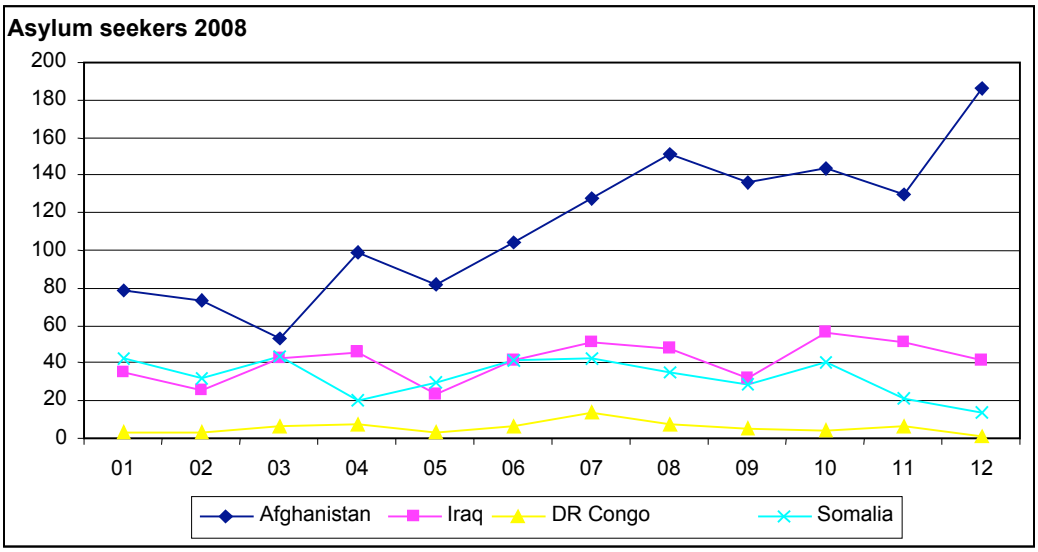
2006	01	02	03	04	05	06	07	08	09	10	11	12	Total
Afghanistan	69	41	71	61	76	28	72	42	45	96	33	63	**697**
Iraq	8	11	21	19	24	38	15	47	42	54	45	60	**384**
DR Congo	3	2	6	2	1	4	2	1	0	9	13	2	**45**
Somalia	14	12	5	14	9	6	18	19	11	31	27	11	**177**



2007	01	02	03	04	05	06	07	08	09	10	11	12	Total
Afghanistan	31	56	65	59	51	57	69	33	91	61	91	97	**761**
Iraq	28	34	42	34	19	38	48	61	38	39	52	39	**472**
DR Congo	0	3	1	1	3	8	4	5	7	2	2	1	**37**
Somalia	37	17	17	39	28	41	34	63	51	59	31	50	**467**



2008	01	02	03	04	05	06	07	08	09	10	11	12	Total
Afghanistan	79	73	53	99	82	104	128	151	136	144	130	186	**1.365**
Iraq	35	26	43	46	23	42	51	48	32	56	51	41	**494**
DR Congo	3	3	6	7	3	6	14	7	5	4	6	1	**65**
Somalia	43	32	44	20	30	41	43	35	29	40	21	14	**392**



4. Had the policy and/or implementation changes (as per question 2) an impact on the number of asylum cases submitted i.e. the influx? Is there a correlation/causality between the change in influx and the new policy?

Answer:

The occurring fluctuation in terms of asylum application numbers from specific countries of origin has no correlation with a certain implementation policy, especially as the applications are considered by a case-by-case review.

BELGIUM (ECRE)

Statuses of complementary/subsidiary protection
• Subsidiary Protection
• Leave of Stay for Medical Reasons
• Leave of Stay under Exceptional Circumstances

On the 15th of September 2006, Belgium introduced two legislative acts[33] amending the Aliens Act of 1980, in order to transpose the Qualification Directive[34]. The provisions concerning subsidiary protection became effective as of 10 October 2006. The legislative reform in its entirety became effective as of the 1st of June 2007. Through these acts the subsidiary protection regime was established for the first time in Belgium. Prior to its introduction, various solutions were adopted in order to accommodate asylum seekers that did not qualify for asylum protection but could not be removed. The solutions were either a form of toleration of presence on the Belgian territory (often in the form of suspension of deportation), individual regularisations through a leave of stay granted by the Minister of the Interior under exceptional circumstances or ad hoc schemes of temporary protection (e.g. during the crises in Former Yugoslavia and Rwanda)[35]. Apart from the subsidiary protection regime the legislation introduced a special regime for people who could not be removed for medical reasons[36]. Furthermore, leave of stay under exceptional circumstances can still be sought, when specific conditions apply[37].

[33] Act of 15 th September 2006 amending the Aliens Act of 15 th December 1980 (Loi sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangeres), MB 6 October 2006, and Act of the 15th September 2006 reforming the Council of State and creating a Council of Aliens Litigation, MB 6 October 2006, available at: http://www.ejustice.just.fgov.be/doc/rech_f.htm

[34] 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, available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML

[35] Vanheule, Dirk, "The Qualification Directive: A Milestone in Belgian Asylum Law", in *The Qualification Directive: Central Themes, Problem Issues, and Implementation in Selected Member States,* Karin Zwaan, (ed.), Wolf Legal Publishers, 2007, at p. 71

[36] Article *9ter* of the Aliens Act of 15th December 1980 as amended by the Act of 15th September 2006.

[37] Article *9bis* of the Aliens Act of 15th December 1980 as amended by the Act of 15th September 2006.

Subsidiary Protection (statut de protection subsidiaire)

Legal basis: Article 48/4 of the Aliens Act of 15th December 1980 as amended by the Act of 15th September 2006.

Beneficiaries: Individuals who do not satisfy the conditions to be recognised as a refugee or do not benefit of the regime of leave of stay for medical reasons and for whom there are serious reasons to believe that, if returned to their country of origin or, if they are stateless, to their country of habitual residence, they would incur a real risk of suffering serious harm and who are who are unable, or, owing to such risk, unwilling to avail themselves of the protection of that country[38]. In addition, they should not be excluded for reasons enumerated in the law[39].

Serious harm consists of[40]:

a) the death penalty.
b) torture or inhuman or degrading treatment in their country of origin
c) serious threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

Belgium has therefore not transposed the requirement that the threat to a civilian's life or person is "individual". The body responsible for the examination of the merits of asylum applications is the *Commissariat Général aux réfugiés et Apatrides* - 'CGRA' (= the Commissioner General for Refugees and Stateless Persons). There is a single procedure for the consideration of refugee and subsidiary protection status. Refugee status is assessed prior to the consideration of subsidiary protection.

Duration: A recipient of subsidiary protection will receive a one-year residence permit, extendable and renewable if conditions in the country of return persist[41]. Five years after the date of the introduction of the asylum claim, the alien who was recognised as a beneficiary of subsidiary protection receives a permanent residence card[42].

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[38] Article 48/4 par.1 of the Aliens Act of 15th December 1980 as amended by the Act of 15th September 2006.
[39] Article 55/4 of the Aliens Act of 15th December 1980 as amended by the Act of 15th September 2006.
[40] Article 48/4 par.2 of the Aliens Act of 15th December 1980 as amended by the Act of 15th September 2006.
[41] Article 49/2 par.1 of the Aliens Act of 15th December 1980 as amended by the Act of 15th September 2006.
[42] Article 49/2 par.3 of the Aliens Act of 15th December 1980 as amended by the Act of 15th September 2006.

Rights:

Rights	Y	N	Details
Access to wage-earning employment	✓		Beneficiaries of subsidiary protection need a work permit (type C, annually renewable, valid for any profession, obtained with few formalities) during their temporary stay on the territory (5 years)[43]. After they obtain a permanent residence card they no longer need this permit[44].
Access to self-employment	✓		In this case they need another type of authorisation (carte professionelle)[45]. This is not so easily obtainable, as the type C work permit, as it depends on the economic viability of the project[46].
Access to liberal professions	✓		
Access to housing	✓		No special provision
Access to public education	✓		Access to primary and further education.
Social security	✓		They are entitled to social aid, which is granted, without prejudice to age or nationality, to any person in financial distress in order to allow a dignified level of living[47]. They also receive family benefits.
Health	✓		
Freedom of movement within the national territory	✓		
Travel document		✓	The beneficiaries of subsidiary protection may not contact the Belgian authorities in order to acquire travel documents. It is considered that the beneficiaries of subsidiary protection can contact

[43] ECRE, The Impact of the EU Qualification Directive on International Protection, October 2008, at p.247, available at: http://www.ecre.org/files/ECRE_QD_study_full.pdf

[44] Ibid

[45] Ibid

[46] France Terre d'Asile, *Asile : La Protection Subsidiaire en Europe : Une Mosaïque de Droits,* Les Cahiers du Social No18, Septembre 2008, at p. 48.

[47] Ibid, at p. 48.

[48] France Terre d'Asile, *Asile : La Protection Subsidiaire en Europe : Une Mosaïque de Droits,* Les Cahiers du Social No18, Septembre 2008, at p. 44.

			the consular authorities of their country[48]
Voting rights in municipal election		✓	Belgium accords the right to vote in municipal elections to all foreigners that can prove legal and uninterrupted residence during 5 years[49]
Right to stand for elections		✓	
Family reunification	✓		The family of a beneficiary of subsidiary protection benefits of the right to family reunification under the same conditions as other migrants who are allowed to stay in Belgium[50] (they have to prove stable means of subsistence and sufficient housing). The family members receive a residence permit valid for the same amount of time as the one of the main beneficiary[51].
Vocational training	✓		
Access to citizenship	✓		Through both the procedures of naturalisation or declaration of nationality[52]

LEAVE OF STAY DUE TO MEDICAL REASONS [53]

Legal basis:

- Article 9ter of the Aliens Act of 15th December 1980 as amended by the Act of 15th September 2006
- Arrêté royal fixant des modalités d'exécution de la loi du 15 septembre 2006 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, 17 Mai 2007[54].
- Circulaire du 21 juin 2007 relative aux modifications intervenues dans la réglementation en matière de séjour d'étrangers suite à l'entrée en vigueur de la loi du 15 septembre 2006[55].

Beneficiaries: As it has been established by the jurisprudence of the European Court of Human Rights, persons who suffer from a serious illness fall within the scope of the protection of Article 3 ECHR. However, the Belgian legislator decided to specifically exclude this category of people from subsidiary protection, creating a special protective regime for them[56]. This specific procedure was introduced because

[49] Ibid, at p.51
[50] ECRE, The Impact of the EU Qualification Directive on International Protection, October 2008, at p. 241.
[51] France Terre d'Asile, *Asile : La Protection Subsidiaire en Europe : Une Mosaïque de Droits,* Les Cahiers du Social No18, Septembre 2008, at p. 46.
[52] France Terre d'Asile, *Asile : La Protection Subsidiaire en Europe : Une Mosaïque de Droits,* Les Cahiers du Social No18, Septembre 2008, at p. 51.
[53] The law only describes this class of beneficiaries and does not define this status with a specific term. See Article 9ter of the Aliens Act
[54] Available at: http://www.medimmigrant.be/2007%2005%2017%20KB%20over%20oa%209ter%20BS%2031%2005%202007.pdf
[55] Available at the Moniteur Belge website at: http://www.ejustice.just.fgov.be/mopdf/2007/07/04_2.pdf
[56] Legros, Thérèse, Doyen, Isabelle, Introduction à la réforme du Droit des étrangers, ADDE, July 2007, at p. 13

the asylum authorities were believed to have insufficient knowledge in medical matters to decide on this type of residence claims[57].

According to the law[58] an alien may claim a leave of stay in Belgium due to medical reasons when:

1. He suffers from a disease in such a manner that this disease constitutes a serious risk for his life or physical integrity or a serious risk of facing inhuman or degrading treatment because there exists no adequate treatment in his country of origin.
2. He holds an identity document or a passport. This clause does not apply to asylum seekers that are still in the asylum process or who have introduced an administrative appeal against the rejection of their application as inadmissible or to foreigners who can prove the impossibility to obtain the requested document in Belgium.
3. He includes in his application a medical certificate as to his disease.
4. He includes in his application any other information or relevant items concerning his disease that are in his possession at the date of the introduction of his demand.
5. He states in his application an effective residence address in Belgium.

The application will be declared inadmissible if the following are included:

- elements that have been stated again during an asylum application and have been rejected, apart from those that were rejected because they were irrelevant to the criteria for the refugee or the subsidiary protection definition.
- elements that should have been invoked during an asylum examination procedure, to the extent that they existed and they were known to the asylum applicant until the end of the asylum procedure.
- elements that have been invoked again during a previous application of leave to stay in Belgium due to exceptional circumstances.
- elements that have been invoked again during a previous application of leave to stay in Belgium for medical reasons.

The alien is excluded if there are serious reasons to believe that he has committed an act stipulated in Article 55/4[59] of the Aliens Act of 15 th December 1980 as amended by the Act of 15th September 2006[60]. However, as stated in the *travaux preparatoires* such an alien cannot be removed from the territory if his state of health is such that his removal would constitute a violation of Article 3 ECHR[61].

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[57] Vanheule, Dirk, "The Qualification Directive: A Milestone in Belgian Asylum Law", in *The Qualification Directive: Central Themes, Problem Issues, and Implementation in Selected Member States,* Karin Zwaan, (ed.), Wolf Legal Publishers, 2007, at p. 75.

[58] The requirements are set out in Article 9ter par.1 of the Aliens Act of 15 th December 1980 as amended by the Act of 15th September 2006 read in conjunction with Article 7 of the May 2007 Royal Decree (Arrêté royal fixant des modalités d'exécution de la loi du 15 septembre 2006 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, 17 Mai 2007).

[59] This is the provision regulating the exclusion of beneficiaries of subsidiary protection.

[60] 9ter par.4 of the Aliens Act of 15th December 1980 as amended by the Act of 15th September 2006.

[61] This is mentioned in Legros, Thérèse, Doyen, Isabelle, Introduction à la réforme du Droit des étrangers, ADDE, July 2007, at p. 15. See also Doc.Chambre 51 2478/001, at p.34 (as referenced in the above-mentioned article) available at: http://www.lachambre.be/FLWB/pdf/51/2478/51K2478001.pdf

The application should not be made at the municipal authority where the alien is residing but directly to the *Office des Étrangers* (Aliens Office)[62]. The application will be declared inadmissible if any of the necessary documentation is missing or it is not addressed to the correct authorities[63]. In the opposite case, the Alien's Office will instruct the municipal authorities to hand the applicant with a registration certificate valid for 3 months during the examination of his claim[64]. This certificate can be prolonged 3 times, each time for a 3-month period[65]. It can be withdrawn, if the alien does not present himself to the medical expert who is responsible for the examination of his application, without any valid reason[66].

Duration: A person granted with a leave to stay due to medical reasons, will receive a one-year residence permit, extendable and renewable if the conditions that lead to its grant continue to exist[67]. Five years after the date of the introduction of the asylum claim, the alien who was granted with a leave to stay due to medical reasons receives a permanent residence card[68].

Rights:

Same rights as the beneficiaries of subsidiary protection. Regarding social security it must be noted that, If the application is declared admissible, the alien has a right to social benefits during the examination of his demand[69]. If the application is declared inadmissible or admissible but unfounded the applicant has the right to emergency medical care only [70]. If the application is declared admissible and founded the alien has a right to full social benefits[71].

LEAVE OF STAY DUE TO EXCEPTIONAL CIRCUMSTANCES[72]

Legal basis:

[62] Circulaire du 21 juin 2007 relative aux modifications intervenues dans la réglementation en matière de séjour d'étrangers suite à l'entrée en vigueur de la loi du 15 septembre 2006.
[63] Article 7 of the May 2007 Royal Decree
[64] Ibid
[65] Circulaire du 21 juin 2007 relative aux modifications intervenues dans la réglementation en matière de séjour d'étrangers suite à l'entrée en vigueur de la loi du 15 septembre 2006.
[66] Article 7 of the May 2007 Royal Decree
[67] Article 13 par.1 of the Aliens Act of 15th December 1980 as amended by the Act of 15th September 2006 read in conjunction with Article 8 of the May 2007 Royal Decree.
[68] Article 13 par.1 of the Aliens Act of 15th December 1980 as amended by the Act of 15th September 2006
[69] Circulaire relative à la régularisation de séjour pour raisons médicales et son impact sur le droit à l'aide sociale, February 2008, at p. 3, available at: http://www.medimmigrant.be/2008%2002%2020%20OB%20ocmw%20bij%20ontv%209ter%20FR.pdf
[70] Ibid.
[71] Ibid
[72] The law only describes this class of beneficiaries and does not define this status with a specific term. See Article 9bis of the Aliens Act

- Article 9bis of the Aliens Act of 15th December 1980 as amended by the Act of 15th September 2006.
- Circulaire du 21 juin 2007 relative aux modifications intervenues dans la réglementation en matière de séjour d'étrangers suite à l'entrée en vigueur de la loi du 15 septembre 2006[73].

Beneficiaries:
Article 9bis organizes the regularization for "exceptional circumstances"Aliens may claim a leave of stay in Belgium due to exceptional circumstances when:
1. They are able to prove exceptional circumstances preventing them from submitting a demand to stay in Belgium longer than three months from the competent Belgian embassy (which is the normal procedure)[74]. There is no definition in the law as to which circumstances could be considered as "exceptional". According to the administrative practice the following cases are indicative as to what constitutes an exceptional circumstance[75]:

- impossibility of return (e.g. because the country of origin refuses to readmit the person or there is no flight or means of transportation available),
- an asylum procedure that has been very protracted,
- asylum applicants whose applications were rejected after taking several years for a decision, and who now have strong ties to Belgium,
- parents of a child with Belgian nationality,
- people who are stateless and cannot reside in any other country but Belgium.

According to the law the following do not constitute exceptional circumstances[76]:

- elements that have been stated again during an asylum application and have been rejected, apart from those that were rejected because they were irrelevant to the criteria for the refugee or the subsidiary protection definition.
- elements that should have been invoked during an asylum examination procedure, to the extent that they existed and they were known to the asylum applicant until the end of the asylum procedure.
- elements that have been invoked again during a previous application of leave to stay in Belgium due to exceptional circumstances.
- elements that have been invoked again during a previous application of leave to stay in Belgium for medical reasons.

2. They possess an identity document[77]. This clause does not apply to asylum seekers that are still in the asylum process or who have introduced an administrative appeal against the rejection of their application as inadmissible or to foreigners who can prove the impossibility to obtain the requested document in Belgium[78]

[73] Available at the Moniteur Belge website at:
http://www.ejustice.just.fgov.be/mopdf/2007/07/04_2.pdf
[74] Article 9bis par.1 of the Aliens Act of 15 th December 1980 as amended by the Act of 15th September 2006.
[75] See for details Legros, Thérèse, Doyen, Isabelle, Introduction à la réforme du Droit des étrangers, ADDE, July 2007, at p. 13.
[76] Article 9bis par. 2 of the Aliens Act of 15 th December 1980 as amended by the Act of 15th September 2006.
[77] Ibid.
[78] Ibid.

3. The exceptional circumstances are expressly and specifically mentioned and if the applicant belongs to a special category of applicants (e.g. student) he has to produce specific documents[79].

4. They have effective residence in Belgium[80].

The applications should be made at the municipal authority where the alien is residing[81]. They will then be transmitted to the Minister of Interior [82]. The applications are examined by the *Office des Étrangers* (Aliens Office)[83] which can either declare the application inadmissible (if the applicant does not state any exceptional circumstances or has unjustifiably failed to provide any identification documents), it can declare the application unfounded (if the invoked arguments are rejected), or it can accept the demand and communicate its decision to the administrative authorities so that they perform the necessary steps to provide the applicant with a residence permit[84].

Duration: The law does not provide a specific duration. In the February 2008 Circulaire it has been stated that the beneficiary receives a one-year residence permit, extendable and renewable[85].

Rights:

Same rights as people granted a leave for stay due to medical reasons. However, it must be noted that during the examination of the demand there is no right to social benefits and access is provided only to emergency medical care[86]. If the application is declared admissible and founded can a beneficiary claim for social benefits[87].

[79] See for more details Article 1 of the Circulaire du 21 juin 2007
[80] Ibid
[81] Article 9bis par.1 of the Aliens Act of 15th December 1980 as amended by the Act of 15th September 2006.
[82] Ibid
[83] The '*Office des Étrangers'* is a Directorate General of the Ministry of the Interior.
[84] Circulaire relative à la régularisation de séjour pour raisons médicales et son impact sur le droit à l'aide sociale, February 2008, at p. 3
[85] Ibid
[86] Ibid
[87] Ibid

PROTECTION SUBSIDIAIRE

Introduite en Belgique le 10 octobre 2006, la protection subsidiaire est une forme de protection qui vient compléter la protection internationale prévue par la Convention de Genève. Elle résulte de la transposition de la Directive européenne 2004/83/CE.
Cette directive défi nit des normes minimales relatives aux conditions que doivent remplir les personnes qui ont besoin d'une protection subsidiaire. Elle a été transposée en droit belge en insérant dans la Loi sur les étrangers des dispositions définissant la protection subsidiaire ainsi que les conditions d'octroi de celle-ci. La Loi sur les étrangers constitue donc le texte de référence à ce sujet.

Définition

Le statut de protection subsidiaire est accordé à tout étranger qui ne peut être considéré comme réfugié et qui ne peut bénéficier de la procédure prévue pour le séjour à titre humanitaire pour raisons médicales, et à l'égard duquel il y a de sérieux motifs de croire que, s'il était renvoyé dans son pays d'origine, il court un risque réel de subir des atteintes graves. Il doit en outre apparaître clairement que l'étranger ne peut ou ne veut se placer sous la protection de son pays en raison du risque d'atteintes graves et qu'il ne relève pas des critères d'exclusion.
Sont considérées comme atteintes graves:
• la peine de mort ou l'exécution; ou
• la torture ou les traitements ou sanctions inhumains ou dégradants du demandeur dans son pays
d'origine; ou
• les menaces graves contre la vie ou la personne d'un civil en raison d'une violence aveugle en cas de conflit armé interne ou international.
Un étranger sera toutefois exclu du statut de protection subsidiaire lorsqu'il existe des motifs sérieux de considérer:
• qu'il a commis un crime contre la paix, un crime de guerre ou un crime contre l'humanité;
• qu'il s'est rendu coupable d'agissements contraires aux buts et aux principes des Nations Unies;
• qu'il a commis un crime grave.
Comme son nom l'indique, ce nouveau régime de protection a un caractère « subsidiaire » par rapport aux deux autres formes de protection, celle prévue par la Convention de Genève et celle prévue pour les personnes ayant de graves problèmes de santé.
L' existence de ces trois formes de protection, qui se complètent, devrait permettre l'octroi d'une protection effective à toutes les personnes qui en ont besoin.

Application

La demande de reconnaissance du statut de réfugié ou d'octroi du statut de protection subsidiaire se fait en Belgique sous la forme d'une demande d'asile.
Les trois instances d'asile (OE, CGRA, CCE) sont compétentes pour le traitement des demandes d'asile et de protection subsidiaire. Ces instances examinent les demandes d'asile en premier lieu dans le cadre de la Convention de Genève puis, lorsque celle-ci

n'est pas d'application, dans le cadre des dispositions relatives à la protection subsidiaire.
Ces deux formes de protection font donc l'objet d'une procédure unique, où la priorité est accordée à l'examen de la demande au regard de la Convention de Genève.

Statut des personnes
Les personnes qui se voient accorder le statut de protection subsidiaire sont admises au séjour en Belgique pour une durée limitée. Un titre de séjour valable un an et renouvelable annuellement leur est délivré par l'administration communale sur instruction de l'Office des étrangers.
Au bout de 5 ans à compter de la date d'introduction de la demande d'asile, le séjour des bénéficiaires de la protection subsidiaire devient à durée illimitée.
Le titre de séjour est délivré par l'administration communale sur la base de la décision d'octroi de la protection subsidiaire prise par le Commissariat général ou par le Conseil du contentieux des étrangers, sauf si la décision d'octroi du CGRA («décision de refus du statut de réfugié et d'octroi du statut de protection subsidiaire») fait l'objet d'un recours auprès du CCE.
Les effets d'un tel recours sont les suivants:
le report de l'octroi de la protection subsidiaire et par conséquent l'allongement du délai d'attente;
• le risque que le CCE réforme la décision du CGRA et refuse de surcroît d'accorder le statut de protection subsidiaire.

Octroi du statut de protection subsidiaire

En 2007, un peu moins de trois demandeurs d'asile sur quatre ayant obtenu le statut de protection subsidiaire étaient originaires d'Irak, ce qui s'explique par la situation qui prévaut dans ce pays. Un nombre moins important étaient originaires d'Afghanistan et de Somalie.

Le nombre de décisions d'octroi de la protection subsidiaire est resté relativement limité en 2007.
Comme le CGRA applique une interprétation large de Convention de Genève, la plupart des cas où une protection s'avère nécessaire aboutissent à une décision de reconnaissance du statut de réfugié. En instaurant la protection subsidiaire, le législateur avait en effet souhaité que le statut de réfugié prime sur cette nouvelle forme de protection.
Le nombre de décisions positives (reconnaissances et octroi de la protection subsidiaire) représente 19,8% du total des décisions prises en 2007, soit une augmentation par rapport à 2006. Cela s'explique en premier lieu par l'introduction de la protection subsidiaire. D'autres facteurs sont la résorption presque complète de l'arriéré, ainsi que le fait que les demandeurs d'asile proviennent de plus en plus de pays où se posent des problèmes sérieux ou qui sont affectés par un conflit grave.

Unofficial translation

Introduced in Belgium on 10 October 2006, subsidiary protection is a form of protection which complements international protection as contemplated by the

Geneva Convention. It is the result of the transposition of the European Directive 2004/83/CE.
This directive establishes minimal standards in regard to conditions which must fulfill persons in need of subsidiary protection. It was transposed in Belgian law through the addition of dispositions in the Aliens Act defining subsidiary protection as well as the conditions to grant it. The Aliens Act is thus the central text on this topic.

Definition

Subsidiary protection status is granted to any alien who cannot be deemed a refugee and who cannot benefit from the humanitarian process for medical reasons, and for whom there are good reasons to believe that the individual would encounter a real risk of serious encroachments, should he be returned to his country of origin. It must also be clearly demonstrated that the person concerned cannot or does not want to claim protection in his country due to this risk of serious encroachment; further, exclusion clauses should not be applied to him.
The following are considered serious encroachments:
• death penalty or execution; or
• torture or inhuman or degrading treatments or penalties in the country of origin; or
• serious threats against life or a civilian person in case of internal or international armed conflict.
However, an alien would be excluded from subsidiary protection status when there are serious reasons to believe that:
• he has perpetrated a crime against peace, a war crime or a crime against humanity;
• he has been guilty of actions contrary to the goals and principles of the United Nations;
• he has perpetrated a serious offense.
As the name indicates, this new protection regime has a « subsidiary » character when considered vis-à-vis other forms of protection, for instance the one foreseen by the Geneva Convention and the one related to individuals with a serious medical condition.
The existence of these three types of protection, which are complementary, should allow for the granting of an efficient protection for all those individuals in need of it.

Application

The application for refugee status or the granting of subsidiary protection statu sis made in Belgium through an asylum application
The three asylum levels (OE, CGRA, CCE) have jurisdiction over asylum applications and subsidiary protection. These agencies first look into the asylum claim in the framework of the Geneva Convention, then, if not applicable, with regard to the subsidiary protection clauses.
These two types of protection undergo a single procedure, where priority is given to the examination of the application in regard to the Geneva Convention.

Status of individuals

Individuals who are granted subsidiary protection status are admitted for a limited period in Belgium. A one-year residence permit is given, renewable annually by the communal administration following a directive from the Aliens Office.

After 5 years from the date of the initial asylum application, the residence of the subsidiary protection beneficiaries becomes for an indefinite period of time.
The residence permit is delivered by the communal administration on the basis of decision granting subsidiary protection made by the General Commissariat or by the Aliens Council, except when the CGRA granting decision is appealed to the CCE («decision denying refugee status and subsidiary protection status »).
These circumstances produce the following consequences:
• the granting of subsidiary protection is extended as well as the waiting period;
• the possibility for the CCE to quash the CGRA decision and refuses to grant subsidiary protection status.

Granting of subsidiary protection

In 2007, a little less than three asylum applicants out of four having received subsidiary protection came from Iraq, which can be explained by the situation prevailing in this country. A smaller number came from Afghanistan and Somalia.

The number of decisions granting subsidiary protection was relatively limited in 2007. As the CGRA gives a liberal interpretation of the Geneva Convention, most cases where such a protection is necessary receive Convention refugee status. By establishing subsidiary protection, the lawmaker wanted that Convention refugee status comes before this new type of protection.
The number of positive decisions (recognizance and granting of protection) represents 19,8% of the total number of decisions made in 2007, an increase in comparison with 2006. First, this can be explained by the introduction of subsidiary protection. Other factors are the almost complete reduction of the backlog as well as the fact that asylum seekers come increasingly from countries where serious problems or a grave conflict prevail.

Statistics Belgium

2006

	Jan	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**	**Oct**	**Nov**	**Dec**	**Total**
Afg	24	26	17	10	19	14	28	26	20	119	23	39	365
DRC	73	75	94	75	71	69	65	59	57	79	64	62	843
Iraq	54	49	54	35	51	38	37	61	61	70	89	86	695
Som[1]													124

2007

	Jan	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**	**Oct**	**Nov**	**Dec**	**Total**
Afg	54	38	33	169	84	61	28	35	62	43	46	53	696
DRC	78	44	53	73	84	57	45	52	63	64	54	49	716
Iraq	70	52	61	50	70	69	72	77	86	100	60	58	825
Som[1]													168

2008

	Jan	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**	**Oct**	**Nov**	**Dec**	**Total**

Afg	63	67	60	33	57	76	78	94	73	88	90	100	879
DRC	57	49	54	51	37	46	38	42	57	45	57	46	579
Iraq	82	84	80	84	77	90	92	69	92	113	92	115	1070
Som[1]													163

1- Somalia was not among the top 10 in any of these years.

DENMARK (ECRE)

Statuses of complementary/subsidiary protection
• Protection Status
• Humanitarian Status
• Exceptional Reasons /Hindrances to Deportation

Denmark is not bound by the Qualification Directive, as it is automatically excluded from all EC asylum measures. However, it remains a party to the 1990 Dublin Convention and in order to update the position while respecting Denmark's exclusion from asylum measures as EC law, the Community and Denmark have concluded a treaty, which extends the "Eurodac" and "Dublin Regulation" to Denmark[88]. The main legal instrument that regulates asylum in Denmark is the Alien's (Consolidation) Act[89]. Also of relevance is the Executive Order on Aliens' Access to Denmark (Aliens Order)[90], as well as the Consolidation of the Act on Integration of Aliens in Denmark (the Integration Act)[91]. Apart from being recognized as a Convention refugee an asylum seeker can be granted a residence permit on protection grounds, on humanitarian consideration and because there exist exceptional reasons which make it appropriate or hindrances to deportation.

[88] Peers, Steven, *EU Justice and Home Affairs Law,* 2nd edition, Oxford University Press, 2006, at p. 307

[89] Consolidation Act No. 808 of 8 July 2008, available at: http://www.nyidanmark.dk/NR/rdonlyres/C2A9678D-73B3-41B0-A076-67C6660E482B/0/alens_consolidation_act_english.pdf

[90] Executive Order No. 635 of 24 June 2008, available at: http://www.nyidanmark.dk/NR/rdonlyres/80A97DB0-B657-4B6D-8734-D17BD6AE74C0/0/aliens_order.pdf

[91] Consolidation Act No. 839 of 5 September 2005, available at: http://www.nyidanmark.dk/NR/rdonlyres/105C4108-2914-4BCB-B5CE-5023B5EF62F7/0/act_on_integration_2005.pdf

PROTECTION STATUS

Legal basis: Aliens (Consolidation) Act 2008, Section 7(2)

Beneficiaries: Aliens who do not qualify for refugee status under the Geneva Convention but risk the death penalty or being subjected to torture or inhuman or degrading treatment or punishment in case of return to their country of origin.

It becomes apparent that this definition is narrower than the definition of subsidiary protection beneficiaries in the Qualification Directive that includes asylum seekers who face a real risk of serious harm in the sense of a "serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict"[92].

Duration: A residence permit under this section of the Aliens Act is issued with a possibility of permanent residence in Denmark, unless the alien applies for a residence permit for the purpose of a temporary stay only[93]. The residence permit may be issued for a limited period of time[94]. A time-limited residence permit under this section of the Aliens Act is issued for seven years[95]. The residence permit is issued for two years if it is expected, upon a general assessment of the conditions in the applicant's country of origin, that the conditions for asylum will not be satisfied during this entire period[96]. In such cases, the residence permit may then be extended by two years or five years depending on an assessment of the development in the applicant's country of origin[97]. If the residence permit is extended by two years, the residence permit may then be extended by further three years[98]. A permanent residence permit is issued upon application to an alien who has lived lawfully in Denmark for more than the last 7 years and who, throughout this period, has been issued with a residence permit on the same basis, unless there is a basis for revoking the residence permit under section 19 Aliens (Consolidation) Act[99].

[92] Article 15 (c), Qualification Directive
[93] Aliens Order, Section 22(1)
[94] Aliens Consolidation Act, Section 11(1)
[95] Aliens Order, Section 23(1)
[96] Ibid
[97] Ibid
[98] Ibid
[99] Aliens Order, Section 11(3). See also Section 19 Aliens Consolidation Act for a detailed list of revocation reasons.

Rights:

Rights	Y	N	Details
Access to wage-earning employment	✓		Exempt from the work permit requirement[100].
Access to self-employment	✓		
Access to liberal professions	✓		
Access to housing	✓		The local council is responsible for housing of beneficiaries allocated to the municipality in question[101].
Access to public education	✓		Like Convention Refugees. An introduction programme planned by the responsible local council must be offered to aliens who, at the date when the local council takes over responsibility, are 18 years of age or more[102].
Social security	✓		Like Convention refugees. For the first 3 years while they are following an introduction programme and if they are unemployed they receive an introduction allowance[103], which is only a percentage of the full amount of social benefits. After the completion of the introduction course they continue to receive the same low amount until they have resided in Denmark for seven years, and they can prove that they have been employed full-time for 2,5 years[104].
Health	✓		Like Convention refugees. Access to the National Health system as for all nationals. They can also be granted assistance for expenses that cannot be met under other legislation[105].
Freedom of movement within the national territory	✓		Like with Convention refugees the freedom of movement may be indirectly limited in that a

[100] Section 14 (1)(iv), Aliens Consolidation Act

[101] Integration Act, Part 2, Section 4(1), It should be noted with reference to the Integration Act, that for the purpose of this particular Act many categories of aliens who are not Convention refugees fall under the definition of "refugee". See Part 12 Section 54, Integration Act.

[102] Integration Act, Part 4, Section 16(1), The introduction programme includes Danish courses as well as other individual elements according to each person's skills. Following an introduction programme is a prerequisite to qualify for an introduction allowance.

[103] Integration Act, Part 5, Section 25

[104] This is stipulated by the Act on an Active Social Policy. See also a report by Amnesty International on the subject (in Danish), Starthjælp – Når staten diskriminerer, Novemebr 2007, available at: http://www.amnesty.dk/log/N%E5rStatenDiskriminerer.pdf
The 2 _ half years only start counting after the 7 years of residence. This means that there is no automatic move into full social benefits after a certain period of residence and a refugee in Denmark will therefore be on the lower introductory allowance for a unlimited time period unless he or she enters into employment for the requires time-span.

[105] Integration Act, Part 6, Section 36

			refugee who within the first three years of residence (the so-called "introduction period") moves to another municipality without the consent of that municipality may be deprived of social security benefits[106].
Travel document	✓		Beneficiaries receive a Danish Aliens Passport upon application[107]. However, aliens are not allowed to visit their home country without prior approval.
Voting rights in municipal election		✓	Aliens can vote only if they have held permanent residence in Denmark in the three years preceding the election.
Right to stand for elections		✓	
Family reunification	✓		Like Convention refugees. There is a number of conditions that have to be fulfilled for a reunification with a spouse or unmarried children under 15, including an age limit, 24 years of age, for reunification with a spouse and proof of financial security[108].
Vocational training	✓		Like Convention refugees. Acquired as soon as they are given the status. See above for the details of the introduction programme.
Access to citizenship	✓		Like Convention refugees. In 2005 an "Agreement on Nationality" was passed that established guidelines for the preparation of naturalisation bills and describes the several requirements in order to be granted Danish citizenship[109].

[106] See Integration Act, Part 2, Section 5(2), Integration Act, Part 4, Section 18(1),(2)
[107] Aliens Order, Section 6(2)(i)
[108] See Section 9, Aliens Consolidation Act. However, these conditions can be waived in certain individual cases, if their application would result to a violation of other international obligations of Denmark.
[109] See the text of the Agreement on Nationality at: http://www.nyidanmark.dk/NR/rdonlyres/0271E58F-0CA9-4492-B87F-5C905FF7FDEB/0/cirkulaereskrivelse_nr_9_12_januar_2006_engelsk.pdf

HUMANITARIAN STATUS

Legal basis: Aliens (Consolidation) Act 2008, Section 9(b)

Beneficiaries: A person who does not qualify for Convention refugee status under section 7(1) of the Act or protected status under section 7(2) of the Act but is in such a position that essential considerations of a humanitarian nature conclusively make it appropriate to grant a residence permit[110]. Such an application may only be submitted by aliens staying in Denmark who are registered as asylum- seekers. When examining applications for a residence permit for humanitarian considerations, the Ministry of Refugee, Immigration and Integration Affairs may, without the applicant's consent, procure the documents included in the case of a residence permit for the applicant for asylum (for convention or other protection grounds) from the Danish Immigration Service or the Refugee Appeals Board and procure health information on the applicant from the accommodation operator and the Danish Immigration Service.

Duration: A residence permit under section 9b of the Aliens Act is issued with a possibility of permanent residence or a temporary stay in Denmark[111]. In deciding whether to issue the residence permit with a possibility of permanent residence or a temporary stay, particular regard must be had to the purpose of the residence or stay[112]. The residence permit may be issued for a limited period of time [113]. A time-limited residence permit under section 9b of the Aliens Act is issued for not more than one year at a time, after two years for not more than two years, and after four years for not more than three years at a time[114]. A permanent residence permit is issued upon application to an alien who has lived lawfully in Denmark for more than the last 7 years and who, throughout this period, has been issued with a residence permit on the same basis, unless there is a basis for revoking the residence permit under section 19 Aliens (Consolidation) Act[115].

Rights: Same rights as persons who are granted residence permits based on protection with one exception:

- **Travel Document:**

[111] Aliens Order, Section 22(2)
[112] Ibid.
[113] Aliens Consolidation Act, Section 11(1)
[114] Aliens Order, Section 23(5)
[115] Aliens Order, Section 11(3). See also Section 19 Aliens Consolidation Act for a detailed list of revocation reasons.

An alien's passport is issued upon application to this category of beneficiaries if they are unable to procure a passport or other travel document, provided that they have been issued with a residence permit[116].

EXCEPTIONAL REASONS/HINDRANCES TO DEPORTATION

Legal basis: Aliens (Consolidation) Act 2002, Sections 9(c)(1), 9(c)(2), 9(c)(3)

Beneficiaries:

1. Exceptional Reasons[117]: A residence permit may be issued to an alien if exceptional reasons make it appropriate, including regard for family unity. Unless particular reasons make it inappropriate, including regard for family unity, it must be made a condition for a residence permit which is granted, under this Section, as a result of family ties with a person living in Denmark that the conditions referred to in section 9(2) to (17) are satisfied (conditions to family reunification that apply to all aliens including proof of financial security).

2. **Hindrances to Deportation**[118]: A residence permit may be issued to a person who does not qualify for Convention refugee status or protection status under section 7(2) of the Act, but whom it has not been possible to return to his/her country of origin for at least 18 months, and provided that the alien has assisted (co-operated with the Danish authorities) in the return efforts for 18 months consecutively, and return is considered futile according to information available at the time.

3. **Special Provisions for Unaccompanied Minors**[119]: A residence permit may be issued to:
(i) an unaccompanied alien who has submitted an application for a residence permit pursuant to section 7 (which includes convention status and protection status) prior to his 18th birthday if, from information available on the alien's personal circumstances, there are particular reasons to assume that the alien should not undergo asylum proceedings;
(ii) an unaccompanied alien who has submitted an application for a residence permit pursuant to section 7 prior to his 18th birthday, if there is reason to assume that in cases other than those mentioned in section 7(1) and (2) the alien will in fact be placed in an emergency situation upon a return to his country of origin.

[116] Aliens Order, Section 6(3)iii
[117] Aliens Consolidation Act, Section 9(c)1
[118] Aliens Consolidation Act, Section 9(c)2
[119] Aliens Consolidation Act, Section 9(c)3

Duration: A residence permit under section 9c of the Aliens Act is issued with a possibility of permanent residence or a temporary stay in Denmark[120]. In deciding whether to issue the residence permit with a possibility of permanent residence or a temporary stay, particular regard must be had to the purpose of the residence or stay[121].
The residence permit may be issued for a limited period of time[122]. In particular, a time-limited residence permit under section 9c(2) of the Aliens Act for aliens with reference to the fact that return, has not been possible for at least 18 months is issued for not more than one year the first time and may be extended for two-year periods at a time[123]. Furthermore, a time-limited residence permit under section 9c(3) of the Aliens Act for under-age unaccompanied aliens who have entered Denmark and been registered as asylum-seekers is issued for not more than two years at a time, and after four years for not more than three years at a time[124]. As in the previous cases, a permanent residence permit is issued upon application to an alien who has lived lawfully in Denmark for more than the last 7 years and who, throughout this period, has been issued with a residence permit on the same basis, unless there is a basis for revoking the residence permit under section 19 Aliens (Consolidation) Act[125].

Rights: Same rights as persons who are granted residence permits based on protection, including the right to work[126], with one exception:

- **Travel Document:**

An alien's passport is issued upon application to this category of beneficiaries[127] if they are unable to procure a passport or other travel document, provided that they have been issued with a residence permit[128].

[120] Aliens Order, Section 22(2)
[121] Ibid.
[122] Aliens Consolidation Act, Section 11(1)
[123] Aliens Order, Section 23(8)
[124] Aliens Order, Section 23(6)
[125] Aliens Order, Section 11(3). See also Section 19 Aliens Consolidation Act for a detailed list of revocation reasons.
[126] See Aliens Consolidation Act, Section 14(1)(vi) which states that: The following aliens are exempt from the requirement of a work permit: (vi) aliens issued with a residence permit under section 9c when the permit has been issued to an alien who has submitted an application for a residence permit under section 7 (asylum). Therefore, all failed asylum seekers who are granted a residence permit under this Section are exempt. See also Aliens Consolidation Act, Section 14(1)(v) which states the exemption of: aliens issued with a residence permit under section 9c(1) when the permit has been issued in immediate continuation of a residence permit under section 9b (humanitarian status).
[127] This category being: "an alien who has submitted an application for a residence permit under section 7 of the Aliens Act", therefore a failed asylum seeker.
[128] Aliens Order, Section 6(3) iv.

FINLAND (ECRE)

Status of complementary/subsidiary protection
• Residence permits based on the need for protection
• Residence permits based on other grounds
• Immigration on other Humanitarian Grounds

The Qualification Directive has not yet been transposed in Finland. The current law that regulates asylum is the 301/2004 Alien's Act that has been in force since the 1st of May 2004[129]. Apart from refugee protection an alien can be granted with a residence permit "based on the need for protection", a regime, which is comparable to the subsidiary protection regime, established by the Qualification Directive. Furthermore, a residence permit can be granted on other grounds, not related to the need or requirements for international protection, that have to do with the applicant's health situation or impossibility of return to his/her country of origin. Finally, the government can decide on a special procedure to admit aliens on other humanitarian grounds.

[129] Aliens Act (301/2004, amendments up to 973/2007 included), A non- binding translation of the law in English is available at the website of the Finnish Immigration Service at: http://www.migri.fi/download.asp?id=Aliens+Act;1220;{7DE0B313-A3EA-4EE1-B90A-1E6D8E42E0A1}A
A binding translation in Swedish is available at:
http://www.finlex.fi/sv/laki/ajantasa/2004/20040301

RESIDENCE PERMITS BASED ON THE NEED FOR PROTECTION

Legal basis: Aliens Act (301/2004, amendments up to 973/2007), Section 88

Beneficiaries: Aliens are issued with a residence permit on the basis of a need for protection if the requirements for granting asylum are not met but the aliens are in their home country or country of permanent residence under the threat of death penalty, torture or other inhuman treatment or treatment violating human dignity, or if they cannot return there because of an armed conflict or environmental disaster[130].

Aliens are excluded from this protection if they have committed, or if there are reasonable grounds to suspect that they have committed[131]:
1) a crime against peace, war crime or crime against humanity as defined by international agreements concerning such crimes;
2) a serious non-political crime outside Finland before entering Finland; or
3) an act which violates the aims and principles of the United Nations

Duration: A continuous residence permit is issued to aliens who are allowed to remain in Finland on the basis of a need for protection[132]. A continuous residence permit (A-permit) can be extended for a maximum of four years at a time. A permanent residence permit is issued to beneficiaries of this category of protection, if after being issued with a continuous residence permit they have resided legally in the country for a continuous period of four years and if the requirements for issuing an alien with a continuous residence permit are still met and there are no obstacles to issuing a permanent resident permit under the 301/2004 Alien's Act[133]. The period of four years is calculated from the date of entry into the country[134].

Rights:

Rights	Y	N	Details
Access to wage-earning employment	✓		Aliens who have been issued with a permanent residence permit or a continuous residence permit have the right to gainful employment[135].

[130] Section 88, par.1, Aliens Act 301/2004
[131] Section 88, par.2, Aliens Act 301/2004
[132] Section 113, par.1, Aliens Act 301/2004
[133] Section 56, par.1, Aliens Act 301/2004. The obstacles according to Section 57 of the same Act are the following:
1)the alien is found guilty of an offence punishable by imprisonment; or
2) is suspected of an offence punishable by imprisonment; or
3) is found guilty of two or more offences; or
4) is suspected of two or more offences.
[134] Section 56, par.4, Aliens Act 301/2004
[135] Section 79, par.1

Access to self-employment	✓		
Access to liberal professions	✓		
Access to housing	✓		Like Convention refugees: municipalities are obliged to provide accommodation.
Access to public education	✓		Children and adults have access to education. Public authorities must secure equal opportunities for every resident in Finland to get education also after compulsory schooling.
Social security	✓		Like Convention refugees
Health	✓		All regular residents in Finland are entitled to sickness insurance compensation
Freedom of movement within the national territory	✓		Persons that have been granted with a residence permit can move freely in Finland.
Travel document	✓		Aliens who have been issued with a residence permit on the basis of a need for protection are issued with an alien's passport[136].
Voting rights in municipal election	✓		Like Convention refugees.
Family reunification	✓		A residence permit is issued on the basis of family ties to a family member of an alien who has been issued with a residence permit on the basis of a need for protection if: 1) the sponsor lives in Finland or has been issued with a residence permit for the purpose of moving to Finland; and 2) the applicant is not considered a danger to public order, security or health[137].
Vocational training	✓		Like Convention refugees
Access to citizenship	✓		Like Convention refugees

Residence Permits based on other grounds

Legal basis: Aliens Act (301/2004, amendments up to 973/2007), Sections 51, 52, 89

[136] Section 134, par.2, Aliens Act 301/2004
[137] Section 114, par.1, Aliens Act 301/2004

Beneficiaries: A residence permit maybe granted for other grounds that are not related to the need or requirements for international protection. The law states three different categories of potential beneficiaries:

1. **Residence permits in cases where aliens cannot be removed from the country**[138]. Aliens residing in Finland are issued with a temporary residence permit if they cannot be returned to their home country or country of permanent residence for temporary reasons of health or if they cannot actually be removed from the country. Issuing such a residence permit does not require that the alien have secure means of support

2. **Residence permits on compassionate grounds**[139]**.** Aliens residing in Finland are issued with a continuous residence permit if refusing a residence permit would be manifestly unreasonable with regard to their health, ties to Finland or on other compassionate grounds, particularly in consideration of the circumstances they would face in their home country or of their vulnerable position

3. **Residence permits when exception clauses are applied**[140]. Aliens residing in Finland who are not granted asylum or a residence permit on the basis of a need for protection because they have committed, or there are reasonable grounds to suspect that they have committed, an act referred to in section 87(2) are issued with a temporary residence permit for a maximum of one year at a time if they cannot be removed from the country because they are under the threat of death penalty, torture, persecution or other treatment violating human dignity.

Duration:

Residence permits in cases where aliens cannot be removed from the country: In this case, beneficiaries receive a temporary residence permit. A temporary residence permit (B-permit) can be extended for a maximum of a year at a time. An alien who has been issued with a temporary residence permit because he or she cannot be removed from the country are issued with a continuous residence permit after a continuous residence of two years in the country if the circumstances on the basis of which they were issued with the previous fixed-term permit are still valid[141].

Residence permits on compassionate grounds: In this case, beneficiaries receive a continuous residence permit. A continuous residence permit (A-permit) can be extended for a maximum of four years at a time. A permanent residence permit is issued to beneficiaries of this category of protection, if after being issued with a continuous residence permit they have resided legally in the country for a continuous period of four years and if the requirements for issuing an alien with a continuous residence permit are still met and there are no obstacles to issuing a permanent resident permit under the 301/2004 Alien's Act[142]. In this case, the period of four

[138] Section 51, Aliens Act 301/2004
[139] Section 52, Aliens Act 301/2004
[140] Section 89, Aliens Act 301/2004
[141] Section 54, par.5, Aliens Act 301/2004
[142] Section 56, par.1, Aliens Act 301/2004. The obstacles according to Section 57 of the same Act are the following:
1)the alien is found guilty of an offence punishable by imprisonment; or

years is calculated from the first day of the fixed-term residence permit issued for the first continuous residence in the country[143].

3. **Residence permits when exception clauses are applied**: In this case, beneficiaries receive a temporary residence permit for a maximum of one year at a time. Aliens who have been issued with a residence permit for this reason are issued with a continuous residence permit after three years of continuous residence in the country if the grounds for issuing a residence permit still exist[144]. A permanent residence permit is issued to beneficiaries of this category of protection, if after being issued with a continuous residence permit they have resided legally in the country for a continuous period of four years and if the requirements for issuing an alien with a continuous residence permit are still met and there are no obstacles to issuing a permanent resident permit under the 301/2004 Alien's Act[145]. In this case, the period of four years is calculated from the first day of the fixed-term residence permit issued for the first continuous residence in the country[146].

Rights:

Residence permits in cases where aliens cannot be removed from the country

Same rights as persons who are granted residence permits based on the need for protection with three exceptions:

- Family reunification

The law explicitly states that the family members of this category of beneficiaries who are residing abroad are not issued with a residence permit on the basis of family ties[147]. However if the circumstances persist and the main beneficiaries are issued continuous residence permit as described above, then they have the right to family reunification[148].

- Right to employment

This category of beneficiaries does not enjoy the right to gainful employment, as they are not listed in any of the Sections 79, 80 of the Alien's Act. However if the

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2) is suspected of an offence punishable by imprisonment; or
3) is found guilty of two or more offences; or
4) is suspected of two or more offences.

[143] Section 93, par.3, Aliens Act 301/2004
[144] Section 113, par.2, Aliens Act 301/2004
[145] Section 56, par.1, Aliens Act 301/2004. The obstacles according to Section 57 of the same Act are the following:
1)the alien is found guilty of an offence punishable by imprisonment; or
2) is suspected of an offence punishable by imprisonment; or
3) is found guilty of two or more offences; or
4) is suspected of two or more offences.
[146] Section 93, par.3, Aliens Act 301/2004
[147] Section 51, par.3, Aliens Act 301/2004
[148] Section 47, par.3, Aliens Act 301/2004

circumstances persist and they are issued continuous residence permit as described above, then they have the right to employment[149].

- Travel Document

An alien's passport may be issued to this category of aliens residing in Finland, if they cannot obtain a passport from the authorities of their home country, if they have no citizenship or if there are other special reasons for issuing an alien's passport to them[150].

Residence permits on compassionate grounds:
Same rights as persons who are granted residence permits based on the need for protection, including family reunification[151] with one exception:

- Travel Document

An alien's passport may be issued to this category of aliens residing in Finland, if they cannot obtain a passport from the authorities of their home country, if they have no citizenship or if there are other special reasons for issuing an alien's passport to them[152].

3. **Residence permits when exception clauses are applied**
Same rights as persons who are granted residence permits based on the need for protection with three exceptions:

- Family reunification

Family members are issued with a continuous residence permit only after beneficiaries of this category receive a continuous residence permit[153], therefore after 3 years of continuous residence in the country under a temporary residence permit.

- Right to employment

This category of beneficiaries does not enjoy the right to gainful employment, as they are not listed in any of the Sections 79, 80 of the Alien's Act. However if the circumstances persist and they are issued continuous residence permit as described above, then they have the right to employment[154].

- Travel Document

An alien's passport may be issued to this category of aliens residing in Finland, if they cannot obtain a passport from the authorities of their home country, if they have no citizenship or if there are other special reasons for issuing an alien's passport to them[155].

[149] Section 79, par.1, Aliens Act 301/2004
[150] Section 134, par.1, Aliens Act 301/2004
[151] Section 52, par.3, Aliens Act 301/2004
[152] Section 134, par.1, Aliens Act 301/2004
[153] Section 113, par.3, Aliens Act 301/2004
[154] Section 79, par.1, Aliens Act 301/2004
[155] Section 134, par.1, Aliens Act 301/2004

Immigration on other Humanitarian Grounds

Legal basis: Aliens Act (301/2004, amendments up to 973/2007), Section 88

Beneficiaries: The Government may decide in a plenary session on admitting aliens into Finland on special humanitarian grounds or to fulfil international obligations[156]. The Ministry of the Interior and the Ministry for Foreign Affairs prepare a joint proposal for Government decision[157].

Duration: Persons who are admitted in Finland on the basis of a government decision under the aforementioned procedure receive a temporary residence permit[158]. A temporary residence permit (B-permit) can be extended for a maximum of a year at a time. After three years of continuous residence in the country and if the grounds for issuing a residence permit still exist they receive a continuous residence permit[159]. A permanent residence permit is issued to beneficiaries of this category of protection, if after being issued with a continuous residence permit they have resided legally in the country for a continuous period of four years and if the requirements for issuing an alien with a continuous residence permit are still met and there are no obstacles to issuing a permanent resident permit under the 301/2004 Alien's Act[160]. In this case, the period of four years is calculated from the first day of the fixed-term residence permit issued for the first continuous residence in the country[161].

Rights: Same rights as persons who are granted residence permits based on the need for protection with two exceptions:

- **Family reunification**

Family members are issued with a continuous residence permit only after beneficiaries of this category receive a continuous residence permit[162], therefore after 3 years of continuous residence in the country under a temporary residence permit.

- **Travel Document**

An alien's passport may be issued to this category of aliens residing in Finland, if they cannot obtain a passport from the authorities of their home country, if they have no citizenship or if there are other special reasons for issuing an alien's passport to them[163].

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[156] Section 93, par.1, Aliens Act 301/2004
[157] Section 93, par.2, Aliens Act 301/2004
[158] Section 112, par.1, Aliens Act 301/2004
[159] Section 113, par.2, Aliens Act 301/2004
[160] Section 56, par.1, Aliens Act 301/2004. The obstacles according to Section 57 of the same Act are the following:
1)the alien is found guilty of an offence punishable by imprisonment; or
2) is suspected of an offence punishable by imprisonment; or
3) is found guilty of two or more offences; or
4) is suspected of two or more offences.
[161] Section 93, par.3, Aliens Act 301/2004
[162] Section 113, par.3, Aliens Act 301/2004
[163] Section 134, par.1, Aliens Act 301/2004

FINLAND/Finnish Immigration Service/Legal Service and Country Information Unit/February 2009

1. What has been the general implementation policy towards asylum seekers from the following four countries: Afghanistan, DR Congo, Iraq and Somalia?

Afghanistan

According to Finnish Aliens Act (301/2004) section 87, aliens residing in the country are granted asylum (Refugee Convention status) if they reside outside their home country or country of permanent residence owing to a well-founded fear of being persecuted for reasons of ethnic origin, religion, nationality, membership in a particular social group or political opinion and if they, because of this fear, are unwilling to avail themselves of the protection of that country.

Finland has not yet implemented the Qualification Directive, including section of subsidiary protection referred to in the directive, into the Finnish Alien act. A Government Proposal (166/2007) to this end was given to the Parliament in December 2007 and the Parliament is still dealing with the proposal.

However according to the law in force, residence permit is granted to an asylum seeker who has not presented sufficient grounds for asylum but who is considered to be in need of protection. According to the Finnish Alien Act section 88, aliens residing in the country (Finland) are issued with a residence permit on the basis of a need for protection if the requirements for granting asylum are not met but the aliens are in their home country or country of permanent residence under the threat of death penalty, torture or other inhuman treatment or treatment violating human dignity, or if they cannot return there because of an armed conflict or environmental disaster.

All cases are assessed on its individual merits. Finland grants protection based resident permits mainly for those applicants who originate from the areas mentioned on UNHCR recommendation (Afghanistan Security Update Relating to Complementary forms of Protection), if conditions to grant asylum in individual case are not otherwise met. In other words, applicants have been granted protection according section 88 (armed conflict) due to the security situation in their home province or district, not because of their individual claim, which is often thought to be either not credible, or their individual claim does not include grounds for protection according to the Finnish Aliens Act (Convention status referred to in section 87 or in section 88 individual threat of death penalty, torture or other inhuman treatment or treatment violating human dignity).

In Finland an application based on the need for international protection is processed in the asylum procedure. Granting the right of residence is also investigated and decided on other emerging grounds (than international protection) in conjunction with the asylum procedure. So If criteria for an asylum or a residence permit on the basis of a need for protection are not met, an applicant can nevertheless be granted a residence permit for example on compassionate grounds, a residence permit because an

applicant has a family tie in Finland or a residence permit for working in Finland (residence permit for employed person).

DR Congo

There is no specific policy on asylum seekers from DRC. All cases are assessed on their individual merits.

During 2007-2007 we received 35 and 31 asylum seekers from DRC, respectively.

In 2007 20 asylum seekers from DRC received positive decision and 16 negative decisions.
In 2008 28 asylum seekers from DRC received positive decision and 10 negative decisions.

For more detailed statistical information on asylum and refugees, please visit our homepage www.migri.fi (direct link to the statistics on asylum and refugees).

Iraq

Currently the Finnish Immigration Service considers that the situation in Southern and Central Iraq can be regarded as an armed conflict referred to in the section 88, that can in itself, be considered a ground for a residence permit on the basis of a need for protection (for more details see answer for Finland's policy on Afghan asylum seekers). Asylum-seekers from that area are thus mainly granted residence permits on grounds of protection if the requirements for asylum are not met.

The security situation in the three Northern Governorates remains relatively calm and local authorities have been able to maintain security in that region. Because of the practical difficulties of forced returns to the three Northern Governorates, applicants from that region are a granted temporary residence permit according to the Aliens Act section 51, if requirements for asylum or protection based residence permit on individual grounds are not met.

Somalia

Differences in security situation between the different regions persist in Somalia The situation in Southern and Central Somalia can be considered unstable and unsafe in many parts of the region for local inhabitants. Due to the current security situation in Southern and Central Somalia, Finland grants mainly the above-mentioned (for more details see answer for Finland's policy on Afghan asylum seekers) protection-based resident permits for those applicants who originate from that area (from an armed conflict area referred Aliens Act section 88) if conditions to grant asylum in individual case are not otherwise met

The situation in Somaliland and Puntland has remained more stable. If an applicant coming from these areas does not have individual grounds for asylum or a residence permit, his or her application can be rejected and the person can be returned to Somaliland or Puntland.

2. Has there been during the 2006-2008 period a change of policy-implementation towards asylum seekers from the above-mentioned four countries? If so, what are they and when did they occur? For instance, has at some point the processing and/or decision-making on asylum requests by e.g. Iraqi asylum seekers been 'amended', in the sense that this category was first accepted en groupe (or prima facie) and later screened on an individual basis? Or, second example, that asylum requests submitted by asylum seekers from a certain area within a given country (e.g. in Southern Somalia) were at first rejected; however at one point this policy was changed due to new insights or developments, resulting in this category now being granted across the board a certain form of asylum/protection/leave of stay.

All applications have always been assessed individually on its own merits.

2006-2008 there have been policy changes because on the other hand there have been changes in the security situation in Afghanistan, Somalia and Iraq and on the other hand because there have been changes in the possibilities of forcing returns of refused asylum to those countries.

In 2004-2006 the Finnish Immigration Service considered that the situation in Southern and Central Somalia couldn't be considered war-like, and hence, couldn't be regarded as the kind of armed conflict, referred to in the Finnish Aliens Act, that could, in itself, be considered grounds for a residence permit. The return of refused asylum seekers from Southern and Central Somalia was considered, however, for practical reasons possible only in individual cases. Because a wide-scale return of refused asylum seekers from Southern and Central Somalia was considered impossible, Finland didn't carry out returns of refused asylum seekers to these regions. If a person coming from Southern or Central Somalia couldn't be considered to have individual grounds for asylum or a residence permit, the Finnish Immigration Service granted a temporary residence permit to this person, on the basis that the person's return to his or her country of origin was temporarily impossible (Aliens Act section 51).

For the same security situation and forced returns reasons Finland granted 2004-2006 temporary residence permits to applicants coming from Southern and Central Iraq and Afghanistan if an applicant couldn't be considered to have individual grounds for asylum or a residence permit.

Because of the more stable security situation in Southern and Central Iraq, the Finnish Immigration Service is re-assessing within the next few months both the need for international protection and return of refused asylum seekers originating from Iraq.

3. Would it be possible to receive an overview (e.g. on a monthly or quarterly basis) of the influx of asylum seekers from the above-mentioned four countries (statistics) over the period 2006-2008 inclusively?

	2006	**2007**	**2008**
Afghanistan	97	96	254
DRC	38	36	31

Iraq	225	327	1255
Somalia	92	82	1181

For more statistics on asylum and refugees, please visit our homepage www.migri.fi (direct link to the statistics on asylum and refugees).

4. Had the policy and/or implementation changes (as per question 2) an impact on the number of asylum cases submitted i.e. the influx? Is there a correlation/causality between the change in influx and the new policy?

We have not noticed a clear causality/correlation between the change in influx and the new policy. Especially the year 2007 when the policy concerning asylum seekers from Iraq (March 2007) and Somalia (January 2007) changed (Finland granted residence permits/ need for protection), the influx of asylum seekers to Finland was exceptionally low. The number of asylum seekers from Somalia even decreased, number of Iraqis increased around 100. During the year 2008 /2009 the influx has increased clearly. The number of asylum seekers from Afghanistan, Iraq and Somalia has increased most of all.

FRANCE (ECRE)

Statuses of complementary/subsidiary protection
• Subsidiary protection
• Constitutional Asylum

Till January 2004 the Minister of Interior granted territorial asylum, a form of complementary protection, to rejected asylum seekers who established that their life or freedom would be threatened, or they would be at risk of treatment contrary to Article 3 of the European Convention on Human Rights (ECHR), if returned to their country of origin. In December 2003, new legislation was adopted that modified the Asylum legislation of 1952 and introduced the subsidiary protection regime in France[164]. Therefore, France transposed the Qualification Directive [165] in an anticipatory manner, even before it was formally adopted, and this transposition incorporated selectively elements of the European Commission's proposal[166]. Apart from the subsidiary protection regime, France maintains another form of asylum- Constitutional Asylum that is in many respects almost identical to Convention Asylum. All other applications for humanitarian or tolerated residence raise an immigration and not an asylum issue in French Law. In practice, the préfets (local representatives of the State) have the discretionary power to deliver a residence permit. Since late 2006, there is an exceptional leave to remain (admission exceptionnelle au séjour) for humanitarian considerations or exceptional reasons[167]. This power falls within the remit of the préfet "with the help" of a national committee[168].

[164] Law No 2003-1176 of 10 th December 2003, which modified Law No 52-893 of 25 th of July 1952 concerning the right to asylum. The aforementioned legislation, as it has been amended by recent decrees, is incorporated into the Code Regulating the Entry and Residence of Aliens and the Right to Asylum (from now mentioned as CESEDA). The latest consolidated version of the Code (dating 5th of January 2009) is accessible at: http://www.legifrance.gouv.fr/affichCode.do;jsessionid=D91AAC7BC647F1BF35AFD0583F136C93.tpdjo02v_3?cidTexte=LEGITEXT000006070158&dateTexte=20090205

[165] 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, available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML

[165] Section 3(6) of the Immigration Act, 1999, available at: http://www.inis.gov.ie/en/INIS/Immmigration_Act_1999_amended.pdf/Files/Immmigration_Act_1999_amended.pdf

[166] France Terre d'Asile, *Asile : La Protection Subsidiaire en Europe : Une Mosaïque de Droits,* Les Cahiers du Social No18, Septembre 2008, at p. 38. A synthesis of the Report is available at: http://www.france-terre-asile.org/positions/710-etude-protection-subsidiaire-en-europe-

[167] Article L313-14 of the CESEDA.

[168] This provision was created in 2006 to "substitute" the debated repeal of a provision granting a residence permit to foreigners who lived in France for 10 years in an irregular manner. Therefore, the exceptional leave to remain was created primarily to address private and family situations of foreigners.

SUBSIDIARY PROTECTION (protection subsidiaire)

Legal basis: Law No. 2003-1176 of 10th December 2003, amending Law No. 52-893, of 25th July 1952, concerning the right to asylum. Both legislative instruments, along with further recent decrees amending them, are incorporated into the Code Regulating the Entry and Residence of Aliens and the Right to Asylum (Code de l'Entrée et du Séjour des Etrangères et du Droit d'Asile-CESEDA).

Beneficiaries: Individuals who do not satisfy the conditions to be recognised as a refugee[169] and who have established that if returned to their country of origin they would be exposed to one of the following serious threats[170]:

d) the death penalty.
e) torture or inhuman or degrading treatment.
f) regarding civilians: a serious and individual threat to their life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

The French Office for the Protection of Refugees and Stateless Persons (Office Français de Protection des Réfugies et Apatrides-OFPRA), which was already in charge of granting refugee status, determines an applicant's eligibility for subsidiary protection as well[171]. There is a single procedure for the consideration of refugee and subsidiary protection status. Refugee status is assessed prior to the consideration of subsidiary protection. Depending on the circumstances and the nature of the threat that lead to the grant of the subsidiary protection status one can distinguish between two categories of recipients: those who are incapable of obtaining documents pertaining to their civil status by their national authorities and those who can contact the consular authorities of their country of origin for that purpose[172]. This distinction has no consequence whatsoever in what concerns residence rights and access to social rights[173].

Duration: A recipient of subsidiary protection will receive a one-year residence permit, renewable if conditions in the country of return persist[174]. In practice, subsidiary protection status is very seldom withdrawn. Subsidiary protection beneficiaries can apply for a permanent residence card after residing for five years in the country[175].

Since 2007, its scope was broadened to foreigners that have an economic activity. As practitioners commented, the effectiveness of the procedure is questionable. The exact set of rights granted to beneficiaries of this class is not set out in the law.

[169] For either conventional or constitutional asylum.

[170] Article L712-1 of the CESEDA.

[171] Article L713-1 of the CESEDA.

[172] France Terre d'Asile, *Asile : La Protection Subsidiaire en Europe : Une Mosaïque de Droits,* Les Cahiers du Social No18, Septembre 2008, at p. 38.

[173] Ibid, at p.39.

[174] Article L712-3 of the CESEDA.

[175] France Terre d'Asile, *Asile : La Protection Subsidiaire en Europe : Une Mosaïque de Droits,* Les Cahiers du Social No18, Septembre 2008, at p. 45.

Appeal: On the one hand, if the OFPRA rejects the request for protection, the applicant can make an appeal to a special administrative court (Cour National du Droit D'Asile)[176]. On the other hand, if the OFPRA decides to grant a subsidiary protection status (instead of recognizing the status of refugee), a plaintiff can also lodge an appeal in order to contest this decision and to get the refugee status[177].

Rights:

Rights	Y	N	Details
Access to wage-earning employment	✓		Subsidiary protection beneficiaries have access to employment as soon as the protection is recognised. If there are certain conditions to be fulfilled/certification needed in order to exercise a profession beneficiaries of subsidiary protection have to either validate their diplomas or undergo an examination to verify their level of knowledge[178].
Access to self-employment	✓		
Access to liberal professions	✓		
Access to housing	✓		As other asylum seekers or refugees, they are entitled to assistance provided through CPHs *(Centres Provisoires d' Hébergement*[179]*)*. In order to qualify for the DALO[180] (*Droit au Logement Opposable)* they need to be residing in the country for 2 years[181].
Access to public education	✓		Refugees and subsidiary protection beneficiaries have access to education. They also benefit from stipends for university education if they fulfil certain criteria (legal residence, limited economic resources)[182]
Social security	✓		Since March 2008, the Minister of Employment has decided to grant subsidiary

[176] Article L731-2 of the CESEDA.
[177] Ibid
[178] France Terre d'Asile, *Asile : La Protection Subsidiaire en Europe : Une Mosaïque de Droits,* Les Cahiers du Social No18, Septembre 2008, at p. 48.
[179] Article L345-1 of the Social Action and Family Code available at : http://www.legifrance.gouv.fr/rechCodeArticle.do?reprise=true&page=1
[180] See for more details : Loi n°2007-290 du 5 mars 2007 instituant le droit au logement opposable et portant diverses mesures en faveur de la cohésion sociale (1) establishing a judicial right of access to accommodation available at : http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000271094&dateTexte=
[181] Ibid, at p. 50.
[182] See for more details also concerning the validation of diplomas: France Terre d'Asile, Emploi et formation LA REPRISE D'ÉTUDES, December 2007, available at: http://www.france-terre-asile.org/images/stories/pdf/droits-refugies/emploi-formation/la_reprise_d_etudes.pdf

			protection beneficiaries with the RMI (Revenue Minimum d'Insertion)[183]. Beneficiaries are also entitled to child benefits, as long as they can prove the legality of their stay[184].
Health	✓		Benefit from C.M.U. (Couverture de Maladie Universelle)[185] as long as they can prove legal residence[186]. People who cannot prove legal residence benefit from state medical aid (AME)[187].
Freedom of movement within the national territory	✓		Every foreigner legally residing in France has the right to move freely within the national territory[188].
Travel document		✓	Subsidiary protection beneficiaries who are unable to contact the authorities of their country of origin are provided with an identity and travel certificate (titre d'identité et de voyage-TIV) that is valid for one year and can be renewed twice[189].
Voting rights in municipal election		✓	
Right to stand for elections		✓	
Family unification	✓		The same rules apply as for refugees (therefore they do not have to fulfil the following criteria: legal residence for at least 2 years, sufficient and stable income and adequate housing)[190]. The only difference is that the family members receive also a one-year residence permit card that is

[183] France Terre d'Asile, *Asile : La Protection Subsidiaire en Europe : Une Mosaïque de Droits,* Les Cahiers du Social No18, Septembre 2008, at p. 49
[184] The only document that is needed is their one-year residence card. See for more details Article L.512-2, D.512-1 of the Social Security Code, available at: http://www.legifrance.gouv.fr/affichCode.do?dateTexte=20090206&cidTexte=LEGITEXT000006073189&fastReqId=1472466581&fastPos=1&oldAction=rechCodeArticle
[185] The CMU guarantees for access to the general medical system for people who are legally residing in France who are not affiliated with a health insurance provider.
[186] Articles L.380-1 and R.380-1 of the Social Security Code.
[187] Article L252-1 of the Social Action and Family Code. For more details see also: France Terre d'Asile, Les prestations socials, LA COUVERTURE MALADIE, December 2007, available at: http://www.france-terre-asile.org/images/stories/pdf/droits-refugies/prestations-sociales/la_couverture_maladie.pdf
[188] Article R.321-1 of the CESEDA. There are some exceptions concerning territories other than Metropolitan France. For more information see: France Terre d'Asile, Les droits civils: LA LIBERTÉ DE CIRCULATION ET D'INSTALLATION, December 2007, available at: http://www.france-terre-asile.org/images/stories/pdf/droits-refugies/droits-civils/la_liberte_de_circulation_et_d_installation.pdf
[189] France Terre d'Asile, *Asile : La Protection Subsidiaire en Europe : Une Mosaïque de Droits,* Les Cahiers du Social No18, Septembre 2008, at p. 45.
[190] Ibid, at p. 47
[191] L313-13 of the CESEDA.

			renewable[191].
Access to citizenship	✓		They have to be residents in France for 5 years in order to be eligible to apply for naturalisation[192].

CONSTITUTIONAL ASYLUM (asile constitutionnel)

Legal basis: **Article 53-1 of the 1946 Constitution, incorporated into 1958 Constitution[193] and Article L-711-1 of the CESEDA.**

Beneficiaries: **Constitutional asylum is granted to persons for their actions in their "fight for freedom" who do not qualify as Convention refugees, under the same procedure as Convention refugee status is determined. In practice, this provision has had a very limited application.**

Duration: **Beneficiaries are granted with a ten-year residence permit[194].**

Rights: There is no difference between Convention refugee status and Constitutional asylum; in fact, the decision to grant refugee status does not even specify under which provision it was granted. Therefore, persons granted Constitutional asylum receive the same rights as Convention refugees.

[192] Article 21-17 and 21-19 of the Civil Code, available at: http://www.legifrance.gouv.fr/affichCode.do;jsessionid=53D6E46AC2D18F6C1A9A2BB084A8D434.tpdjo15v_2?idSectionTA=LEGISCTA000006165459&cidTexte=LEGITEXT000006070721&dateTexte=20090205

[193] Available at: http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank_mm/constitution/constit58.pdf

[194] Article L314-11 of the CESEDA

France (ICMPD)

Liberté • Égalité • Fraternité
RÉPUBLIQUE FRANÇAISE

MINISTERE DE L'IMMIGRATION, DE L'INTEGRATION,
DE L'IDENTITE NATIONALE ET DU DEVELOPPEMENT SOLIDAIRE

OFPRA

OFFICE FRANÇAIS DE PROTECTION DES REFUGIES ET APATRIDES

MAEI/DAM

Fontenay-sous-Bois, le 18.03.2009

ICMPD Etude comparative – Protection par catégorie 2006/2008

La France dispose de deux outils de protection au titre de l'asile spécifiés dans le Code de l'entrée et du séjour des étrangers et du droit d'asile (CESEDA) :

- article **L. 711-1 : «** La qualité de réfugié est reconnue à toute personne persécutée en raison de son action en faveur de la liberté ainsi qu'à toute personne sur laquelle le haut-commissariat des Nations unies pour les réfugiés exerce son mandat aux termes des articles 6 et 7 de son statut tel qu'adopté par l'Assemblée générale des Nations unies le 14 décembre 1950 ou qui répond aux définitions de **l'article 1er de la convention de Genève du 28 juillet 1951** relative au statut des réfugiés. Ces personnes sont régies par les dispositions applicables aux réfugiés en vertu de la convention de Genève susmentionnée. »

- article **L. 712-1 :** « Sous réserve des dispositions de l'article L.712-2, le bénéfice de la **protection subsidiaire** est accordé à toute personne qui ne remplit pas les conditions pour se voir reconnaître la qualité de réfugié mentionnées à l'article L.711-1 et qui établit qu'elle est exposée dans son pays à l'une des menaces graves suivantes :

a) La peine de mort ;
b) La torture ou des peines ou traitements inhumains ou dégradants ;
c) S'agissant d'un civil, une menace grave, directe et individuelle contre sa vie ou sa personne en raison d'une violence généralisée résultant d'une situation de conflit armé interne ou international.

L. 712-2 « La protection subsidiaire n'est pas accordée à une personne s'il existe des raisons sérieuses de penser :

a) Qu'elle a commis un crime contre la paix, un crime de guerre ou un crime contre l'humanité ;
b) Qu'elle a commis un crime grave de droit commun ;
c) Qu'elle s'est rendue coupable d'agissements contraires aux buts et aux principes des Nations unies ;
d) Que son activité sur le territoire constitue une menace grave pour l'ordre public, la sécurité publique ou la sûreté de l'État.

L. 712-3 « Le bénéfice de la protection subsidiaire est accordé pour une période d'un an renouvelable. Le renouvellement peut être refusé à chaque échéance lorsque les circonstances ayant justifié l'octroi de la protection ont cessé d'exister ou ont connu un changement suffisamment profond pour que celle-ci ne soit plus requise. Il peut être mis fin à tout moment au bénéfice de la protection subsidiaire pour les motifs énumérés aux a,
b, c et d de l'article L.712-2. »

La législation française apparaît donc conforme à la directive 2004/83/CE du Conseil du 29 avril 2004 qui définit dans ses articles 2 et 15 (notamment) les formes principale et subsidiaire de protection accessibles aux demandeurs d'asile. L'OFPRA examine successivement le besoin de protection au regard de la Convention de Genève et, à défaut de reconnaissance de cette qualité, sur la base de la protection subsidiaire.

Outre ces deux outils mis en œuvre par l'Office français de protection des réfugiés (OFPRA), guichet unique de l'examen des demandes d'asile en France, il existe une forme d'admission au séjour à titre médical. Prévue par l'article **L. 713-11, 11°,** du CESEDA cette admission au séjour est précisée par l'article suivant :

L. 313-11. _ « Sauf si sa présence constitue une menace pour l'ordre public, la carte de séjour temporaire portant la mention « vie privée et familiale » est délivrée de plein droit : […]
11° A l'étranger résidant habituellement en France dont l'état de santé nécessite une prise en charge médicale dont le défaut pourrait entraîner pour lui des conséquences d'une exceptionnelle gravité, sous réserve qu'il ne puisse effectivement bénéficier d'un traitement approprié dans le pays dont il est originaire. La décision de délivrer la carte de séjour est prise par l'autorité administrative, après avis du médecin inspecteur de santé publique compétent au regard du lieu de résidence de l'intéressé ou, à Paris, du médecin, chef du service médical de la préfecture de police. Le médecin inspecteur ou le médecin chef peut convoquer le demandeur pour une consultation médicale devant une commission médicale régionale dont la composition est fixée par décret en Conseil d'Etat. »

Au regard de la description (en annexe de votre courriel du 17 février 2009) de l'approche néerlandaise de la protection par catégorie, il convient de relever que cette forme de protection en vertu des lois d'asile des Pays-Bas couvre les conditions du retour dans le pays d'origine, retour qui serait considéré comme « particulièrement sévère eu égard aux conditions générales de sécurité ». Or, si ce dispositif néerlandais devait être assimilé à une forme de protection ayant un caractère absolu – de même ampleur que la protection contre les traitements prohibés par l'article 3 de la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales (CEDH), il conviendrait de souligner que la protection subsidiaire

mise en place par le législateur européen (et, de ce fait, commune aux Pays-Bas et à la France) est, elle, limitée dans sa portée, quand bien même l'existence de la menace grave est avérée, puisque assortie de clauses d'exclusion. Ainsi, faudrait-il souligner que dans le dispositif français de l'asile élargi à l'éloignement du territoire des demandeurs d'asile déboutés de leur demande de protection, l'ensemble des droits garantis par la CEDH sont pris en compte tant par le Préfet au moment de la décision sur le renvoi que par le tribunal administratif dans le cadre des recours formés contre une décision de refus de séjour (ministère de l'Immigration : Arrêté préfectoral de reconduite à la frontière (APRF) ou Obligation de quitter le territoire français (OQTF)) et contre la décision fixant le pays de renvoi.

La France n'a donc jamais développé de dispositif de protection par catégorie à proprement parler et n'envisage à priori aucune évolution significative en la matière. Néanmoins, depuis le mois de juillet de l'année 2008, l'Office a modifié sa pratique en ce qui concerne les demandes de protection formulées par les petites filles, majoritairement originaires de l'Afrique de l'Ouest (Mali, Guinée, Côte d'Ivoire…), qui invoquent, par le truchement de leurs parents agissant en tant que représentant légal, un risque d'excision pour leur personne en cas de retour dans leur pays. Depuis lors, l'OFPRA accorde à la plupart de ces petites filles, exceptées celles dont l'un des deux parents dispose d'un droit au séjour au France, le bénéfice de la protection subsidiaire eu égard au risque d'être soumis à des traitements inhumains et dégradants en cas de retour. Cette approche s'est d'ailleurs trouvée confortée et généralisée, sans discrimination eu égard au statut des parents en matière de séjour en France, à la suite de plusieurs décisions récentes de la Cour nationale du droit d'asile (CNDA, SR, n° 639907, Mlle Hélène KOUYATE ; CNDA, SR, n° 639908, Mlle Irène Adama KOUYATE ; CNDA, SR, n° 637717, Mlle Khadidja Leila DARBO) qui a considéré que ces petites filles, nées en France ou arrivées très jeune dans ce pays, « ne [*pouvaient*] compte tenu de [*leur*] jeune âge manifester [*leur*] refus de la pratique de l'excision et ne relev[*aient*] pas pour ce motif de l'article 1er, A, 2 de la convention de Genève ». Ainsi, la CNDA a-t-elle étendue le bénéfice de la protection subsidiaire à l'ensemble des petites filles craignant d'être soumise à une forme d'excision en cas de retour, sans pouvoir se réclamer utilement de la protection des autorités de leur pays d'origine, estimant que « cette mutilation grave et irréversible constitue un traitement inhumain et dégradant au sens de l'article L 712-b) du code de l'entrée et du séjour des étrangers et du droit d'asile ». Ces décisions récentes de la CNDA peuvent être vues comme porteuse des ferments d'une innovation jurisprudentielle, la CNDA (anciennement dénommée Commission des recours des réfugiés) n'ayant - à titre d'illustration - jamais reconnu l'existence du groupe social des femmes persécutées parce qu'elles sont femmes, et ne considérant pas le sexe de l'individu comme le fondement d'une persécution au sens des dispositions de l'article 1A2 de la convention de Genève. Ainsi, la position récente de la CNDA quant à la problématique de l'excision vient-elle affirmer que les petites filles - étrangères nées en France ou arrivées dans ce pays dès leur plus jeune âge - risquant d'être soumises à l'excision en cas de retour dans leur pays d'origine constituent un ensemble, ensemble que l'on pourrait assimiler à une catégorie *sui generis*.

1 – Politiques générales de protection
L'OFPRA fonde ses décisions sur une étude au cas par cas des dossiers individuels.

2 – Modification des politiques de protection (2006-2008)
En dehors de la problématique de l'excision évoquée ci-dessus, problématique qui concerne en particulier les flux de demandes d'asile en provenance de l'Afrique de l'Ouest, aucune évolution majeure ne ressort du traitement individualisé des dossiers émanant de ressortissants des quatre pays concernés par votre étude.

3 - Données statistiques
Se reporter au document excel ci-joint.

Nota bene :
- les données statistiques pour l'année 2008 seront rendues publiques au début du mois d'avril 2009 avec la publication du rapport d'activité de l'OFPRA. D'ici cette échéance, le service statistique de l'OFPRA ne peut fournir aucune donnée provisoire pour 2008.
- les chiffres présentés dans ce tableau ne comprennent pas les mineurs accompagnants leurs parents demandeurs d'asile.

4 – Modification des politiques de protection et impact éventuel sur les flux
L''OFPRA ne dispose à l'heure actuelle d'aucun outil de pilotage permettant de mettre en corrélation le sens des décisions rendues et le volume des flux de demandes d'asile.
D'un point de vue général, et à défaut d'être en mesure de vous apporter une réponse précise, il existe à n'en pas douter un lien de causalité entre « l'offre de protection » (condition d'accès à la procédure d'examen de la demande d'asile, durée de cette procédure, taux d'accord, conditions d'accueil des demandeurs d'asile et prestations sociales, possibilité d'accès au marché de l'emploi pour les demandeurs d'asile…) son éventuelle évolution et le nombre de demandes d'asile.

GERMANY (ECRE)

Statuses of complementary/subsidiary protection

- Subsidiary Protection
- Temporary Suspension of Deportation- *Duldung* (tolerance)

Germany transposed the Qualification Directive with a legislative act that came into force on the 1st of January 2005. The law was amended further and therefore, the current legislative act that regulates asylum qualification in Germany is the Residence Act (Aufenthaltsgesetz) that has been in force since the 28th of August 2007[195]. The Residence Act includes the possibility to be granted subsidiary protection status. Apart from that, the only other possibility for an asylum seeker to remain in Germany is the temporary suspension of his deportation, also known as *Duldung*, which means tolerance. *Duldung* may or may not lead to the grant of a residence permit and therefore, it constitutes merely an individual decision relating to the enforceability of a deportation order. Finally, there is a possibility[196] to grant residence permits to (economically) well integrated migrants (e.g. rejected asylum seekers)[197].

SUBSIDIARY PROTECTION

Legal basis: Residence Act of 2007, Section 60 (2), (3), (5), (7)

Beneficiaries: Residence permits are issued to aliens in the following situations:

- Aliens cannot be sent back to a state where they would incur a real risk of facing torture, or inhuman or degrading treatment or punishment[198].
- Aliens cannot be send back to a state where they would incur the risk of facing the imposition or the execution of the death penalty[199].
- Aliens cannot be send back to a state, if it follows from the provisions of the European Convention of Human Rights that such a deportation is forbidden according to the Convention[200].
- Aliens cannot be send back to a state where there is a concrete and considerable danger for their life, person or liberty. Furthermore, civilians may not be returned to a state where they would face serious and individual threats

[195] The law is available in German in the website of the Federal Office for Migration and Refugees, at: http://bundesrecht.juris.de/aufenthg_2004/index.html
[196] It must be noted that this possibility is not related with the asylum procedure.
[197] Section 23(1), 2007 Residence Act. People falling under this category, qualified for a residence permit under a so called "long stayers regulation" (esp. Section 104a Residence Act). Furthermore, the resettlement of the 2500 Iraqis from Syria and Jordan which Germany has proposed to take over under the respective EU-wide voluntary resettlement scheme will be dealt with under 23 (2) Residence Act.
[198] Section 60(2), 2007 Residence Act
[199] Section 60(3), 2007 Residence Act
[200] Section 60(5), 2007 Residence Act

to their life or person by reason of international or internal armed conflict[201]. Moreover the health situation may lead to the granting of subsidiary protection under 60 (7) 1 Residence Act if a there is a risk of a "severe aggravation of the health situation of the individual" if s/he was deported.

Duration: The law stipulates that beneficiaries of subsidiary protection should be granted with a residence permit with duration of at least one year[202]. However, the formulation of this provision leaves a wide margin of discretion to the state as it allows for the residence permit to be withheld from beneficiaries if they have performed a gross or repeated breach of their duty to co-operate or if it is reasonable and possible for them to depart to another state[203]. In practice, beneficiaries receive a residence permit, which is valid for one or two years[204]. Beneficiaries of subsidiary protection can claim for a permanent residence permit, after residing in Germany for 7 years and if they have the financial means to sustain themselves economically and they have a basic command of the language[205]

Rights:

Rights	Y	N	Details
Access to wage-earning employment		✓	German law does not contain a right to a work permit in principle[206]. Limited access to the labour market is granted, after beneficiaries have faced a waiting period of one year, which depends on a review of the availability of privileged aliens for a particular job[207]. German provisions only allow ending the review of availability of privileged aliens after 4 years of residence or 3 years of employment as a discretionary decision, not as a right[208].
Access to self-employment		✓	
Access to liberal professions		✓	
Access to housing	✓		Dependent upon the welfare policies of the different districts.
Access to public education	✓		Access to schools – but not Universities - automatically[209]. Persons with this status presently are only entitled to public financial

[201] Section 60(7), 2007 Residence Act
[202] Section 25(3), in conjunction with Section 26(2), 2007 Residence Act
[203] Section 25(3), 2007 Residence Act
[204] France Terre d'Asile, *Asile : La Protection Subsidiaire en Europe : Une Mosaïque de Droits,* Les Cahiers du Social No18, Septembre 2008, at p. 44
[205] Section 26(4), 2007 Residence Act
[206] Section 25(3), in conjunction with Section 4(2), 2007 Residence Act
[207] **ECRE, The Impact of the EU Qualification Directive on International Protection, October 2008, at p.248, available at: http://www.ecre.org/files/ECRE_QD_study_full.pdf**
[208] Ibid
[209] Ibid, at p.251. It should be noted that this issue is not a question for the Federal Government but for the 16 federal states (*Länder*).

			support for their studies if they have stayed in Germany with a legal stay permit for at least five years and have been employed for that time (Section 8 (2) Bundesausbildungsförderungsgesetz)[210].
Social security	✓		Full social assistance, the same as German nationals in what concerns unemployment benefits[211]. Regarding family benefits, they should fulfil the requirement of residing in the country for 3 years before they can claim them[212].
Health	✓		Entitled to the same access to the national obligatory health system as German nationals.
Freedom of movement within the national territory		✓	They may not settle where they choose; their freedom of movement is restricted to a local district or a Länd.
Travel document		✓	
Voting rights in municipal election		✓	
Right to stand for elections		✓	
Family reunification		✓	They have no legal entitlement. German law requires that the sponsor have a secure residence status in the form of a settlement or residence permit pursuant to section 29(1) AufenthG[213]. Family reunification may be possible to a limited extent under specific circumstances[214].
Vocational training		✓	
Access to citizenship	✓		They can apply for naturalisation after eight years of residence, if they benefit from a permanent residence permit, if they have substantial economic means to support their family needs and if they have not been convicted of a crime or do not pose a danger

[210] Ibid. The actual text of the law is available at: http://www.das-neue-bafoeg.de/de/204.php
[211] France Terre d'Asile, *Asile : La Protection Subsidiaire en Europe : Une Mosaïque de Droits,* Les Cahiers du Social No18, Septembre 2008, at p. 49
[212] Ibid
[213] See also Federal Office for Migration and Refugees, Family Reunification in Germany, Working Paper 10, Small Scale Study IV in the Framework of the European Migration Network, 2007, at p. 30, available at: http://www.bamf.de/cln_092/nn_435122/SharedDocs/Anlagen/EN/Migration/Downloads/EMN/EMNselbst/small-scale-4-family-reunification.html
[214] Ibid. See also Section 29(3), 2007 Residence Act
[215] Ibid , at p.51

			to national security[215].

TEMPORARY SUSPENSION OF DEPORTATION (*DULDUNG*)

Legal basis: Residence Act of 2007, Section 60a

Beneficiaries: There are factually two forms of "*Duldung*". First of all, the highest state authorities of each 'Land' may order a temporary suspension of deportation on humanitarian or international law considerations, or in order to ensure the political interests of the Federal Republic of Germany[216]. This provision only applies to aliens from certain countries or to specific groups of aliens[217].

Furthermore there is another form of *Duldung*, which concerns,individual rejected asylum seekers whose deportation is suspended as long as it is impossible due to factual[218] or legal reasons and no residence permit [219] has been accorded to them [220]. The deportation of an alien is also suspended when his temporary presence is required for a criminal procedure because, without his presence, the investigation of the facts of a criminal case would be hindered[221]. Furthermore, the deportation of an alien is suspended when imperative humanitarian or personal considerations or important public interests require it[222].

Duration: *Duldung* is not conceived as a residence status, but as an individual decision on the enforceability of deportation Its duration is up to 6 months[223].
The pronouncement of such a temporary suspension of transfer may or may not lead to the grant of a residence permit This is the case because the issuance of the residence permit is done by the local aliens authority (on the level of the "Land"), whereas the examination of the asylum application is done by the Federal Office for Migration and Refugees (on the federal level). The law stipulates that a deportable alien, whose deportation is non-executable, can be handed with a temporary residence permit as long as imperative humanitarian or personal considerations or important public interests require it[224]. This type of residence permit can be extended when, because of the particular circumstances of the individual case, the departure from the territory would constitute an extraordinary hardship for the alien[225]. Furthermore, the law stipulates that a deportable alien, may be granted with a residence permit when his deportation is impossible due to factual or legal reasons and the abolition of these obstacles is not deeded possible in the foreseeable future[226]. In both these cases, the

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[216] Section 60a(1), 2007 Residence Act
[217] Ibid
[218] An example can be the health situation of a person.
[219] What is menat here is that no residence permit on other grounds, e.g. subsidiary protection status, has been awarded to him.
[220] Section 60a(2), 2007 Residence Act
[221] Ibid
[222] Ibid. See also Section 60a(2a) that regulates the suspension of deportation for one week in the cases described by the Council Regulation 2003/110/EC regarding assistance during repatriation operations.
[223] Section 60a(1), 2007 Residence Act
[224] Section 25(4), 2007 Residence Act
[225] Ibid
[226] Section 25(5), 2007 Residence Act

temporary residence permit is granted for a period of 6 months at the most[227]. The residence permit shall be granted when the deportation has been suspended for a period of 18 months[228]. Such a residence permit should be granted only when the alien is not responsible for the obstacles to his deportation[229]. Such a responsibility lays to the alien in particular when he makes false declarations or he changes his identity or nationality or he doesn't fulfil reasonable demands that could lead to the removal of the deportation obstacles[230].

Rights	Y	N	Details
Access to wage-earning employment		✓	After beneficiaries have faced a waiting period of one year hey may apply, for a work permit concerning a specific job. However, there should be first a review of the availability of privileged aliens for a particular job.
Access to self-employment		✓	
Access to liberal professions		✓	
Access to housing	✓		Dependent upon the welfare policies of the different districts.
Access to public education	✓		Access to compulsory education. Higher education is in theory possible. However, they receive no subsidies for learning material, travel costs or fees.
Social security	✓		They receive significantly lower benefits. In particular, they receive the same benefits as asylum seekers, according to the Asylum Seeker Benefits Law[231].
Health	✓		Reduced medical care limited to urgent needs[232].
Freedom of movement within the national territory		✓	Beneficiaries may not settle where they choose. They have to remain in the local district of the Alien's Administration Unit that was formerly in charge of their application[233].
Travel document		✓	
Voting rights in municipal		✓	

[227] Section 26(1), 2007 Residence Act
[228] Ibid
[229] Ibid
[230] Ibid
[231] Section 1 (1), Asylum Seeker Benefits Law (Asylbewerberleistungsgesetz). The law is available at: http://bundesrecht.juris.de/asylblg/
[232] Section 4, Asylum Seeker Benefits Law
[233] Section 61(1a), 2007 Residence Act

election			
Family reunification		✓	Family reunification is not granted to persons holding this category of temporary residence permit[234].
Vocational training		✓	
Access to citizenship		✓	

[234] Federal Office for Migration and Refugees, Family Reunification in Germany, Working Paper 10, Small Scale Study IV in the Framework of the European Migration Network, 2007, at p. 30

Germany (ICMPD)

*1. What has been the general implementation policy towards asylum seekers from the following four countries: **Afghanistan, DR Congo, Iraq and Somalia**?*

Country of origin	General German implementation policy towards asylum seekers in 2006	Recent changes in 2008
Afghanistan	There is no political persecution by the central government. Persecution by none state actors as Warlords, Talibans or members of al-Qaida is possible. Protection by the state is only possible in the region of Kabul, the capital may be an internal flight alternative. International protection by the ISAF is not possible. There is no persecution in fact of tribal or ethnic identity. Converts from the Islam to a Christian religion may be persecuted. Gender-based persecution is a widespread phenomenon.	The security situation in Afghanistan is still fragile; the Central Government is threatened by militias and by Talibans, especially in the South and the East. There are no recent changes.
DR Congo,	The general situation in Congo has calmed down after the President's elections from 2006. But there are still fights in the Kivu region between governmental troops and militias. State-controlled persecution doesn't exist actually. Gender-based persecution occurs.	
Iraq	After the intervention of the coalition forces, the threat, caused by Saddam Hussein's Government and the Baath-Party was abolished. The return of former recognized refugees seemed possible.	Since May 2007 the decision practice is as follows: Religious minorities like Christians, Yezides or Mandeans from Central Iraq are regarded as a persecuted group, they receive refugee status in the sense of the Geneva Convention. Revocation of positive decisions, concerning Iraqi refugees, are not carried out at this

		time, except for criminals.
Somalia as a whole	Because of lack of state-organizations, persecution was only possible by non-state actors. Gender-based persecution is wide-spread.	
Central- and South-Somalia	As mentioned above. Persecution is possible by clans, tribes or militias. No protection by the state or international organizations. Internal flight alternatives are realizable in Somaliland or Puntland for returnees with tribal identity and a subsistence level of existence.	
North-west Somalia, so-called Republic of Soamlia	Due to the fact of a quasi official organization, a state-like persecution seems possible, but it is not probable. There is no persecution because of the tribal or ethnic identity.	
North-east Somalia, so-called Puntland	As mentioned above.	

*2. Has there been during the 2006-2008 period a **change of policy-implementation** towards asylum seekers from the above-mentioned four countries? If so, what are they and when did they occur?*
For instance, has at some point the processing and/or decision-making on asylum requests by e.g. Iraqi asylum seekers been 'amended', in the sense that this category was first accepted en groupe (or prima facie) and later screened on an individual basis? Or, second example, that asylum requests submitted by asylum seekers from a certain area within a given country (e.g. in Southern Somalia) were at first rejected; however at one point this policy was changed due to new insights or developments, resulting in this category now being granted across the board a certain form of asylum/protection/leave of stay.

Since May 2007 the decision practice is as follows: Religious minorities like Christians, Yezides or Mandeans from Central Iraq are regarded as group persecuted, they receive refugee status in the sense of the Geneva Convention. Revocation of positive decisions, concerning Iraqi refugees, are not carried at this time, except for criminals.

There are no recent changes otherwise.

*3. Would it be possible to receive an overview (e.g. on a monthly or quarterly basis) of the influx of asylum seekers from the above-mentioned four countries (**statistics**) over the period 2006-2008 inclusively?*

Please find attached the annual statistics from the above-mentioned countries (2006-2008), see below.

*4. Had the policy and/or implementation changes (as per question 2) an impact on the number of asylum cases submitted i.e. the influx? Is there a **correlation/causality** between the change in influx and the new policy?*

The essential result of the new policy since May 2007, concerning Iraq, was an increasing number of recognition of refugees from Iraq. In 2006, 6,0 % received the Geneva Convention Status, in 2008, 77,0 %. The protection-quota for Iraqi refugees (GC-Status, Protection according to the German Constitution and subsidiary protection) increased from 8,3 % in 2006 to 78,4 % in 2008.

Statistics

Statistics Germany for Afghanistan

	ASYLANTRÄGE					ENTSCHEIDUNGEN										
							Sachentscheidungen									
		Erstanträge		Folgeanträge			Anerkennungen als Asylberechtigte (Art. 16 a GG und Familienasyl)		Gewährung von Abschiebungsschutz gem. § 60 Abs. 1 AufenthG		Abschiebungsverbot gem. § 60 Abs. II, III, V, VII AufenthG festgestellt		Ablehnungen		formelle Entscheidungen	
		absoluter	prozentualer	absoluter	prozentualer		absoluter	prozentualer	absoluter	prozentualer	absoluter	prozentualer	absoluter	prozentualer	absoluter	prozentualer
Zeitraum	insgesamt	Wert	Wert	Wert	Wert	insgesamt	Wert	Wert	Wert	Wert	Wert	Wert	Wert	Wert	Wert	Wert
2006	1.524	531	34,8%	993	65,2%	1.512	10	0,7%	71	4,7%	163	10,8%	383	25,3%	885	58,5%
2007	574	338	58,9%	236	41,1%	720	2	0,3%	70	9,7%	127	17,6%	230	31,9%	291	40,4%
2008	831	657	79,1%	174	20,9%	398	5	1,3%	77	19,3%	96	24,1%	67	16,8%	153	38,4%

Statistics Germany for DRC

	ASYLANTRÄGE					ENTSCHEIDUNGEN										
							Sachentscheidungen									
		Erstanträge		Folgeanträge			Anerkennungen als Asylberechtigte (Art. 16 a GG und Familienasyl)		Gewährung von Abschiebungsschutz gem. § 60 Abs. 1 AufenthG		Abschiebungsverbot gem. § 60 Abs. II, III, V, VII AufenthG festgestellt		Ablehnungen		formelle Entscheidungen	
		absoluter	prozentualer	absoluter	prozentualer		absoluter	prozentualer	absoluter	prozentualer	absoluter	prozentualer	absoluter	prozentualer	absoluter	prozentua
Zeitraum	insgesamt	Wert	Wert	Wert	Wert	insgesamt	Wert	Wert	Wert	Wert	Wert	Wert	Wert	Wert	Wert	Wert
2006	343	227	66,2%	116	33,8%	395	1	0,3%	12	3,0%	18	4,6%	199	50,4%	165	41,8
2007	250	194	77,6%	56	22,4%	193	4	2,1%	4	2,1%	11	5,7%	94	48,7%	80	41,5
2008	221	190	86,0%	31	14,0%	99	1	1,0%	5	5,1%	14	14,1%	31	31,3%	48	48,5

Statistics Germany for Iraq

	ASYLANTRÄGE					ENTSCHEIDUNGEN										
							Sachentscheidungen									
		Erstanträge		Folgeanträge			Anerkennungen als Asylberechtigte (Art. 16 a GG und Familienasyl)		Gewährung von Abschiebungsschutz gem. § 60 Abs. 1 AufenthG		Abschiebungsverbot gem. § 60 Abs. II, III, V, VII AufenthG festgestellt		Ablehnungen		formelle Entscheidungen	
		absoluter	prozentualer	absoluter	prozentualer		absoluter	prozentualer	absoluter	prozentualer	absoluter	prozentualer	absoluter	prozentualer	absoluter	prozentu
Zeitraum	insgesamt	Wert	Wert	Wert	Wert	insgesamt	Wert	Wert	Wert	Wert	Wert	Wert	Wert	Wert	Wert	We
2006	2.585	2.117	81,9%	468	18,1%	2.272	24	1,1%	137	6,0%	28	1,2%	1.539	67,7%	544	23
2007	9.903	4.327	43,7%	5.576	56,3%	7.779	128	1,6%	5.632	72,4%	34	0,4%	1.025	13,2%	960	12
2008	8.388	6.836	81,5%	1552	18,5%	7.390	38	0,5%	5.692	77,0%	64	0,9%	467	6,3%	1.129	15

Statistics Germany for Somalia

	ASYLANTRÄGE					ENTSCHEIDUNGEN										
							Sachentscheidungen									
		Erstanträge		Folgeanträge			Anerkennungen als Asylberechtigte (Art. 16 a GG und Familienasyl)		Gewährung von Abschiebungsschutz gem. § 60 Abs. 1 AufenthG		Abschiebungsverbot gem. § 60 Abs. II, III, V, VII AufenthG festgestellt		Ablehnungen		formelle Entscheidungen	
		absoluter	prozentualer	absoluter	prozentualer		absoluter	prozentualer	absoluter	prozentualer	absoluter	prozentualer	absoluter	prozentualer	absoluter	prozentual
Zeitraum	insgesamt	Wert	Wert	Wert	Wert	insgesamt	Wert	Wert	Wert	Wert	Wert	Wert	Wert	Wert	Wert	Wert
2006	165	146	88,5%	19	11,5%	159	0	0,0%	24	15,1%	14	8,8%	84	52,8%	37	23,3
2007	172	121	70,3%	51	29,7%	181	0	0,0%	66	36,5%	51	28,2%	34	18,8%	30	16,6
2008	185	165	89,2%	20	10,8%	151	0	0,0%	86	57,0%	33	21,9%	13	8,6%	19	12,6

IRELAND (ECRE)

Statuses of complementary/subsidiary protection

- Subsidiary Protection
- Leave to remain

Up to the transposition of the Qualification Directive[235] there was no subsidiary protection regime in Ireland. Leave to Remain was granted at the discretion of the Minister for Justice, Equality and Law Reform[236]. On the 10 th of October 2006, the European Communities (Eligibility for Protection) Regulations 2006[237] came into force in order to give effect to the Qualification Directive. The Regulations established a subsidiary protection regime while at the same time keeping in place the former discretionary regime of Leave to Remain[238]. The 2006 Regulations were created as an interim measure in order to give full effect to the provisions of the Directive by the transposition deadline. The procedure to create a new Immigration, Residence and Protection Bill that would set out, in a single code, comprehensive statutory procedures for the application of policies to the various stages of the immigration process[239] was already underway. The Immigration, Residence and Protection Bill was published in January 2008[240]. However, it is still undergoing amendments and has not been enacted yet. When enacted, the Bill purports to create a single procedure where all the grounds, including discretionary grounds, for remaining in Ireland will be examined[241]. Currently, the procedure is sequential allowing for refused asylum seekers to apply both for subsidiary protection as well as for leave to remain at the same time and within fifteen days of the Minister's proposal to deport[242].

[235] 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, available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML

[236] Section 3(6) of the Immigration Act, 1999, available at: http://www.inis.gov.ie/en/INIS/Immmigration_Act_1999_amended.pdf/Files/Immmigration_Act_1999_amended.pdf

[237] S.I. No. 518 of 2006, available at: http://www.inis.gov.ie/en/INIS/AsylumQual.pdf/Files/AsylumQual.pdf

[238] See Regulation 4(6) of the Eligibility for Protection Regulations that states: Nothing in these regulations shall affect the discretionary power of the Minister under Section 3 of the 1999 Act.

[239] See Asylum Policy Division-Irish Naturalisation and Immigration Service, Background Note on Asylum Policy, at p. 5, available at: http://www.inis.gov.ie/en/INIS/AsylumPolicyMarch07.pdf/Files/AsylumPolicyMarch07.pdf

[240] Available at: http://www.inis.gov.ie/en/INIS/IRPB_2008.pdf/Files/IRPB_2008.pdf

[241] See Part 7 "Protection" of the Immigration, Residence and Protection Bill 2008

[242] See Regulation 4 of the Eligibility for Protection Regulations 2006 as well as Section 3(3)(b) and 3(6) of the Immigration Act, 1999.

SUBSIDIARY PROTECTION

Legal basis: Regulation 4 of the Eligibility for Protection Regulations 2006.

Beneficiaries: Individuals whose application for asylum has been rejected and who has been notified in writing of the Minister's proposal to be deported[243]. They should also not be a national of a Member State, nor be excluded under the Regulation[244]. Further substantial grounds need to be shown for believing that, if returned to their country of origin, they would face a real risk of suffering serious harm and are unable, or, owing to such risk, unwilling to avail themselves of the protection of that country[245].

Serious harm consists of[246]:

(*a*) death penalty or execution,
(*b*) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin, or
(*c*) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

Duration: Subsidiary protection beneficiaries are granted permission to remain in the State for three years[247]. This permission is renewable, unless compelling reasons of national security or public order require otherwise[248].

Rights:

Rights	Y	N	Details
Access to wage-earning employment	✓		**Subsidiary Protection beneficiaries are entitled to seek and enter employment and to carry on any business, trade or profession[249].**
Access to self-employment	✓		
Access to liberal professions	✓		
Access to housing	✓		

[243] See Regulation 4(1) of the Eligibility for Protection Regulations 2006.
[244] See Regulation 2(1) of the Eligibility for Protection Regulations 2006.
[245] Ibid
[246] Ibid
[247] See Regulation 17(1) of the Eligibility for Protection Regulations 2006.
[248] See Regulation 17(2) of the Eligibility for Protection Regulations 2006.
[249] See Regulation 19(1)(b) of the Eligibility for Protection Regulations 2006.

Access to public education	✓		Access to education and training in the State in the like manner and to the like extent in all respects as an Irish citizen[250].
Social security	✓		Same social benefits as those to which Irish citizens are entitled[251].
Health	✓		Same medical care and services as those to which Irish citizens are entitled[252].
Freedom of movement within the national territory	✓		Same rights of travel in or to or from the State, other than to their country of origin, as those to which Irish citizens are entitled[253].
Travel document	✓		Beneficiaries need to apply in writing for such a document[254]. The Minister may, for reasons of national security or public order (*ordre public*), refuse to issue a travel document[255].
Voting rights in municipal election		✓	
Right to stand for elections		✓	
Family reunification		✓	No right to family reunification, but they may apply to the Minister for permission to be granted to a member of his or her family or to a dependant to enter and to reside in the State[256].
Vocational training	✓		
Access to citizenship	✓		

[250] See Regulation 19(1)(b) of the Eligibility for Protection Regulations 2006.
[251] See Regulation 19(1)(c) of the Eligibility for Protection Regulations 2006.
[252] Ibid
[253] See Regulation 19(1)(a) of the Eligibility for Protection Regulations 2006.
[254] See Regulation 18(1) of the Eligibility for Protection Regulations 2006.
[255] See Regulation 18(2) of the Eligibility for Protection Regulations 2006.
[256] See Regulation 18(2) of the Eligibility for Protection Regulations 2006 that also defines the terms "member of family" and "dependent member of the family".

LEAVE TO REMAIN

Legal basis: Sections 3(3)(b) and 3(6) of the Immigration Act, 1999.

Beneficiaries:

1. Individuals whose application for asylum has been rejected and who have been notified in writing of the Minister's proposal to deport them[257]. The application for leave to remain is made at the same time as a subsidiary protection application and within fifteen days of the Minister's proposal to deport. A number of people have been granted leave to remain before it has been determined whether they should be granted subsidiary protection (or perhaps before they even applied for it). The Minister for Justice, Equality and Law Reform, in his discretion, decides whether there are humanitarian or other reasons not to make a deportation order and to allow an individual to remain in the country. The Supreme Court has held that a decision under this provision is discretionary and therefore, the Minister is not obliged to provide reasons for a positive or negative decision[258]. However, from this it does not follow that the Minister can exercise this discretion in a capricious way or in a way that would be counter to proper procedure or constitutional principle[259].
   The 1999 Act states that the Minister should take into consideration before making the deportation order the following factors: the age of the person, the duration of residence in Ireland, the family and domestic circumstances of the person, the nature of the person's connections with Ireland, the person's employment record and employment prospects, the person's character and conduct within and outside of Ireland, humanitarian considerations, representations made by and on behalf of the person, the common good, and considerations of national security and public policy[260]. While the term "humanitarian" is not defined in the 1999 Act or in administrative regulations, it has been judicially interpreted to include circumstances such as illness, family connections and personal considerations. Prohibition of refoulement could also conceivably constitute a situation where a failed asylum-seeker could not be removed to a particular destination because of humanitarian considerations[261]. Therefore, when one takes into consideration that, currently, the application for leave to remain is made at the same time as a subsidiary

[257] Section 3(3)(b) of Immigration Act, 1999. It should be stressed at this point, once more, that currently the procedure is sequential and therefore, an individual may only make representations as to why they should be granted leave to remain only after receiving the Minister's proposal to deport.
[258] See e.g. *P, B & L v Minister for Justice, Equality and Law Reform,* 2 January 2001, 2000/596 JR, 2000/597JR, 2000/758JR, available at:
http://www.unhcr.org/refworld/country,,IRL_HC,,ROM,4562d8b62,45ebf77f2,0.html
[259] Brian Ingoldsby, Leave to remain other than through the regular migration process, *paper delivered at the*
Incorporated Law Society Seminar: Rights to Reside in Ireland on 14 May 2002, p. 3, available at:
http://www.inis.gov.ie/en/INIS/LeaveMigrat.pdf/Files/LeaveMigrat.pdf

[260] Section 3(6) of Immigration Act, 1999
[261] Brian Ingoldsby, Leave to remain other than through the regular migration process, *paper delivered at the*
Incorporated Law Society Seminar: Rights to Reside in Ireland on 14 May 2002, p. 4

protection application the possibility for overlap with the subsidiary protection regime becomes apparent.

2. Prior to 2003, parents of children who were born in Ireland were also able to withdraw from the asylum process and seek leave to remain. Since February 2003, the Department of Justice, Equality and Law Reform has ended the separate procedure which existed to enable persons to apply for residence in the State on the sole basis of parentage of an Irish born child[262]. In 2005 the Irish Born Child Scheme (IBC/05) allowed a number of foreign national parents of children born in Ireland prior to 1 January 2005 to stay in the country granting them leave to remain for an initial period of 2 years. From January 2007 it is possible to apply for a renewal a month before the expiry date of their leave to remain[263]

Duration: Not specified in the statute or in administrative regulations

Rights:

Rights	Y	N	Details
Access to wage-earning employment	✓		**No requirement of a work permit.**
Access to self-employment	✓		
Access to liberal professions	✓		
Access to housing	✓		Beneficiaries are entitled to assistance from local authorities and are included in housing lists. They are eligible for a rent supplement. Emergency accommodation may be provided if necessary.
Access to public education	✓		Access to primary and secondary education. Eligible to receive grants, scholarships and remission of fees in relation to higher education, if they have been resident in Ireland for more than 3 years (same as for recognised refugees).
Social security	✓		Social Welfare on the same basis as an Irish citizen. Access to Supplementary Welfare Support, Social assistance payments and other payments such as Child Benefit. Employees who make Pay-Related Social Insurance

[262] See the " Notice to Non-National Parents of Irish Born Children" issued by the Department of Justice, Equality and Law Reform in July 2003, available at: http://www.inis.gov.ie/en/INIS/Pages/WP07000210

[263] See the "Reminder Notice of IBC/05 Renewal Scheme" accessible at: http://www.inis.gov.ie/en/INIS/33x6%20Irish%20Born%20Child.pdf/Files/33x6%20Irish%20Born%20Child.pdf, as well as further information on the Irish Born Child Renewals at: http://www.inis.gov.ie/en/INIS/Pages/WP07000030

			Contributions receive related benefits and pensions like nationals.
Health	✓		Access to health care, including free medical and dental care.
Freedom of movement within the national territory	✓		
Travel document	✓		A person who has been granted leave to remain may apply for a "soft cover" travel document. Before making any travel arrangement beneficiaries must obtain a re-entry visa.
Voting rights in municipal election	✓		
Right to stand for elections		✓	
Family reunification		✓	No right to family reunification, but a beneficiary may apply to have a family member join him in Ireland.
Vocational training	✓		
Access to citizenship	✓		

Ireland (ICMPD)

International Centre for Migration Policy Development
Categorised Protection Study Update 2009
Response from Ireland

1. What has been the general implementation policy towards asylum seekers from the following four countries: Afghanistan, DR Congo, Iraq and Somalia?

All applications for refugee status in the State are determined by an independent process comprising the Office of the Refugee Applications Commissioner (first instance) and the Refugee Appeals Tribunal (appeal stage) which make recommendations to the Minister for Justice, Equality and Law Reform on whether such status should be granted.

Every application for asylum is considered on its own merits. No distinction is made in the examination of asylum applications from Afghanistan, DR Congo, Iraq and Somalia.

2. Has there been during the 2006-2008 period a change of policy-implementation towards asylum seekers from the above-mentioned four countries? If so, what are they and when did they occur? For instance, has at some point the processing and/or decision-making on asylum requests by e.g. Iraqi asylum seekers been 'amended', in the sense that this category was first accepted en groupe (or prima facie) and later screened on an individual basis? Or, second example, that asylum requests submitted by asylum seekers from a certain area within a given country (e.g. in Southern Somalia) were at first rejected; however at one point this policy was changed due to new insights or developments, resulting in this category now being granted across the board a certain form of asylum/protection/leave of stay.

As stated in response to question 1 above, every application for asylum is considered on its own merits and no distinction is made in the examination of asylum applications from the four countries listed. There has been no policy change in this regard during the period 2006 to 2008.

Since responding to the Categorised Protection Study in 2005, the European Communities (Eligibility for Protection) Regulations, 2006 (Statutory Instrument No. 518 of 2006) came into force in Ireland (on 10 October 2006). These Regulations gave effect in Irish law to Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection. With effect from 10 October 2006, any asylum applicant who is formally refused a declaration of refugee status, following the investigation of his/her asylum claims by the Refugee Applications Commissioner (first instance) and the Refugee Appeals Tribunal (on appeal) is advised of the options open to him/her as a result, which are:

(i) to leave the State voluntarily,
(ii) to consent to deportation,
(iii) to apply for Subsidiary Protection in the State in accordance with the provisions of the European Communities (Eligibility for Protection) Regulations, 2006 and/or
(iv) to submit, within a period of 15 working days, written representations to the Minister for Justice, Equality and Law Reform as to why they should be granted permission to remain in the State. The great majority of persons faced with these options decide to apply for Subsidiary Protection in the

State and permission to remain in the State with both applications to be considered in the order listed.

In such instances, the application for Subsidiary Protection in the State is considered first following which the applicant is notified of the outcome of that application. In the event that this application is approved, the successful applicant is advised as to the entitlements accompanying such status. However, in the event that the application for Subsidiary Protection in the State is refused, the application for permission to remain in the State must then be considered which involves the detailed examination of the application having regard to the various headings set out in 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 (see Appendix for relevant extracts from both Acts).

Following the consideration of such an application, a decision is made as to whether the applicant should be granted permission to remain in the State or if, instead, he/she should become the subject of a Deportation Order.

This process applies to failed asylum applicants from Afghanistan, DR Congo, Iraq and Somalia in the exact same way as it applies to failed asylum applicants from other source countries.

The introduction of Subsidiary Protection in October 2006 has been the only policy change in this area since 2005.

3. Would it be possible to receive an overview (e.g. on a monthly or quarterly basis) of the influx of asylum seekers from the above-mentioned four countries (statistics) over the period 2006-2008 inclusively?

Applications for Refugee Status

Table 1 shows the number of asylum applications received by the Office of the Refugee Applications Commissioner (ORAC) during the period 2006 to 2008 and the number of those applications received from nationals of Afghanistan, DR Congo, Iraq and Somalia.

Table 1:

Asylum Applications Received 2006 - 2008

	2006	2007	2008
Afghanistan	88	78	79
DR Congo	109	149	173
Iraq	215	285	203
Somalia	161	144	141
Others	3741	3329	3270
Total	4314	3985	3866

Tables 2 - 5[264] illustrate the number of asylum applicants from each of the four countries that were granted or refused refugee status at first instance and appeal stages each year in the period 2006 to 2008. It should be noted that the figures provided refer to the year in which the decision was made and not the year of application. Grants and refusals at appeal stage will stem from refusals at first instance.

[264] It should be noted that the figures in the table refer to the year in which the decision was made and not the year of application.

Table 2*:

		2006		2007		2008	
		Granted	Refused	Granted	Refused	Granted	Refused
Afghanistan	**First Instance**	265	111	†	80	†	81
	Appeal Stage	15	64	11	43	20	41
	Total	-	175	-	123	-	122

Table 3*:

		2006		2007		2008	
		Granted	Refused	Granted	Refused	Granted	Refused
DR Congo	**First Instance**	14	106	12	139	†	158
	Appeal Stage	†	123	10	64	†	117
	Total	-	229	22	203	-	275

Table 4*:

		2006		2007		2008	
		Granted	Refused	Granted	Refused	Granted	Refused
Iraq	**First Instance**	65	71	100	141	110	130
	Appeal Stage	16	15	18	27	30	29
	Total	81	86	118	168	140	159

Table 5*:

		2006		2007		2008	
		Granted	Refused	Granted	Refused	Granted	Refused
Somalia	**First Instance**	60	142	28	88	23	53
	Appeal Stage	39	128	14	79	15	61
	Total	99	270	42	167	38	114

Subsidiary Protection Applications

During the period 2006 to 2008, a total of 2,954 applications for Subsidiary Protection were received in the State. **Table 6** provides a breakdown of these applications by year for each of the four nationalities concerned. During the same period, less than 10 applicants from these four source countries have been granted subsidiary protection in the State.

Table 6:

[265] Please note that figures less than 10 are not supplied for confidentiality reasons.

[266]**Subsidiary Protection Applications Received 2006 - 2008**

	2006	2007	2008
Afghanistan	[267]	45	44
DR Congo	†	50	104
Iraq	†	24	18
Somalia	†	48	43
Total	**-**	**167**	**209**

Applications for Humanitarian Leave to Remain

The Department of Justice, Equality and Law Reform does not retain specific records of the numbers of applications for leave to remain in the State received each year. This is primarily because the cases of all failed asylum applicants fall to be considered for leave to remain in the State and not just those who have made a formal written application for such a residency status. However, the number of persons from each of those source countries who were formally refused a declaration of refugee status by the Minister for Justice, Equality and Law Reform in the years in question will provide a good indication of the number of persons from those countries in respect of who humanitarian leave to remain in the State was considered. (See Table 7 below.)

Table 7 sets out the numbers of persons from Afghanistan, DR Congo, Iraq and Somalia who were formally refused a declaration of refugee status by the Ministerial Decisions Unit of the Department each year from 2006 to 2008. Again, it should be noted that the figures in the table refer to the year in which the decision was made and not the year of application.

Table 7:

***Refused Declaration of Refugee Status by the Minister**

	2006	2007	2008
Afghanistan	73	69	70
DR Congo	123	96	103
Iraq	19	56	77
Somalia	135	115	70
Total	350	336	320

Table 8 sets out the numbers of persons from Afghanistan, DR Congo, Iraq and Somalia who were granted leave to remain in the State each year from 2006 to 2008 following the consideration of their cases 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. It might be noted that these statistics **do not** include the persons from the same source countries who were granted permission to remain in the State under another heading e.g. marriage to an Irish or EU national etc.

Table 8:

[266] It should be noted that the figures in the table refer to the year in which the decision was made and not the year of application.
[267] Please note that figures less than 10 are not supplied for confidentiality reasons.

[268]**Granted Humanitarian Leave to Remain**

	2006	2007	2008
Afghanistan	[269]	†	†
DR Congo	†	49	97
Iraq	†	†	20
Somalia	†	27	27
Total	-	-	-

Returns to Afghanistan, DR Congo, Iraq and Somalia

While there have been no forced returns to the four countries concerned during the period 2006-2008, a total of 15 people have voluntarily returned during this time.

4. Had the policy and/or implementation changes (as per question 2) an impact on the number of asylum cases submitted i.e. the influx? Is there a correlation/causality between the change in influx and the new policy?

As stated in response to questions 1 and 2 above, there has been no specific change in policy for applications from the four source countries listed during the period 2006 to. It may be noted that Ireland does not have a "categorised protection" process in place.

Asylum Policy Division
Irish Naturalisation & Immigration Service (INIS)
February 2009

APPENDIX

Immigration Act 1999, as amended

Section 3 - Deportation orders.
3. —(6) In determining whether to make a deportation order in relation to a person, the Minister shall have regard to—
(*a*) the age of the person;
(*b*) the duration of residence in the State of the person;
(*c*) the family and domestic circumstances of the person;
(*d*) the nature of the person's connection with the State, if any;
(*e*) the employment (including self-employment) record of the person;
(*f*) the employment (including self-employment) prospects of the person;
(*g*) the character and conduct of the person both within and (where relevant and ascertainable) outside the State (including any criminal convictions);
(*h*) humanitarian considerations;
(*i*) any representations duly made by or on behalf of the person;
(*j*) the common good; and
(*k*) considerations of national security and public policy, so far as they appear or are known to the Minister.

Refugee Act 1996, as amended

Section 5 - Prohibition of refoulement.
5.—(1) A person shall not be expelled from the State or returned in any manner whatsoever to the frontiers of territories where, in the opinion of the Minister, the life

[268] It should be noted that the figures in the table refer to the year in which the decision was made and not the year of application.
[269] Please note that figures less than 10 are not supplied for confidentiality reasons.

or freedom of that person would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion.
(2) Without prejudice to the generality of subsection (1), a person's freedom shall be regarded as being threatened if, *inter alia*, in the opinion of the Minister, the person is likely to be subject to a serious assault (including a serious assault of a sexual nature).

SWEDEN (ECRE)

Statuses of complementary/subsidiary protection

• Persons otherwise in need of protection • Residence Permit on Grounds of Exceptionally Distressing Situations • Measures In Case of Impediments to the Enforcement of Refusal of Entry or Expulsion Orders

The transposition process of the Qualification Directive[270] has not yet been completed in Sweden. A government inquiry had been assigned to draw up a comprehensive report on legislative changes necessary to transpose the Directive, and delivered a 494-page report on January 2006, including detailed legislative proposals[271]. At the moment the legislation is undergoing amendments and will be enacted in the following months. However, the most recent legislative instrument, the Alien's Act 2005[272] as well as other legislative instruments encompass already many of the notions included in the Qualification Directive. In what concerns complementary protection, there is a status very similar to subsidiary protection that is defined as protection for "persons otherwise in need of protection"[273]. Furthermore, a residence permit can be granted as a result of particularly distressing circumstances linked directly with the applicant[274]. The law also recognises certain impediments to the enforcement of refusal of entry and expulsion decisions[275]. In this case the Migration Board may re-examine the case, either after a request of the applicant[276] or on its own accord [277] or after the request of some other authority[278]. Finally, the law as amended in November 2008, enables failed asylum seekers that have employment in Sweden to, in certain situations, apply for a temporary permit[279]

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[270] 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, available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML

[271] Noll, Gregor, "The Qualification Directive and its Transposition into Swedish Law", in *The Qualification Directive: Central Themes, Problem Issues, and Implementation in Selected Member States,* Karin Zwaan, (ed.), Wolf Legal Publishers, 2007, at p. 79. The text of the proposal (Skyddsgrundsdirektivet och svensk rätt En anpassning av svensk lagstiftning till EG-direktiv 2004/83/EG angående flyktingar och andra skyddsbehövande), is available at: http://www.regeringen.se/sb/d/108/a/56440. A small 10-page summary is included in English.

[272] Alien's Act 2005, Swedish Code of Statutes no 2005:716, issued 29 September 2005, official English translation available at: http://www.sweden.gov.se/sb/d/5805/a/66122;jsessionid=axnOnhDLLWS_

[273] Chapter 4, Section 1 of the 2005 Alien's Act

[274] Chapter 5, Section 6 of the 2005 Alien's Act

[275] Chapter 12, Sections 1-3 of the 2005 Alien's Act

[276] Chapter 12, Section 19 of the 2005 Alien's Act

[277] Chapter 12, Section 18 of the 2005 Alien's Act

[278] Chapter 12, Section 17 of the 2005 Alien's Act

[279] Chapter 5, Section 15a of the 2005 Alien's Act. The amendments are available at: http://www.sweden.gov.se/content/1/c6/11/83/77/107e027f.pdf. The provision states the following: A temporary residence permit may be granted to an alien whose application for a residence permit as a refugee under Chapter 4, Section 1 or as a person otherwise in need of protection under Chapter 4, Section 2 or corresponding older provisions has been rejected owing to a decision that has become final and non-appealable, if the alien is staying here and

PERSONS OTHERWISE IN NEED OF PROTECTION [280]

Legal basis: Aliens Act 2005, Chapter 4, Section 2.

Beneficiaries:[281] An alien who does not qualify as a refugee but is outside the country of the alien's nationality, because he or she
1. feels a well-founded fear of suffering the death penalty or being subjected to corporal punishment, torture or other inhuman or degrading treatment or punishment,
2. needs protection because of external or internal armed conflict or, because of other severe conflicts in the country of origin, feels a well-founded fear of being subjected to serious abuses or
3. is unable to return to the country of origin because of an environmental disaster.

The corresponding applies to a stateless alien who is outside the country in which he or she has previously had his or her usual place of residence.

Duration: As a general rule, persons falling into this category receive a permanent residence permit[282]. The law states that a residence permit may be denied to a beneficiary of this status if in view of his or her criminal activities there are special grounds for not granting them a residence permit or if there are exceptional grounds for not granting such a permit in view of what is known about their previous activities or with regard to national security[283].
Additionally, a temporary residence permit may be granted if there is a reason to question a person's expected mode of life[284]. This period can be seen as a period of probation for a permanent residence permit. Those who receive a temporary residence permit need a permit to work. However, a temporary permit of at least a year means that the beneficiaries can register in the community, therefore they are entitled to social care and they can work.

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1. for at least six months has had employment that meets the requirements specified in Chapter 6, Section 2, first paragraph and refers to a period of at least one year from the time of the application, or

2. under Section 3, first paragraph, points 1-4, Section 3a, first paragraph, point 1 or second paragraph has strong ties to a person who has been granted a residence permit under point 1.

The Swedish Migration Board must have received an application for a temporary residence permit under the first paragraph no later than two weeks after the decision to reject the application for a residence permit as a refugee or a person otherwise in need of protection has become final and non-appealable.

[280] This term is the official translations of the Swedish equivalent.
[281] As defined in the official translation of the Aliens Act 2005, Chapter 4, Section 2
[282] Chapter 5, Section 1(1) of the 2005 Alien's Act
[283] Chapter 5, Section 1(2) of the 2005 Alien's Act
[284] Chapter 5, Section 7 of the 2005 Alien's Act

Rights:

Rights	Y	N	Details
Access to wage-earning employment	✓		The work permit requirement does not apply to an alien who has a permanent residence permit[285].
Access to self-employment	✓		There is no work permit requirement for aliens who wish to run their own business.
Access to liberal professions	✓		
Access to housing	✓		Beneficiaries have access to municipal social assistance programmes, which include allocation of housing[286].
Access to public education	✓		Swedish legislation gives children who benefit from this protection status the right to schooling or other education under the same conditions as Swedish children[287]. Adult aliens who have been granted this status have access to municipal adult education and higher education[288]. Furthermore, they can claim credit for both Swedish and foreign education under the same conditions as Swedish nationals[289].
Social security	✓		They are entitled to residence-based social insurance benefits under the same conditions as Swedish nationals from the date that a residence permit that leads to entry in the population registry is granted[290].
Health	✓		
Freedom of movement within the national territory	✓		Aliens' freedom of movement is limited either through legislation or through ordinances[291]. These provisions make no distinction between aliens on the basis of

[285] Chapter 2, Section 8 of the 2005 Alien's Act
[286] France Terre d'Asile, *Asile : La Protection Subsidiaire en Europe : Une Mosaïque de Droits,* Les Cahiers du Social No18, Septembre 2008, at p. 50.
[287] Skyddsgrundsdirektivet och svensk rätt En anpassning av svensk lagstiftning till EG-direktiv 2004/83/EG angående flyktingar och andra skyddsbehövande, (2006 Inquiry), at p. 37
[288] Ibid
[289] Ibid
[290] Ibid, at p. 38
[291] Ibid, at p.40

			the grounds they have for living in the country[292].
Travel document		✓	At present an alien's passport can be issued for this purpose, but there is no obligation to do so[293].
Voting rights in municipal election	✓		People who hold a permanent residence permit have a right to vote for the municipal elections[294]
Right to stand for elections		✓	
Family reunification	✓		Same as every person who holds a permanent residence permit. However, unlike refugees, the cost of transport for the family members is not undertaken by the state[295]
Vocational training	✓		
Access to citizenship	✓		After residence in Sweden for at least five years[296].

Residence Permit on Grounds of Exceptionally Distressing Situations[297]:

Legal basis**: Aliens Act 2005, Chapter 5, Section 6.**

Beneficiaries: A permit may be granted to an alien if on an overall assessment of the alien's situation there are found to be such exceptionally distressing circumstances that he or she should be allowed to stay in Sweden[298]. In making this assessment, particular attention shall be paid to the alien's state of health, his or her adaptation to Sweden and his or her situation in the country of origin[299]. Children may be granted residence permits under this Section even if the circumstances that come to light do not have the same seriousness and weight that is required for a permit to be granted to adults[300].

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[292] Ibid
[293] Ibid, at p. 40. See also Chapter 2 of the Alien's Ordinance 2006, Swedish Code of Statutes no 2006:97, issued 23 February 2006, official English translation available at: http://www.sweden.gov.se/sb/d/5805/a/75618;jsessionid=aVxlo2sM-Ep-
[294] France Terre d'Asile, *Asile : La Protection Subsidiaire en Europe : Une Mosaïque de Droits,* Les Cahiers du Social No18, Septembre 2008, at p. 52.
[295] ECRE, The Impact of the EU Qualification Directive in International Protection, at p.247
[296] France Terre d'Asile, *Asile : La Protection Subsidiaire en Europe : Une Mosaïque de Droits,* Les Cahiers du Social No18, Septembre 2008, at p. 52.
[297] This term is the official translations of the Swedish equivalent.
[298] Aliens Act 2005, Chapter 5, Section 6.
[299] Ibid
[300] Ibid

Duration: This category of beneficiaries will also usually benefit from a permanent residence permit. The beneficiary will be granted with a temporary residence permit if, in view of their expected way of life, there is doubt as to whether a residence permit should be granted[301]. Furthermore, a residence permit that is granted on grounds of sickness shall be for a limited time if the alien's sickness or need of care in Sweden is of a temporary nature[302].

Rights: Depending on whether they receive a permanent or a temporary residence permit, they have the same rights as "persons otherwise in need of protection", that fall into each respective category. However, a temporary permit of at least a year provides access to the same level of rights.

MEASURES IN CASE OF IMPEDIMENTS TO THE ENFORCEMENT OF REFUSAL OF ENTRY OR EXPULSION ORDERS[303]

Legal basis: Aliens Act 2005, Chapter 12

Beneficiaries: The Alien's Act 2005 specifically defines what can constitute an impediment to the enforcement of refusal of entry and end expulsion orders. Therefore, according to the legislation:

1. The refusal of entry and expulsion of an alien may never be enforced to a country

where there is fair reason to assume that

- the alien would be in danger there of suffering the death penalty or being subjected to corporal punishment, torture or other inhuman or degrading treatment or punishment or
- the alien is not protected in the country from being sent on to a country in which the alien would be in such danger[304].

2. The refusal of entry and expulsion of an alien may not be enforced to a country
   - if the alien risks being subjected to persecution in that country or
   - if the alien is not protected in the country from being sent on to a country in which the alien would be at such risk[305].

An alien may, however, be sent to such a country, if it is not possible to enforce the refusal of entry or expulsion to any other country and the alien has shown by committing an exceptionally gross offence that public order and security would be seriously endangered by allowing him or her to remain in Sweden[306]. This is,

[301] Chapter 5, Section 7 of the 2005 Alien's Act
[302] Chapter 5, Section 9 of the 2005 Alien's Act
[303] This term is the official translations of the Swedish equivalent.
[304] Chapter 12, Section 1 of the 2005 Alien's Act.
[305] Chapter 12, Section 2 of the 2005 Alien's Act.
[306] Ibid

however, not applicable if the persecution threatening the alien in the other country entails danger for the life of the alien or is otherwise of a particularly severe nature[307].

An alien may also be sent to such a country if the alien has conducted activities that have endangered national security and there is reason to assume that the alien would continue to conduct these activities in the country and it is not possible to send the alien to any other country[308].

3. The refusal of entry and expulsion of a "person who is otherwise in need of protection" that needs protection because of external or internal armed conflict or, because of other severe conflicts in the country of origin, feels a well-founded fear of being subjected to serious abuses or who is unable to return to the country of origin because of an environmental disaster, may not be enforced to the alien's country of origin or to a country where he or she risks being sent on to the country of origin unless there are exceptional grounds for this[309].

The legislation also defines what measures can be taken in the event of impediments to enforcement. There are four different cases:

1. Some other authority than the Swedish Migration Board is to enforce a refusal of entry or expulsion order[310]. In this case, if this authority finds that it cannot enforce the order or that it needs additional information, the authority shall notify the Swedish Migration Board. The same applies if an alien invokes the existence of an impediment to enforcement referred to above, in contact with the authority or if it comes to light in some other way that there may be such impediments. In such cases the Swedish Migration Board shall provide directions on enforcement or take other measures.

2. The Swedish Migration Board finds that new circumstances have come to light in a case that has become final and non-appealable[311]. If these new circumstances mean that there is an impediment to enforcement as mentioned above, or there is reason to assume that the intended country of return will not be willing to accept the alien or there are medical or other special grounds why the order should not be enforced, the Swedish Migration Board may grant a permanent residence permit if the impediment is of a lasting nature. If there is only a temporary impediment to enforcement, the Board may grant a

[307] Ibid
[308] Ibid
[309] Chapter 12, Section 3 of the 2005 Alien's Act.
[310] Chapter 12, Section 17 of the 2005 Alien's Act.
[311] Chapter 12, Section 18 of the 2005 Alien's Act.

temporary residence permit. The Swedish Migration Board may also order a stay of enforcement.

3. An alien invokes new circumstances that have come to light in a case that has become final and non-appealable[312]. If, can be assumed that these circumstances constitute a lasting impediment to enforcement as described above and that these circumstances could not previously have been invoked by the alien or the alien shows a valid excuse for not previously having invoked these circumstances, the Swedish Migration Board shall, if a residence permit cannot be granted under the previous procedure (Section 18 of the Alien's Act), reexamine the matter of a residence permit and issue an order staying the enforcement case. If the conditions set out in the first paragraph have not been fulfilled, the Swedish Migration Board shall decide not to grant a re-examination.

4. Expulsion on account of a criminal offence/ security cases[313].

   - If, in a case referring to a judgment or order of a general court concerning expulsion on account of a criminal offence, it comes to light that enforcement cannot be carried out, the Swedish Migration Board shall not take its own decision in the case but shall promptly turn over the case, attaching it's own opinion, to the Government for examination under Chapter 8, Section 14[314].
   - If, during the enforcement of a refusal-of-entry or expulsion order in a security case, information comes to light that the enforcement cannot be carried out, the Swedish Migration Board shall promptly turn the case over to the Government for examination under Section 18. In this examination the Government shall obtain an opinion from the Migration Court of Appeal. The opinion shall specifically state whether there is an impediment to enforcement as defined above. If the Court finds that there is such an impediment to enforcement, the Government may not diverge from the assessment of the Court in its examination. In an examination under the second paragraph the Government may order a stay of enforcement, decide on a residence permit and work permit and cancel the refusal-of-entry or expulsion order.

[312] Chapter 12, Section 19 of the 2005 Alien's Act.
[313] Chapter 12, Section 20 of the 2005 Alien's Act.
[314] This Article states the following: If the Government finds that a judgment or order of expulsion on account of criminal offences issued by a general court cannot be enforced or if there are some other special grounds why the order shall no longer apply, the Government may set aside the order wholly or in part. In connection with this, the Government may also make a decision regarding a residence permit and work permit. If the judgment or order of expulsion is not cancelled, the Government can, in cases referred to in the first paragraph, issue a temporary residence permit and work permit. The expulsion order may not be enforced while the permit is valid.

Duration: As mentioned above, the alien may receive a permanent or a temporary residence permit, according to the evaluation of the Swedish Migration Board or of the Government (in criminal/security cases)[315].

Rights: Depending on whether they receive a permanent or a temporary residence permit, they have the same rights as "persons otherwise in need of protection", that fall into each respective category. However, a temporary permit of at least a year provides access to the same level of rights.

[315] Concerning the temporary residence permit for this category of beneficiaries see also Chapter 5, Section 11 of the 2005 Alien's Act.

SWITZERLAND (ECRE)

Statuses of complementary/subsidiary protection

- Provisional Protection
- Residence Permit on Grounds of Exceptional Circumstances
- Provisional Admission

Switzerland, although not an EU Member State, signed an association agreement to Schengen/Dublin on 26 October 2004. On 12 December 2008 the Schengen association agreement of Switzerland was fully implemented. As a result, land border controls between Switzerland and the 24 countries that currently make up the Schengen area have been lifted. However, apart from its participation in the Dublin system Dublin, Switzerland is not bound by the EC legislative measures on asylum, therefore it is not bound by the Qualification Directive either. Asylum in Switzerland is regulated by the Asylum Act of 1998 (as amended till December 2008)[316]. The Alien's Act also contains provisions that are of relevance regarding complementary statuses of protection[317]. Apart from refugee status, asylum seekers can be granted with provisional protection if they will be exposed to a serious general danger upon their return. Furthermore, independently of the state of the asylum procedure, the cantons may grant a residence permit on grounds of exceptional circumstances. Finally, people who may not be deported are admitted provisionally to the territory, as regulated by the Alien's Act.

Provisional Protection (Protection Provisoire)

Legal basis: Asylum Act 1998 (as amended till December 2008), Chapter 1, Article 4

Beneficiaries: Persons who are exposed to a serious general danger, especially during international or internal armed conflict or during situations of generalized violence[318]. Persons who compromise seriously public order and security are excluded from the grant of the provisional protection status[319].

Duration: If, after 5 years, the Federal Council (Conseil federal) has not yet lifted the provisional protection, the beneficiary of this form of protection receives a residence permit (autorisation de séjour) which expires at the moment that the protection is

[316] Loi sur l'asile du 26 juin 1998 (LAsi), in force since 1st of October 1999, available at : http://www.admin.ch/ch/f/rs/c142_31.html
[317] Loi fédérale sur les étrangers (LEtr), 16 Decembre 2005, available at : http://www.admin.ch/ch/f/ff/2005/6885.pdf
[318] Chapter 1, Article 4, Asylum Act 1998
[319] Chapter 4, Article 73, Asylum Act 1998

lifted[320]. Ten years after the grant of the provisional protection status, the canton can issue beneficiaries with an establishment permit (autorisation d'établissement)[321].

Rights:

Rights	Y	N	Details
Access to wage-earning employment	✓		It must be noted that during the first 3 months following their entry beneficiaries are not allowed to work[322]. After this period elapses their access to employment is regulated by the provisions of the Alien's Act[323]. However, the Federal Council may pronounce less restrictive requirements for this class of beneficiaries[324]
Access to self-employment	✓		
Access to liberal professions	✓		
Access to housing	✓		
Access to public education	✓		
Social security	✓		They are entitled to social benefits and child benefits, which are allocated by the canton (municipality) in which they reside[325]. However, until they are granted with a residence permit social benefits can take the form of in-kind contributions and the level of benefits may differ from those accorded to Swiss nationals[326].
Health	✓		As stipulated in the Health Insurance Act with certain exceptions for beneficiaries who have not yet acquired

[320] Chapter 4, Article 74 (2), Asylum Act 1998. The Federal Council can lift the provisional protection, after consulting the representatives of the cantons, the Office of the UN High Commissioner for Refugees and other non-governmental and international organizations, concerning certain groups of beneficiaries. This decision has a general application. However, the persons concerned are granted a right to file a claim that they fear persecution. For more details see Chapter 4, Article 76, Asylum Act 1998

[321] Chapter 4, Article 74 (3), Asylum Act 1998

[322] Chapter 4, Article 75(1), Asylum Act 1998

[323] Ibid

[324] Chapter 4, Article 75(2), Asylum Act 1998

[325] Chapter 5, Articles 80-84, Asylum Act 1998

[326] Chapter 5, Articles 82, Asylum Act 1998

[327] See Chapter 5, Articles 82a, Asylum Act 1998

			a residence permit[327]
Freedom of movement within the national territory		✓	Persons benefiting from provisional protection reside in the "canton" to which they are assigned[328].
Travel document		✓	They are provided with an identity card. When they receive a residence permit they can be granted with a travel document[329]
Right to stand for elections		✓	
Family reunification	✓		Authorised unless particular circumstances oppose it[330]
Vocational training		✓	
Access to citizenship	✓		People who have been resident in Switzerland for twelve years - the years spent in this country between the completed 10th and 20th years are counted double for this purpose - may apply for naturalisation.

Residence Permit on Grounds of Exceptional Circumstances (Autorisation de sejour en cas de rigueur)

Legal basis: Chapter 2, Article14, Asylum Act 1998

Beneficiaries: Failed asylum seekers who cannot be deported or asylum seekers who withdrew their application cannot engage in a procedure to remain in the country according to the immigration legislation (Alien's Act 2005)[331].The cantonal authorities may, however, with the consent of the Federal Office of Migration, grant a residence permit to persons who fulfill the following requirements[332]:

1. They have been living in Switzerland since 5 years, which are counted from the submission of the asylum claim
2. Their place of stay has always been known to the authorities
3. The case raises exceptionally severe circumstances [in case of deportation] because of the progressed integration of the concerned person.

It must be stressed, that this status is granted independently of the asylum procedure[333]. It aims at regularizing the legal position of persons who have been staying for a considerable amount of time in Switzerland[334].

[328] Chapter 4, Article 74 (1), Asylum Act 1998
[329] Chapter 9, Article 59(2), Alien's Act 2005
[330] Chapter 4, Article 71, Asylum Act 1998
[331] Chapter 4, Article 14(1), Asylum Act 1998
[332] Chapter 4, Article 14(2), Asylum Act 1998
[333] See Federal Office for Migration, Loi sur l'asile (LAsi): questions et réponses, available at : http://www.bfm.admin.ch/etc/medialib/data/migration/asyl_schutz_vor_verfolgung/asylgesetz/abstimmungen.Par.0010.File.tmp/FAQ_AsylG_f_neu.pdf

Duration: Beneficiaries receive a residence permit (autorisation de séjour ordinaire- titre de séjour B). This type of autorisation is granted for a period of more than one year[335] . This authorization of stay can be prolonged according to the conditions of the Alien's Act[336]. As described in Chapter 10, Articles 62-63 Alien's Act such a permit is extended unless it is proved that an alien acquired it through false declarations or that the alien has been condemned for a crime with a penalty of long-term imprisonment, or the alien has posed a threat to the public order and security of Switzerland or abroad, in a serious or repeated manner or poses a threat for the external and internal security of Switzerland, or finally the alien or a person for which he is responsible depends constantly and on a large extent on social aid.

Rights: There are no special provisions in the Alien's Act 1998. Beneficiaries receive the same rights that any third-country national granted with a residence permit (titre de séjour B) would receive.

Provisional Admission (Admission Provisoire)

Legal basis: Alien's Act 2005 (as amended till January 2009), Chapter 11, Article 83

Beneficiaries: The Federal Office for Migration decides to admit the alien provisionally if his return or the execution of the deportation order is not possible, is not lawful, or cannot be reasonably demanded[337]. The execution of the deportation order is not possible when the alien cannot leave Switzerland (voluntary) to return to his country of origin, his country of consignment (pays de provenance) or a third country and cannot be forcibly returned to any of those states either[338]. The execution of the deportation order is not lawful when the forcible return of the alien to his country of origin, his country of consignment (pays de provenance) or a third country is contrary to Switzerland's obligations under international law[339]. The execution of the deportation order cannot be reasonably demanded if the forcible return or the expulsion of the alien to his country of origin, his country of consignment (pays de provenance) will place him in concrete danger, for example in case of international or internal armed conflict, generalized violence or medical necessity[340]. The provisional admission can be proposed by the cantonal authorities[341]. The following categories of persons are excluded from the scope of provisional admission[342]: aliens who have been condemned for a crime with a penalty of long-term imprisonment, aliens who have posed a threat to the public order and security of Switzerland or abroad, in a serious or repeated manner or who pose a threat for the external and internal security

[334] Ibid
[335] Chapter 6, Article 33, Alien's Act 2005
[336] Chapter 4, Article 14(6), Asylum Act 1998.
[337] Chapter 11, Article 83(1), Alien's Act 2005
[338] Chapter 11, Article 83(2), Alien's Act 2005
[339] Chapter 11, Article 83(3), Alien's Act 2005
[340] Chapter 11, Article 83(3), Alien's Act 2005
[341] Chapter 11, Article 83(6), Alien's Act 2005
[342] Chapter 11, Article 83(7), Alien's Act 2005

of Switzerland and finally aliens whose deportation cannot be executed due to their behaviour.

Duration: The residence title of a beneficiary of this category is granted by the canton where they reside, has duration of maximum twelve months and can be prolonged[343]. The Federal Office of Migration verifies periodically whether the alien fulfills the conditions of provisional admission and if he no longer does orders for the execution of their deportation[344].

Rights:

Rights	Y	N	Details
Access to wage-earning employment	✓		Persons admitted provisionally can acquire by the cantonal authorities a work permit, regardless of the situation of the work market or the general economic situation[345]
Access to self-employment	✓		
Access to liberal professions	✓		
Access to housing	✓		
Access to public education	✓		
Social security	✓		They are entitled to social benefits and which are allocated by the canton (municipality) in which they reside[346]. However, the same provisions as for beneficiaries of provisional protection apply, namely social benefits can take the form of in-kind contributions and the level of benefits may differ from those accorded to Swiss nationals[347].
Health	✓		As stipulated in the Health Insurance Act with certain exceptions[348]
Freedom of movement within the national territory		✓	Persons benefiting from provisional admission reside in the "canton" to which they are assigned, unless they are authorized by the Federal Office of Migration to changer their place of residence[349]. They can choose however

[343] Chapter 11, Article 85, Alien's Act 2005
[344] Chapter 11, Article 84(1)(2), Alien's Act 2005
[345] Chapter 11, Article 85(6), Aliens Act 2005
[346] Chapter 11, Article 86, Aliens Act 2005
[347] Chapter 11, Article 86(1), Aliens Act 2005
[348] Chapter 11, Article 86(2), Aliens Act 2005
[349] Chapter 11, Article 85(3), Aliens Act 2005

			freely their place of residence within the canton[350].
Travel document		✓	They are provided with an identity card.
Right to stand for elections		✓	
Family reunification	✓		It is possible after three years of residence under this provision and if the following requirements are met: the family will live together, they already have an appropriate lodging and they will not depend on social aid[351]
Vocational training		✓	
Access to citizenship	✓		People who have been resident in Switzerland for twelve years - the years spent in this country between the completed 10th and 20th years are counted double for this purpose - may apply for naturalisation.

[350] Chapter 11, Article 85(5), Aliens Act 2005
[351] Chapter 11, Article 85(7), Aliens Act 2005

Switzerland (ICMPD)

1. What has been the general implementation policy towards asylum seekers from the following four countries: ***Afghanistan, DR Congo, Iraq and Somalia****?*

Answers Switzerland

Afghanistan
Asylum requests from Afghan nationals are subject to an individual examination by taking into account all the aspects of the case. Whoever belongs to a risk group is as a rule recognized as a refugee or- if individual execution hindrances exist - is granted temporary admission.
In all other cases the asylum request is rejected and the removal from Switzerland is ordered.

DR Congo
S'agissant des demandes d'asile déposées par des ressortissants de République démocratique du Congo, l'Office fédéral des migrations (ODM) procède à un examen individualisé desdites demandes.
Cela étant, conformément à la pratique de l'ODM et de l'autorité de recours (le Tribunal administratif fédéral), l'office octroie une protection provisoire à certaines catégories de personnes («groupes vulnérables"). Sont au bénéfice d'une admission provisoire en Suisse :
- les personnes âgées ou malades sans réseau familial / social au pays;
- les femmes seules ou familles avec enfants en bas âge (moins de six ans), dépourvues d'attaches solides dans leur pays d'origine ainsi que
- les Tutsi dont l'appartenance à cette ethnie est avérée.

En outre, l'exécution du renvoi des requérants d'asile congolais n'est envisageable pour autant que la personne concernée ait eu son dernier domicile à Kinshasa ou dans une ville aéroportuaire de l'ouest du pays ou qu'elle dispose d'attaches solides dans l'une de ces régions. Par conséquent, les personnes dont le dernier domicile est à l'est du pays et qui n'ont aucun point de chute dans une ville aéroportuaire de l'ouest du pays sont également au bénéfice d'une protection provisoire en Suisse.

Unofficial translation:
In regard to asylum claims from nationals of DRC, the Federal Office for Migration carries out individual examinations of the application.
According to the FOM practice as well as the review tribunal (Federal administrative tribunal), the FOM grants a temporary protection to certain categories of individuals (vulnerable persons). The following can obtain such protection:
- old or sick persons without any familial/social network in the country;
- single women or families with young children (below 6 years old) without strong links in the country;
- Tutsis (insofar as the ethnicity is proven).

Furthermore, implementation of returns is foreseeable only when the person concerned had its last residence in Kinshasa or from a city with an airport in the western part of the country, or that the person has strong links in one of these regions. Consequently, persons whom last place of residence was in the eastern part of the

country and do not have access to a city with an airport in the western part of the country will also benefit from temporary protection.

Iraq
In general, Switzerland grants a status of temporary protection to rejected asylum seekers who originate from all the governorates except Dohuk, Erbil and Sulaymaniyah, unless there are exclusion grounds.
Temporary protection status is granted to rejected asylum seekers originating from the three Kurdish administered governorates Dohuk, Erbil and Sulaymaniya only if they are families with children or if they are vulnerable.
The execution of the removal order is considered to be reasonable in general for young and healthy singles and childless couples from Dohuk, Erbil and Sulaymaniyah.
People originating from all the other governorates may get an execution of the removal order (to Dohuk, Erbil or Sulaymaniyah governorates only) if they have good relations to relatives living there or good relations to the two big political parties there or good job opportunities there (e.g. engineers, doctors) or if they have had a longer previous stay there.

Somalia
L'Office fédéral des migrations (ODM) traite de façon individuelle les demandes d'asile.
Les demandes d'asiles émanant de personnes provenant du centre et du sud de la Somalie (la partie se trouvant au sud de la ville de Galkayo) qui sont rejetées sont assorties d'une admission provisoire.
Des décisions de renvoi à l'égard d'hommes seuls peuvent être prononcées vers le Somaliland et le Puntland. Cependant, l'exigibilité de l'exécution du renvoi de ces personnes doit être soumise à la réalisation de certaines conditions. Il faut en particulier que la personne ait des liens étroits avec la région et puisse y trouver des moyens de subsistance ou compter sur le soutien effectif d'un réseau clanique; le seul lien tiré de l'appartenance à une famille clanique principale établie dans la région est insuffisant.

Unofficial translation:
The FOM handles the asylum applications individually. Persons coming from the centre or the south of Somalia (the part which is south of Galkayo) whose claims are rejected receive temporary protection.
Removal orders for single men can be undertaken towards Somaliland and Putland. However, certain conditions must be met to effect the removal. In particular, the person concerned must have strong links to the region and be able to find means of subsistence or to rely on the effective support from the clan. The mere link to a principal family clan established in the region is deemed insufficient.

*2. Has there been during the 2006-2008 period a **change of policy-implementation** towards asylum seekers from the above-mentioned four countries? If so, what are they and when did they occur?*
For instance, has at some point the processing and/or decision-making on asylum requests by e.g. Iraqi asylum seekers been 'amended', in the sense that this category was first accepted en groupe (or prima facie) and later screened on an individual basis? Or, second example, that asylum requests submitted by asylum seekers from a

certain area within a given country (e.g. in Southern Somalia) were at first rejected; however at one point this policy was changed due to new insights or developments, resulting in this category now being granted across the board a certain form of asylum/protection/leave of stay.

Afghanistan
In the year 2006 the appeal court determined the province of Kabul, the province of Herat and the Northern provinces (Parwan, Baghlan, Takhar, Badakhshan, Kunduz, Balkh and Sari Pul) as the only safe provinces where returns can be ordered to. In December 2007 the Federal Office for Migration adapted its practice regarding the returns to Afghanistan to the practice of the appeal court with one exception. The province of Bamian also is regarded as safe.

DR Congo
Aucun changement dans la mise en œuvre des politiques de protection des demandeurs d'asile provenant de RDC n'est intervenu durant la période 2006-2008.

Unofficial translation
No changes in regard to the implementation of the protection policies towards DRC claimants occurred during the period 2006-2008.

Iraq
The removal practice as outlined above under question 1 has been adopted in May 2007. Before this, rejected asylum seekers from all over Iraq were granted temporary protection since September 2005.

Somalia
Non. Il n'y a eu aucun changement durant cette période.

Unofficial translation
There were no changes during this period.

*3. Would it be possible to receive an overview (e.g. on a monthly or quarterly basis) of the influx of asylum seekers from the above-mentioned four countries (**statistics**) over the period 2006-2008 inclusively?*

Afghanistan

	Jan	**Feb**	**Mar**	**Apr**	**May**	**June**	**July**	**Aug**	**Sept**	**Oct**	**Nov**	**Dec**
2006	16	8	17	19	37	25	11	16	34	37	16	12
2007	21	10	13	15	17	11	28	39	76	48	16	28
2008	31	21	13	19	21	19	18	88	56	26	47	46

DR Congo

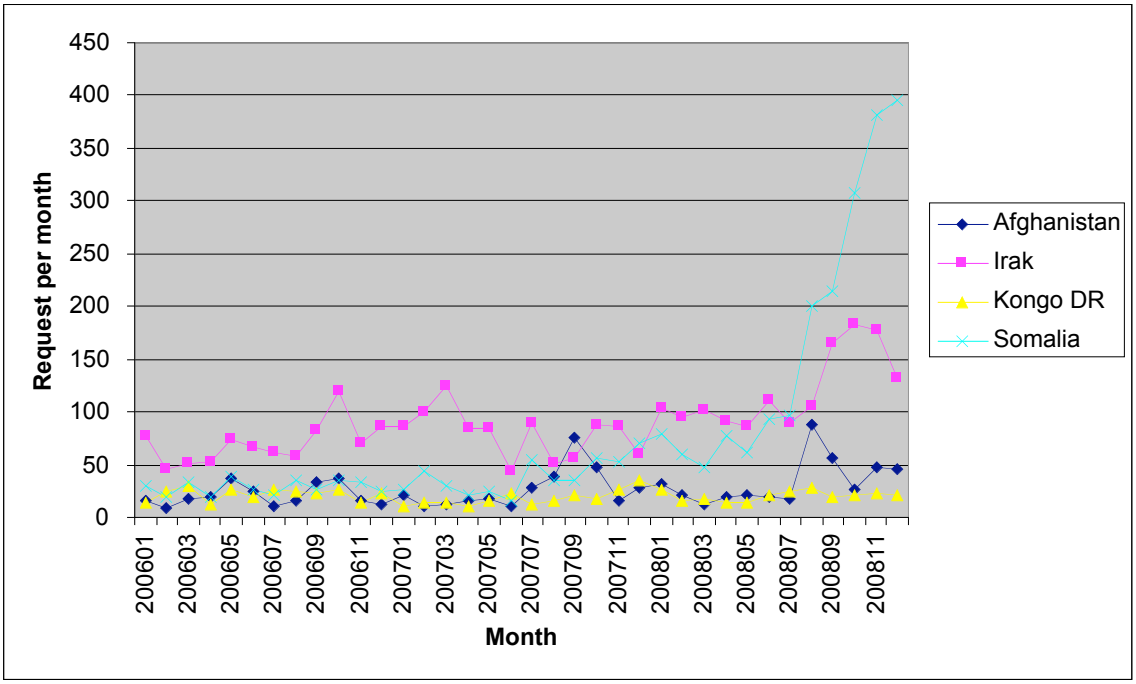
	Jan	**Feb**	**Mar**	**Apr**	**May**	**June**	**July**	**Aug**	**Sept**	**Oct**	**Nov**	**Dec**
2006	14	25	30	12	26	19	26	25	23	27	14	23
2007	11	14	14	11	15	23	13	15	21	18	26	36
2008	27	16	18	14	14	21	24	28	20	21	22	21

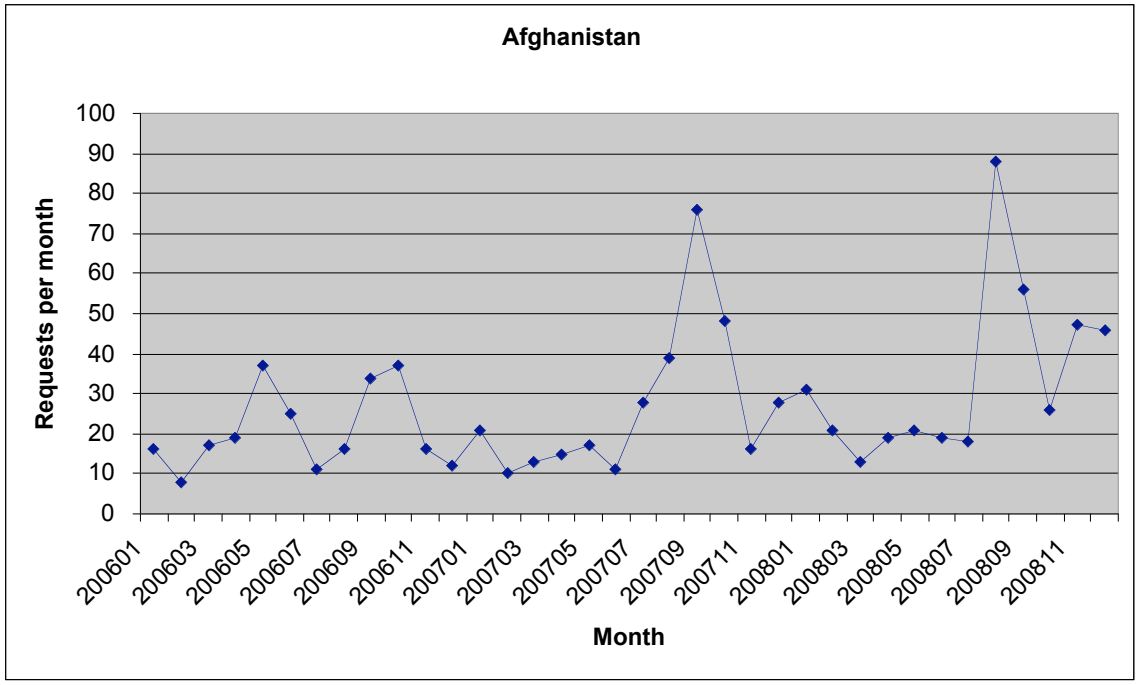
Iraq

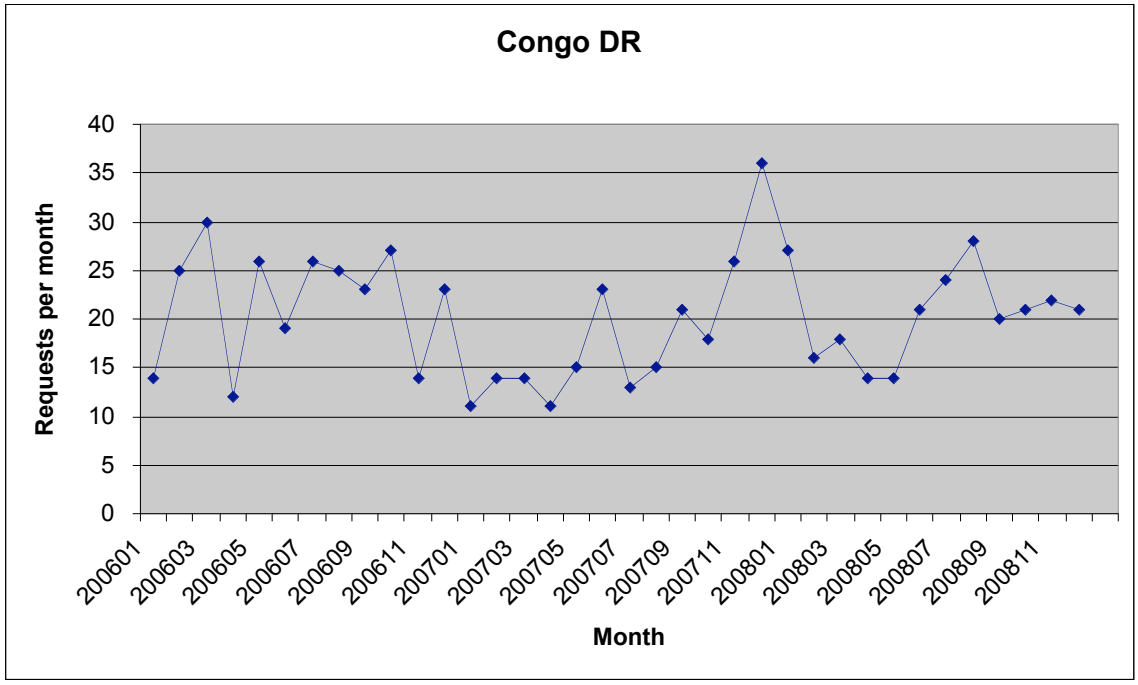
	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
2006	77	45	51	52	74	66	62	58	83	119	71	86
2007	87	100	125	85	85	44	89	51	57	88	86	59
2008	104	95	102	91	86	111	89	105	166	183	177	131

Somalia

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
2006	30	20	33	20	39	27	21	36	27	35	34	25
2007	26	44	30	21	24	16	54	36	35	56	52	70
2008	79	59	48	77	62	93	96	201	214	308	381	396




Afghanistan
Requests per month
100
90
80
70
60
50
40
30
20
10
0
200601
200603
200605
200607
200609
200611
200701
200703
200705
200707
200709
200711
200801
200803
200805
200807
200809
200811
Month


Congo DR
Requests per month
40
35
30
25
20
15
10
5
0
200601
200603
200605
200607
200609
200611
20701
200703
200705
200707
200709
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200801
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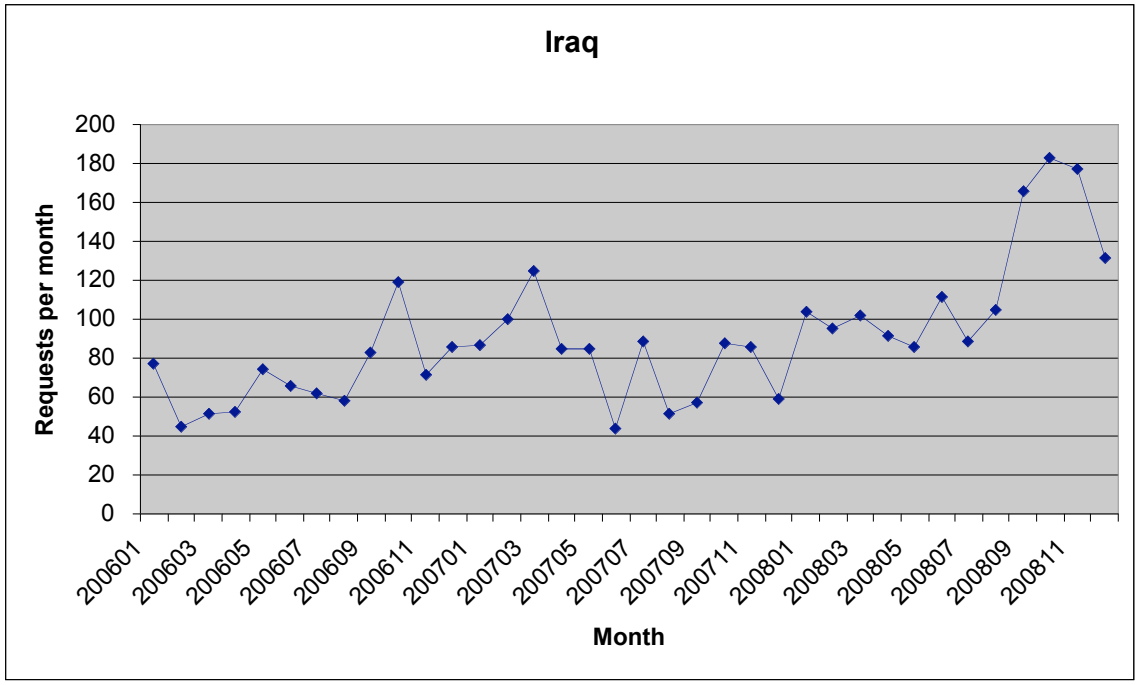
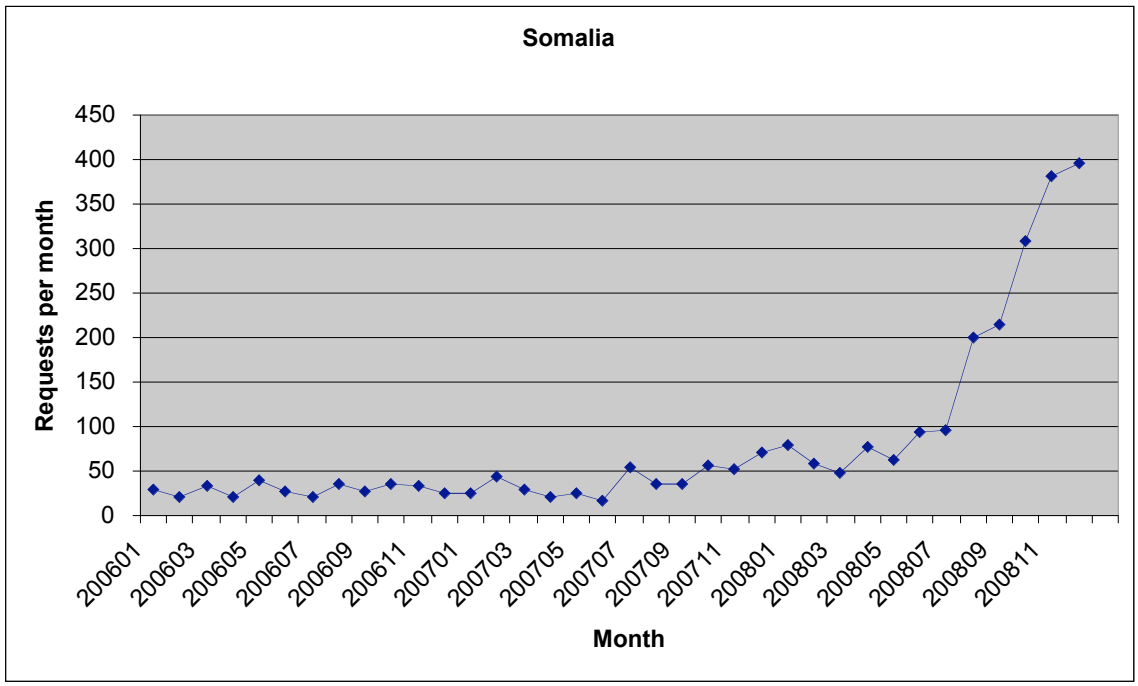
200807
200809
200811
Month





4. Had the policy and/or implementation changes (as per question 2) an impact on the number of asylum cases submitted i.e. the influx? Is there a ***correlation/causality*** *between the change in influx and the new policy?*

Concerning Somalia and DR Congo there had not been any changes of policy implementation (see answer to question 2), therefore fluctuations of numbers of asylum cases submitted from those two countries cannot be correlated with the country practice.

Afghanistan: The adaptation of the return practice to the one of the appeal court in December 2007 had no significant effect on the number of asylum cases.

Iraq: It is possible, that the decline of asylum claims filed by Iraqi citizens in summer 2007 was the result of the decision that persons from northern Iraq will no longer be granted temporary protection. As the number of claims was back on the normal level by autumn 2007 this short drop of claims may have other reasons, e.g. a fluctuation on the migration routes to Switzerland.

UNITED KINGDOM (ECRE)

Statuses of complementary/subsidiary protection
- Humanitarian Protection (HP) status
- Discretionary Leave (DL)

In the 1st of April 2003, Humanitarian Protection (HP) and Discretionary Leave (DL) replaced Exceptional Leave to Remain (ELR), which was formally the system of subsidiary protection in the UK[352]. These two forms of protection were based in the 1971 Immigration Act that gives discretion to the Secretary of State for the Home Office to grant leave to a person for a reason not covered by the Immigration Rules. This regime was further amended on the 9th of October 2006 when two legal instruments that implemented the Qualification Directive[353] came into force. Those instruments were: "The Refugee or Person in Need of International Protection (Qualification) Regulations 2006"[354] and the "Statement of Changes in Immigration Rules, CM 6918"[355]. As an outcome, Humanitarian Protection status (HP) is now regulated by these legislative instruments and constitutes the equivalent of the Qualification Directive's subsidiary protection status for the UK[356]. Discretionary Leave (DL) was not incorporated in either the Immigration Rules or the Qualification Regulations of 2006. Therefore, it remains on the discretion of the Secretary of State for the Home Office and is amended by more recent asylum policy instructions.

[352] Until 2007 some residents in the UK still had ELR status that was granted before the change. ELR recipients who had received ELR for four years were, upon the completion of that period, considered for settlement under the rules in place prior to the change. Recipients who had received ELR for less than four years and sought an extension of their stay were evaluated to see if they qualified for HP or DL status; if not, their stay was not extended.

[353] 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, available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML

[354] Statutory Instrument 2006 No. 2525, available at: http://www.opsi.gov.uk/si/si2006/20062525.htm

[355] Presented to Parliament on September 2006, available at: http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/statementsofchanges/2006/cm6918.pdf?view=Binary

[356] See also Explanatory Memorandum to the Refugee or Person in Need of International Protection (Qualification) Regulations 2006, available at: http://www.opsi.gov.uk/si/em2006/uksiem_20062525_en.pdf

HUMANITARIAN PROTECTION (HP)

Legal basis: Consolidated version of the Immigration Rules as they have been updated until November 2008[357] and The Refugee or Person in Need of International Protection (Qualification) Regulations 2006, implementing the Qualification Directive.

Beneficiaries: Asylum seekers who do not qualify as refugees and for whom there are substantial reasons for believing that if returned to the country of return, they would face a real risk of suffering serious harm and who are unable, or, owing to such risk, unwilling to avail themselves of the protection of that country[358]. In addition, they should not be excluded from a grant of humanitarian protection[359].

Serious harm consists of:
(i) the death penalty or execution;
(ii) unlawful killing[360];
(iii) torture or inhuman or degrading treatment or punishment of a person in the country of return; or
(iv) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

Duration: Humanitarian protection is granted for five years[361]. At the end of five years, recipients are eligible to apply for Indefinite Leave to Remain (ILR), also known as settlement. Applications for ILR are reviewed to determine whether the applicant still qualifies for humanitarian protection. Usually, the status will not be revoked and there will not be an active review, meaning an in-depth review of the applicant's circumstances. This will mainly take place if the particular country of origin of the individual is under review or the individual's conduct (e.g criminal offences) leads to closer scrutiny of whether the UK has to let them stay.

[357] The legal basis for the creation of the Immigration Rules is Section 3(2) of the 1971 Immigration Act. Asylum is regulated at Part 11 of the Rules. The latest consolidated version of the Immigration Rules is available at:
http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/

[358] Paragraph 339C of the Immigration Rules.

[359] Paragraphs 339C, 339D of the Immigration Rules.

[360] The UK has decided to retain the notion of unlawful killing and add it to the list of Article 15 of the Qualification Directive. According to the UK Border Office however, this notion does not contain cases where the threat to life is:
(a) in defence of any person from unlawful violence;
(b) in order to effect lawful arrest or to prevent the escape of a person lawfully detained;
(c) in action lawfully taken for the purpose of quelling a riot or insurrection.
See UK Border Office Asylum Policy Instruction on Humanitarian Protection available at: http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/humanitarianprotection.pdf?view=Binary

[361] Paragraph 339Q(ii) of the Immigration Rules

Rights:

Rights	Y	N	Details
Access to wage-earning employment	✓		No conditions are imposed restricting the employment or occupation in the UK of a person granted asylum or HP[362].
Access to self-employment	✓		
Access to liberal professions	✓		
Access to housing	✓		This right is acquired immediately. To meet the requirements of the Qualification Directive the Secretary of State for Communities and Local Government will amend secondary legislation to reflect the change in Humanitarian Protection being granted inside the immigration rules[363].
Access to public education	✓		Irrespective of the child's immigration status or rights of residence authorities have a legal obligation to make education available for all children of school age[364]. Both refugees and beneficiaries of humanitarian protection, as well as their spouse, civil partner or children are able to access university education paying the same low fees as EU nationals if they have remained ordinarily resident in the UK and Islands since being granted that status[365].
Social security	✓		Same conditions apply as for Convention refugees. They are entitled to the same income-related benefits as UK nationals, provided that they fulfil the normal conditions of entitlement[366].
Health care	✓		Same as Convention refugees. They are entitled to access the NHS as for the primary and secondary health care and services are free of charge[367].
Freedom of movement within the national territory	✓		There is no bar on those granted refugee status or humanitarian protection (unless otherwise detained)[368]. Therefore there is no legislative basis for freedom of

[362] Paragraph 344b of the Immigration Rules
[363] Explanatory Memorandum to the Refugee or Person in Need of International Protection (Qualification) Regulations 2006, p. 25
[364] Section 13, 12 of the Education Act 1996.
[365] Explanatory Memorandum to the Refugee or Person in Need of International Protection (Qualification) Regulations 2006, p. 23
[366] Ibid, p.24
[367] Ibid
[368] Ibid, p.26

			movement for people with refugee status any more than there is a legal basis for freedom of movement for anyone else[369].
Travel document	✓		A travel document will be issued where the person is unable to obtain a national passport or other identity documents which enable him to travel, unless compelling reasons of national security or public order otherwise require[370].
Voting rights in municipal election		✓	Like Convention refugees
Right to stand for elections		✓	Like Convention refugees
Family reunification		✓	Dependants of persons granted refugee status or humanitarian protection that are in the country of origin can apply to join the principle applicants subject to the necessary conditions[371]. Immigration Rule 349 confirms that dependants will be granted leave in line with that of the main applicant, unless otherwise requested, and where this is the case they will also have access to the benefits as set out in article 24-34[372].
Access to citizenship	✓		General provisions on aliens apply.

DISCRETIONARY LEAVE (DL)

Legal basis: Provisions of the 1971 Immigration Act allow the Secretary of State for the Home Office to grant leave to a person for a reason not covered by the Immigration Rules.

Beneficiaries: Discretionary Leave is granted where a person does not qualify for asylum or Humanitarian Protection, but neither an enforced nor a voluntary return is possible without prejudice to protected rights[373]. Such cases are the following[374]:

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[369] Ibid

[370] Paragraph 344A(ii) of the Immigration Rules. Paragraph 344A(iii) states that where the beneficiary can obtain a national passport or identity documents but has not done so, the Secretary of State will issue that person with a travel document where he can show that he has made reasonable attempts to obtain a national passport or identity document and there are serious humanitarian reasons for travel.

[371] Explanatory Memorandum to the Refugee or Person in Need of International Protection (Qualification) Regulations 2006, p. 20. This is also confirmed by Immigration Rules 352A-352D.

[372] Ibid

[373] As there is no specific legislation governing Discretionary Leave see on it's application the Asylum Policy Instruction issued by the Home Office available at: http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/discretionaryleave.pdf?view=Binary

[374] As they are described in the Home Office's "Asylum Policy Instruction".

1. Removal would result in a direct breach of Article 8 of the ECHR by breaching the right to a private and family life in the UK. It does not include situations that fall under the exception to the right in Article 8(2) or people who allege they would face a breach of Article 8 in the country of return.
2. Removal would be contrary to Article 3 of the ECHR but Humanitarian Protection was not applicable. Examples[375]:

   Where a person has a serious medical condition and removal would have very serious consequences for the person concerned (a very high threshold). Discretionary Leave is granted only if: the UK has assumed responsibility for the person's care; there is credible evidence that return would significantly reduce the applicant's life expectancy, due to a complete absence of medical care in the country of return; and return would subject the applicant to acute physical and mental suffering[376].

   Rare cases where the applicant would face such poor conditions if returned, such as absence of water, food or basic shelter, that removal would result in a breach of Article 3.
3. Other cases that would breach the ECHR. This involves situations where there would be a flagrant denial of a Convention right in the person's country of origin.
4. Unaccompanied asylum seeking children who do not qualify for asylum or Humanitarian Protection, should be granted Discretionary Leave if there are inadequate reception arrangements available in their own country. Where an unaccompanied child qualifies for Discretionary Leave on more than one ground (i.e. on the ground of inadequate reception arrangements and also on another ground) they should be granted leave on the basis of the ground that provides the longer period of stay.
5. Other cases where individual circumstances are so compelling that it is appropriate to grant some form of leave. From time to time separate instructions may be issued describing categories of case for which Discretionary Leave might be granted under this heading.
6. Where the person would have qualified for refugee status or Humanitarian Protection but was excluded. In what concerns this category of applicants, Ministers must be advised on any proposal to grant Discretionary Leave.

Duration: The duration of Discretionary Leave depends upon the basis for granting the leave:

- Article 8 cases: three years [377]

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[375] These cases are deemed as not meriting Humanitarian Protection because they are not protection-related cases. See Asylum Policy Instructions on Humanitarian Protection at p. 11. Available at: http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/humanitarianprotection.pdf?view=Binary

[376] See also Asylum Policy Instruction "Applications Raising Article 3 Medical Grounds", available at: http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apunotices/applicationsraisingarticle3.pdf?view=Binary

[377] See also Asylum Policy Instruction "Periods of discretionary leave granted to those with marriage-based Article 8 claims", available at: http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apunotices/periodsofdiscretionaryleave.pdf?view=Binary

- Article 3 cases: three years
- Other ECHR cases: three years
- Unaccompanied asylum seeking children: 3 years[378] or until the child reaches 17,5 years of age, whichever is shorter
- Other cases: three years
- Persons excluded from Humanitarian Protection: six months. This period applies to the first grant and any subsequent grants following an active review.
- Shorter periods of leave may be granted if it is *clear* that the circumstances leading to the granting of Discretionary Leave will be short-lived[379].

Individuals may apply for an extension of leave, and an extension will be granted if the individual still qualifies for Discretionary Leave. A person is not eligible for consideration for ILR/settlement until they have completed six years of Discretionary Leave (10 years in exclusion cases)[380]. ILR is granted if the individual still qualifies for Discretionary Leave (unless, in exclusion cases, the Ministers decide it would be conducive to the public good to deny settlement, in which case Discretionary Leave will be extended)[381].

Rights:

Rights	Y	N	Details
Access to wage-earning employment	✓		Same as Convention refugees[382]
Access to self-employment	✓		
Access to liberal professions	✓		
Access to housing	✓		This right is acquired immediately. Like Convention refugees.
Access to public education	✓		With regard to access to the higher education sector, DL status holders have to meet the criterion of three years residence in the UK, before being able to claim a university grant or student loan[383].
Social security	✓		Same as Convention refugees[384].
Health	✓		Like Convention refugees. They are

[378] Or 12 months for certain countries. See Asylum Policy Instruction "Amendment to Discretionary Leave Policy Regarding to Asylum Seeking Children", available at: http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apunotices/amendmenttodlpolicyasc.pdf?view=Binary

[379] An example is where a grant of leave is appropriate to enable a person to stay in the UK to participate in a court case.

[380] Asylum Policy Instruction "Discretionary Leave", at p. 11

[381] Ibid, at p. 16

[382] Asylum Policy Instruction "Discretionary Leave", at p. 4

[383] Only refugees are not required to satisfy a 3-year prior residence test. See Explanatory Memorandum to the Refugee or Person in Need of International Protection (Qualification) Regulations 2006, p. 23

[384] Asylum Policy Instruction "Discretionary Leave", at p. 4

			entitled to access the NHS as for the primary[385] and secondary health care and services are free of charge.
Freedom of movement within the national territory	✓		
Travel document	✓		People granted Discretionary Leave would normally be expected to keep their own national passport valid[386]. They may apply however for a Home Office Certificate of Identity if they show that they have been formally and unreasonably refused a national passport, unless the UK Border Agency has accepted that they have a well-founded fear of their national authorities[387].
Voting rights in municipal election		✓	Like Convention refugees
Right to stand for elections		✓	Like Convention refugees
Family reunification		✓	Only qualify for family reunion when have been granted ILR, after six (or ten) years of DL status[388]. The sponsor is not expected to satisfy the maintenance and accommodation requirements as set out in the Immigration Rules (paragraph 240 (iii) and (iv) of HC395)[389]. If family members are already in port or country, they will normally be granted leave to remain along with the sponsor.
Access to citizenship	✓		General provision on aliens applies

[385] (NHS) primary medical services are free to all persons lawfully resident in the UK regardless of their immigration status. As mentioned in the Explanatory Memorandum to the Refugee or Person in Need of International Protection (Qualification) Regulations 2006, p. 25
[386] Asylum Policy Instruction "Discretionary Leave", at p. 18
[387] Ibid
[388] Information available at the UK Border Agency website: http://www.ukvisas.gov.uk/en/ecg/chapter16/
[389] Ibid

All asylum and human rights applications, including those from Afghans, Iraqis, Somalis and DRC nationals, are considered on their individual merits in accordance with our obligations under the 1951 United Nations Convention Relating to the Status of Refugees and the European Convention on Human Rights (ECHR). We've not had group protection policies for any of these countries in the last couple of years. Impact on asylum intake may well have been affected by our returns policies of course. With regard to the DRC, enforced returns of unsuccessful asylum seekers were deferred between 23 August 2007 and December 2008. During this period we still encouraged voluntary departures and the deferral did not alter the fact that every asylum application still fell to be considered on its own individual merits. There is no legal barrier precluding the removal of Afghan asylum seekers found not to need protection.

Asylum applications (1) received in the United Kingdom, excluding dependants 2006 by month, nationals of Afghanistan

Afghanistan	Applications		
	Total	Port	In Country
January	**190**	10	180
February	**185**	5	180
March	**140**	5	135
April	**165**	5	165
May	**235**	10	225
June	**180**	5	175
July	**220**	10	210
August	**185**	5	180
September	**195**	*	195
October	**265**	10	255
November	**260**	10	250
December	**180**	15	165
Total	**2 400**	**90**	**2 310**

(1) Figures rounded to nearest 5, (- = 0, * = 1 or 2).

Asylum applications (1) received in the United Kingdom, excluding dependants
2007 by month, nationals of Afghanistan

Afghanistan	Applications		
	Total	Port	In Country
January	**260**	5	255
February	**225**	5	220
March	**275**	15	260
April	**170**	10	160
May	**210**	5	205
June	**185**	5	175
July	**160**	10	150
August	**150**	10	140
September	**165**	5	160
October	**210**	10	200
November	**270**	15	260
December	**215**	15	200
Total	**2 500**	**110**	**2 390**

(1) Provisional figures rounded to nearest 5, (- = 0, * = 1 or 2).

Asylum applications (1) received in the United Kingdom, excluding dependants
2008 by month, nationals of Afghanistan

Afghanistan	Applications		
	Total	Port	In Country
January	**290**	25	265
February	**300**	10	295
March	**240**	5	235
April	**245**	20	230
May	**225**	10	220
June	**215**	10	205
July	**350**	15	335
August	**285**	5	275
September	**340**	10	330
October	**375**	15	355
November	**335**	20	315
December	**305**	25	280
Total	**3 510**	**170**	**3 340**

(1) Provisional figures rounded to nearest 5, (- = 0, * = 1 or 2).

Asylum applications (1) received in the United Kingdom, excluding dependants

2006 by month, nationals of Dem. Rep. of Congo

Dem. Rep. of Congo	Applications		
	Total	Port	In Country
January	**70**	15	55
February	**50**	10	40
March	**70**	15	55
April	**45**	10	35
May	**45**	5	40
June	**50**	10	35
July	**45**	5	40
August	**35**	5	25
September	**50**	10	40
October	**40**	10	35
November	**40**	10	30
December	**30**	5	20
Total	**570**	**115**	**460**

(1) Figures rounded to nearest 5, (- = 0, * = 1 or 2).

Asylum applications (1) received in the United Kingdom, excluding dependants
2007 by month, nationals of Dem. Rep. of Congo

Dem. Rep. of Congo	Applications		
	Total	Port	In Country
January	**40**	10	30
February	**35**	5	30
March	**50**	15	35
April	**35**	5	30
May	**30**	5	25
June	**30**	5	25
July	**25**	5	25
August	**15**	*	15
September	**25**	10	15
October	**35**	5	25
November	**20**	*	20
December	**30**	10	20
Total	**370**	**80**	**290**

(1) Provisional figures rounded to nearest 5, (- = 0, * = 1 or 2).

Asylum applications (1) received in the United Kingdom, excluding dependants
2008 by month, nationals of Dem. Rep. of Congo

Dem. Rep. of Congo **Applications**

	Total	Port	In Country
January	**30**	10	20
February	**40**	5	35
March	**30**	10	25
April	**25**	5	25
May	**30**	10	25
June	**25**	5	20
July	**20**	5	15
August	**15**	–	15
September	**25**	5	20
October	**25**	*	25
November	**25**	5	20
December	**30**	5	25
Total	**325**	**60**	**265**

(1) Provisional figures rounded to nearest 5, (- = 0, * = 1 or 2).

Asylum applications (1) received in the United Kingdom, excluding dependants 2006 by month, nationals of Iraq

Iraq **Applications**

	Total	Port	In Country
January	**40**	5	35
February	**40**	10	30
March	**35**	5	25
April	**40**	–	40
May	**45**	10	35
June	**70**	5	60
July	**90**	5	80
August	**115**	5	110
September	**125**	15	105
October	**110**	15	95
November	**130**	10	125
December	**110**	15	95
Total	**945**	**100**	**845**

(1) Figures rounded to nearest 5, (- = 0, * = 1 or 2).

Asylum applications (1) received in the United Kingdom, excluding dependants 2007 by month, nationals of Iraq

Iraq **Applications**

	Total	Port	In Country
January	**135**	20	115
February	**100**	10	90
March	**85**	10	75
April	**75**	5	70
May	**90**	5	85
June	**95**	5	90
July	**160**	10	150
August	**150**	5	140
September	**210**	20	190
October	**225**	10	215
November	**265**	10	255
December	**235**	15	215
Total	**1 825**	**130**	**1 695**

(1) Provisional figures rounded to nearest 5, (- = 0, * = 1 or 2).

Asylum applications (1) received in the United Kingdom, excluding dependants
2008 by month, nationals of Iraq

Iraq	**Applications**

	Total	Port	In Country
January	**285**	10	275
February	**220**	5	215
March	**190**	10	180
April	**100**	15	85
May	**100**	10	90
June	**110**	5	105
July	**115**	10	105
August	**135**	5	130
September	**135**	5	135
October	**185**	10	175
November	**160**	5	160
December	**110**	*	110
Total	**1 855**	**90**	**1 760**

(1) Provisional figures rounded to nearest 5, (- = 0, * = 1 or 2).

Asylum applications (1) received in the United Kingdom, excluding dependants
2006 by month, nationals of Somalia

Somalia	**Applications**

	Total	Port	In Country
January	**205**	25	185
February	**160**	20	140
March	**170**	20	150
April	**120**	15	110
May	**145**	15	130
June	**160**	15	140
July	**145**	20	125
August	**160**	30	135
September	**165**	25	140
October	**145**	20	125
November	**155**	20	135
December	**110**	25	90
Total	**1 845**	**245**	**1 600**

(1) Figures rounded to nearest 5, (- = 0, * = 1 or 2).

Asylum applications (1) received in the United Kingdom, excluding dependants 2007 by month, nationals of Somalia

Somalia	**Applications**		
	Total	**Port**	**In Country**
January	**125**	15	110
February	**125**	15	110
March	**145**	15	130
April	**140**	25	110
May	**140**	20	125
June	**115**	15	100
July	**100**	15	90
August	**150**	30	120
September	**180**	35	145
October	**130**	25	105
November	**160**	25	135
December	**100**	35	65
Total	**1 615**	**265**	**1 345**

(1) Provisional figures rounded to nearest 5, (- = 0, * = 1 or 2).

Asylum applications (1) received in the United Kingdom, excluding dependants 2008 by month, nationals of Somalia

Somalia	**Applications**

	Total	Port	In Country
January	**165**	35	130
February	**110**	20	90
March	**155**	35	120
April	**115**	20	95
May	**145**	15	125
June	**90**	10	80
July	**110**	20	90
August	**95**	15	80
September	**95**	25	75
October	**125**	25	100
November	**85**	30	55
December	**75**	20	55
Total	**1 370**	**270**	**1 100**

(1) Provisional figures rounded to nearest 5, (- = 0, * = 1 or 2).