

Resolution 6/2002

REFUGEE PROCEDURES

DECLARATION ON INTERNATIONAL MINIMUM STANDARDS FOR REFUGEE PROCEDURES

The 70th Conference of the International Law Association held in New Delhi, India, 2-6 April 2002:

RECALLING article 14 of the 1948 Universal Declaration of Human Rights and the right of everyone to seek and to enjoy in other countries asylum from persecution,

RECALLING FURTHER the obligations assumed by States parties to the 1951 Convention and 1967 Protocol relating to the Status of Refugees, the 1984 United Nations Convention on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and other universal and regional human rights conventions, particularly in regard to the procedural standards,

BEARING IN MIND the fundamental obligation of States not to return (*refouler*) a refugee in any manner whatsoever to a country in which his or her life or freedom may be threatened for reasons of race, religion, nationality, membership of a particular social group or political opinion, or in which he or she may be at risk of torture,

NOTING that the obligations assumed under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees will be effectively implemented only if States take the necessary steps to identify those who should benefit, in particular, from the status of refugee and the principle of *non-refoulement*,

RECALLING the principles of due process recognized by States at universal and regional level, and in their constitutions and legal systems,

RECALLING that everyone whose human rights are violated or in danger of violation is entitled to an effective remedy, and that this right should be available also to ensure that no person entitled to international protection is returned or sent to a territory in which he or she is at risk of persecution or other relevant harm,

NOTING ALSO the importance of ensuring access, for all persons seeking international protection, to fair and efficient procedures for the determination of refugee status,

DECLARES the following minimum standards of international law for incorporation in all States in which individuals and groups may seek international protection:

Access to procedures

1. Everyone seeking international protection as a refugee outside his or her country of origin and in accordance with the relevant international instruments should have access to a fair and effective procedure for the determination of his or her claim.

2. Access to refugee status procedures and the benefit of refugee status should be granted without discrimination as to racial or ethnic origin, religion or belief, disability, sex, status, or country of origin.
3. Admissibility to the refugee determination procedure may be limited or excluded where effective international protection has been granted in another State, or where another State has assumed responsibility for deciding the claim; such exceptions shall be provided by law. The application of admissibility criteria is without prejudice to the fundamental principles of protection and *non-refoulement*.
4. Agreements between States on the attribution of responsibility to determine claims to international protection or on the readmission of foreign nationals are without prejudice to the principle of individual and joint responsibility for the implementation of the principle of *non-refoulement* and should clearly provide for access to a fair and efficient procedure by any individual who seeks international protection.
5. No one who seeks asylum at the border or in the territory of a State shall be rejected at the frontier, or expelled or returned in any manner whatsoever to any country in which he or she may be tortured or subjected to inhuman, cruel or degrading treatment or punishment, or in which his or her life or freedom may be endangered for reasons of race, ethnic origin, religion, nationality, membership of a particular social group, association with a national minority, sex, language, political or other opinion, birth or other status.
6. In accordance with the provisions of the 1989 United Nations Convention on the Rights of the Child, States should make special provision for unaccompanied minors in need of protection.
7. States should take the necessary measures to ensure the sensitive handling of applications for refugee status by asylum seekers having special needs.

Procedural standards – General provisions

8. The effective identification of those entitled to international protection requires not only that claimants present their case fully and truthfully and show that they face a reasonable risk of persecution or harm, but also that States provide the opportunity to ensure that international obligations are fully implemented. To this end,
 - The relevant officials should be clearly instructed on the handling of all applications for international protection
 - Guidance should be provided to applicants, in a language which they clearly understand, on the procedure and on the opportunity to contact the Office of the United Nations High Commissioner for Refugees
 - UNHCR and other organizations working for refugees should be allowed access to persons seeking refugee status
 - Applicants should be given the opportunity of a personal interview and be examined by trained and fully qualified decision-makers, and their claims decided on an individual basis, objectively and impartially.
 - No claimant should be removed, excluded or deported from the country until a decision has been made in his or her case, subject to the provisions on appeal and suspensive effect.
9. Where a group or categories approach is adopted to facilitate the determination of status and the grant of international protection, States should ensure that no individual is excluded or rejected without an examination of the merits of his or her claim.

10. Where a State adopts an accelerated procedure for manifestly unfounded or other claims, it shall also provide appropriate guarantees, including review of negative decisions in accordance with the standards set out below.

Procedural Standards – Hearing and determination of claims

11. Every applicant for international protection is entitled,
- to the services of a competent interpreter, wherever necessary;
 - to legal advice or representation, if possible without cost;
 - to a full opportunity, through interview and hearing, to present his or her claim;
 - to present evidence relating to his or her personal circumstances and to the conditions in his or her country of origin; and
 - to know the evidence that may be used in the determination of his or her claim, and to have access to that information.
12. Every decision on an application for protection shall be based on evidence presented at the determination, and which is found to be credible and trustworthy. Reasons for the decision in fact and law shall be given in writing, and shall be communicated to the claimant in a language which he or she understands, together with information and advice on how to make an appeal.

Procedural standards – Appeal and review

13. Negative decisions on applications for refugee status shall be subject to appeal or review by an independent body on matters of fact and law. Every applicant for protection shall be advised of his or her rights and of the procedure to be followed.
14. A State may by law limit the right of appeal or review in cases that have been determined by the authority described in paragraph 1 to be manifestly unsupported by objective evidence or an abuse of the right of asylum.
15. Procedures for appeal or review may be accelerated or shortened in cases clearly defined by law and where reasonably necessary in a democratic society. The right of the individual to an effective remedy requires in principle that appeal or review proceedings should have suspensive effect in regard to the implementation of any measure of expulsion or removal. Wherever suspensive effect is denied, the person concerned should have the right to apply for permission to remain pending the outcome of an appeal.
16. In accordance with the principle of the rule of law, the decisions and procedures of refugee determination bodies and appeal authorities should be subject to the controlling supervision of the courts.