

**Guidelines on how to create information guides regarding asylum claims
and services for refugees**

Created jointly with government and partners

**INFORMATION GUIDE REGARDING THE
APPLICATION FOR REFUGEE STATUS IN (country)**

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INTRODUCTION

This document provides guidance to those people applying for refugee status in (country), so they are able to understand the legal framework under which their cases are to be analyzed, which procedures apply and their rights and obligations.

LEGAL FRAMEWORK

The Convention Relating to the Status of Refugees of July 28th, 1951, establishes the principles over which the international protection for refugees has been built. According to this instrument, a refugee is anyone who *“as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his [or her] nationality and is unable or, owing to such fear, is unwilling to avail him [her]self of the protection of that country; or who, not having a nationality and being outside the country of his [of her] former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”* It also establishes the main rights and obligations of refugees as well as the treatment they are entitled to in the host country.

In 1967, the *Convention* was strengthened by a *Protocol* that extended the scope of application of the provisions by including a broader range of refugee situations. The *1967 Protocol* removed the geographical and temporal limitations established in the *1951 Convention relating to the Status of Refugees*, which restricted categorically the scope of international protection only to European refugees after World War II.

In the Americas, the Cartagena Declaration on Refugees (non-binding legal instrument) was adopted in 1984 and it broadened the scope of refugee protection created by the 1951 Convention and its Protocol. The Cartagena definition include among refugee persons those *“who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.”*

(Include other laws and protocols that have been adopted in the country to protect the rights of asylum-seekers, refugees or other persons of concern to UNHCR.)

WHO IS A REFUGEE?

A refugee is someone that:

a) Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his [her] nationality and is unable or, owing to such fear, is unwilling to avail him [her]self of the protection of that country; or who, not having a nationality and being outside the country of his [her] former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

b) Has fled from the country of his [her] nationality or habitual residence (in case of statelessness) because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.

FREQUENTLY ASKED QUESTIONS

What is the difference between an immigrant and a refugee?

Immigrants leave their countries of origin due to different reasons and needs. The status of refugee is intended only for the purpose of providing international protection to those who cannot find effective protection to their rights in their countries since they are persecuted and/or threatened by political conflicts or wars for reasons of political opinion, race or other motives that force them to leave their countries.

Immigrants abandon their countries voluntarily due to economical reason, looking for a change, for family reason or other personal motives.

For example and according to the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* a migrant worker is “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.”

Can a criminal be considered a refugee?

The status of refugee cannot be granted to those that have:

- **Committed a crime** against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes.
- **Committed a serious non-political crime** in his [her] country of origin prior to his admission to the host country.
- **Been guilty** of acts contrary to the purposes and principles of the United Nations.

The objective of these restrictions is to avoid granting the status of refugee to common criminals or fugitives.

Can a soldier be considered a refugee?

An **active** soldier cannot be a refugee. By definition, all refugees are civilians. Someone participating in military activities from the host country in favor or against his [her] country of origin cannot be considered a refugee.

What are environmental “refugees”?

The term environmental refugee refers to those forcefully displaced due to changes in their home environment (droughts and flooding, etc). However, these persons are not considered as refugees according to international law and the legislation applicable in our country.

Can a child apply for refugee status?

Yes. Anyone can apply for refugee status. If either his parents or only one of them accompanies the child, they become his legal representatives and will submit the refugee claim for him. If the child is unaccompanied he can also apply for refugee status. The Executive Secretariat of the (Eligibility Commission) will designate a tutor to advise the child during the procedure and look after his well-being. Not every unaccompanied child that enters the host country is a refugee. The Eligibility Commission should analyze each case to guarantee that the conditions to be recognized are met.

HOW TO APPLY FOR REFUGEE STATUS IN (country)?

According to their own legal systems, every country establishes different mechanisms to determine if the applicant is a refugee or not. In (country) there is an office in charge of processing applications, created by Act xxxx, called XXX (as an example, in Argentina it is called National Refugee Commission, CONARE)

What is the (Eligibility Commission)?

Describe here what the Eligibility Commission is (or the body that determines if the applicant is a refugee or not).

What does the (Eligibility Commission) do?

Its attributions are:

* To protect in all circumstances the rights of refugees and asylum-seekers under the jurisdiction of (country). With this aim, the office is entitled to undertake all actions necessary to watch over the effective enjoyment of their rights by refugees and their families.

* To decide, as a first instance, over granting or revoking the refugee status.

* To decide over granting authorization for the applications to enter the country for family reunification or resettlement purposes, as well as approving plans relative to voluntary repatriation and resettlement of refugees that are currently in the territory of (the country) to another country.

* To convene national, state and municipal authorities in order to propose the coordination of actions leading to compliance with the objectives of the law and, particularly, in reference to:

1. The protection of refugees' rights to access the proceedings to apply for refugee status.
2. Assistance provided to refugees and their families.
3. Their incorporation to the social and economical life of the host country.

Where can a person apply for refugee status in (country)?

In (country), a person can apply for refugee status to (specific person), in any inland Immigration Office that belongs to the National Immigration Authority; or any other national, provincial or state authority. It is also possible to apply, while entering the country, to any border immigration authority. However, it is not possible to apply for refugee status while being away from (country), e.g., going to the Argentinean Consulate in the country of origin of the applicant. The application must be made in the border or inside (country's) territory.

What documentation must a person submit to apply for refugee status?

In order to apply for refugee status, one must submit to the pertinent authority:

(Describe the documentation required. Here is the example of Argentina:)

* A letter addressed to the President of CONARE providing details of the reasons for applying for refugee status. The letter must be as detailed as possible regarding the reasons for leaving the country of origin and why is he seeking refugee status.

* Original and photocopy of an identity document (passport or personal id). If the person lacks such documentation, he must explain in the letter the reason.

* The applicant must provide his real home address (where he lives) and provide an address (can be same) to receive notifications and appointment notices. Every time the applicant changes his address he must notify it to the authorities.

* Two identical 4x4 photos.

Please notice:

◆ All **procedures are personal and free of charge**. The intervention of agents is not required.

The procedure

The application for refugee status is made formal by submitting the above-mentioned documentation and filling a format.

If the arguments provided by the applicant provide a clear and evident case and no further

investigation is required, the case can be treated through a fast-track procedure. If it is considered that there is a need to further investigation, obtain more information and additional proofs, the case must follow the ordinary procedure.

The law establishes that the authorities must provide within 20 days of the formal application a temporary residency certificate that confirms the applicant's legal situation in the country until his case is definitely solved.

The applicant can be summoned for a personal interview where he will provide details of his experiences. If the applicant does not speak the language, he can ask for a translator for this interview and for filling out the initial format. Depending on the case, more than one interview may be needed so as to provide more details.

The **Eligibility Commission** considers that all the information provided by the applicant is important, as well as the documents he can give regarding the facts that led to his decision to leave his country. In order to solve the case it is indispensable to have as many information elements as possible that can help prove the situation.

Having all the information, the Executive Secretariat issues a technical non-binding report to the **Eligibility Commission**. Based on this report the Eligibility Commission will analyze the case, take a decision and issue a resolution through an official agreement.

What is a temporary residency certificate and what is it used for? (If such a document is issued)

When the person formalizes his request for refugee status, the authorities must provide within **XXX** days a temporary residency certificate that is valid for a defined period; it must be renewed until the application is resolved.

This certificate will allow the person to (**legally stay, work and move**) within the national territory during **XXX** months until his application is resolved.

How is the interested party notified?

The Commission's decision is notified to the interested party via mail to the home address provided, or personally. A copy of the official agreement from the **Eligibility Commission** will be handed to the applicant together with the notification, specifying if the person has been granted or not refugee status.

What happens if the applicant is granted refugee status?

If the decision is favorable to the applicant and he is granted refugee status, he will be handed a certificate that credits him as a refugee and allows him to apply for temporary residency in the country for **XXX** years extendable, according to current regulations. This procedure is totally free of charge.

Once the temporary residency is granted, the person can start the paperwork at the National People Registry in order to obtain a National ID presenting all the documentation required by that institution. The procedure for the first ID will be totally free given his refugee condition.

After two years, unless the person has ceased to be considered a refugee, he can request

for an extension of his temporary residency for another period.

What happens if the refugee status is denied?

If the decision to grant refugee status to the applicant is negative, the applicant can appeal the decision to XXX by sending a letter in the next XXX working days to the authorities that initially processed the application. The application must be well founded, indicating specifically the action against which it is presented and explaining the reasons for his non-conformity against CONARE's decision. The applicant and/or his legal representatives must sign the letter.

If the decision by XXX is negative, this means the administrative steps towards applying for refugee status have been exhausted. However, the person can go to court.

The application for refugee status does not interfere with the application for residency before XXX in agreement with all other criteria defined in immigration law.

Can the authorities of (country) contact the authorities of applicant's country of origin?

Any documentation and information provided by the applicant is considered confidential and therefore cannot be given to the authorities of the applicant's country of nationality or origin.

How long can the government take to decide if the condition of refugee is granted or not to the applicant?

There is not pre-established period for CONARE to decide about the application, or, the period is between XXX and XXX months. Nevertheless, the decision must be reached in a reasonable period. This period depends on the complexity of the case (the evident cases are treated through a fast-track procedure), of the number of applications that need to be processed and resolved as well as on the information and documentation provided by the applicant.

Is refugee status granted only for the applicant or for his whole family group?

Refugee status is granted individually. However, the status is awarded by extension to his partner or to the refugee's acquaintances by reasons of affection or coexistence, ascendants, descendants and first-degree collaterals that economically depend on him. The family relationship must be proven and each case will be analyzed.

ADDITIONAL FREQUENT QUESTION

How long does refugee status last for?

The status of refugee is temporary by nature, that is, it exists while the circumstance that led to the person's decision to flee his country lasts. When the circumstances cease to exist, refugee status can cease. This is a decision that must be taken by the host country but it is not automatic. It must be notified to the interested party so he can express his intentions to return to his country or stay in the host country.

There are other motives to cease refugee status. For example, when the refugee...

- * **accepts** voluntarily the protection of the country of origin:
- * **recovers** voluntarily his nationality (in case he had lost it);
- * **acquires** a new nationality and the protection derived from this new nationality. For example, becoming a citizen of (country).
- * **returns** again to the country he had left for fear of persecution.

Can refugees finally return to their country of origin?

Once the conditions in their country of origin allow it, voluntary repatriation is the ideal long-term solution for refugees. In case they express the desire to return to their country and once it is verified that their lives, security or freedom are not at risk there, UNHCR's regional office can facilitate the voluntary repatriation of refugees, depending on fund availability.

How can refugees in (country) travel to another country?

(The country) does not restrict the refugee's free transit to other countries. Refugees with passports of their country can use them. For those refugees without passports or whose passports have expired and cannot or will not renew them in the consulate of their country, XXX will issue a Travel Document, in agreement with the 1951 Convention, based on a certificate that proves the status of refugee that must be issued by the Executive Secretariat of the Eligibility Commission. Logically, in order to enter the destination country all its requirements must be met as in any other case.

What is resettlement? (If it applies)

For a small percentage of refugees (in 2010, it was 0.7% worldwide) there is the possibility of resettlement. This is an alternative for those refugees that cannot stay in the country that granted them refugee status due to security reasons (because there is a threat of *refoulement* or to their physical security, for example). It is also considered for those cases where there is no perspective for local integration because the refugees do not have legal residency or documents or because of their personal disorders, they cannot integrate.

Resettlement is a durable solution for those persons that have not found protection in their asylum country but it is not a right. In (country) it is done as part of a special procedure agreed by XXX (the country's authority) and the UNHCR's office.

Refugee's resettlement in (country) is done through UNHCR's offices in the first country of asylum, that is, where the refugees are and from which they must depart. In these cases, UNHCR proposes to the government of (country) the resettlement cases, and officers of the Commission or its Secretariat must get in touch with the candidates so the refugees as well as the government can reach a decision regarding this solution alternative.

RIGHTS AND OBLIGATIONS

1) APPLICANTS

The applicants to refugee status have the right to:

- * Be protected against *refoulement* to their country of origin.
- * Remain legally within the territory.
- * Work and perform paid activities.
- * Access public education.
- * Choose freely his place of residence.
- * Have freedom of movement in the country (informing previously the **Eligibility Commission**, if it needed).
- * Travel abroad as long as they have a valid document. In such cases, the refugee must notify the Secretariat of the **Eligibility Commission** the date and the reason for the trip. Bear in mind that for some nationalities, (country) requires return visa so before coming back to the country, the person must get it in the corresponding Embassy or Consulate.
- * Return voluntarily to his country of origin or residency (by his own means). In case of travelling to his country without wanting to stay there, this will be evaluated as another additional element when the time comes to analyze the application.
- *Not to be discriminated for reasons of race, religion, membership of a particular social group or political opinion.

- * Access to courts of justice.
- * Freely exercise the religion of their choice.
- * Be assisted freely by a translator or interpreter if he cannot understand or speak the national language.

The applicants have the obligation to:

- * Say the truth and help clarify the invoked facts and personal motives for their application. They must answer all questions asked.
- * Make an effort to present proofs and provide explanations about the possible lack of them.
- * Provide information about him and his experience providing the necessary details needed to determine the pertinent facts.
- * Renew his residency certificate.
- * Respect the National Constitution as well as all national, provincial and/or municipal laws.
- * Respect all rules dictated by the State towards maintaining public order.
- * Respect people, entities and public and private institutions.
- * Keep his home address updated for the Eligibility Commission.

2) REFUGEES

The rights of the refugees derive from the 1951 Convention Relating to the Status of Refugees as well as from Law **XXX (specify country law)**.

The refugees in (country) have the following rights:

- * To be protected against *refoulement* to their country of origin.
- * To remain legally within the territory.
- * To work and perform paid activities.
- * Exercise their profession freely from the moment he obtains refugee status, previous revalidation of their title in agreement with current law.
- * To access public education.
- * To choose freely his place of residence and move freely in the country.
- * Travel abroad and obtain travel documentation to that effect.
- * Family reunification.
- * Not to be discriminated for reasons of race, religion, membership of a particular social group or political opinion.
- * Access to courts of justice.
- * Freely exercise the religion of their choice.
- * Be assisted free of charge by a translator or interpreter if he cannot understand or speak the national language.
- * In the event a refugee must ask for consular services from his country of nationality or normal residency in order to obtain documents, certifications, a certificate of marital status, titles or any administrative act, the competent authorities will assist the refugee while respecting his right of not asking for the help of the authorities of the government of the country of his nationality or his normal residency.
- * Return voluntarily to his country of origin.

Additionally, they have the obligation of:

Respect the National Constitution as well as all national, provincial and/or municipal laws.

- * Respect all rules dictated by the State aimed at maintaining public order.
- * Respect people, entities and public and private institutions.

OTHER ENTITIES THAT PROVIDE ATTENTION TO REFUGEES

Description of the entities that provide attention to refugees

United Nation's High Commissioner For Refugees (UNHCR)

This Office was created in 1950 by the United Nations' General Assembly. Its main purpose is to provide international protection to refugees, which implies in first instance guaranteeing the *non refoulement* to their countries of origin. UNHCR protects the rights of asylum-seekers and refugees. In collaboration with the governments, UNHCR searches for durable solutions for refugees and implement programs all around the world that are funded by the international community.

USEFUL ADDRESSES:

Web pages and emails, if adequate, including government, civil society and private institutions. This information should be based on an institutional mapping.

Some examples are:

Eligibility Commission

National Immigration Authority

UNHCR (United Nation's High Commissioner for Refugees)

Public and Social Assistance Services

You must describe here how can the refugee obtain access to educational services, job-related training, medical care as well as how can he obtain the country's nationality.