

UNHCR'S TECHNICAL GUIDANCE FOR THE DEVELOPMENT OF REFUGEE LEGISLATION IN THE CARIBBEAN

The attached *Technical Guidance for the Development of Refugee Legislation in the Caribbean* was developed by the United Nations High Commissioner for Refugees (UNHCR) at its Regional Office for the USA and the Caribbean in Washington. The technical guide is meant to serve as a resource for countries in the Caribbean region that are considering the development of national legislation to implement the provisions of the *1951 Convention Relating to the Status of Refugees* and its *1967 Protocol*, set out refugee status determination procedures and specify refugee rights and protection safeguards in line with international standards.

Although the vast majority of countries in the Caribbean are parties to the *1951 Convention Relating to the Status of Refugees* and its *1967 Protocol*, few currently have legislation, policies or regulations governing refugee protection and asylum. As a result, UNHCR is frequently called upon to provide Caribbean governments with guidance on refugee protection and to engage in refugee status determination on behalf of States in lieu of government procedures.

Since 2014, an increasing number of Caribbean states and overseas territories have requested support from UNHCR for the drafting of legislation, regulations and policies on refugee issues. In consultation with governments in the Caribbean, therefore, UNHCR identified a demand for sample legislation in order to demonstrate ways to incorporate international standards for refugee protection into domestic legal frameworks. The attached technical guide was developed in response to this identified need, and with an eye to being readily applicable in the Caribbean context, which is characterized by smaller states facing challenges with identifying asylum-seekers and refugees in mixed migration flows, and often with extensive maritime borders.

The *Technical Guidance for the Development of Refugee Legislation in the Caribbean* contains the fundamental provisions for refugee protection in a clearly structured manner. While it is expected that the guide be adjusted to the respective national context, it can also serve as a practical tool to promote consistency in refugee policies and practices across the region.

Features of the technical guide include:

- A refugee definition that incorporates the key provisions of the *1951 Convention* and *1967 Protocol* (addressing persons with a well-founded fear of persecution on account of their race, religion, nationality, membership of a particular social group or political opinion) as well as elements of the *Cartagena Declaration on Refugees* of the Organization of American States¹ (for persons who flee generalized violence, foreign aggression, internal conflict, massive violations of human rights, or events seriously disturbing public order). (See Articles 3-8).

¹ All independent States in the Caribbean are also members of the Organization of American States.



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- Clarification on the scope of the *non-refoulement* principle that acknowledges that a person who expresses a fear of return to his or her country of origin must be protected from forced return and provided with an opportunity to seek asylum, including when at a border (including a maritime border) or while subjected to the effective authority and control of an officer of the country of asylum (such as on the high seas). (See Articles 1, 11 and 28).
- Guidelines for asylum procedures that give flexibility to host countries to develop various structures or systems for their effective implementation, as long as minimum due process guarantees (such as the right to appeal and the right to judicial review) and other international standards are met. (See Articles 11-24).
- Articles clarifying the rights and duties of asylum-seekers and refugees in the country of asylum, according to the *1951 Convention* and other sources of international law (including the right to family unity, right to documentation, protection from forced return, non-penalization for illegal entry or presence, legal residence, employment, education, access to public services, and more). (See Articles 25-40).

With the *Technical Guidance for the Development of Refugee Legislation in the Caribbean* as a practical tool, UNHCR will continue to support governments throughout the Caribbean to establish and strengthen legal frameworks to protect the rights of asylum-seekers and refugees.

December 2016
UNHCR Regional Office Washington

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SECTION I: DEFINITIONS AND INTERPRETATION OF TERMS

Article 1. Definitions. As used in this Act ---

- A. The term “1951 Refugee Convention” refers to the United Nations Convention Relating to the Status of Refugees adopted in Geneva on 28 July 1951, as complemented by its Protocol Relating to the Status of Refugees adopted in New York on 31 January 1967.
- B. “Asylum” means the protection accorded by the Government of (name of country) to a refugee as per the 1951 Refugee Convention and the relevant human rights instruments.



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- C. The term “asylum-seeker” refers to a person who has expressed a fear of return to his or her country of origin or a desire to seek asylum in (name of country). Such a person shall be considered to be an asylum-seeker from the time that he or she has expressed such fear to the competent authorities irrespective of whether he or she has been granted access to file an application for asylum in accordance with the procedures specified in this Act, and shall remain an asylum-seeker until such time that a final decision is reached on his or her application for asylum in accordance with this Act.
- D. The term “application for asylum” means a request for the recognition of refugee status and / or humanitarian protection in (name of country) made in accordance with the provisions of this Act.
- E. The term “competent authority” refers to the officials or institutions of the Government of (name of country) which are created and / or empowered by this Act and any subsequent implementing regulations to carry out the functions described herein.
- F. The term “country of origin” means either the country of nationality of a person, or, in cases in which the person in question does not have a nationality, the country of his or her former habitual residence.
- G. The term “country of asylum” means (name of country).
- H. The term “due process” means all of the procedural and substantive elements of due process as incorporated by Article 22 of this Act.
- I. The term “well-founded fear of persecution” means that there is a reasonable possibility or likelihood that a person would, if returned to his or her country of origin, experience a serious violation of his or her human rights under the relevant international human rights instruments.
- J. The term “dependent family members” means, in relation to a person, his or her spouse or common law partner, dependent children by birth or adoption, and other persons who have been living in the same household with whom there is a social, economic or emotional relationship of dependency.
- K. The term “child” means a person who has not yet attained 18 years of age.
- L. The term “humanitarian protection” means the provisions related to freedom from torture and cruel, inhuman and degrading treatment, and other forms of humanitarian protection set forth in articles 9 and 10 of this Act.
- M. The term “stateless person” means a person who is not considered as a national by any State under the operation of its law; and “stateless refugee” means a refugee who is also a stateless person.
- N. The acronym “UNHCR” stands for the United Nations High Commissioner for Refugees.

Article 2. Interpretation. The competent authorities shall interpret and apply the terms and provisions of this Act in the manner most consistent with the peaceful and humanitarian character of asylum which cannot be considered as unfriendly

by any other State, with the provisions of the 1951 Refugee Convention, and with the full range of international human rights obligations and customary legal norms applicable to (name of country) .

SECTION II: REFUGEE DEFINITION AND ELIGIBILITY FOR ASYLUM

Article 3. Inclusion criteria. The competent authorities of the Government of (name of country) shall recognize as a refugee any person who ---

- A. owing to a 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 himself/herself 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; or
- B. has been forced to flee or to remain outside his or her country of origin because of a threat to his or her life, safety or liberty, due to generalized violence, foreign aggression, internal conflict, massive violations of human rights or events seriously disturbing public order.

Article 4. Exclusion criteria. The provisions of Article 3 of this Act shall not apply to a person within the scope of article 1 D) and E) of the 1951 Refugee Convention or with respect to whom the competent authorities have serious reasons for considering that he or she ---

- A. has 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; or
- B. has committed a serious non-political crime outside the country of refuge prior to his or her admission to that country as a refugee; or
- C. has been guilty of acts contrary to the purposes and principles of the United Nations.

Article 5. Cessation. The provisions of Article 3 of this Act may cease to apply to a person previously recognized as a refugee if the competent authority determines after a full and fair procedure in which all due process protections are diligently applied that he or she ---

- A. meets the criteria for cessation in accordance with Article 1(C), Sections 1, 2, 3 or 4 of the 1951 Refugee Convention, in which case, the competent authority shall produce evidence that the refugee acted voluntarily, intended to re-avail himself or herself of the protection of the country of origin, and actually obtained such protection, prior to applying cessation on these grounds; or
- B. meets the criteria for cessation in accordance with Article 1(C), Sections 5 or 6 of the 1951 Refugee Convention, in which case, the competent authority shall produce evidence that the change in circumstances is a

fundamental, stable and durable one, prior to applying cessation on the grounds of ceased circumstances; and

- C. in no case shall cessation be applied to a refugee who is able to invoke compelling reasons arising out of previous persecution for refusing to return to his or her country of origin despite changed circumstances. This provision shall apply equally to those refugees recognized as principal applicants as well as to dependent family members of principal applicants who derived their refugee status from their relationship with the principal applicant.
- D. Before concluding that any of the above grounds for cessation apply, the competent authority should consult with UNHCR.
- E. Should the competent authority conclude that cessation applies to a recognized refugee, it should consider the refugee's previously acquired rights in the country, as well as any ties the refugee has established in the country, with a view to granting an alternative legal status.

Article 6. Cancellation. A person's prior recognition as a refugee under this Act may be cancelled if the competent authority determines after a full and fair procedure in which all due process protections are diligently applied that, at the time of his or her refugee recognition, he or she was not entitled to refugee status and was erroneously recognized as a refugee because of fraud or an intentional misrepresentation of the material facts of his or her case which, if known at the time of adjudication, would have led to non-recognition of refugee status under Article 3 of this Act or application of the exclusion provisions of Article 4 of this Act. In determining whether cancellation should be applied, the competent authority must ensure that any relevant administrative law provisions and parameters for reopening a decision which is final (including, but not limited to, the principles of proportionality and respect for acquired rights) are followed. If cancellation is applied to a person previously recognized as a refugee from whom dependent family members also derived refugee status, any dependent family members who may also be affected by such cancellation shall have the opportunity to present an independent claim for refugee status to be evaluated by the competent authority.

Article 7. Revocation. A person's prior recognition as a refugee under this Act may be revoked if the competent authority determines after a full and fair procedure in which all due process protections are diligently applied that, after recognition as a refugee, he or she engaged in conduct that would bring him or her within the realm of application of the exclusion clauses in Article 4(A) of this Act (regarding a crime against peace, a war crime, or a crime against humanity) or 4(C) of this Act (regarding acts contrary to the purposes and principles of the United Nations). These are actions which, as per Article 1F of the 1951 Refugee Convention, if committed at any time, shall disqualify a person from eligibility for refugee protection. Revocation is not appropriate, however, if a person previously recognized as a refugee commits acts described under Article 33(2) of the 1951 Refugee Convention. In no case should the refugee status of dependent family members who derived their refugee status from their relationship with the

recognized refugee as a principal applicant be affected by the recognized refugee's commission of an act contained within Article 4(A) or 4(C) of this Act.

Article 8. Diversity and interpretation of the refugee definition. For the purpose of interpreting and applying the refugee definition in Article 3 of this Act, the competent authorities shall consider ---

- A. that "persecution" can be linked to characteristics such as age, gender and diversity;
- B. that where the feared persecution does not emanate directly from a State actor or authority, persecution may be "for reasons of" a protected ground when either ---
 - a. a non-State agent of persecution is motivated by the protected ground; or
 - b. the State's inability or unwillingness to protect is motivated by the protected ground.

SECTION III: HUMANITARIAN PROTECTION

Article 9. Freedom from torture. A person who is not a refugee, but who cannot return to his or her country of origin because he or she would be exposed to the danger of torture or cruel, inhuman or degrading treatment or punishment, shall be granted humanitarian protection, which shall include, at a minimum, protection from *refoulement* under Article 28 of the present Act.

Article 10. Other forms of humanitarian protection. A person who is neither a refugee under Article 3 of this Act, nor entitled to humanitarian protection under Article 9 of this Act, may nevertheless be granted humanitarian protection at the discretion of the competent authorities if he or she would be exposed to a risk of serious harm in his or her country of origin, including, but not limited to, harm arising from natural disasters.

SECTION IV: ASYLUM PROCEDURES AND DUE PROCESS GUARANTEES

Article 11. Facilitating access to asylum. It shall be the responsibility of the Government of (name of country) to designate a competent authority to furnish to any asylum-seeker within the national territory, seeking admission at a border of (name of country) or otherwise subjected to the effective authority and control of any public officer, an application for asylum or to make available to him or her the procedure by which to apply for asylum immediately upon his or her expression of a fear to return to his or her country of origin or expression of a desire to seek asylum. Asylum-seekers who submit an application at the border or while subjected to the effective authority and control of a public officer of the Government of (name of country) shall be admitted into the national territory and allowed to proceed with their application for asylum according to the provisions of this Act.

Article 12. Fees. There shall be no fee associated with an application for asylum. The refugee, the person granted humanitarian protection, or the asylum-seeker will not be required to pay the costs associated with their documentation or with the

granting of legal residence, if the competent authorities so decide, on account of his or her economic situation.

Article 13. Non-discrimination. The provisions of this Act shall be applied to all asylum-seekers and refugees without discrimination as to their race, religion, country of origin, gender, sexual orientation or gender identity, language, political opinion, socio-economic class or other status, including status as persons who were the object of smuggling of migrants or victims of human trafficking.

Article 14. Application for asylum. The application for asylum and the procedure by which to apply for asylum shall ---

- A. register and gather basic relevant personal data of the asylum-seeker, such as his or her name, gender, date of birth or age, place of birth, nationality or country of last habitual residence if he or she lacks a nationality, religion, ethnic group, marital status, names and dates of birth or ages of dependent family members accompanying the asylum-seeker in the country of asylum, occupation and current address or other contact information, if any;
- B. allow an asylum-seeker to register as a principal applicant and any dependent family members to register as derivative applicants;
- C. give the asylum-seeker the opportunity to submit any other supporting documents he or she so desires to establish the material elements of his or her claim;
- D. establish a case management system to maintain the asylum-seeker's and dependent family members' personal information in a secure and confidential manner;
- E. provide the asylum-seeker with an opportunity to explain – in a language that he or she understands and can adequately communicate in – why he or she left his or her country of origin and what he or she believes would happen upon return to the country of origin; and
- F. issue the asylum-seeker and any dependent family members a document certifying that the asylum-seeker has applied for asylum and stating his or her right, as well as the right of any dependent family members, to remain in (name of country) until a final decision has been made on their asylum applications.

Article 15. Data protection.

- A. All information provided by an asylum-seeker in his or her application for asylum and throughout the asylum adjudication procedure shall be maintained in a confidential manner and shall not be disclosed to, or shared with, any persons or institutions other than those directly involved in the processing of the asylum-seeker's case.
- B. Under no circumstances shall an asylum-seeker's information or the fact that a person has sought asylum be directly or indirectly disclosed to, or shared with, the authorities of the country of origin of the asylum-seeker, nor shall any information be requested from the authorities of

the country of origin regarding the asylum-seeker, nor shall the asylum-seeker be compelled to request such information from his or her own country of origin.

Article 16. Documentation requirements. In order to apply for or obtain asylum, an asylum-seeker shall not be subject to documentation requirements which by their nature a refugee or a stateless person may be incapable of fulfilling, or which may cause a person who fears persecution from his or her country of origin to initiate contact with that country of origin in violation of Article 15 of this Act. Such requirements include, but are not limited to, presenting a valid passport issued by his or her country of origin, or providing documentary support for each and every material element of his or her claim.

Article 17. Procedures for adjudication of applications for asylum. The Ministry of **insert competent ministry in charge of refugee issues** shall establish a procedureⁱ to adjudicate applications for asylum and determine whether an asylum-seeker meets the requirements to be recognized as a refugee and/or stateless person and/or provided with humanitarian protection according to the terms of this Act. Such a procedure shall include ---

- A. an individual interview, conducted in a timely manner after the filing of an application for asylum, whereby every asylum-seeker shall be personally interviewed by a/an **insert competent authority for interviews and assessments** trained on the substantive and procedural elements of refugee status determination and/or statelessness status determination and/or the conditions to grant humanitarian protection, with the option for the asylum-seeker to choose either a male or a female interviewer, who shall provide the asylum-seeker with the opportunity to explain, in a language that the asylum-seeker understands and can adequately communicate in, and in a climate of privacy and confidence, the material elements of his or her claim;
- B. the assistance of a competent interpreter where necessary and as required in order to allow the asylum-seeker to communicate in a language that he or she can understand and adequately communicate in;
- C. a written assessment of the asylum-seeker's claim, prepared by the **insert competent authority for interviews and assessments**, who shall, after interviewing the asylum-seeker and conducting research into the circumstances of his or her country of origin, make a recommendation as to whether the asylum-seeker is eligible for asylum as a refugee or for humanitarian protection or for protection as a stateless person according to the terms of this Act;
- D. the creation or designation of a/an **insert competent authority for adjudication of applications for asylum** for the adjudication of applications for asylum according to this Act, who/which shall have the authority and the responsibility to ---



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- a. receive and review all applications for asylum in a timely manner, including the written assessment and reasoned recommendation prepared by the **insert competent authority for interviews and assessments** after his or her personal interview with the asylum-seeker, and any supporting documents provided by the asylum-seeker or obtained by the **insert competent authority for interviews and assessments**;
- b. establish its own internal procedures for reaching a decision on each application for asylum and/or statelessness status determination in a timely manner, and ensuring that all due process protections and procedural requirements are met according to this Act;
- c. obtain or instruct other competent authorities to obtain additional information, conduct additional interviews, and present additional written and reasoned recommendations to the **insert competent authority for adjudication of applications for asylum** as to whether Articles 3, 4, 5, 6, 7, 9 or 10 should be applied to any individual whose case is before it;
- d. consult with and seek the advice, assistance and cooperation of UNHCR or any other inter-governmental or non-governmental organization within or outside (name of country) with expertise in refugee status determination, statelessness status determination, refugee protection, and humanitarian protection in carrying out its functions under this Act;
- e. issue a decision in a timely manner as to whether the asylum-seeker meets the criteria for recognition of refugee status or humanitarian protection and is thereby granted asylum according to this Act (and where the refugee is a stateless person, both conditions shall be recognized expressly in the decision);
- f. inform the asylum-seeker with a written notification of the decision on his or her application for asylum, and ---
 - i. in the event of a positive decision, where the applicant is found to be a refugee and eligible for asylum or humanitarian protection under this Act, also inform the competent authorities responsible for granting work permits and legal residence in accordance with Articles 31 and 33 of this Act; or
 - ii. in the event of a negative decision, where the applicant is found not to be a refugee or stateless person or is otherwise ineligible for humanitarian protection under this Act, the written notification shall provide the reasons for the denial and shall inform the applicant of his or her right to appeal and the procedure by which to do so;
- g. initiate, when there is credible evidence to support doing so, a procedure to determine whether cancellation of refugee status according to Article 5, cessation of refugee status according to



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Article 6, or revocation of refugee status according to Article 7 of the present Act may be applied, which procedure shall include, at a minimum ---

- i. written notification to the recognized refugee or recipient of humanitarian protection status that cancellation, revocation or cessation may be applied; and
 - ii. the opportunity for the refugee or recipient of humanitarian protection status to appear before and be heard by the same authority or body with decision-making authority on cancellation, cessation or revocation, regarding the effect that such decision may have on him or her or any derivative family members, and any reason why the refugee objects to cancellation, revocation or cessation; and
- h. issue a decision in a timely manner in any procedure commenced regarding the application of Article 5, Article 6 or Article 7 to a refugee previously recognized under this Act; and
- i. provide the refugee with written notification of the decision regarding application of the cancellation, revocation or cessation clauses, and, in the event that either Article 5, Article 6 or Article 7 of the present Act is applied, and the person is found not to have been a refugee or found no longer to be a refugee, respectively, then the written notification shall provide the reasons for the application of either Article 5, Article 6 or Article 7, and shall inform the applicant of his or her right to appeal this decision and the procedure by which to do so; and
 - j. review and reopen a decision previously rendered by the **insert competent authority for adjudication of applications for asylum** in response to a petition for reconsideration made by an asylum-seeker or a derivative family member who was denied refugee status or humanitarian protection and who has provided compelling reasons on either procedural or substantive grounds for reconsideration of that decision, including, but not limited to ---
 - i. procedural unfairness or violation of due process;
 - ii. misapplication of law or fact;
 - iii. change in circumstances for the asylum-seeker or the country of origin; or
 - iv. any other compelling factors that may alter the outcome of the adjudication.

Article 18. Right to appeal. An asylum-seeker or his or her derivative family members shall have the right to appeal a decision to deny, cancel, cease or revoke refugee status or humanitarian protection made by the **insert competent authority for adjudication of applications for asylum** to a higher authority.

Article 19. Judicial review. The **insert name of competent court** shall have jurisdiction to review the decisions of the **insert competent authority for adjudication of applications for asylum**, when challenged by any person adversely affected by the rejection of an appeal brought in conformity with Article 18, of a decision to deny refugee status or humanitarian protection to an asylum-seeker or any of his or her derivative family members, or to apply the cancellation, cessation or revocation clauses to any previously recognized refugee.

Article 20. Suspensive effect. Any appeal of a decision of the **insert competent authority for adjudication of applications for asylum** brought as per Articles 18 and 19 of this Act shall have suspensive effect on the implementation of such decision.

Article 21. Burden of proof and standard of proof. In procedures carried out under this Act ---

- A. for the adjudication of the application of Article 3 or Articles 9 and 10 of this Act to an asylum-seeker, the adjudicator shall ensure the asylum-seeker is given the opportunity to establish the material elements of his or her claim, in accordance with the due process provisions of Article 22 of this Act, and the asylum-seeker shall have the duty to render a truthful account of the material facts of his or her claim. The adjudicator shall share the duty to ascertain and evaluate all relevant facts, in compliance with the documentation requirements as described in Article 16 of this Act, so that an asylum-seeker is not subject to documentation requirements which, by their nature a refugee or a stateless person may be incapable of fulfilling. The adjudicator shall therefore endeavor to use all reasonable means at his or her disposal to produce the necessary evidence in support of the asylum application, and shall extend the asylum-seeker the benefit of the doubt on those elements of his or her claim that lack objective evidence for support, if and when all available evidence has been obtained and examined and the adjudicator is satisfied as to the asylum-seeker's general credibility. The asylum-seeker's credibility may be established if his or her statements are coherent and plausible and do not run counter to generally known facts.
- B. Regarding exclusion as set forth in Article 4 of this Act, the adjudicator has the burden of proof to establish with clear and credible evidence all required elements in order to apply the exclusion clauses.
- C. For the adjudication of the application of Article 5, Article 6 or Article 7 of this Act to a previously recognized refugee or a person granted humanitarian protection, the adjudicator has the burden of proof to establish with clear and credible evidence all required elements in order to apply either the cancellation, cessation or revocation clauses.

Article 22. Due process. In addition to any procedural guarantees specified elsewhere in this Act, all asylum-seekers and refugees in the national territory, at a border of (name of country) or otherwise subjected to the effective authority and control of any public officer of (name of country) , shall be entitled to ---



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- A. receive information on the asylum procedure and on the rights and obligations of asylum-seekers and refugees in (name of country) ;
- B. have access to the procedures necessary to apply for asylum, including the services of a competent interpreter to present his or her claim;
- C. recruit the services of a legal representative at any stage of the asylum process, to assist him or her in exercising his or her rights under this Act;
- D. contact UNHCR throughout the course of proceedings under this Act;
- E. a reasonable time to prepare his or her case and collect evidence to support his or her claim;
- F. have his or her personal data maintained in a secure and confidential manner in conformity with the other provisions of this Act;
- G. the right to appeal a decision to deny, cancel, revoke or cease refugee status or humanitarian protection made by the **insert competent authority for adjudication of applications for asylum** to a higher authority or body of the Ministry of **insert competent ministry**, in conformity with Article 18 of this Act; and
- H. the right to judicial review of a decision of the **insert competent authority for adjudication of applications for asylum** in conformity with Article 19 of this Act.

Article 23. Children. Where proceedings under this Act pertain to child asylum-seekers who are principal applicants rather than dependent family members of an adult principal applicant, the child asylum-seeker shall also be entitled to ---

- A. be assigned a suitably qualified legal representative and a guardian if he or she is unaccompanied by a parent or an adult acting as a legal guardian, at no cost to the child;
- B. participate and be heard in the procedures;
- C. have their cases be decided on a priority basis;
- D. have their vulnerability, age and mental maturity be taken into account in the assessment of their claims;
- E. have the right to be registered and interviewed using techniques that are sensitive to their status as children; and
- F. have their best interests considered when making a determination.

Article 24. Asylum-seekers with special needs. Other asylum-seekers who demonstrate special needs during the application process that could affect their ability to access asylum procedures – including, but not limited to, survivors of violence and torture, asylum-seekers with physical disabilities or mental health issues, and female asylum-seekers – shall have access to procedures that take their special needs into account, including by accommodating requests for interviewers and interpreters of a particular gender, providing facilities for interviews that are accessible to people with disabilities, and other accommodations as reasonably necessary to allow access to asylum procedures.

SECTION V: RIGHTS AND DUTIES OF ASYLUM-SEEKERS AND REFUGEES IN (NAME OF COUNTRY)

Article 25. Right to family unity. As the family is the natural and fundamental group unit of society and is entitled to protection by society and the state, the dependent family members of an asylum-seeker or refugee in (name of country) shall have the same rights as that asylum-seeker or refugee under this Act. A refugee shall be entitled to a mechanism for his or her dependent family members outside the national territory of (name of country) to petition to join him or her in (name of country) within a reasonable time after his or her recognition as a refugee under this Act.

Article 26. Complementarity with other rights and benefits. The rights and treatment that an asylum-seeker, refugee or stateless person shall be entitled to under this Act shall be the basic standard and shall not preclude or terminate their ability to access other rights or benefits by virtue of their status as persons who are also, among other things, a spouse, child or parent of a citizen of (name of country), or a legal resident of (name of country), or otherwise a foreign national who meets the criteria for another form of more preferential treatment under the immigration and nationality laws of (name of country).

Article 27. Right to documentation. The competent authorities shall issue ---

- A. a document to an asylum-seeker and each of his or her dependent family members to identify them as asylum-seekers and to facilitate the exercise of their rights under this Act;
- B. an identity document to a refugee and each of his or her dependent family members, which need not identify them as refugees, but which shall facilitate the exercise of their rights under this Act; and
- C. a travel document to a refugee and each of his or her dependent family members, in accordance with the provisions of Article 28 of the 1951 Refugee Convention, which shall allow for their travel outside of and return to the national territory of (name of country).

Article 28. Protection from expulsion or return (*refoulement*). In accordance with the principle of non-*refoulement*, no person shall be expelled from within the territory or from a border or port of entry of (name of country), or returned in any manner whatsoever to the frontiers of a territory where ---

- A. his or her life or freedom would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion;
- B. his or her life or security would be threatened by generalized violence, foreign aggression, internal conflict, massive violations of human rights or events seriously disturbing public order; or
- C. there are substantial grounds for believing that he or she would be in danger of being subjected to torture or any cruel, inhuman or degrading treatment.

Article 29. Non-penalization for illegal entry or presence. No asylum-seeker or refugee shall be detained or otherwise penalized solely on account of his or her

illegal entry or presence in (name of country), in accordance with the provisions of Article 31 of the 1951 Refugee Convention.

Article 30. Non-penalization for being the object of illegal smuggling of migrants. No asylum-seeker or refugee shall be penalized for having been the object of illegal smuggling of migrants as per Articles 5 and 6 of the Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organized Crime.

Article 31. Legal residence. An asylum-seeker and his or her dependent family members who are present in (name of country) shall be granted leave to remain for an initial period of 90 days upon filing an application for asylum, which shall be renewed until a final decision is reached on his or her application for asylum; and a refugee and his or her dependent family members who are present in (name of country) shall be granted legal residence for an initial period of 2 years upon being recognized as refugees, which shall be renewed for a period of 5 years and then every 5 years thereafter while the refugee remains in (name of country) until he or she voluntarily avails himself or herself of the option of naturalization.

Article 32. Naturalization. A refugee and his or her dependent family members shall have access to expedited naturalization proceedings at reduced cost in accordance with Article 34 of the 1951 Refugee Convention.

Article 33. Employment. An asylum-seeker shall be granted authorization to engage in wage-earning employment or self-employment for an initial period of 90 days upon filing an application for asylum, which shall be renewed every 90 days until a final decision is reached on his or her application for asylum. A refugee shall be granted authorization to engage in wage-earning employment or self-employment for an initial period of at least 2 years upon being recognized as a refugee, which shall be renewed every 2 years thereafter, with their treatment in other matters regarding business ownership and the exercise of a profession in (name of country) to be in accordance with Articles 17, 18 and 19 of the 1951 Refugee Convention.

Article 34. Education. All asylum-seekers, refugees and stateless persons under the age of 18 shall be provided with free access to public primary and secondary education, and shall not be discriminated against in enrollment on the basis of their status as asylum-seekers, refugees or stateless persons, on the basis of their lack of a form of documentation that may be required of other foreign nationals or citizens, or on the basis of any other ground articulated in Article 13 of this Act.

Article 35. Access to public services and social security. A refugee shall have the same treatment as that accorded to citizens of (name of country) with regard to access to public relief and assistance, labour protection and unemployment compensation, and social security benefits, in accordance with Articles 23 and 24 of the 1951 Refugee Convention.

Article 36. Access to courts and legal assistance. An asylum-seeker or refugee shall have free access to the courts of law of (name of country), and shall enjoy the same treatment as nationals with regard to access to legal assistance and the payment of legal fees for judicial proceedings.

Article 37. Freedom of movement and non-detention. An asylum-seeker or refugee shall have the right to choose his or her place of residence and to move freely within the national territory, subject only to any regulations or restrictions applicable to other foreign nationals who are legal residents of (name of country), and shall not be subjected to detention on the basis of his or her status as an asylum-seeker or refugee or as a form of punishment for his or her illegal entry or presence in the territory, in conformity with Article 29 of this Act and Article 31 of the 1951 Refugee Convention.

Article 38. Freedom of association. An asylum-seeker or refugee shall have the same rights as other foreign nationals with regard to membership in and association with non-political and non-profit associations and trade unions.

Article 39. Obligations. An asylum-seeker, refugee or stateless person shall be required to comply with the laws and regulations of (name of country) insofar as they do not contradict with any of the rights of the asylum-seeker, refugee or stateless person under the 1951 Refugee Convention and any other human rights instruments applicable to (name of country).

Article 40. Other rights. Asylum-seekers, refugees and stateless persons shall enjoy the free exercise of all other rights due to them under the 1951 Refugee Convention, the laws of (name of country) and other international human rights instruments applicable to (name of country).

ⁱ There are many different ways that procedures could be established. Either new institutions could be created and/or existing individuals or institutions could be delegated new authorities to perform the functions of this Act, including, but not limited to, the following scenarios ---

Scenario 1: A Refugee Eligibility Commission will be established as the “competent authority for adjudication of applications for asylum,” and will be composed of 3 representatives, 1 each from the Ministry of XXX, the Ministry of YYY, and the Ministry of ZZZ, each with vote and voice. The Refugee Unit within the Immigration Division of the Ministry of XXX will act as the “competent authority for interviews and assessments” to process the asylum claim, including performing the personal interview of the asylum-seeker, writing an assessment and recommendation on the case, and compiling all documentation. Decisions will be made by majority vote of the Refugee Eligibility Commission. UNHCR may be invited to participate in the Refugee Eligibility Commission in an advisory capacity, with voice but no vote.

Scenario 2: A representative of the Ministry of XXX will be the “competent authority for adjudication of applications for asylum.” The Refugee Unit within the Immigration Division of the Ministry of XXX will act as the “competent authority for interviews and assessments” to process the asylum claim, including performing the personal interview of the asylum-seeker, writing an assessment and recommendation on the case, and compiling all documentation. UNHCR may be invited to provide its technical advice on the processing of asylum claims to the Refugee Unit and/or the representative of the Ministry of XXX.