

## CHAPTER IV

# ASYLUM AND REFUGEE STATUS DETERMINATION

### INTRODUCTION

Asylum-seekers are persons who have sought international protection and whose claim for refugee status has not yet been determined. It is important to note, however, that a person is a refugee from the moment he/she fulfils the criteria set out in the refugee definition. The formal recognition of a person, for instance through individual refugee status determination, does not establish refugee status, but confirms it. As part of its obligation to protect refugees on its territory, the country of asylum is normally responsible for determining whether an asylum-seeker is a refugee or not. The responsibility is often incorporated into the national legislation of the country and is derived from the 1951 Refugee Convention.

Although the 1951 Convention does not establish procedures for determining refugee status as such, fair and efficient procedures are an essential element in the full application of the Convention. In a number of countries, UNHCR cooperates closely with governments in the determination of refugee status. This cooperation in establishing fair and efficient refugee status determination procedures can take on a variety of forms, including legal training, assisting in drafting asylum laws, registering asylum-seekers or attending hearings. In some countries, primarily in the developing world, UNHCR conducts refugee status determination under its mandate. This can be the case if a country is not a State party to the 1951 Convention and/or its 1967 Protocol or has not enacted refugee legislation. Another reason can be if the State's national refugee status determination (RSD) procedure is a non-functioning one (including countries that have made reservations related to RSD); the State has a national RSD procedure that does not meet minimum standards for fairness and efficiency; and/or for a residual population of asylum-seekers after an RSD hand over to the national authorities. In addition, in a few countries UNHCR undertakes RSD for the purpose of identifying refugees with resettlement needs.

This chapter presents a global overview of refugee status determination in 2006, including asylum applications submitted and relevant decisions taken, analyses the role of UNHCR in building national capacities and discusses asylum patterns and trends in industrialized and non-industrialized countries. With asylum policies and practices in industrialized countries being far from harmonized, their national statistics are often difficult to compare. For a better understanding of the national and international sources, definitions and categories ("meta-data"), this chapter should be read in combination with annex table 19.

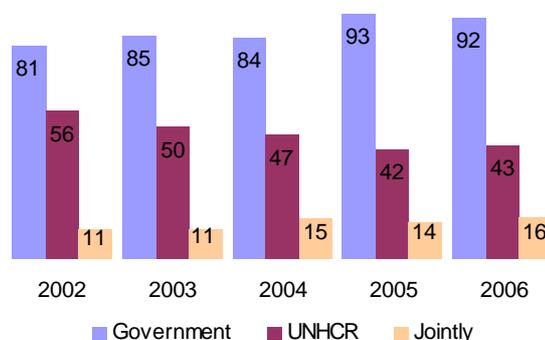
It should be stressed that even though the concepts of asylum and refugee status are sometimes used interchangeably in the Yearbook, territorial asylum can only be accorded by States. UNHCR may grant refugee status under its mandate, but it cannot provide asylum.

## RESPONSIBILITY FOR REFUGEE STATUS DETERMINATION

For the 151 countries where data is available in 2006, it was reported that Governments carried out refugee status determination (RSD) in 92 countries (61%). UNHCR was responsible for RSD in 43 countries (28%), whereas a shared responsibility was reported for 16 countries (11%). The latter includes asylum procedures which are either jointly established between UNHCR and the Government or where there are parallel procedures within the same country that are conducted independently from each other.

As part of its efforts to strengthen States' capacities to conduct refugee status determination themselves, over the last few years UNHCR has handed over the responsibility for assessing asylum claims to a number of States as shown by Figure IV.1. For instance, while in 2002 UNHCR was responsible for assessing asylum claims in 56 countries, this number has dropped to 43 by 2006.

**Fig IV.1 Responsibility of refugee status determination by country**



## GLOBAL TRENDS

## APPLICATIONS

During 2006, a total of 605,000 new or appeal applications for asylum or refugee status were submitted to Governments or UNHCR offices in 151 countries. The number of new and appeal applications decreased by 10 per cent compared to 2005 when 674,000 claims were lodged globally. Most applications were registered in Europe (307,000), followed by Africa (159,000), the Americas (78,000), Asia (53,500), and Oceania (7,100).

Out of the 605,000 new or appeal applications submitted in 2006, some 91,500 were received by UNHCR offices conducting refugee status determination (15%). UNHCR's share has increased steadily in the past few years reaching its peak in 2006. One reason for this development can be attributed to Governments receiving less asylum applications, in particular in industrialized countries. Simultaneously, UNHCR has registered more claims for refugee status in recent years, even though the number of UNHCR offices conducting RSD has actually gone down (see Figure IV.1). This increase can partly be explained by the inclusion of Somali and Sudanese claims lodged in Kenyan camps and processed by UNHCR (at least some 35,000 since 2005).

Tab.IV.a New and appeal applications received				
	2003	2004	2005	2006
Government	774,000	604,000	576,800	489,300
UNHCR	61,800	75,500	89,300	91,500
Jointly*	4,900	1,800	7,900	23,800
% UNHCR only	7%	11%	13%	15%

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

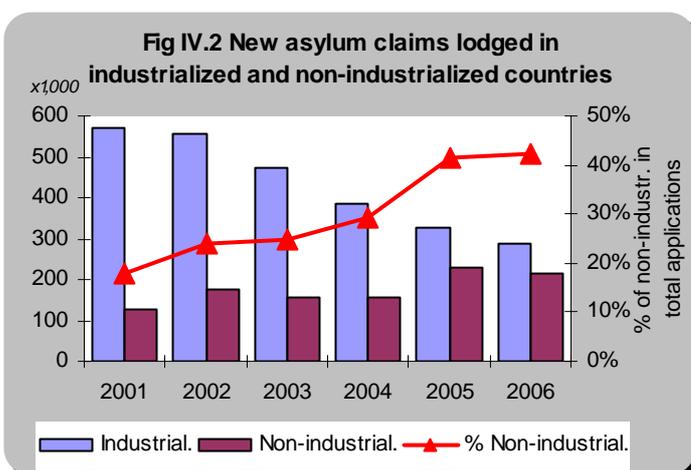
Tab.IV.b Asylum claims lodged				
	2003	2004	2005	2006
Global (new+appeal)	840,900	681,400	674,000	604,600
Global (new only)	643,100	540,900	554,600	503,900
EU-25 (new only)	425,500	346,600	239,800	199,900
Europe (new only)	477,200	390,200	260,700	216,000

Out of the total of 605,000 asylum applications lodged during 2006, some 504,000 (83%) requests were submitted for the first time. The 504,000

applications were 50,000 or 9 per cent lower than the number of first applications submitted during 2005 (555,000). In relative terms, however, the percentage of first applications out of the total number of claims lodged during the year was virtually identical in 2006 (83%) and 2005 (82%) (see *Table IV.b*).



The number of new asylum-seekers arriving in Europe continued to drop, albeit at a lower pace than in previous years. Between 2003 and 2006, the number of new asylum claims submitted on the continent more than halved from 477,000 to 216,000 (-55%). This decrease was witnessed in most European countries. In general, it is believed that more restrictive asylum policies and border control measures in many parts of Europe, combined with improved security and/or living conditions in some of the major source countries of asylum-seekers (Serbia and Montenegro, Turkey etc.) as a result of the end of armed conflicts, are responsible for this decrease.



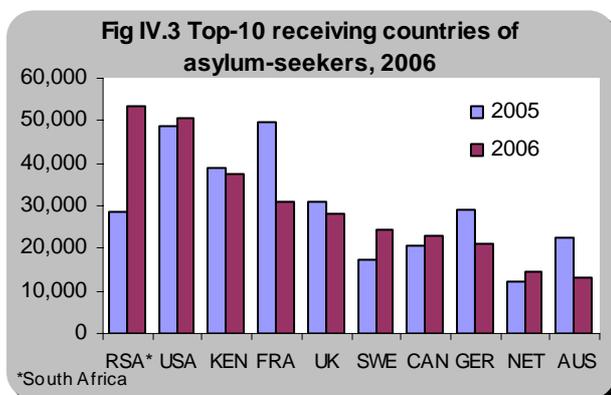
The industrialized countries<sup>1</sup> received an estimated 290,000 new asylum claims during 2006, some 77,000 more than the group of non-industrialized countries which constitutes the smallest gap witnessed so far. As such, during 2006 alone, more than 40 per cent of all new asylum applications were lodged in the non-industrialized countries. One possible explanation for this phenomenon could be the

direct consequence of asylum policies in industrialized countries, in particular in Europe, having become more restrictive over the years, forcing asylum-seekers to seek refuge in non-industrialized countries.

With 53,400 new asylum claims lodged in 2006, or roughly one tenth of individual applications globally, South Africa became the main destination for new asylum-

<sup>1</sup> See annex table 24 for a list of countries included.

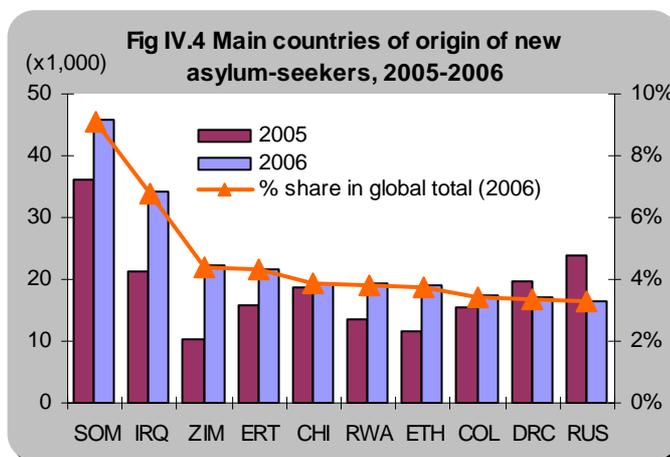
seekers. With a cumulative total of 205,000 individual asylum applications since 2002, this country is one of the largest recipients in the world. The United States of America was in second position in terms of new asylum claims (50,800)<sup>2</sup> during 2006, followed by Kenya (37,400), France (30,700), the United Kingdom (28,300), Sweden (24,300), and Canada (22,900).



Among the 10 main asylum countries in 2006, five each recorded an increase or decrease, with South Africa experiencing an almost doubling of new claims as compared to the year before (+47% or 24,800 claims more). Sweden also witnessed a strong increase in new asylum claims (+28% or 6,700 claims more), primarily as a result of the arrival of new asylum-seekers from Iraq.

Conversely, both France and Austria saw a sharp decrease in new asylum claims lodged during 2006 (-62% and -68% respectively).

By nationality, the highest number of new individual asylum claims was filed by Somalis (45,800), Iraqis (34,300), Zimbabweans (22,200), Eritrean (21,700), Chinese (19,400), and Rwandans (19,200). These figures should, however, be considered as indicative only because some asylum-seekers' country of origin is not known. About 60 per cent of all new Somali claims for refugee status were submitted in Kenya, where UNHCR conducts refugee status determination. Iraqi citizens claimed asylum in more than 70 countries worldwide during 2006, including 9,000 in Sweden, 2,800 in the Netherlands and 2,100 in Germany. Sweden witnessed an almost quadrupling of Iraqi asylum requests in 2006 as compared to the year before. The large Iraqi community there and, therefore, strong social network in Sweden may be part of the driving forces behind the high concentration of Iraqi asylum-seekers in that country. UNHCR offices in Jordan and Egypt, on the other hand, received respectively 4,700 and 2,900 new Iraqi asylum applications during 2006.<sup>3</sup>



The highest concentration of Zimbabwean asylum-seekers was in South Africa (19,000 new claims) and the United Kingdom (2,100) whereas the majority of Eritrean asylum applications were lodged in Sudan (8,700), the United Kingdom (2,700), Ethiopia (2,700), and Italy (2,200). Almost half of all Chinese claims were lodged in the United States (9,400).

<sup>2</sup> Estimated number of persons based on the number of new cases (24,300) and multiplied by 1.4 to reflect the average number of persons per case (Source: Department of Homeland Security); and number of new "defensive" asylum requests lodged with the Executive Office of Immigration Review (16,800).

<sup>3</sup> See also footnote 4 in Chapter III.

**Box 3. Refugee status determination under the UNHCR Mandate**

Between 2003 and 2006, the number of new and appeal asylum applications submitted to State authorities worldwide has decreased by 37 per cent, from 774,000 to 489,000. During the same period, the number of applications submitted to UNHCR increased by 48 per cent, from 61,800 to 91,500. Still in the same span of time, the number of applications pending decision by the end of the reporting year decreased worldwide by 25 per cent, from almost 1 million to 744,000, while the number of applications pending decisions in UNHCR operations increased by 39 per cent, from 73,000 to 102,000.

The significant increase in the number of applications submitted to UNHCR concerned both influxes of refugees from countries affected by armed conflicts as well as situations of mixed migration. In some cases, the increase was incremental, whereas in others, UNHCR offices were faced with refugee emergencies and/or sudden increases in asylum applications.

As a consequence of the above, in 2006, UNHCR was involved in refugee status determination (RSD) in about 80 countries. In some 60 countries, UNHCR undertook individual RSD under the mandate primarily in order to protect refugees (e.g. from *refoulement*, detention etc.) because those countries are either not able or unwilling to undertake RSD, which is a State responsibility. In some 20 countries, UNHCR conducted RSD for resettlement purposes. Over 90 per cent of UNHCR's RSD work (in terms of RSD applications received and decisions rendered) was concentrated in some 15 countries.

Some 140 officers (half of whom are non-regular UNHCR staff) are conducting RSD under UNHCR's mandate on a full-time basis while another 150 to 160 on a part-time or ad hoc basis. It is estimated that, for the same number of applications, UNHCR has five to six times less staffing resources to process refugee claims than States in industrialized countries. In 2006, UNHCR rendered decisions for more than 56,000 persons, representing 11 per cent of the total number of RSD decisions worldwide. In addition, close to 17,000 decisions were rendered together with States in jointly conducted asylum procedures.

In order to support field operations conducting refugee status determination under its mandate, UNHCR maintains an RSD Deployment Scheme, under which experienced RSD consultants and UN Volunteers (UNVs) are deployed to the Field to assist with case processing, in particular to reduce the backlog of pending applications, staff training, as well as development of RSD procedures. In 2006, UNHCR's RSD Unit at Headquarters deployed RSD consultants and UNVs under the RSD Deployment Scheme to 14 countries.

Besides assessing asylum claims under the UNHCR mandate, strategic partnerships with governments that have a long-standing experience in RSD have been formed, allowing for the deployment of experts from, for instance, the Immigration Refugee Board of Canada (IRB) and the Office Français de Protection des Réfugiés et Apatrides (OFPRA), to selected UNHCR operations.

**Tab.IV.c Asylum claims lodged in main receiving UNHCR offices\***

	2005	2006
Kenya	39,000	37,500
Burundi**	120	10,800
Malaysia	15,200	9,100
Ecuador***	7,100	7,800
Egypt	3,500	7,100
Turkey	3,900	5,100
Jordan	5,800	4,800
Cameroon	3,100	3,800
Hong Kong SAR, China	1,000	3,000
Syrian Arab Rep.	930	2,800

\* New and appeal applications.

\*\* 2006 refers to joint screening procedure.

\*\*\* UNHCR registers asylum-seekers.

**DECISIONS**

There are different types of decisions an asylum-seeker can receive based on his/her claim. First, a decision can be positive, meaning that refugee status has been confirmed and the person is indeed in need of international protection. This can include recognition under the 1951 Refugee Convention, the 1967 Protocol, or the 1969 OAU Convention. In addition, in some countries, an asylum-seeker may be granted a complementary form of protection. This refers to formal permission, under national law, to persons who are in need of international protection, to reside in a country, even though they might not qualify for refugee status under conventional refugee criteria.

Second, if an asylum-seeker is found not to be in need of international protection, then the asylum claim will be rejected. Both the positive and negative outcome of refugee status determination is referred to as a “substantive” decision if it is based on the merits of the claim. Conversely, asylum claims which are closed for administrative reasons are usually referred to as “non-substantive” decisions. This might result from, among others, the death of the applicant, no-show for interview, withdrawal of the application, or abandonment of the claim.

As a result of this decision-making process, recognition rates can be calculated. The 2006 Statistical Yearbook uses two recognition rates to calculate the proportion of refugee claims accepted during the year. The **Refugee Recognition Rate (RRR)** divides the number of asylum-seekers granted Convention refugee status by the total number of accepted (Convention and, where relevant, humanitarian status) and rejected cases. The **Total Recognition Rate (TRR)** divides the number of asylum-seekers granted Convention refugee status and humanitarian status by the total number of accepted (Convention and, where relevant, humanitarian status) and rejected cases. Non-substantive decisions are, to the extent possible, excluded from both calculations. For the purpose of international comparability, UNHCR only uses these two recognition rates and does not report nationally calculated rates.

An estimated 699,000 decisions on asylum applications were rendered during 2006, a 16 per cent decrease as compared to the 834,000 decisions in 2005. This also includes some 194,000 cases which were closed for administrative reasons, without taking a decision on the substance itself. The

	2003	2004	2005	2006
Government	676,100	579,400	505,200	431,700
UNHCR	39,900	45,400	60,100	56,400
Jointly*	2,500	500	5,200	16,800
% UNHCR only	6%	7%	11%	11%

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

overall decrease may be explained in part by the globally lower numbers of new asylum claims lodged during the year. Out of the 505,000 substantive decisions in 2006, UNHCR staff adjudicated more than 56,000, or 11 per cent, the same relative share as in 2005. In seven countries, including Burundi, Ecuador, and Israel, another 16,800 substantive decisions were taken jointly by UNHCR and the Government concerned.

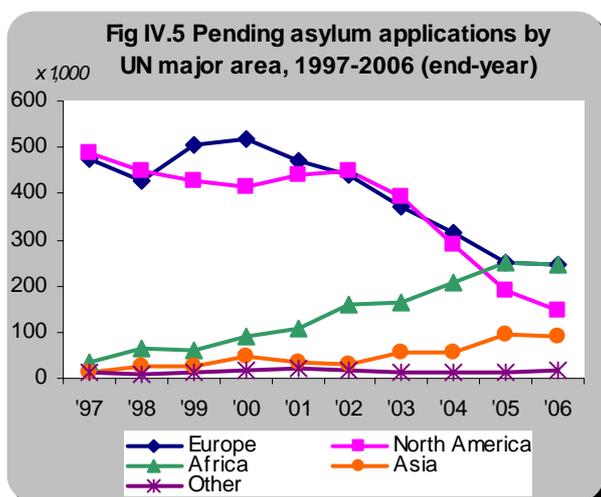
Some 196,000 asylum-seekers were recognized as refugees or given a complementary form of protection in the course of 2006. In Europe, 33,200 asylum-seekers were granted individual refugee status under the 1951 Convention, and another 38,000 were eligible for a complementary form of protection. While the latter figure was almost identical with that of 2005, the former decreased by a striking 34 per cent compared to the year before. It is believed that stricter asylum policies across Europe in combination with fewer asylum applications being lodged are the main reasons for this decrease. Africa was the second largest region in terms of the number of asylum-seekers being recognized in 2006 (53,800), followed by Asia (33,500), and North America (32,500).

On a global level, the United States of America recognized the largest number of asylum-seekers (23,300 during the US Fiscal Year), followed by Kenya (22,900), Thailand (16,300), Switzerland (12,500), and France (11,800).

Out of the 505,000 substantive decisions taken during 2006, roughly two thirds of asylum-seekers (309,000) were rejected on substantive grounds, some 54,000 less than the year before. Figures on rejected asylum-seekers also include negative decisions at the first instance which might be appealed. Asylum-seekers who appeal a negative decision at first instance are therefore counted twice in this figure.

At the global level, the RRR amounted to an estimated 28 per cent of all decisions taken during 2006 while the TRR was 39 per cent. Both values were above the corresponding rates in 2004 (21 per cent for RRR and 27 per cent for TRR) and 2005 (27 per cent for RRR and 36 per cent for TRR). It should be noted that in reality the proportion of positive decisions is higher, because persons rejected on appeal are counted twice. As such, negative decisions should be considered as indicative only. To allow for a more accurate comparison of recognition rates, UNHCR calculates recognition rates for each level of procedure (first instance, appeal etc.).

It is important to note that highly different recognition rates with regard to the same nationality could point to different standards of treatment between asylum countries. In the European Union, for instance, a process is currently under way to harmonize asylum policies and practices among Member States. It might be expected therefore that recognition rates will converge over time. However, recognition rates in comparing country practices should not be overemphasized. Asylum-seekers of the same nationality may have a different regional or ethnic origin, they may have fled for different reasons and may have left at different dates. Divergent recognition rates for the same nationality during the same period may well be explained when the detailed profile of the individual claimant is taken into account.



The cumulative number of claims not yet adjudicated (“pending cases”), at both the first instance and on appeal, has decreased over the past few years, reaching an estimated 744,000 by the end of 2006, the lowest level in at least a decade. In fact, the number of asylum-seekers awaiting a decision globally has gone down by one third since 2002. This fall, however, has not been felt across all regions equally. On the contrary, while Europe and North America experienced a sharp downward trend, Asia and in particular Africa witnessed an

upward trend in pending cases in the past few years. In 1997, for instance, close to half a million asylum applications were waiting in each Europe and North America to be adjudicated compared to 36,000 in Africa. At the end of 2006, however, the number of individuals waiting for a decision on their asylum claim was identical in Europe and Africa (244,000 each). This figure was also almost 100,000 higher than the 148,000 claims which were waiting to be decided on in North America by the end of the year. While the available data might indicate that asylum procedures have become more efficient, they may also coincide with a decrease in the number of new asylum applications submitted, as is indeed the case in many of the countries of Europe.

A similar trend can also be observed with respect to the different continents’ relative share of pending cases. In 1997, globally, one out of two applications was pending at any level in the asylum procedure in North America while the same ratio was observed in Europe only two years later. By the end of 2006, the ratio had changed significantly to one out of three for Europe and even one out of five for North America. This confirms, on the one hand, the diminishing relative share of Europe and North America as recipients of asylum-seekers, partly due to stricter asylum policies and border control measures in place. On the other hand, it highlights the

growing importance of individual refugee status determination procedures in developing countries in Africa and Asia for those who are in need of international protection.

At the end of 2006, the largest number of undecided cases at the first instance and on appeal was reported by South Africa (131,000). However, a Ministerial Initiative incorporating special measures to clear the backlog was being implemented by the close of the reporting period.

In the United States of America, the number of pending cases at the end of (its fiscal) year totalled 124,000. Other countries with high numbers of pending cases included Germany (52,800), Austria (42,400), and France (39,600). With the number of new asylum-seekers arriving in industrialized countries generally on the decline, many of these countries were able to reduce the number of undecided cases during 2006, including the United States of America (-46,600), Germany (-18,800), and Belgium (-3,200). The strong reduction in the backlog in the United States of America refers by and large to asylum-seekers from El Salvador (-28,500) and Guatemala (-20,300), the majority of whose applications were closed for administrative reasons. On the other hand, significant increases in the backlog were reported by Sweden (+8,400), Egypt (+5,300), Greece (+4,600), and Canada (+3,000).

