

TABLE 8.

## LEGISLATION ESTABLISHES THE DECLARATORY NATURE OF REFUGEE STATUS

SEE ALSO TABLES 5 AND 6

<b>Why is it good practice?</b>	A person is a refugee as soon as he or she meets the requirements contained in the definition. In accordance with the declaratory nature of refugee status determination, principles such as non-refoulement, non-penalisation for illegal entry, confidentiality...shall apply to both recognised refugees and asylum seekers
<b>Country</b>	Sources
<b>Argentina</b>	<p>Law No. 26165 (2006)</p> <p>ARTICLE 2 — The protection of refugees in the Argentine Republic shall be carried out in accordance with the principles of non-refoulement, including the prohibition of refusal of entry at the border, non-discrimination, non-penalisation for illegal entry, family unity, confidentiality, more favourable treatment and of more favourable and humane interpretation or pro homine principle. <b>In accordance with the declaratory nature of refugee status recognition, these principles shall apply to both recognised refugees and those applying for this recognition.</b></p> <p>Available in Spanish at:  <a href="http://www.acnur.org/t3/fileadmin/Documentos/BDL/2006/4658.pdf">http://www.acnur.org/t3/fileadmin/Documentos/BDL/2006/4658.pdf</a></p>
<b>Brazil</b>	<p>Law No. 9474 of 22 July 1997</p> <p>Article 26. The decision on refugee status determination shall be deemed a <b>declaratory act</b> and shall be duly substantiated.</p> <p>Available in Portuguese at:  <a href="http://www.acnur.org/t3/fileadmin/Documentos/BDL/2002/0801.pdf">http://www.acnur.org/t3/fileadmin/Documentos/BDL/2002/0801.pdf</a></p>
<b>Chile</b>	<p>LAW NO. 20430 (2010)</p> <p>Article 35.- Declaratory Effect of the Act of Recognition and Substantiation of Resolutions.  The recognition of refugee status <b>is a declaratory act</b>. All resolutions issued relating to refugee status determination must be duly substantiated.</p> <p>Article 1.- The provisions of this law shall apply to <b>applicants for refugee status or refugees</b>, from the moment they are in national territory.</p> <p>Available in Spanish at:  <a href="http://www.acnur.org/t3/fileadmin/Documentos/BDL/2010/7733.pdf">http://www.acnur.org/t3/fileadmin/Documentos/BDL/2010/7733.pdf</a></p>

<p><b>Costa Rica</b></p>	<p>Regulations for Refugees (2011)</p> <p>Article 14. An applicant for refugee status shall be understood as a person who has expressed their desire to seek international protection as a refugee in Costa Rican territory. <b>In accordance with the declaratory nature of refugee status recognition</b> of the Convention relating to the Status of Refugees and its Protocol, guarantees shall be applied in equal measure to recognised refugees and applicants for this recognition, who shall enjoy protection against return until their application has been determined.</p> <p>Article 107. The decision on refugee status is a declaratory, humanitarian and apolitical act (...)</p> <p>Available in Spanish at:  <a href="http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=t3/fileadmin/Documentos/BDL/2011/8171">http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=t3/fileadmin/Documentos/BDL/2011/8171</a></p>
<p><b>El Salvador</b></p>	<p>DECREE No. 79 (2005), REGULATION OF THE LAW FOR REFUGEE STATUS DETERMINATION</p> <p>Resolutions</p> <p>Article 5.- The decisions of the Commission, which shall be known as resolutions, shall be adopted unanimously and in the case of the disparity of votes shall be deemed to be negative.</p> <p>The resolutions shall be motivated, written and may be favourable, unfavourable and expanded. They shall be favourable when they recognise an applicant as a refugee. This resolution shall be considered a <b>declaratory act</b>.</p> <p>(...)</p> <p>Available in Spanish at:  <a href="http://www.acnur.org/t3/fileadmin/Documentos/BDL/2005/3792.pdf">http://www.acnur.org/t3/fileadmin/Documentos/BDL/2005/3792.pdf</a></p>
<p><b>Mexico</b></p>	<p>LAW ON REFUGEES AND COMPLEMENTARY PROTECTION (2011)</p> <p>Article 12. The Secretariat shall, by means of a <b>declaratory act</b>, recognise the refugee status of foreigners who find themselves in any of the cases established in article 13 of this Law, and who shall therefore be subject to the rights and responsibilities contained therein.</p> <p>Article 47. When a <b>foreigner recognised as a refugee in a third country</b> is detained in contravention of the provisions of entry into the national territory, the Secretariat, taking into account the <b>declaratory nature of the recognition of refugee status</b>, shall analyse the reasons for the detention and the reasons for leaving the country where they were recognised as a refugee, in order to determine whether or not they enjoyed effective protection.</p> <p>If the protection granted by a third country were effective and the reasons for which they were recognised as a refugee remain in force, the departure of the refugee from the national territory shall be applicable.</p> <p>(...)</p> <p>Available in Spanish at:  <a href="http://www.acnur.org/t3/fileadmin/Documentos/BDL/2010/8150.pdf">http://www.acnur.org/t3/fileadmin/Documentos/BDL/2010/8150.pdf</a></p>

<p><b>Inter-American Court of Human Rights Case of Pacheco Tineo v Bolivia. Preliminary Objections, Merits, Reparations and Costs. Sentence of 25 November 2013.</b></p>	<p>145. Under the 1951 Convention, a person is a refugee as soon as he or she fulfils the criteria contained in the definition, which would necessarily occur prior to the time at which his or her refugee status is formally determined. Thus, the recognition of a person's refugee status <b>is declaratory, not constitutive</b>. A person does not become a refugee by virtue of a recognition decision, but is recognised because he or she is a refugee.</p> <p>147. Given the <b>declaratory nature</b> of refugee status determination, and even considering the important role given to UNHCR in the context of international protection, it is the States Parties to the 1951 Convention that, as a matter of priority, are responsible for the recognition based on fair and efficient procedures for this purpose.</p> <p>For a summary of the judgment visit:  <a href="http://www.refworld.org/cgi-bin/tehis/vtx/rwmain?page=search&amp;docid=53ce2cee4&amp;skip=0&amp;query=Case%20of%20Pacheco%20Tineo%20v%20Bolivia">http://www.refworld.org/cgi-bin/tehis/vtx/rwmain?page=search&amp;docid=53ce2cee4&amp;skip=0&amp;query=Case%20of%20Pacheco%20Tineo%20v%20Bolivia</a></p>
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