



**A PHASED APPROACH TOWARDS
THE ESTABLISHMENT OF A
NATIONAL POLICY TO ADDRESS REFUGEE AND ASYLUM MATTERS
IN THE
REPUBLIC OF TRINIDAD AND TOBAGO**

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SECTION 1: INTRODUCTION

Located between the Caribbean Sea and the North Atlantic Ocean and only seven nautical miles from the South American mainland, Trinidad and Tobago is geographically predisposed to receiving migratory arrivals of undocumented persons into its territory from the South American mainland. Over the past ten (10) years, Trinidad and Tobago has received upwards of three hundred (300) asylum-seekers, coming from over thirty (30) countries, predominantly from Africa. A smaller but significant number of asylum-seekers originate from Asia, the Middle East and from countries within the Americas.

Trinidad and Tobago is Party to the 1951 Convention Relating to the Status of Refugees (hereinafter referred to as “the 1951 Convention”) and the 1967 Protocol Relating to the Status of Refugees (hereinafter referred to as “the 1967 Protocol”). By acceding to the two international instruments that govern the treatment of asylum seekers and refugees, Trinidad and Tobago acknowledged the vulnerability of refugees and the role that the international community plays in the protection of the rights of refugees. However, this country does not have an established Refugee Status Determination (RSD) mechanism to process refugee claims.

The Office of the United Nations High Commissioner for Refugees (UNHCR), operating under its mandate, has been registering and conducting RSD and assisting those who are recognised refugees to resettle in third countries. It is however imperative that, in compliance with its international obligations under the 1951 Convention and the 1967 Protocol, Trinidad and Tobago establishes a mechanism to differentiate the categories of persons arriving in the country and, more importantly, identifies persons in need of international protection.

This Policy frames the approach that Trinidad and Tobago will adopt to address asylum-seekers and refugees in the country. The execution of the provisions of this document will require the support of all stakeholders in matters contributing to the RSD mechanism, the privileges to be extended to refugees and asylum seekers, and the subsequent voluntary repatriation, local integration or resettlement in a third country.

Basis for a Refugee Status Determination Mechanism

International legal instruments, the Constitution of the Republic of Trinidad and Tobago, as well as national laws serve as a solid basis for the establishment of a refugee status determination mechanism in Trinidad and Tobago, pending the adoption of new enabling legislation.

SECTION 2: DEFINITIONS AND GENERAL PRINCIPLES

Definitions

Asylum-seeker: a person who has fled his country of origin or habitual residence and would like to be granted refugee status, or a person who has applied for protection as a refugee and is awaiting his determination status.

Child: a person under the age of eighteen years; (Definition taken from the Children Act, 2012 – not yet proclaimed).

Dependant: a person who being a member of the same household of the asylum seeker related by blood or affinity and is financially dependent on the asylum seeker.

Durable solutions: means the three solutions as identified by the UNHCR by which a State or organisation can help a refugee to rebuild their lives in dignity and peace. These are:

- (i) voluntary repatriation;
- (ii) local integration; and
- (iii) resettlement in a third country.

Eligibility Committee: a committee comprising suitably trained immigration officers, police officers, representatives from the International Law and Human Rights Unit at the Ministry of the Attorney General, the Consular Division at the Ministry of Foreign Affairs, Implementing Partner and a Non-Governmental Organisation (NGO).

Implementing Partner: The organisation selected by the UNHCR in a member state which counsels, guides, screens, interviews, provides material assistance (including shelter, food, medical care, etc.) to, and visits (at home and in detention) asylum-seekers and refugees and assists the latter with finding durable solutions to their problems.

International protection: *“all actions by Governments aimed at ensuring the equal access to and enjoyment of the rights of women, men, girls and boys, in accordance with the relevant bodies of law (including international humanitarian, human rights and refugee law” (UNHCR, 2005).* It includes, inter alia:

- Promoting the application of international conventions for the protection of refugees, to ensure refugees are identified and accorded appropriate status and standards of treatment in their countries of asylum;
- Ensuring, with and through national authorities, the safety and well-being of refugees in countries of asylum;
- Ensuring the needs of refugee children, refugee women and refugee men are met, including in particular the special needs of victims of violence, women who are single heads of household, elderly refugees, and child refugees who have been forcibly recruited as child soldiers and/or separated from their families; and

- Facilitating, assisting and monitoring the safety and dignity of voluntary repatriation when this becomes feasible.

Living Water Community (LWC): currently the Implementing Partner of the UNHCR in Trinidad and Tobago.

Refugee: a person who, owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

Spouse: means the husband to a married woman, or the wife to a married man, and also includes a cohabitant within the meaning given under the Cohabital Relationships Act, Chap. 45:55 of the Laws of Trinidad and Tobago.

UNHCR: the United Nations High Commissioner for Refugees, the UN Refugee Agency created in 1951 with a mandate to provide protection and to search for durable solutions for refugee problems. Under Article 35 of the 1951 Convention, States are called upon to cooperate with UNHCR on asylum and refugee matters. UNHCR's mandate has been extended by the UN General Assembly to cover, among other issues, statelessness and internal displacement.

UNHCR Honorary liaison: a "representative" of UNHCR in a country where UNHCR has not established a formal presence. The representative is a selected member of society, whose work/vocation is related to protection and who has a special interest in working on a voluntary basis to assist refugees and other persons of UNHCR concern.

General Principles

Principle of Confidentiality

International human rights law guarantees everyone the right to privacy and protects individuals from arbitrary or unlawful interference. This means that effective measures need to be taken to ensure that information concerning a person's private life does not reach the hands of third parties that use such information for purposes incompatible with human rights law. The consent of the asylum-seeker/refugee is necessary before the individual's information can be shared with other parties.

Principle of Fair, Efficient and Expeditious adjudication of claims

A fair and efficient asylum adjudication system provides the most effective means to identify those in need of international protection and safeguard the integrity of the adjudication process itself. A single, centralised and non-adversarial asylum system with clear and well-accepted eligibility criteria, well-trained adjudicators and the opportunity for independent review of every decision underpins this determination process. Such a

system is equipped to adjudicate asylum requests expeditiously without sacrificing quality and best ensures that those in need of protection receive it and that those who are not, would be identified.

Principle of Family Unity

A principle that gives effect to the protection of the family as the natural and fundamental unit of society. Under this principle, refugee status may be granted to the spouse, children and dependants of a person who meet the refugee criteria. When spouses and dependants acquire refugee status by application of the principle of family unity, they are said to enjoy derivative status. Family members, who have been granted derivative refugee status, are entitled to join the principal asylum seeker, in the country of asylum (family reunification can be facilitated and funded, if necessary, by UNHCR).

Principle of non-refoulement

The principle of non-refoulement has attained the status of customary international law and prohibits countries (even those that are not Party to the 1951 Convention) from expelling or returning a person, in any manner whatsoever, to a place where his life or liberty would be endangered. This principle ensures non-rejection at frontiers without access to fair and effective procedures for determining status and protection needs.

Principle of non-detention

Article 21 of the 1951 Convention stipulates, that Contracting States shall not impose penalties on account of the illegal entry or presence of refugees. As a general rule, an asylum seeker should not be detained as detention should be considered as a measure of last resort. There are four general exceptions under international law to the non-detention rule. These are:

- (i) to verify identity;
- (ii) to determine elements on which the claim for refugee status or asylum is based;
- (iii) in cases where asylum-seekers have destroyed their travel and/ or identity documents or have used fraudulent documents in order to mislead the authorities of the State in which they intend to claim asylum; and
- (iv) to protect national security and public order.

Where detention is required, an asylum seeker should be provided with the reason for detention and should be granted the ability to challenge the detention order.

The authorities must ensure that a detention order is issued by the relevant authority who may commit the person to a place of detention for a period not exceeding ten (10) days or release the person unconditionally or on condition that the person resides or remains in a particular district or place in Trinidad and Tobago; that he/she reports to a specified police station or immigration officer at specified intervals; and/or he/she surrenders any passport or travel document in his possession. If detained, the asylum seeker should be housed in a detention centre and must not be imprisoned with convicted persons.

SECTION 3: INTERNATIONAL LEGAL INSTRUMENTS

International Refugee Law

There are two international legal instruments that serve as the bedrock of international refugee law, namely the:

- 1951 Convention; and
- 1967 Protocol.

The 1951 Convention and the 1967 Protocol embody the principles upon which the system of international protection rests. These texts set forth precisely the rights and obligations of refugees in the country of asylum.

Trinidad and Tobago acceded to this Convention and its Protocol in November 2000.

International Human Rights Instruments

There exists a panoply of international instruments which enunciate innumerable legal principles aimed at protecting human rights, among these are the:

- Universal Declaration of Human Rights (1948);
- International Convention on the Elimination of All Forms of Racial Discrimination (1965);
- International Covenant on Civil and Political Rights (1966);
- International Covenant on Economic, Social and Cultural Rights (1966);
- United Nations Convention on the Elimination of Discrimination Against Women (1979);
- and
- United Nations Convention on the Rights of the Child (1989).

Trinidad and Tobago has signed and ratified all of these Instruments.

SECTION 4: NATIONAL LEGAL INSTRUMENTS AND POLICY DECISIONS

The Constitution of the Republic of Trinidad and Tobago

Section 4 of the Constitution (Recognition and Declaration of Rights and Freedoms) provides for recognition of a number of fundamental human rights and freedoms without discrimination based on “race, origin, colour, religion or sex.” Of particular relevance are **Section 4 (a) and (b)** which afford the right to “life, liberty, (and) security of the person,” and “the right of the individual to equality of treatment from any public authority in the exercise of any functions.”

In addition, **Section 5** (Protection of Rights and Freedoms) affirms that all persons must be guaranteed adjudication of matters before the appropriate tribunal in a manner that respects human rights and freedoms provided for in the Constitution. This includes the prohibition of arbitrary arrest and detention, as well as the right to an interpreter, to name a few. Where such rights have been deprived, **Section 14** (Enforcement of the Protective Provisions) guarantees access to the High Court to review complaints.

Cabinet Decision

Cabinet in Minute No. 4809 dated November 16, 1979, agreed that:

- (i) Requests for the granting of refugee status on political or economic grounds continue to be dealt with under the appropriate sections of the Immigration Laws of Trinidad and Tobago governing the grant of resident status;
- (ii) Cases of refugees from natural disasters be left open and be decided, when need arises, on the basis of the circumstances prevailing in Trinidad and Tobago at the particular period in time.

The Immigration Act

Part II of the Immigration Act, Chapter 18:01, including **Sections 12-27**, outlines responsibilities and procedures of Immigration Officers. These sections might reasonably be interpreted to incorporate screening and other procedures necessary for the adjudication of refugee claims, particularly under the mandate of Special Inquiry Officers. In addition, **Section 10** (Entry Under Permit) provides the Minister broad discretion to grant entry to Trinidad and Tobago to any person. Finally, **Section 17** (Conditional Release) allows the Minister the authority to grant conditional release or orders of supervision to persons detained.

The Immigration Regulation (subsidiary legislation)

In the event a deportation order is issued against an asylum seeker or potential refugee, **Regulation 28 (I)** (Execution of Order) provides that:

(b) in the case of any other person who was not a resident at the time of the making of the order of deportation, having regard to:

- (i) the existence of reasonable grounds for believing that if execution of the order is carried out the person concerned will be punished for activities of a political character or will suffer unusual hardship; or*
- (ii) the existence of compassionate or humanitarian consideration that in the opinion of the Minister warrant the granting of special relief.*

The Minister may direct that the execution of the deportation order be stayed, or may quash the order and direct the entry of the person against whom the order was made.

Subsequently, according to **Regulation 28 (4)** (Quashing of deportation order after stay of execution), the Minister may, at his discretion, grant temporary or long-term entry to such persons. Furthermore, **Regulation 18 (2-3)** (Terms of stay of execution) provides an additional avenue for the Minister to, at his discretion, stay orders of deportation and permit entry to persons of concern, whereas **Regulation 29** (Order of release) outlines procedures for release from detention pending adjudication of immigration appeal matters.

Trafficking in Persons Act

Where trafficked victims seek asylum, the Trafficking in Persons Act, 2011 (Act No. 14 of 2011) may serve the dual purpose of providing an additional layer of protection for such individuals. **Section 6** of the Act provides broad authority to a National Task Force to develop and implement policy in collaboration with members of civil society, foreign governments and other relevant actors. In **Section 12 (1)** the Counter-Trafficking Unit (CTU) is tasked with, among other functions, screening potential victims and investigating trafficking claims. Such provisions can be interpreted to incorporate, at a minimum, measures that allow for identification and referral to the appropriate authorities of potential asylum cases.

SECTION 5: REFUGEE STATUS DETERMINATION PROCEDURE

Given that Trinidad and Tobago has neither a national legal framework on asylum and refugee matters nor trained personnel to process claims of persons who purport to be fearful of persecution or were subjected to serious violations of human rights in their countries of origin or habitual residence, a three (3) phased strategy to refugee status determination is highly recommended for implementation.

The phased strategy will allow for the transfer of knowledge and expertise on refugee status determination to Trinidad and Tobago through training provided by the UNHCR. During such time, the Government of Trinidad and Tobago would develop adequate institutional processes in order to treat with asylum and refugee cases.

PHASE 1: UNHCR LEADS THE REFUGEE STATUS DETERMINATION (RSD) PROCEDURE IN COLLABORATION WITH THE GOVERNMENT OF TRINIDAD AND TOBAGO

This phase should be limited to a duration of twelve months from the agreed upon date of commencement. The procedure outlined has been articulated in the “Ad Hoc Procedure Document for determination of Refugee Status under the 1951 Convention and the 1967 Protocol” drafted by officials of the International Law and Human Rights Unit of the Ministry of the Attorney General, pending the enactment of legislation.

The Document calls, *inter alia*, for:

- (i) Immigration Officers and law enforcement officials to be made aware of the need to be sensitive to any expression of fear of being returned or of harm on return on the part of a foreign national, this may signal an asylum claim;
- (ii) Immigration Officers and law enforcement officials to be trained to recognise such signals, and to gather further information, such as, country of origin, language spoken, need for an interpreter and purpose of the presence of the individual in Trinidad and Tobago; and
- (iii) An interview of the asylum-seeker to be conducted as soon as reasonably possible.

There is a need for special procedures to be adopted and implemented by personnel with specialised training when dealing with persons with special needs (for example unaccompanied minors/separated children, pregnant and lactating women, persons with physical/mental disabilities, the elderly, persons who require urgent medical assistance, etc.). The UNHCR will provide specialised training sessions on international refugee protection, international human rights law, international humanitarian law, credibility assessment, interviewing techniques, cross-cultural communication, etc.

Scenario I

There are times when asylum seekers due to various reasons present themselves first to the Honorary Liaison. In this scenario, the following steps are recommended:

- the LWC will register the asylum-seeker and conduct an initial screening within three (3) days of receiving the asylum seeker;
- the LWC will present the asylum seeker to the Immigration Division within one (1) day of the initial screening;
- the Immigration Division will register the asylum-seeker and issue an Order of Supervision;
- the Ministry of Foreign Affairs will be informed by the Immigration Division accordingly;
- the LWC will assess the needs of the individual and assist, where necessary;
- the LWC will refer the asylum claim to the relevant section of the UNHCR Regional Office in Washington, D.C.; and
- the UNHCR will make arrangements to interview the asylum seeker, and present its findings to the Immigration Division within sixty (60) working days from the date of the transmission of the asylum claim by the LWC.

Scenario II

Should the asylum seeker be brought to the attention of the Immigration Division, in the first instance, the Division would arrange for immediate accommodation and within three (3) days arrange for initial screening. Thereafter:

- Immigration Division will register the asylum-seeker, determine whether detention is necessary or issue an Order of Supervision;
- Immigration Division will inform the LWC of the application for asylum;
- LWC will register the asylum seeker and begin process of determination;
- Ministry of Foreign Affairs will be informed by the Immigration Division accordingly;
- LWC will assess the needs of the individual, provide accommodation and assist where necessary;
- LWC will refer the asylum claim to the relevant section of the UNHCR Regional Office in Washington, D.C.; and
- UNHCR will make arrangements to interview the asylum seeker and present its findings within sixty (60) working days to the Immigration Division from the date of the transmission of the asylum claim by the LWC.

PHASE 2: THE GOVERNMENT LEADS THE REFUGEE STATUS DETERMINATION (RSD) PROCEDURE, WITH THE INVOLVEMENT OF UNHCR.

The duration of this phase should be twelve months, as recommended. During this period, Trinidad and Tobago would be expected to enact legislation on refugees.

The Government would formally establish the Eligibility Committee, which shall have responsibility for processing asylum applications. This decision should be made ideally at the time of the adoption of Phase 1.

The Eligibility Committee

The Eligibility Committee will:

- (i) operate under the responsibility of the Immigration Division;
- (ii) be responsible for processing asylum applications, liaising with the UNHCR and the LWC;
- (iii) communicate its recommendations to the Minister in charge of refugee matters and forward the RSD decision to the asylum seeker.

The details of the composition and functions of the Eligibility Committee will be determined during Phase 1. The two Non-Governmental Organisations will be granted observer status.

The procedures followed during Phase 1 will also be followed during this phase, with the exception that the asylum claim will be submitted to the Eligibility Committee¹ for adjudication. In making its determination advice may be sought from the UNHCR.

Where requested, the UNHCR will be required to provide an advisory opinion within thirty (30) days of such a request. At the end of the thirty (30) days, the Eligibility Committee's recommendation will be transmitted to the Minister, with or without the UNHCR's advisory opinion. The Eligibility Committee may also decide not to seek the UNHCR's advisory opinion on refugee claims.

PHASE 3: THE GOVERNMENT CONDUCTS THE REFUGEE STATUS DETERMINATION (RSD) PROCEDURE

The procedures followed for the identification, registration, screening and referral of asylum applications will be implemented during this phase. The Government operating through the Eligibility Committee will have exclusive and sole responsibility for the adjudication of all asylum claims.

The UNHCR/LWC will participate in the deliberations of the Eligibility Committee, as observers, with relevant excerpts of refugee claims shared with the UNHCR/LWC prior to the RSD sessions.

The UNHCR will continue to collaborate with the Government by providing technical advice and support, as well as, training and building the capacity of agencies and individuals to address matters pertaining to asylum, refugee and statelessness.

It is expected that during this Phase:

- Trinidad and Tobago would have enacted legislation and corresponding administrative regulations on asylum and refugee matters;

¹While the committee may consist of six or seven members, a quorum of three or four members present should be set, to ensure that decisions can go forward even if all members cannot attend each meeting. The committee would only meet when it has recommendations to consider.

- Immigration Officers, Police Officers, Coast Guard Officers and Magistrates would be trained to recognise the potential for an asylum claim, even in a situation of mixed migratory flows, by asking pertinent questions that enable the person to give reasons for leaving their country and for fearing, if at all, to return there;
- the UNHCR will continue to organise training on international refugee protection for members of the Eligibility Committee, as well as, for those who deal directly with asylum-seekers and refugees;
- public awareness programmes would be implemented to sensitise the general public to the situation, condition and rights of refugees generally;
- the UNHCR would also assist with building the capacity of the division/section of the Immigration Division that has responsibility for asylum and refugee issues;
- a “Refugee Unit” or Refugee Office” within the Immigration Division would be established based on the volume of cases during the first two phases; and
- both the UNHCR and the Government of Trinidad and Tobago would contribute to the funds of the Implementing Partner for the care and maintenance of asylum-seekers and refugees in Trinidad and Tobago, to the extent that such support is required.

SECTION 6: GENERAL CONSIDERATIONS

Recognition of a Refugee

Once UNHCR's assessment and findings are completed, it should be sent to an Eligibility Committee. This Eligibility Committee should comprise suitably trained immigration officers, police officers, representatives from the International Law and Human Rights Unit at the Ministry of the Attorney General, the Ministry of Foreign Affairs, and UNHCR/Living Water Community and one other Non-Governmental Organisation (NGO). The Eligibility Committee will establish its own rules of procedure.

If the Eligibility Committee recommends that the individual should be recognised as a refugee and the Minister agrees, the Minister should issue a permit under **Section 10** of the Immigration Act, Chap.18:01. This permit should include appropriate conditions, including work authorizations and length of permitted stay. (See the recognised refugee's entitlements below.)

It is recommended that recognized refugees be entitled to the following:

- A permit authorising stay in country;
- Work authorisation;
- Identity papers;
- Travel Document, if he/she does not already have a valid one;
- Public assistance, if he/she is unable to work and is needed of it;
- Medical care as needed;
- Freedom of movement as any national;
- Family reunification;
- Educational opportunities and recreational activities, if a child;
- Counselling for trauma or other psychological issues, if necessary; and
- The right not to be expelled from the country (unless the refugee poses a threat to national security or the public order).

Denial of Recognition

Where the Minister denies the application, either on the recommendation of the Eligibility Committee or his/her own discretion, the reasons for denial should be provided to the asylum-seeker, with a copy to UNHCR/LWC. The asylum-seeker would then be required to leave the country in accordance with the Immigration Act.

Judicial Review

Where the Minister denies an application and the asylum-seeker is required to leave the country, the asylum-seeker should then be informed of his right to apply to the High Court for judicial review of the Minister's decision, in accordance with the *Judicial Review Act, Chap. 7:08*. Under the *Judicial Review Act*, the asylum-seeker must first seek the permission of the Court to make a claim for judicial review. Once permission is granted, the Minister may grant the asylum-seeker permission to remain in Trinidad and Tobago until the proceedings before the Court have completed. In addition, the asylum-seeker should also be

advised of his options for accessing legal aid under the *Legal Aid and Advice Act, Chap. 7:07*, for the purpose of facilitating an action in judicial review.

Where in judicial review proceedings, the Court finds in favour of the asylum-seeker, the Court shall order that the Minister's decision be quashed and that the Minister reconsider the matter in accordance with the decision of the Court.

Appeals in relation to Judicial Review Proceedings

Where the Court affirms the decision of the Minister to deny the application and dismisses the matter, the asylum-seeker may be treated as required by the Immigration Act. In these circumstances, the asylum-seeker, should be informed of his right to appeal the Court's decision, in accordance with the *Judicial Review Act*. Once, the appeal is filed, the High Court or the Court of Appeal, may order a stay of execution pending the outcome in the Court of Appeal, consistent with the *Civil Proceedings Rules 1998*. If the appeal to the Court of Appeal fails as in relation to the asylum-seeker, he should then be informed of his right to appeal to the Privy Council. Appeals to the Privy Council shall be made in accordance with the *Supreme Court of Judicature Act, Chap. 4:01*.

Once all the appeals and proceedings in relation to judicial review have been exhausted, the asylum-seeker is required to leave the country in accordance with the Immigration Act. As a final option, the asylum-seeker may be given the opportunity to access the services of the International Organization for Migration (IOM) in relation to its Assisted Voluntary Return (AVR) Programme, to facilitate return to his country of origin

SECTION 7: CONCLUSION

States are answerable for the observance of human rights and are required to comply with the legal norms and standards enshrined in international human rights instruments.

Under international law, it is the responsibility of the state to promote and protect human rights. This means that states cannot curtail nor interfere with the rights of an individual, and must also take action to protect those rights from being violated by other parties. The state is obligated to observe the principles of accountability and the rule of law to ensure the protection of refugees and asylum seekers.