

Act No. ____ of ____ 2000

PREAMBLE

BEARING IN MIND that the Republic of _____ ratified the Convention of 1951 and the Protocol of 1967 on the Status of Refugees by means of Act No. ____ of _____; and

CONSIDERING that the General Assembly of the Organization of American States, the United Nations Commission on Human Rights and the Executive Committee of the United Nations High Commissioner for Refugees (UNHCR), in several resolutions and conclusions, have called on the parties to these international instruments to implement procedures for determining refugee status,

The National Congress PASSES, and the President of the Republic SIGNS, the following Act regulating the procedure for determining the status of refugees and setting forth the competent agencies in this field and their functions and responsibilities.

PART ONE – ON THE DEFINITION OF REFUGEE, THE PRINCIPLE OF FAMILY UNITY, THE PRINCIPLE OF NON-REFOULEMENT, AND THE EXCLUSION AND ANNULMENT OF THE STATUS OF REFUGEE

Chapter One – On the definition of refugee

Article 1 – For the purposes of the current Act, the term “refugee” shall apply to any individuals who:

- (a) As a result of well-founded fears of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, are outside the country of their nationality and is unable or, owing to such fears, are unwilling to avail themselves of the protection of that country; or who, not having a nationality and being outside the country of their former habitual residence as a result of such events, are unable or, owing to such fears, unwilling to return to it.; or
- (b) Have fled their country of nationality or, lacking a nationality, have fled from their country of habitual residence because their life, security or freedom were threatened as a result of generalized violence, external aggression, occupation, internal conflicts, mass violations of human rights, or other circumstances that have severely disturbed public order.

Chapter Two – On the extension of the status of refugee in compliance with the principle of family unity

Article 2 – The unity of the family, the natural and fundamental group unit of society, is an essential right of refugees.

Article 3 – By virtue of the preceding article, refugee status shall also be conferred on the spouse, underage children and other relatives under the legal custody of the person who has been recognized as a refugee.

Article 4 – Refugee status may also be conferred on the adult children and other dependent relatives of the refugee.

Chapter Three – On the prohibition of expulsion or return (“refoulement”)

Article 5 – No refugees, including asylum seekers whose procedure for determining refugee status is still pending final resolution, shall be expelled or returned to the territory of a country where their life or freedom are threatened for reasons of race, religion, nationality, membership of a particular social group or political opinion.

Article 6 – Exceptionally, refugees may be expelled from a country to the national territory of another country where their life or freedom are not threatened, for reasons of national security or public order and in pursuance of a decision reached in accordance with due process of law. In any case, such refugees shall be entitled to submit evidence that may clear them, and to appeal to and be represented for this purpose before the competent authorities. After the expulsion procedure has been completed and the firm and final resolution of expulsion by the competent authority has been notified to these refugees, they will be allowed a reasonable period within which to seek legal admission into another country. From the start of the expulsion procedure until the effective departure of the refugee from the territory of the country, competent authorities may apply such internal measures befitting due process of law as they may deem necessary to safeguard public order, national security, and the safety of the refugees themselves.

Chapter Four – On the exclusion from refugee status

Article 7 – No persons shall be granted refugee status with respect to whom there are serious reasons for considering that:

- (a) They have committed crimes against peace, war crimes, or crimes against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- (b) They have committed a serious non-political crime outside the country of refuge prior to their admission to that country as a refugee;
- (c) They have been guilty of acts contrary to the purposes and principles of the United Nations.

Chapter Five – On persons not requiring international protection

Article 8 – No international protection is required by, and therefore refugee status will not be granted to, persons:

- (a) Who are at present receiving protection or assistance from bodies or agencies of the United Nations other than the United Nations High Commissioner for Refugees. (When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall *ipso facto* be entitled to the benefits of this Act.)
- (b) Who are recognized by the competent authorities of the country in which they have taken residence as having the rights and obligations attached to the possession of the nationality of that country.

Chapter Six – On the cessation of refugee status

Article 9 – Refugee status shall cease to apply to any persons if:

- (a) They have voluntarily re-availed themselves of the protection of the country of their nationality; or
- (b) Having lost their nationality, they have voluntarily re-acquired it, or
- (c) They have acquired a new nationality, and enjoys the protection of the country of their new nationality; or
- (d) They have voluntarily re-established themselves in the country which they left or outside which they remained owing to fear of persecution; or
- (e) They can no longer, because the circumstances in connection with which they have been recognized as a refugee have ceased to exist, continue to refuse to avail themselves of the protection of the country of their nationality; or
- (f) Being persons who have no nationality and who, because of the circumstances in connection with which they have been recognized as a refugee have ceased to exist, are able to return to the country of their former habitual residence.

Refugee status shall not cease to apply to any persons falling under sections (e) or (f) of this article who are able to invoke compelling reasons, arising out of previous persecution, for refusing to avail themselves of the protection of the country of nationality or former habitual residence; or who, in their own particular case and in spite of the change in general circumstances, retain well-founded fears of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.

Article 10 – The National Committee on Refugees shall resolve in the first instance on the applicability of the cessation clauses, such resolution being subject to an appeal to the Minister of _____ within a period of fifteen working days from the date of notification. Any persons who have ceased to enjoy refugee status shall be granted a reasonable period of time to leave the

country or, should that be the case, to remain in the country by availing themselves of the legal status that, under current law, may be conferred upon them by virtue of the degree of their integration and their families' in the country, as well as the rights acquired by the refugees and their families during their stay in the country.

Chapter Seven – On the revocation of refugee status

Article 11 – Based on the principle of *res judicata*, once a request for asylum has been granted by the competent authorities, the decision may not be reviewed by the same authorities. However, exceptionally, the Committee may review the status of refugees recognized as such by the country, should it have in its possession sufficient evidence to prove that the asylum seekers in question falsified the material facts on which they based their request for asylum or concealed relevant facts in such fashion, had these facts been known fully, they would have led to the rejection of their request for refugee status.

Article 12 – It shall be the responsibility of the National Committee on Refugees to determine in the first instance, by means of a well-reasoned resolution, whether a person's refugee status should be revoked, notification of which shall be made to the person in question, who will have the right to appeal to the Minister of _____ within a period of fifteen working days from the date of notification. Regardless of the circumstances, the person whose refugee status has been revoked shall not be expelled from the country until any appeal thereof has been resolved by a firm and binding resolution. Expulsion shall be carried out with regard to due process of law in compliance with the country's legal provisions and procedures to this effect.

PART TWO – ON EXTRADITION

Article 13 – The submittal of a request for asylum involving a claim to refugee status shall stay the execution of any decision taken under due process of law granting the extradition of the asylum seeker until the procedure for determining refugee status has been completed by a firm and final resolution.

Article 14 – The recognition of refugee status shall have the effect of terminating any extradition procedure against refugees at the request of the government of their country of nationality or former habitual residence, based on the very facts that determined the granting of their status as refugees. Regardless of the specific circumstances, the extradition of a refugee shall only be carried out in full compliance with the provisions contained in Chapter Three of Part One of this Act.

PART THREE – ON THE LEGAL CONDITION OF REFUGEES

Article 15 – Any refugee shall be subject to the provisions contained in this Act and the 1951 Convention and 1967 Protocol related to the status of refugees, which given their status of international law, take precedence over the ordinary

laws of the land applying to non-nationals in general, except in those instances where such laws may be more favorable to refugees.

Article 16 – Every refugee in the country has the obligation to conform to its laws and regulations as well as to measures taken for the maintenance of public order.

Article 17 – When in the exercise of their rights and duties, refugee should in normal circumstances request the consular services of their country of nationality or former habitual residence for obtaining documents certifying or accrediting their marital status, academic degrees and other administrative actions, the competent authorities of _____ (name of country) shall take all pertinent and timely measures to assist these refugees while respecting their right not to ask for the assistance of the authorities of their country of nationality or former habitual residence.

PART FOUR – ON THE AUTHORITIES COMPETENT TO DEAL WITH REFUGEE ISSUES, THEIR STRUCTURE AND FUNCTIONS

Chapter One – On the National Committee on Refugees, its structure, competencies, and functions

Section One – Structure of the National Committee on Refugees

Article 18 – The National Committee on Refugees (hereinafter “the Committee”) is hereby created. It shall consist of a representative of the Ministry of _____, who shall act as Chairman of the Committee, and a representative each of the following ministries and government agencies: _____
_____. Committee members shall be appointed by the Ministers they represent or the highest ranking official of the government agency involved.

Article 19 – A representative of the United Nations High Commissioner for Refugees (hereinafter the UNHCR), a representative of the National Ombudsman’s Office, and a representative of the humanitarian non-governmental organizations legally accredited in the country shall participate ex officio, without the right to vote, in the Committee’s deliberations on the determination of refugee status as well as any other meetings convened by the Committee Chairman. The UNHCR delegate to the Committee shall be appointed by UNHCR’s Regional Representative for _____, based in the city of _____, _____. The Ombudsman representative shall be appointed by the Ombudsman, and that of the humanitarian NGOs by the national coordination mechanism for refugee NGOs.

Article 20 – the ministries and agencies represented in the Committee shall notify the Committee’s Chairman of the appointments of their representatives, as well as of any alternate representatives or new appointments.

Section Two – On the attributions and functions of the Committee

Article 21 – The Committee shall be the governmental, inter-ministerial and inter-agency body in charge of formulating government policies for the protection of refugees, provision of assistance to them, and the search for solutions to their plight; and it shall have the following functions, among others:

- (a) Determining, in the first instance, the refugee status of those who have presented claims to refugee protection for the reasons listed in Article 1 of this Act. In order to do so, the Committee shall base its decisions on the provisions of the 1951 Convention and 1967 Protocol on the Status of Refugees, as well as this Act and other sources of international and national refugee law.
- (b) Deciding, in the first instance, whether to cease or revoke the refugee status of any person thus protected.
- (c) Authorizing requests for entry into the country of persons for reasons of family reunion and resettlement, and ensuring the voluntary nature of all repatriation procedures in compliance with the principle of *non-refoulement*.
- (d) Guiding government action in favor of the effective social and economic integration of refugees.
- (e) Establishing government policies regarding refugees, and managing all activities aimed at their protection, assistance, and search for lasting solutions, in coordination with all other relevant government agencies, non-governmental organizations, and UNHCR.
- (f) Develop its own internal procedures and regulations for the enforcement of this Act, subject to their approval by the Minister of _____.
- (g) Carry out any other functions entrusted to it by means of internal procedures and regulations approved by the Minister of _____.

Article 22 – The Committee shall hold regular meetings at least once a month (**quarter, fortnight**). It may also hold special meetings as often as the Chairman considers necessary, for which purpose the Chairman shall issue the necessary notice, or at the request of a third of the members of the Committee, by means of a request in writing to the Chairman of the Committee. The Committee shall only adopt decisions or pass resolutions when a quorum of at least two third of its voting members is present. Decisions shall be taken by simple majority; in the event of a tie, the Chairman shall cast the deciding vote.

Chapter Two – On the Secretariat of the Committee on Refugees

Article 23 – A Secretariat of the Committee on Refugees (hereinafter “the Secretariat”) is hereby created under the wing of the Ministry of _____; its main function shall be to serve the Committee in the fulfillment of its duties.

Article 24 – The Secretariat shall act as the repository of all claims for refugee status addressed to the Committee. It shall ensure that border, police, immigration, municipal and judicial authorities throughout the territory of the country are aware of the procedures for referral of requests for refugee status to the Secretariat as soon as they become acquainted, either orally or in writing, with the intention of presenting such a claim by the interested party or a representative of the interested party. To that effect, the phrase “representative of the interested party” shall be understood to mean an attorney who is a full member of the Bar, an official belonging to an NGO that is properly accredited in the country, or a UNHCR representative. In the course of its first two years of operations, The Committee shall draft and implement all such internal procedures and regulations as shall effectively enable the referral process mentioned above.

Article 25 – Other functions of the Secretariat shall include:

- (a) Accepting all claims of refugee protection, issuing certifications attesting to the receipt of such claims, notifying the police and the central immigration authority for purposes of enforcing this Act, and maintaining a record of all claims received.
- (b) Issuing to claimants, their spouses and members of their family older than 14 (12, 10) years of age included in their file, an identification document attesting to their claim being currently under consideration. The documents in question shall contain the name and surname of the claimant or dependents, their date of birth, marital status, nationality, and place of residence in the country. The document shall bear a photograph of the claimant or relative and a fingerprint of the claimant or relative, as well as the signature of the person in question and of the head of the Secretariat, and the official stamp of the institution. This document shall serve as temporary identification of the bearer and shall have a validity of three months, indefinitely renewable with an identical validity..
- (c) Informing the competent ministries and government agencies of such facts as may be needed to enable claimants and their family to engage in wage-earning employment, self-employment, or the exercise of their professions, as well as to have access to social security benefits.
- (d) Interviewing the claimant and issuing advisory opinions.
- (e) Maintaining a full file on each claimant, including: personal information regarding the claimant and accompanying relatives, a writ by the claimant stating the reasons for claiming refugee status, any documentary evidence or affidavits to that effect, reports on the interviews with the claimants, and an assessment of the facts and the legal foundations for the claim.
- (f) Producing a technical assessment of the merits of the claim based on the sources of law mentioned in Article 21 (a).

- (g) Preparing the files for the consideration of the Committee pursuant to its attributions.
- (h) Drafting notifications of Committee meetings and the agendas of such meetings for approval by the Chairman.
- (i) Keeping minutes of the Committee meetings for approval by the Committee Chairman.
- (j) Issuing notifications of Committee decisions or additional requirements to the claimants, their representatives, relevant national, regional, and municipal authorities, and UNHCR representatives.
- (k) Issuing identity papers to refugees recognized as such, with a validity of one year renewable for identical periods, and informing the relevant government agencies in order to facilitate access by refugees to wage-earning employment, self employment or the exercise of their profession, as well as social security benefits.
- (l) Carrying out any other tasks assigned as a result of internal decisions approved by the Minister of _____.

Article 26 – Given its functions, the Secretariat shall be headed by a person with a post-graduate degree in Law, Social Sciences or Political Science, and among its staff there shall be at least one professional in law and one in social work, either full time or part-time as required by the head of the Secretariat based on the effective needs of the Secretariat.

PART FIVE – ON THE PROCEDURES FOR DETERMINING REFUGEE STATUS

Chapter One – On the arrival into national territory and the presentation of claims for refugee protection

Article 27 – Once a claim for refugee status has been made either orally or in writing by the claimants, their representatives, or any of the competent authorities mentioned in Article 28, the Secretariat shall proceed to register the claims and notify the claimants of the need for submitting in writing the reasons for making such a claim, and the form such a claim should take, accompanied by any extant documentary evidence and other evidence of any kind that may be submitted in support of such claims. It shall also be the responsibility of the Secretariat to notify claimants of any individual interviews that may have been deemed necessary and the times and dates thereof.

Article 28 – Competent national, regional or municipal police, border, immigration, judicial or other authorities or officials, upon learning orally or in writing of the desire of the claimant to request protection as a refugee, shall be responsible for full compliance with the principle of *non-refoulement* as contained in Article 5 of this Act, and for the formal notification to the Secretariat of the Committee regarding such claims. Copies of such notifications shall be issued to the claimants or their representatives.

Article 29 – No criminal or civil penalties shall be imposed on claimants to refugee status on account of their illegal entry or presence in the country, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence. Competent authorities shall not apply to the movements of such refugees restrictions other than those that are necessary, and such restrictions shall only be applied until their status in the country is regularized.

In the event that criminal or civil proceedings have been launched against the claimants for reasons of illegal entry or presence, such proceedings shall be stayed until the claims of refugee status have been resolved firmly and finally. Should refugee status be granted, all criminal or civil proceedings against the refugees in question shall be immediately voided as long as the offences committed can be justified by the causes that led to the person's recognition as a refugee.

Chapter Two – On procedural issues

Article 30 – Once claimants have presented their claim at any the Secretariat's facilities, they shall be informed of the procedures for determining refugee status, and their rights and duties, in a language they can understand. Any claimants who so request and require it shall be granted the services of an interpreter to assist in the interviews and the presentation in writing of the grounds for their claim. They shall also be informed of their right to legal assistance.

Article 31 – In a period no later than five (10, 15, 20) days after the claim for asylum has been recorded, the Secretariat shall issue to the claimants and the other relatives included in their file the documents mentioned in Article 25 of this Act, and shall notify all relevant authorities of the claimants' right to temporary legal residence in the country until a final determination is made. It shall likewise notify all relevant agencies with a view to ensuring that claimants and their relatives receive the basic humanitarian assistance they may require as a result of their economic situation, particularly regarding and access to food, health care, and education.

Article 32 – in order to facilitate the economic self-reliance of asylum seekers, the Secretariat shall request of the Ministry of Labor the issuance of a temporary work permit for claimants and their relatives of working age once 30 (45, 60, 90) days have passed since their claim was recorded.

Article 33 – Once compilation of the file referred to under Article 25 (e) of this Act has been completed, the Secretariat shall include it in the agenda of the next Committee meeting.

Article 34 – All information regarding claims of refugee protection shall be strictly confidential. The Committee shall instruct and guide relevant national authorities to that effect, particularly regarding communications with the authorities of the country of nationality or former habitual residence of the claimant.

Article 35 – The decision to grant refugee status is declaratory, humanitarian, and apolitical. Such decisions by the Committee, approving or rejecting refugee status, must render explicit all the facts and legal arguments on which they are based.

Article 36 – Once the Committee has issued a resolution in the first instance, the Secretariat shall proceed to notify the claimant immediately of the content of this resolution. The claimant may then appeal to the Minister of _____ within a period of fifteen working days following the date of notification.

SECTION SIX – FINAL PROVISIONS

Article 37 – The procedures for determining refugee status shall be carried out at no cost to claimants and in the most expeditious way possible, without prejudice to the procedural safeguards and rights to which the claimants are entitled.

Article 38 – In the event of a mass influx into the country, or the imminent risk of a mass influx, of persons requiring international protection, the Minister of _____, in consultation with the Committee and advised by the UNHCR, shall determine the necessary provisions for ensuring the protection of all such potential claimants.

Article 39 – The provisions of this Act shall be interpreted in accordance with the principles and standards contained in the Universal Declaration of Human Rights, the American Convention on Human Rights, the 1951 Convention and the 1967 Protocol on the Status of Refugees, and all other relevant provisions contained in international human rights law instruments that have been ratified by the Republic of _____.

Article 40 – This Act shall enter into effect upon publication in the official Gazette.