

Table 7.

Domestic law expressly sets forth the principle of non-penalisation for illegal entry.

Suspension of criminal proceedings for illegal entry:

Argentina, Brazil, Chile (only suspends the "application of sanctions"), Costa Rica, Ecuador, Mexico (only suspends the immigration procedure), and Uruguay

See also tables 5, 6, 39

<p>Why is it good practice?</p>	<p>Although in Latin America international human rights treaties to which a State is party are obligatory regardless of whether a national law develops them, immigration and penal authorities sometimes tend to evade Article 31 of the 1951 Convention (non-penalisation for illegal entry or presence), on the pretext that domestic law should reiterate that whoever is recognised as a refugee is subject neither to criminal nor to administrative sanctions for reasons related to illegal entry or illegal presence in the country for applying for refugee status</p>
<p>Country</p>	<p>Source</p>
<p>Argentina</p>	<p>GENERAL REFUGEE RECOGNITION AND PROTECTION ACT (2006)</p> <p>ARTICLE 2 — Refugee protection in the Argentine Republic shall be carried out in accordance with the principles of non-refoulement, including the prohibition of rejection at the frontier, non-discrimination, non-penalisation for illegal entry, family unity, confidentiality, more favourable treatment and of more favourable and humane interpretation or pro homine principle. (...)</p> <p>ARTICLE 40. - No criminal or administrative sanctions shall be imposed on refugee status claimants due to their illegal entry into the country, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence. The competent authority shall not apply restrictions of movement other than those which are strictly necessary and such restrictions shall only be applied until the claimant's status in the country is regularised. In the event that criminal or administrative proceedings for illegal entry have been initiated, these procedures shall be suspended until a final decision has been made on the claimant's refugee status. In the case of refugee status recognition, administrative or criminal proceedings against refugees on the grounds of illegal entry will be rendered ineffective if the offenses committed are justified in the causes that led to their recognition as refugees.</p> <p>Available in Spanish at: http://www.acnur.org/t3/fileadmin/Documentos/BDL/2006/4658.pdf</p>

<p>Bolivia</p>	<p>Bolivia, Law No. 251 of 2012 - Refugee Protection Act</p> <p>Article 7. (NON-PENALISATION). Bolivia shall not impose criminal or administrative sanctions on account of the irregular entry or presence of refugee status claimants</p> <p>Available in Spanish at: http://www.acnur.org/t3/fileadmin/Documentos/BDL/2012/8855.pdf</p>
<p>Brazil</p>	<p>Law No. 9474 of 22 July 1997</p> <p>Article 8. Irregular entry into the national territory shall not preclude foreigners from seeking asylum before the competent authorities.</p> <p>Article 9. The authority to whom the application was submitted must hear the interested party and prepare the declaration term, which must contain the circumstances related to their entry into Brazil and the reasons that caused them to leave their country of origin.</p> <p>Article 10. The application, submitted in accordance with the conditions provided in the previous articles, shall suspend any administrative or criminal proceedings for irregular entry against the claimant and persons from their family group that accompany them.</p> <p>§ 1 If refugee status is recognised, the procedure will be archived, provided it shows that the corresponding violation was determined by the same facts that justified the recognition.</p> <p>§ 2 For the purposes of the provisions of the previous paragraph, the Federal Police must be notified of the asylum request and the decision on it, in order to inform the entity that will process the administrative or criminal proceedings.</p> <p>Available in Portuguese at: http://www.acnur.org/t3/fileadmin/Documentos/BDL/2002/0801.pdf</p>
<p>Chile</p>	<p>LAW No. 20430 ESTABLISHING PROVISIONS ON REFUGEE PROTECTION (2010)</p> <p>Article 8.- Non-Penalisation for Irregular Entry and Residence. No criminal or administrative sanctions shall be imposed on refugees on account of their irregular entry or residence, provided they present themselves to the authorities within ten days following the violation of the legislation establishing rules on foreigners in Chile, and show good cause. In respect of refugee status recognition claimants who have entered or who reside irregularly in the national territory, the restrictions of movement established by the general norms on foreigners shall not apply in cases where they have been forced to resort to migrant smuggling networks as a way of ensuring their entry into the territory and of obtaining protection.</p> <p>Available in Spanish at: http://www.acnur.org/t3/fileadmin/Documentos/BDL/2010/7733.pdf</p> <p>RULES OF PROCEDURE OF LAW No. 20430, ESTABLISHING PROVISIONS ON REFUGEE PROTECTION</p>

	<p>Article 8.- Non-penalisation for irregular entry or residence. Foreigners who have irregularly entered the country or whose current residence is irregular and who wish to formally apply for asylum must present themselves to the corresponding immigration authority within a period of 10 days following the violation, and show good cause for their illegal entry or presence.</p> <p>No criminal or administrative sanctions shall be imposed upon the irregular entry or residence of applicants recognised as refugees who are in the situation indicated above.</p> <p>In other situations, foreigners will be subject to the immigration penalties established by the rules on foreigners in Chile.</p> <p>The application of the sanctions to which the abovementioned violations give rise will be suspended until a final decision has been made on the application of refugee status recognition.</p> <p>The foregoing shall be without prejudice to the authority of the immigration agency to exempt from those sanctions those who have been recognised as refugees and have formalised their application outside the aforementioned period, in accordance with the legislation that establishes norms on foreigners in Chile.</p> <p>In any event, applicants for refugee status who have entered or reside irregularly in the national territory shall not be subject to the control and transfer measures established in the general rules on foreigners in Chile, in cases where they have been forced to resort to migrant smuggling networks as a means of ensuring their entry into the territory and obtaining protection.</p> <p>Applicants for refugee status recognition shall be required to provide the authority with their background in relation to the fact that they have been forced to resort to such networks for that purpose.</p> <p>Available in Spanish at: http://www.acnur.org/t3/fileadmin/Documentos/BDL/2011/7411.pdf</p>
<p>Costa Rica</p>	<p>Regulations for Refugees (2011)</p> <p>Article 137.No criminal or administrative sanctions shall be imposed on applicants for refugee status on account of irregular entry into the country, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence. The competent authority shall not apply restrictions of movement other than those which are strictly necessary and restrictions shall only be applied until the claimant's status in the country is regularised. In the event that criminal or administrative proceedings have been initiated for irregular entry, these procedures shall be suspended until the applicant's refugee status is determined by a final decision that is not subject to appeal. In the case of refugee status recognition, administrative or criminal proceedings initiated against the refugee on account of irregular entry will be cancelled, if the justification for the violations committed lie in the causes that determined their recognition as a refugee.</p> <p>Available in Spanish at: http://www.acnur.org/t3/fileadmin/Documentos/BDL/2011/8171.pdf</p>

<p>Ecuador</p>	<p>Article 41 of the Constitution:</p> <p>The rights to asylum and refuge are recognised in accordance with the law and international human rights instruments. Asylum-seekers and refugees shall be entitled to special protection in order to guarantee the full exercise of their rights. The State shall respect and guarantee the principle of non-refoulement and provide emergency humanitarian and legal aid.</p> <p>Asylum-seekers and refugees shall not be liable to criminal penalties for having entered or remained in the country illegally.</p> <p>In exceptional circumstances, and when the situation so requires, the State shall grant refugee status to a group, in accordance with the law.</p> <p>Available in Spanish at: http://www.acnur.org/t3/fileadmin/Documentos/BDL/2008/6716.pdf</p> <p>Human Mobility Act (2017)</p> <p>Article 2. (...) Prohibition of penalisation. No persons shall be subject to penal sanctions on account of their condition of human mobility. Any immigration offense shall be administrative in nature.</p> <p>Article 119 (...) Non-penalisation and non-detention of victims. No sanctions of any kind shall be applied to victims of trafficking in persons and migrant smuggling for performing acts that are the direct result of having been subjected to these crimes.</p> <p>Available in Spanish at: http://www.acnur.org/fileadmin/Documentos/BDL/2017/10973.pdf</p>
<p>Guatemala</p>	<p>Migration Code (2016)</p> <p>Article 50. Sanction. Not having identity and travel documents, or not having complied with administrative requirements for entry, stay or transit within the country does not justify the imposition of a criminal sanction, but there is an obligation to pay administrative expenses incurred in accordance with that established in the regulations and they will be returned to their country of origin (sic).</p> <p>Article 10 (...) State institutions should not require identification documents or any other requirement in order to provide the protection required by a foreign person. In any event, the necessary and available means must be used to provide immediate care.</p> <p>Available in Spanish at: http://www.acnur.org/fileadmin/Documentos/BDL/2017/10978.pdf</p>

<p>Honduras</p>	<p>Migration and Foreign Citizens Act (2003) Article 46 (...) no monetary or any other type of penalty shall be imposed on a refugee claimant on account of irregular entry or stay in the national territory.</p> <p>Available in Spanish at: http://www.acnur.org/t3/fileadmin/Documentos/BDL/2004/2528.pdf</p>
<p>Mexico</p>	<p>Refugee Law and Complementary Protection (2011)</p> <p>Article 7. No refugee or foreigner granted complementary protection shall be subject to any sanction imposed on the grounds of their irregular entry into the country.</p> <p>In the case of an immigration procedure having been initiated on account of a claimant's irregular entry into the national territory, this procedure shall be suspended until a resolution on the recognition of refugee status is issued. In any event, immigration procedures shall be concluded considering the resolution on the application for recognition of refugee status.</p> <p>Available in Spanish at: http://www.acnur.org/t3/fileadmin/Documentos/BDL/2010/8150.pdf</p>
<p>Nicaragua</p>	<p>Law No. 655 on Refugee Protection (2008)</p> <p>Article 10. No criminal or administrative sanctions.</p> <p>A) No criminal or administrative sanctions shall be imposed, on account of their illegal entry or presence, on refugees or asylum-seekers who have entered or are in the national territory without authorisation, provided they present themselves before the competent authorities in no later than one year, showing good cause for their irregular entry or presence. In exceptional cases, the presentation of the petition may be justified outside the established term, taking into account the humanitarian nature of this Law.</p> <p>B) In the event that an applicant for refugee status is detained because he or she is undocumented and/or has entered the national territory irregularly, the competent authority may not detain him or her for more than seven days, during which time they may carry out the relevant assessment. Once released, the applicant must appear every thirty days before the immigration authorities while the application for refugee status recognition is resolved.</p> <p>C) In the case of applicants for refugee status with special needs, such as victims of sexual or gender-based violence, the elderly, persons who have suffered extreme violence or torture, unaccompanied or separated children, the disabled, or persons with a physical or mental illness, these persons cannot be detained and shall be immediately transferred to a suitable institution.</p> <p>Available in Spanish at: http://www.acnur.org/t3/fileadmin/Documentos/BDL/2008/6435.pdf</p>

<p>Panama</p>	<p>EXECUTIVE DECREE No. 23 of 10 February 1998</p> <p>ARTICLE 25. Unlawful or irregular entry into the country of a person claiming refugee status shall be considered an action taken on account of the need to seek and obtain protection; therefore, it shall not be a cause for refusal of entry, return or deportation before their status is determined.</p> <p>ARTICLE 28. The primary receiving authority is the official who receives the asylum seeker in the first instance. They must inform ONPAR, within a period of no more than 24 hours, of any case of a person requesting protection who claims refugee status, in order that the procedure for gathering information and assessing the alleged facts may be initiated, this being required to determine their admission to the process, applying the following principles:</p> <ol style="list-style-type: none"> 1) Non-refusal of entry at the border; 2) Non-penalisation for illegal or irregular entry; 3) Non-return to the country they left on account of well-founded fears of persecution. <p>ARTICLE 53. The following are the rights of refugees and their basic family unit, in accordance with the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, the Political Constitution and the laws of the Republic:</p> <ol style="list-style-type: none"> 1) "Non-refusal of entry" at the border or point of entry into the country. 2) Non-penalisation for entering the country illegally or irregularly. <p>(...)</p> <p>Available in Spanish at: http://www.acnur.org/t3/fileadmin/Documentos/BDL/2001/0069.pdf</p>
<p>Peru</p>	<p>LAW No. 27891 (2002)</p> <p>Article 31.- Illegal entry</p> <p>31.1 No penalty of any kind shall be imposed on the refugee applicant who enters or is in the country illegally, provided they come directly from the territory where their life or freedom is threatened on account of any of the grounds mentioned in article 3 and, according to that established in section b) of article 134 of the present law, they present themselves to the national authorities showing good cause for their illegal entry or presence.</p> <p>31.2 The same criterion shall apply to refugee applicants who, for the same reasons as in article 34, have been in transit through other States that did not grant them a stable and definitive immigration status.</p> <p>Available in Spanish at: http://www.acnur.org/t3/fileadmin/Documentos/BDL/2003/1938.pdf</p>
<p>Uruguay</p>	<p>REFUGEE STATUS (2006)</p> <p>ARTICLE 12. (Non-refusal of entry at border). All public officials, when exercising immigration control duties at a land, sea, river or air border post, shall refrain from prohibiting the conditional entry into the national territory of all persons who express their intention to seek asylum. This provision shall</p>

	<p>apply even if the asylum-seeker does not have the documentation required by the statutory immigration provisions or if it is visibly fraudulent or counterfeit.</p> <p>ARTICLE 15. (Illegal entry).- The administrative or judicial process tending to impose penal or administrative sanctions and the applicable ambulatory restriction measures that have their antecedent in the illegal or fraudulent entry of the applicant into the national territory, will be suspended by order of the competent judge until a final decision is made on their asylum application. A person who has been recognised as a refugee will not be subject to penal or administrative sanctions for reasons that are directly or indirectly linked to illegal entry into the country in order to seek refuge.</p> <p>Available in Spanish at: http://www.acnur.org/t3/fileadmin/Documentos/BDL/2007/4752.pdf</p>
<p>Venezuela</p>	<p>Organic Law on Refugees and Asylum-Seekers of 3 October 2001</p> <p>Article 2.- <i>Fundamental Principles.</i> The Bolivarian Republic of Venezuela recognises and guarantees the right of asylum and refuge, in accordance with the following principles: (...) 4. No authority shall impose any sanction, on account of irregular income or permanence in the territory of the Republic, on persons who apply for refugee status or asylum-seekers, according to the terms established in this Law.</p> <p>Article 6.- <i>Non-penalisation.</i>- No person included in the cases of the previous article shall be penalised for having entered and remained illegally in the national territory, provided they present themselves without delay before the national authorities and show good cause for their illegal entry or presence.</p> <p>Available in Spanish at: http://www.acnur.org/t3/fileadmin/Documentos/BDL/2001/0308.pdf</p>

Compiled by the Regional Legal Unit of the Bureau for the Americas, UNHCR