

**Submission by the United Nations High Commissioner for Refugees**  
**For the Office of the High Commissioner for Human Rights' Compilation Report**  
**Universal Periodic Review: *Fourth Cycle, 43rd Session***

**COMMONWEALTH OF THE BAHAMAS**

**I. BACKGROUND INFORMATION**

The Commonwealth of the Bahamas (“The Bahamas”) acceded to the *1951 Convention relating to the Status of Refugees* and its 1967 Protocol (hereinafter referred to jointly as the *1951 Convention*) in 1993. The Bahamas is neither a State party to the *1954 Convention on the Status of Stateless Persons* (the *1954 Convention*), nor to the *1961 Convention on the Reduction of Statelessness* (the *1961 Convention*).

The Bahamas has not yet adopted national legislation governing refugee status determination. The Law Reform Commission of the Attorney-General's Office prepared a draft Nationality, Immigration and Asylum Bill in 2018. The public consultation period, and subsequent deliberation by cabinet, was however interrupted by Hurricane Dorian in 2019 and thereafter by the COVID pandemic. The Bill has now been divided into two pieces of legislation – one on nationality and one on asylum and immigration – that are expected to be adopted in 2023.

There has been an *ad hoc* Government refugee status determination procedure in the Bahamas since 2007. In agreement when the Government, UNHCR conducted refugee status determination under its mandate 2015-2020 when it was fully handed over to the Government. In 2016, in the absence of asylum/refugee legislation, The Bahamas adopted standard operating procedures, which formally established a Refugee Administration Unit within the Department of Immigration. There is no data available on the number of asylum-seekers or refugee in The Bahamas at the time of writing. The Bahamas has, between January and September 2022, recognized 10 asylum-seekers previously registered with UNHCR. It is unclear what the legal status is following recognition in the Bahamas, particularly in light of the absence of any legislation for this purpose and any clear guidelines or standard operating procedures. Registered asylum-seekers receive an asylum-seeker card, valid for one year. Recognized refugees are expected to be issued a refugee card, also valid for one year, and may potentially be issued a Convention travel document. However, in practice, only one Convention travel document has been issued by the authorities between January and September 2022, and it is not clear if all refugees have been provided with refugee cards.

UNHCR appreciates its close cooperation with the Government of the Bahamas. UNHCR has observer status in the Migration Task Force and is invited to support the development of the capacity of the Refugee Administration Unit and the Department of Immigration.

The territory of The Bahamas is comprised of about 700 different islands, atolls and cays, spread out across a wide swath of the northern Caribbean in the Atlantic Ocean. Given its location and more than 3,500 kilometres of coastline, the country is subject to complex mixed movements and protection-at-sea challenges. Maritime smuggling of Haitians has become increasingly frequent the past year as the Caribbean Island nation deals with multiple humanitarian and security challenges. The Bahamian Coast Guard has reported that it has rescued more than 800 Haitians between October 2021 and September 2022. While the majority of foreigners arriving by sea originate from within the Caribbean, an increasing number of irregular arrivals are coming from outside the Americas to The Bahamas.

While the Bahamas is not a signatory to either of the Statelessness Conventions, it is party to a number of other human rights conventions that guarantee the right to nationality, namely the *Convention on the Rights of the Child* and the *International Covenant on Civil and Political Rights*. The Bahamas had prepared pledges on statelessness for the 2019 High-Level Event on Statelessness but could not deliver them due to the impact of Hurricane Dorian.

The Carmichael Detention Centre in Nassau, New Providence, holds non-Bahamian nationals arrested for breach of immigration law provisions. Refugees and asylum-seekers may be detained, if undocumented, upon arrival. Individuals who are “acting in good faith” and enter legally and request asylum upon entry, or later through appropriate channels, are accorded freedom of movement and documentation until their asylum claim has been processed. However, individuals who are in detention for infringing the Penal Code or the Immigration Act, by entering irregularly and requesting asylum once in detention, are given access to asylum procedures but remain in detention during processing. In 2021, US human rights reports said that conditions at the Carmichael Road Detention Centre for migrants were only adequate for short-term detention.<sup>1</sup>

Under Bahamian law, the Constitution of The Bahamas and the Immigration Act, persons arrested by Immigration Officers must be charged and arraigned before the Magistrate Court no later than 48 hours after arrest in accordance with section 18 Criminal Procedure Code. A failure to arraign a person suspected of committing an offence under the Immigration laws within 48 hours after arrest renders any subsequent detention of the person unlawful. There are reports of asylum-seekers who were kept in prolonged detention [approximately one year in the situation of 8 asylum-seekers] while they waited for a government decision on their cases. The average length of detention varied significantly by nationality, the willingness of other governments to accept their nationals back in a timely manner, and the availability of funds to pay for repatriation.

## II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

### Linked to 3rd cycle UPR recommendations no 105.126-127<sup>2</sup>:

The Government of The Bahamas continues to build the capacity of its Refugee Administration Unit and the inter-agency Migration Task Force, under the auspices of the Office of the Attorney General, which both seek to address refugee matters. The past year, UNHCR has observed an increase in the number of asylum cases processed by the Refugee Administration Unit, however, its capacity must continue to be developed to reduce the processing time.

UNHCR welcomes the participation of The Bahamas in the Summit of Americas held in Los Angeles in July 2022. The participation of The Bahamas in this high-level event demonstrates the country’s commitment to play a constructive role in strengthening regional cooperation on protection of refugees and stateless persons however the Bahamas did not sign on to the Migration Protection Declaration. UNHCR encourages The Bahamas to continue to work with UNHCR and other States in the region, and the hemisphere, in hosting refugees, providing regular migration pathways, promoting local economic and social integration, facilitating safe, dignified and voluntary return, and supporting the sustainable reintegration of returnees.

UNHCR recognizes the Government of The Bahamas’ recent efforts relative to its citizenship reform legislation that seeks to put an end to the issue of inequality on citizenship

<sup>1</sup> <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/bahamas/>

<sup>2</sup> 105.126. Ensure that the rights of migrants and refugees are guaranteed (Italy); 105.127. Strengthen the framework to protect the processing of migrants, refugees, asylum seekers and suspected trafficking victims, building on existing platforms and with appropriate assistance from the international community (Jamaica).

transmission in The Bahamas.

### III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

#### Issue 1: Protection of asylum-seekers and refugees

##### Linked to 3rd cycle UPR recommendation nos. 105.126-128, 105.30 and 105.133<sup>3</sup>

The lack of legislation or regulations governing asylum in The Bahamas results in significant gaps in the identification and protection of refugees, and insufficient guarantees against *refoulement*. In light of the high volume of irregular movements through the extensive maritime territory of The Bahamas, including by nationals of known refugee-producing countries, protection-sensitive screening and referral mechanisms are crucial to systematically identify persons in need of international protection and protect these against *refoulement* in the routine course of repatriating individuals intercepted at sea. Moreover, formal procedures governing asylum are required to ensure refugee protection safeguards and set out a national refugee status determination procedure. The Bahamas should be strongly encouraged to formalize the role of the Refugee Administration Unit, adopt procedures for the identification and referral of asylum-seekers, and ensure that Government officials are trained on these procedures.

While there is currently no written framework governing asylum in The Bahamas, there are written agreements for the expedited removal of individuals arriving irregularly from Cuba and Haiti, respectively. Provisions of the bilateral agreements signed with each of those countries call for information-sharing about the individuals to be repatriated with their countries of origin, sometimes within 72 hours of their identification in The Bahamas, as a pre-condition for their accelerated removal and return. Implementation of these agreements in the context of an *ad hoc* approach to asylum raises concerns about adequate guarantees against *refoulement*. Provisions of these agreements are also in contradiction with The Bahamas' international obligations under the *1951 Convention*, which require that asylum-seekers have access to a refugee status determination procedure with associated guarantees of minimum procedural safeguards, including the right to appeal a denial of asylum prior to their removal from the territory. In early September 2022, the Royal Bahamas Defence Force announced that just under 2,400 migrants had been apprehended in Bahamian waters between January-August and 1,823 Haitians were repatriated between January and 7 September. UNHCR believes that among them may be persons in need of international protection.

#### **Recommendations:**

UNHCR recommends that the Government of The Bahamas:

- a) Adopt national legislation defining the eligibility for refugee protection, the refugee definition, procedures for refugee status determination, identity, travel documents and permits, other rights and obligations of refugees, and the role of UNHCR;
- b) Seek UNHCR's continued technical support in drafting refugee legislation, providing capacity-building for Government officials, sharing good practices and quality assurance tools; and,
- c) Enhance dialogue and consultation with UNHCR regarding mixed movements and the establishment of protection-sensitive entry and screening mechanisms.

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<sup>3</sup> 105.126. Ensure that the rights of migrants and refugees are guaranteed (Italy), no. 105.127: Strengthen the framework to protect the processing of migrants, refugees, asylum seekers and suspected trafficking victims, building on existing platforms and with appropriate assistance from the international community (Jamaica); 105.128: Establish legislation to regulate the care of migrants and asylum seekers, in accordance with international human rights standards on the matter (Mexico); 105.130 Take the necessary measures to ensure a dignified welcome for migrants in an irregular situation intercepted at sea, as well as asylum seekers (Algeria); 105.133: Enact asylum and refugee legislation that enables the implementation of its obligations under the Convention relating to the Status of Refugees of 1951 (Republic of Korea).

## **Issue 2: Detention in the context of mixed movements**

**Linked to 3rd cycle UPR recommendation nos.105.131 and 105.132<sup>4</sup>**

The Bahamas faces a complex phenomenon of mixed movements. As a country of both destination and transit, including for persons in need of international protection, The Bahamas is encouraged to strengthen its capacity to appropriately manage these movements. There is a need for cooperation amongst Caribbean countries to manage data collection and analysis on migration and mixed movements, and to establish protection-sensitive entry systems, reception arrangements, mechanisms for the profiling and referral of asylum-seekers and vulnerable migrants, differentiated processes, and long-term solutions. When addressing these aspects of mixed movements, the Government should take into consideration the fundamental rights and needs of persons in need of international protection, including refugees and stateless persons, victims of trafficking, as well as the profiles of specific groups who require a differentiated treatment, such as women and children.

UNHCR encourages the Government of The Bahamas to pursue alternatives to detention for asylum-seekers and refugees, to ensure that any restriction on their freedom of movement is applied only under those circumstances where it is necessary, reasonable, and proportionate to the legitimate purpose achieved and justified by international law, and that the detention of any person in need of international protection is neither arbitrary nor indefinite. As per international legal standards, if detained, asylum-seekers should be entitled to minimum procedural guarantees, including the possibility to contact and be contacted by UNHCR; and refugees should not be detained or otherwise punished for their unlawful entry or presence in the territory, according to Article 31 of the *1951 Convention*.<sup>5</sup>

### **Recommendations:**

UNHCR recommends that the Government of The Bahamas:

- a) Pursue alternatives to detention for migration management and establish legal and procedural safeguards to ensure that asylum-seekers who enter irregularly are not subjected to arbitrary or indefinite detention;
- b) Ensure that detention of asylum-seekers and refugees is used only as a last resort, and where justified under international law; and,
- c) Provide enhanced training to law enforcement, immigration, and judicial officials to better identify and protect vulnerable individuals in mixed migration movements, including asylum-seekers, refugees, stateless persons and victims of trafficking.

## **Issue 3: Preventing and reducing statelessness**

**Linked to 3rd cycle UPR recommendation no.105.25-27, 105.135-141<sup>6</sup>**

Nationality in The Bahamas is acquired according to the principle of *jus sanguinis*. The Bahamian Constitution establishes that every person born in the Bahamas is a Bahamian citizen if either or both parents are citizens of the Bahamas at the date of their birth. However, the Bahamian Constitution makes different provisions for how Bahamian men and women confer citizenship to a child born abroad or to a foreign spouse. The Bahamas is therefore one of two countries in the Western hemisphere that discriminates on the basis of gender in its nationality laws. Statelessness may arise in several instances as a result of

<sup>4</sup> 105.131: Ensure that its detention and treatment of migrants conform with its obligations under international human rights law and the Convention relating to the Status of Refugees (Canada); 105.132: Develop alternatives to detention for asylum seekers and refugees, as well as ensure that any restriction on their freedom of movement is applied under circumstances in which it is necessary, reasonable and proportionate (Portugal);

<sup>5</sup> C.f. [Universal Declaration of Human Rights](#), [International Covenant on Civil and Political Rights](#) (ICCPR), [Human Rights Committee General Comment 35, Article 9](#) (Liberty and Security of Person), and [Body of principles for the protection of all persons under any form of detention or imprisonment](#)

this, including:

- (i) where a Bahamian woman is unable to transmit her citizenship to a child born abroad, and the father is either stateless, missing or has limited possibilities to transmit his citizenship;
- (ii) where a Bahamian woman is married to a foreign man, she is unable to transmit her nationality to him on an equal basis as a Bahamian man, and as such, if the foreign spouse is stateless, he will remain without citizenship;
- (iii) where an unmarried Bahamian man has a child outside of wedlock with a non-Bahamian woman, even if born in The Bahamas, the child does not automatically acquire Bahamian citizenship. Therefore, unless the child acquires citizenship from his/her mother, the child will be stateless.

**Recommendations:**

UNHCR recommends that the Government of The Bahamas:

- a) *Accede to the 1954 Convention relating to the Status of Stateless Persons and to the 1961 Convention on the Reduction of Statelessness;*
- b) Amend the Constitution to introduce a safeguard against statelessness in the case of foundlings as well as children born in the territory of The Bahamas who would otherwise be stateless, in accordance with obligations under the Convention on the Rights of the Child;
- c) Continue the dialogue on Constitutional Reform to ensure gender equality in the conferral of Bahamian citizenship, in accordance with obligations under the Convention on the Elimination of all forms of Discrimination Against Women;
- d) Develop, together with UNHCR, special facilitated naturalization proceedings that are distinct from normal naturalization procedures, and have as their main objective guaranteeing citizenship for those identified as stateless persons; and,
- e) Introduce a statelessness determination procedure to identify stateless persons and afford them protection within The Bahamas.

**UNHCR**  
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