

# Analysis of the French Practice on the Adjudication of Refugee Claims related to Situations of Armed Conflict

*Refugee Law Initiative*

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# Outline

- Context and statistics
- Short overview of the French asylum authorities and procedure
- Analysis of the interpretation of some elements of the refugee definition in situations of armed conflict

# France

## Protection rates, OFPRA (first) level, 2016

(Source: Ofpra Activity report)

- **Sudan:** 42,3% of protection rate, including 86% refugee protection
- **Iraq:** 78% of protection rate, including 80% refugee protection
- **Syria:** 97,3% of protection rate, including around 50% refugee protection (against around 70% until 2015)
- **Afghanistan:** 80,9% of protection rate, including 77% subsidiary protection

# French Asylum Authorities

- **OFPRA** (*“French Office for the Protection of Refugees and Stateless Persons”*), independent administrative body
- **CNDA** (*“National Asylum Court”*), specialized administrative Court
- **Council of State**: issues of law and procedure

# Analysis of the Interpretation of Some Elements of the Refugee Definition in Situations of Armed Conflict

## Three main findings:

- Relationship between the 1951 Convention refugee definition and subsidiary protection
- Restrictive interpretation
- Constructive interpretation

# Relationship between the 1951 Convention Refugee Definition and Subsidiary Protection

- Sequential approach to adjudication
- Primacy of refugee protection over subsidiary protection

# Restrictive Interpretation of Some Elements of the Refugee Definition

- Assessment of the well-founded fear of persecution: visibility requirement + insufficient forward-looking assessment
- Convention grounds: perception of the persecutor insufficiently taken into account
- No imputation of political opinions to members of State institutions (Afgh)

# Constructive Interpretation of Some Elements of the Refugee Definition

- Sanction for refusing to serve in the armed forces (in Syria) constitutes persecution
- Convention ground imputed to groups of people based on their family, community, geographic or other links (in Syria)



# Conclusion

Perspectives for a possible influence of the UNHCR GIPs No.12 in the decision-making of the French asylum authorities in situations of armed conflict?

FRANCE

Number of applications and protection rates of applicants from main countries of origin where situations of armed conflict prevail

Source: Ofpra Activity reports

NB: figures do not include accompanying children

2016	Total number of <u>OFPRA decisions</u> ( <i>1st instance</i> )						<u>Number of decisions overturned</u> by the National Asylum Court (CNDA) ( <i>Court level</i> )			Total positive decisions OFPRA + CNDA
	Country	Total positive decisions	% positive decisions	Share of refugee status	Share of subsidiary protection	Negative decisions	Total decisions	Total decisions overturned	Share of refugee status	
AFG	3 270	80,9%	741	2 529	773	4 058	142	51	91	3 412
IRAQ	1 343	78%	1 083	260	378	1 746	17	5	12	1 360
SYRIA	3 857	97,3 %	1 916	1 941	107	4 166	152	137	15	4 009
SUDAN	2 456	42,3%	2 115	341	3 354	5 888	695	297	398	3 151