

REFUGEE POLICY

PART I

The Government is committed to ensuring that Jamaica adheres to its obligations under the 1951 Convention Relating to the Status of Refugees ("the Convention") and the 1967 Protocol Relating to the Status of Refugees ("the Protocol"), and that those who are fleeing persecution are given the protection they need.

As party to the Convention, Jamaica has an obligation to consider all applications for refugee status made in the country. Each application for refugee status is considered on its individual merit to determine whether the applicant has demonstrated a well-founded fear of persecution in his or her country of nationality for reasons of race, religion, nationality, membership of a particular social group or political opinion.

1. OBJECTIVE

The objective of the Refugee Policy is to ensure that Jamaica meets its obligations under the Convention and the Protocol. The Policy establishes procedures for managing the refugee status determination process.

PART II

PRINCIPLES

2. Refugee Status

In accordance with Article 1A(2) of the Convention, a person qualifies for refugee status for the purposes of this Policy if:

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

¹ Jamaica acceded to the Convention on 30 July 1964 and to the Protocol on 30 October 1980.

3. Application for Refugee Status

- a) To be eligible to apply for refugee status, a person shall be in Jamaica at the time of making the application.
- b) Where a person has indicated to an immigration official or a member of the Jamaica Constabulary Force (JCF), a desire to seek refugee status in Jamaica, he or she shall be afforded the opportunity to submit an application in the manner prescribed.
- c) The immigration status of the individual shall not affect the submission of an application for refugee status in Jamaica.
- d) Persons already holding refugee status, or similar protection, granted by another country shall not be considered for refugee status in Jamaica.

4. Treatment

- a) The relevant provisions of this Policy shall be applied to persons applying for refugee status without discrimination as to race, gender, religion, nationality or political opinion.
- b) Persons applying for refugee status shall be treated in a manner consistent with internationally recognized human rights standards.
- c) The grant of refugee status shall be determined in accordance with established procedures.
- d) No person applying for refugee status may be removed from Jamaica until his/her application has been finally determined.
- e) Notwithstanding paragraph (d) above, a person applying for refugee status to whom the exclusion clauses of the Convention apply, may be deported or removed at any time, once the information becomes known, in accordance with the provisions in Part VI below.
- f) Once an applicant is granted refugee status, the State has a responsibility to facilitate his or her access to social and welfare services.

PART III

REFUGEE DETERMINATION PROCESS

The refugee determination process will involve three phases:

- i. Initial Screening
- ii. Eligibility Committee

and where necessary,

- iii. Refugee Review Body

Designation of Powers and Duties

The Ministry responsible for immigration matters will also be responsible for refugee matters and shall ensure the establishment of an entity within its organization for proper administration and oversight of the procedures set out in this policy.

5. Ministry Responsible for Refugee Matters

- a) The Ministry receives applications from persons applying for refugee status and facilitates access to social and welfare services that attend the grant of that status.
- b) The Permanent Secretary in the Ministry responsible for immigration matters shall receive the recommendations of the Eligibility Committee, and make a decision on the application for refugee status.
- c) The Minister responsible for immigration matters shall receive the applications for a reconsideration of decisions on refugee status.
- d) The Ministry shall endeavour to ensure the provision of adequate facilities and services for the care of persons applying for refugee status within Jamaica.
- e) Where necessary, the Ministry shall facilitate competent interpretation during the refugee determination process and the translation of application forms and any other documents submitted in support of an application that is not written in English. The interpreter/translator shall not be an official representative or an agent of the Government of the country from which the applicant claims to fear persecution.
- f) The Ministry shall establish and maintain a database listing qualified

persons who are willing to serve as interpreters and translators.

6. The Eligibility Committee

a) Composition

- i. The Committee shall be comprised of three persons who shall be senior officers in the Ministries responsible for Immigration, Foreign Affairs, and Justice.
- ii. The Committee shall be chaired by the representative designated by the Minister responsible for immigration matters.

b) Powers and Duties

The Eligibility Committee shall:

- i. Consider applications and make recommendations to the Permanent Secretary in the Ministry responsible for immigration matters on the outcome of applications for the grant, withdrawal or revocation of refugee status.
- ii. Exercise any other powers and perform any other duties that may be assigned by the Minister.

c) Meetings

- i. Meetings shall be convened by the Chairperson.
- ii. The decision of the Committee shall be adopted by a majority of votes.

7. The Refugee Review Body

a) Composition

The Refugee Review Body shall be comprised of three persons, who shall be:

- a retired Judge,
- a retired Diplomat, and
- a retired Permanent Secretary, or such other persons who have held senior public office.

b) Powers and Duties

The Refugee Review Body shall:

- i. examine the submissions of persons whose applications for refugee status have been denied by the Permanent Secretary in the Ministry responsible for immigration matters;
- ii. make recommendations as to whether the Permanent Secretary's decision shall be overturned or upheld, to the Minister responsible for immigration matters;
- iii. determine its rules of procedure;
- iv. exercise any other powers and perform any other duties that may be assigned by the Minister.

8. Secretariat

- a) All Secretariat services attendant to the refugee status determination process shall be provided by the Ministry responsible for immigration matters.
- b) The Attorney General's Chambers may be called upon throughout the refugee determination process to offer legal advice and support as may be considered appropriate.

9. Assistance from other Bodies

The expertise of the United Nations High Commissioner for Refugees (UNHCR) and any other agency or body may be called upon to assist, as required, in the refugee determination process.

PART IV

PROCESSING APPLICATIONS

10. Arrival and interview

Persons may apply for refugee status on arrival in Jamaica or subsequent to entry.

a) Application following Unauthorized Entry

- i. Where an individual is discovered on land, or where he/she arrives by sea, the JCF should be the first official point of contact. Where an individual is rescued at sea by the Jamaica Defence Force (JDF), he/she shall be entrusted to the care/custody of the JCF. The appropriate Divisional Officer of the JCF shall, where possible, language and medical condition permitting, ascertain information from the individual such as his/her name, country of origin and date of and reason for departure from his/her country.
- ii. The JCF shall inform the Ministry of National Security within twenty-four (24) hours of the arrival of such person(s). The appropriate Divisional Officer shall, where necessary make immediate contact with relief and support organizations within the parish including the medical authorities, entities responsible for children's affairs, and for disaster preparedness and emergency management.
- iii. Each person shall be assigned a case number and photographed. Adults shall be fingerprinted.
- iv. Immigration officers stationed in each parish shall interview the person(s) using the Preliminary Determination Form (PDF). The services of an Interpreter shall be utilized if required. (A copy of the PDF is attached as Appendix I).
- v. During the interview, the immigration officer shall ascertain whether the individual wishes to apply for refugee status in Jamaica.
- vi. Where the immigration officer, having interviewed the person using the PDF, has ascertained from the Form, or otherwise determined, that the person is an undesirable immigrant,² he shall at that time, pursuant to powers under the relevant immigration legislation, refuse him/her leave to remain in Jamaica and make arrangements for his/her immediate removal.
- vii. Where, on the basis of the information provided in the PDF, the immigration officer determines that the person is applying for refugee status, the applicant shall undergo a second interview by immigration officers using the Refugee Determination Form (RDF). (A copy of the RDF is attached as Appendix II).

² Refer to the Aliens Act Section 6(g), Immigration Restriction (Commonwealth Citizens) Act, section 4(h) and (i).

- viii. The immigration officer shall transmit completed application forms along with copies of all supporting documents to the Eligibility Committee as soon as possible, but no later than 10 working days after the completion of the forms.
- ix. Where it has been ascertained that the person is not applying for refugee status, the person shall be treated as an illegal immigrant in accordance with the relevant immigration legislation.
- x. Where a large number of persons have entered Jamaica over a short period of time, affecting the country's capacity to process applications in the usual manner, it may become necessary to institute such measures as are required to expedite the screening process. In such circumstances, applicants may be given a preliminary and second interview as referred to in paragraphs 10(a) iv to vii above.

b) Application at Port of Entry

- i. The Public Health authorities shall be alerted as well as other relief and support entities as may be required.
- ii. Each person shall be assigned a case number and photographed. Adults shall be fingerprinted.
- iii. Persons who apply for refugee status on entry at sea/airports, shall be interviewed by an immigration officer using the PDF. The services of an interpreter should be provided if required.
- iv. Where an immigration officer has refused a person leave to remain in Jamaica at the point of entry at the seaport or airport, and that person expresses a fear of persecution if returned to their country of origin or refuses to be returned, that person shall be interviewed by the immigration officer using the PDF.
- v. During the interview, the immigration officer shall ascertain whether the individual wishes to apply for refugee status in Jamaica.
- vi. Where the immigration officer, having interviewed the person using the PDF, has ascertained from the Form, or otherwise determined that the

person is an undesirable immigrant,³ he shall at that time, pursuant to powers under the relevant immigration legislation, refuse him/her leave to remain in Jamaica and make arrangements for his/her immediate removal.

- vii. Where, on the basis of the information provided in the PDF, the immigration officer determines that the person is applying for refugee status, the applicant shall undergo a second interview by immigration officials using the RDF.
- viii. The Chief Immigration Officer shall transmit completed application forms along with copies of all supporting documents to the Eligibility Committee as soon as possible, but no later than 10 working days after the completion of the forms.
- ix. Where a large number of persons have entered Jamaica over a short period of time, affecting the country's capacity to process applications in the usual manner, it may become necessary to institute such measures as are required to expedite the screening process. In such circumstances, applicants may be given a preliminary and second interview as referred to in paragraphs 10(a) iv to vii above, and where necessary, additional resources be deployed to facilitate the expeditious processing of the persons .

c) Application after Entry

- i. Persons who wish to apply for refugee status after a period of time in the island shall be directed to contact the Ministry responsible for immigration matters where they shall be interviewed by immigration officials, using the PDF.
- ii. Each person shall be assigned a case number and photographed. Adults shall be fingerprinted.
- iii. Where the immigration officer, having interviewed the person using the PDF, has ascertained from the form, or otherwise determined that the person is an undesirable immigrant, he shall at that time, pursuant to powers under the relevant immigration legislation, refuse him/her leave to remain in Jamaica and make arrangements for his/her immediate removal.

³ Refer to the Aliens Act Section 6(g), Immigration Restriction (Commonwealth Citizens) Act.

- iv. Where the information obtained does not lead the immigration officer to conclude that the applicant is an undesirable immigrant, the applicant shall undergo a second interview by immigration officials using the RDF.
- v. The immigration officer shall transmit the completed PDF and RDF to the Eligibility Committee for consideration within ten (10) working days.
- vi. No penalties on the account of illegal entry or presence shall be applied to persons applying for refugee status who entered Jamaica without authorization. However, any delay in presenting themselves to the authorities may be taken into account when the application is being considered.

11. Consideration of Applications

- a) A meeting of the Eligibility Committee shall be convened within a reasonable time-frame, but not exceeding one (1) month, after the receipt of application(s).
- b) The Ministry responsible for Foreign Affairs shall be requested to prepare the necessary situation brief on the country in question, for submission to the members of the Eligibility Committee at least one (1) week prior to the scheduled date of the meeting of the Eligibility Committee.
- c) Where the Eligibility Committee is satisfied that it has received all the information pertinent to the application, it shall review the information and where necessary, invite the candidate for an interview.
- d) If an applicant is to be interviewed by the Committee, he/she shall be notified in advance of the date, time and place of the interview.
- e) The notice of the interview should advise the applicant, if the first language is not English, of the fact that an interpreter shall be present at the interview.
- f) The notice should advise the applicant that if he/she does not attend the interview, the Committee may still determine the matter in his/her absence.
- g) Legal counsel for the applicant may be present during the interview in an observer capacity.

- h) The Secretariat shall produce a report summarizing the proceedings together with the recommendations of the Eligibility Committee. In the event that the legal counsel is permitted to make submissions, the report should include a summary of any submissions made by the legal counsel on behalf of the applicants.

12. Decision Regarding Application for Refugee status

- a) After considering the application, the Committee may recommend that the Permanent Secretary in the Ministry responsible for immigration matters:
 - i. recognize the applicant as a refugee, or
 - ii. not recognize the applicant as a refugee, or
 - iii. not recognize the applicant as a refugee but may grant the applicant exceptional leave to remain in Jamaica for a limited period.
- b) The limited period contemplated in paragraph 12(a) iii above shall be for a period of three years in the first instance. A month prior to the expiration of this period, the Chief Immigration Officer shall review the individual's circumstances and make a recommendation as to whether leave to remain should be allowed to expire, or be extended for another limited period or indefinitely.

13. Implementation of Decision

- a) The Permanent Secretary's decision regarding the application shall be communicated to the applicant, in writing, by the Ministry responsible for immigration matters, within ten (10) working days of the decision.
- b) Where refugee status has been granted, the refugee shall be treated in accordance with Part V of this Policy.
- c) Where an application for refugee status has been denied, the applicant shall be advised of his/her right to have the application reconsidered.
- d) Where an applicant has been denied and has decided not to seek reconsideration of the decision, arrangements for removal are to be made by the Ministry in charge of immigration matters in collaboration with the Ministry responsible for Foreign Affairs.

- f) In those circumstances where the Permanent Secretary has decided not to recognise the applicant as a refugee but has decided that the individual be granted leave to remain in Jamaica on humanitarian grounds, the Permanent Secretary shall communicate that decision to the applicant along with the relevant terms and conditions associated with such leave.

14. Procedure for Reconsideration of Initial Decision

- a) An applicant who has been denied refugee status may apply in writing to the Minister responsible for immigration matters to have the decision reconsidered and shall do so within seven (7) working days from the date of notification of that decision.
- b) Such a request must be in writing and the application may include with that request, any information that he/she believes will assist the Minister in making his determination.
- c) Where the Minister determines that the applicant should be denied refugee status, the applicant shall be entitled to apply to the Refugee Review Body to have this decision reconsidered.
- c) The Refugee Review Body shall be convened to reconsider the application and any additional information submitted by the applicant and shall make a recommendation to the Minister.
- d) The Minister responsible for immigration matters shall make the final decision on the applicants appeal.
- e) The applicant may be represented by legal counsel throughout the process of reconsideration of his application.

15. Implementation of Minister's decision arising from Reconsideration of the Initial Decision

- a) The Minister responsible for immigration matters shall convey his decision, in writing, to the applicant or his legal representative
- b) Where refugee status has been granted the refugee shall be treated in accordance with the provisions of Part V of this Policy.
- c) Where refugee status has been denied, arrangements for removal shall be made by the Ministry responsible for immigration in collaboration with the Ministry responsible for Foreign Affairs.
- d) In those circumstances where the Minister responsible for immigration matters

has decided not to recognise the applicant as a refugee but has decided that the individual be granted leave to remain in Jamaica for a limited period, the Minister shall communicate that decision to the applicant along with the relevant terms and conditions associated with such leave.

PART V

RIGHTS AND DUTIES OF REFUGEES

16. Protection and General Rights

In addition to the rights and full legal protection that every person is entitled under the Constitution and laws of Jamaica, a refugee shall be given formal written recognition of refugee status which will entitle him/her to:

- a) receive the same basic health services and basic primary education which the inhabitants of Jamaica receive from time to time;
- b) seek employment; and
- c) receive the travel document referred to in paragraph 17 below.

17. Identity Document for Refugee

- a) A refugee shall be issued with a travel document which shall contain the following information:
 - i. an identity number of the holder;
 - ii. the holder's surname, full forenames, gender, date of birth and the place or country where he or she was born;
 - iii. the country of which the holder is citizen, if any;
 - iv. a recent photograph of the holder; and
 - v. any other security feature which may be required.
- b) The travel document shall be used for the purposes of identification and travel and should be issued automatically.

18. Obligations of Refugees

Every refugee is required to conform to the Constitution, laws and regulations of

Jamaica, as well as to comply with measures taken for the maintenance of public order.

19. Dependents of Persons to whom refugee status is granted

a) Principal

For the purposes of this Policy, "Principal" is the refugee from whom refugee status may be derived by his/her dependents.

b) Dependents of refugee

1. The term "dependents" in relation to the persons applying for refugee status or refugee means the members of his/her family.
2. The term "members of the family" means:
 - i. his/her spouse; and
 - ii. a child/children; and
 - iii. any other person deemed by the Minister to be members of the family having regard to the circumstances of a particular case.
3. The term "spouse" means:
 - i. the husband or wife of the refugee; or
 - ii. a single woman who has lived and cohabited with a single man as if he was in law her husband for a period of not less than five (5) years immediately preceding her arrival in Jamaica; or
 - iii. a single man who has lived and cohabited with a single woman as if she was in law his wife for a period of not less than five (5) years immediately preceding his arrival in Jamaica;
 - iv. in accordance with Jamaican law, at any given point in time there may only be one recognized spouse.
4. The term "child" means a person under the age of eighteen (18) years and includes:
 - i. a child adopted in accordance with the law of any country;

- ii. a child for whom the applicant has legal custody in his country of origin or has assumed custody subsequently.
5. A person of or over the age limit of eighteen (18) years may be regarded as a dependent for the purposes of this Policy:
- i. if that person is under the age of twenty-three (23) years and was or would have been pursuing academic studies or receiving trade or professional instructions prior to arrival in Jamaica; or
 - ii. if there are special circumstances (including physical and mental disability) which justify the disregard of the age limit.

20. Treatment of Applications of Dependents

- a) An application for refugee status must be completed for each person, eighteen (18) years and older.
- b) The Eligibility Committee and the Refugee Review Body when considering a dependent's application shall seek to first determine whether that person should be granted refugee status due to their specific circumstances. If the application is not successful on its own merit, the Eligibility Committee and the Refugee Review Body shall consider whether the dependent may derive refugee status based on the grant of such status from the Principal's application.
- c) Regardless of whether refugee status is gained on the merit of a dependent's application or derived from a Principal, refugee status is held by that dependent in his/her own right. This provision applies to minors.
- d) If an order is made for the removal from Jamaica of a Principal that order will automatically be applicable to any dependent of that Principal, provided that the dependent does not qualify for refugee status in his/her own right.
- e) Unaccompanied minors shall not be eligible for refugee status in Jamaica and shall be returned to their country of origin or residence. They shall be referred to the Child Development Agency for supervision as children in need of care and protection pending arrangements for their repatriation.

For the purposes of this Policy, an unaccompanied minor is a child who arrives in Jamaica without a parent or legal guardian.

PART VI

RIGHTS OF REFUGEES IN RESPECT OF REMOVAL FROM JAMAICA

21. Expulsion of Refugees

- a) A refugee shall not lawfully be expelled from Jamaica save on the grounds of national security or public order.
- b) The expulsion of such a refugee shall be only pursuant to a decision reached in accordance with the due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself/herself, and to appeal to and be represented for the purpose before the competent authority, or a person(s) specially designated by the competent authority.
- c) Such a refugee shall be allowed a reasonable period within which to seek legal admission to another country. Jamaica reserves the right to apply during that period such internal measures as it may deem necessary.

22. Exclusion from Refugee Status

- a) Pursuant to Article 1F of the Convention, a person does not qualify for refugee status for the purpose of this Policy, if there is reason to believe that he or she:
 - i. has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes;
 - ii. has committed a serious non-political crime outside the country of refuge prior to his or her admission to Jamaica as a refugee; or
 - iii. has been guilty of acts contrary to the purposes and principles of the United Nations.
- b) Where such persons have inadvertently been granted refugee status they shall be subject to the revocation procedures as set out in paragraph 24(II).

23. Cessation of Refugee Status

- a) Pursuant to Article 1C of the Convention, a person shall cease to be a refugee for the purpose of this Policy if he/she:

- i. has voluntarily re-availed himself or herself of the protection of the country of his/her nationality; or
 - ii. having lost his/her nationality, he/she has voluntarily reacquired it; or
 - iii. has acquired Jamaican nationality or the nationality of some other country and enjoys the protection of Jamaica or the country of his or her new nationality; or
 - iv. has voluntarily re-established himself or herself in the country which he/she left or outside of which he/she remained owing to fear of persecution; or
 - v. can no longer, because the circumstances in connection with which he/she has been recognized as refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of his/her nationality.
- b) Where the Minister has evidence of any of the circumstances contemplated in Article 1C of the Convention, he shall notify the refugee that he/she shall be subject to withdrawal of refugee status in accordance with the procedures set out in 24(II).

24. Revocation or Withdrawal of Refugee Status

I. Grounds

Refugee Status may be revoked or withdrawn on the following grounds:

- a) Refugee status shall be revoked, pursuant to Article 1F of the Convention, where the applicant did not qualify on the basis that there is reason to believe that he/she has:
 - (i) committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes;
 - (ii) committed a serious non-political crime outside the country of refuge prior to his or her admission to Jamaica as a refugee. A serious non-political crime for the purposes of this Policy, is a criminal offence which attracts a minimum sentence of 5 years imprisonment;
 - (iii) been guilty of acts contrary to the purposes and principles of the United Nations.
- b) Refugee status shall be withdrawn, pursuant to Article 1C of the Convention,

where a person ceases to be a refugee on the grounds outlined in paragraph 23 above; or

- c) Refugee status may be withdrawn, if it was granted on the basis of an application that contained information that was false, fraudulent or forged, that was material in nature.

II. Procedure

- a) The Minister shall notify the refugee of his intention to revoke or withdraw refugee status and shall specify, with sufficient particulars to give the refugee reasonable information as to the nature of the allegations against him or her, the grounds on which such revocation or withdrawal would be effected.
- b) The refugee may, within seven (7) working days after receipt of notification of the Minister's intention to revoke or withdraw refugee status, make a written submission articulating the reasons why revocation or withdrawal should not be effected.
- c) The information in the possession of the Minister and the written submission by the refugee responding to the allegations shall be submitted to the Eligibility Committee for its consideration.
- d) After considering all material information, the Committee may recommend revocation or withdrawal of refugee status of the person concerned.
- e) Any person from whom refugee status has been revoked or withdrawn may be arrested and detained as an illegal alien, pursuant to the relevant immigration legislation.
- f) The Ministry shall take all other steps, including voiding the person's travel document, to effect revocation or withdrawal of refugee status.

SUPPLEMENTARY AND GENERAL PROVISIONS

25. The Training of Staff

The Ministry responsible for immigration matters shall take such steps as necessary to ensure appropriate training of any person:

- i. to whom powers are delegated in terms of this Policy; or

- ii. appointed in any capacity in terms of this Policy.

26. Records

The Ministry responsible for immigration matters shall maintain a record of events in relation to the refugee determination process and maintain a database with information on the number of asylum seekers and persons granted refugee status in Jamaica.

27. Reporting Obligations

In accordance with the provisions of Articles 35 and 36 of the Convention, the Ministry of Foreign Affairs shall undertake, with the assistance of the Ministry responsible for immigration matters, to provide the United Nations High Commissioner for Refugees (UNHCR), or any other agency of the United Nations which may succeed it, with information and statistical data on developments in Jamaica concerning:

- a) the condition of refugees
- b) the implementation of the Convention
- c) laws, regulations and decrees which are, or may be in force relating to refugees

11th March 2009