

Submission by the United Nations High Commissioner for Refugees

For the Office of the High Commissioner for Human Rights' Compilation Report -

Universal Periodic Review:

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*, nor to the *1961 Convention on the Reduction of Statelessness*.

The Bahamian Government has no refugee legislation and no regulatory framework to implement its obligations under the *1951 Convention*. As such, the Government treats asylum-seekers and refugees on an ad hoc basis, with no access to judicial remedies.

The Bahamas is the geographic gateway between the Caribbean and Florida. The island group is a major transit point for Caribbean migrants, especially Haitians and Cubans, hoping to reach the United States of America. Migrant populations include a complex mix of economic migrants, asylum-seekers and refugees, victims of trafficking, and other individuals with protection needs such as undocumented and unaccompanied minors and people with undetermined nationality.

During an average year, the Bahamas intercepts, detains, and returns hundreds of Cubans and Haitians (although these numbers rise and fall depending on the conditions in these countries), as well as others such as Sri Lankans, Chinese, Dominicans, Jamaicans, and other Caribbean and African nationalities. During 2011, despite calls from UNHCR and OHCHR to stop all involuntary returns of Haitian nationals on humanitarian grounds following Haiti's 2010 earthquake, the Bahamas repatriated 2,392 Haitians. There are an estimated 30,000 or more Haitians residing in an irregular manner in the Bahamas. As of January 2011, the Bahamas hosted 28 recognized refugees and 9 asylum-seekers. However, the Government is in charge of the refugee determination procedure and UNHCR does not receive consistent information regarding new asylum claims or decisions on pending claims.

The Royal Bahamas Defense Force (RBDF) and the United States Coast Guard (USCG) interdict migrants at sea and arrest migrants onshore for unlawful status in the Bahamas. They are held at the Carmichael Detention Centre, sometimes for extended periods. UNHCR is allowed limited access to these detainees. UNHCR is concerned that information about these detainees is shared

with authorities in their country of origin. Systematic deportations from Carmichael are conducted under bilateral Memoranda of Understanding (MOUs) with Cuba and Haiti.

II. ACHIEVEMENTS AND BEST PRACTICES

The Bahamian Immigration Department's Refugee Unit continues to collaborate with UNHCR by requesting Advisory Opinions or country-of-origin research on a limited number of asylum claims. UNHCR has submitted favourable Advisory Opinions for some cases, but they remain pending with the Cabinet with no final determination on refugee status.

In December 2011, Bahamian Government officials and civil society members participated in a joint UNHCR and IOM training on the protection of vulnerable migrants. The former Deputy Prime Minister (and Minister of Immigration) opened the training session. The training was productive and provided an opportunity for UNHCR, IOM, and government officials to interact on issues pertaining to the protection of vulnerable migrants, including asylum-seekers, victims of trafficking and persons at risk of statelessness.

Following concerns raised by UN Special Rapporteurs and civil society organizations, in 2009, the Government conducted an investigation of conditions in the Carmichael Detention Centre; however, the Government did not make the results of the report public. Detainees had reasonable access to visitors and could participate in religious observances. Detainees could request to meet with UNHCR representatives, and the Government allowed UNHCR representatives access to some detainees.

The Government of the Bahamas made efforts to curb human trafficking. By the end of 2010, the director of public prosecutions established a special cadre of prosecutors to prosecute trafficking cases. These prosecutors investigated officials for misconduct, but the Government did not report on the findings of the investigations or prosecutions of such officials. The Government also provided venues for trainings on trafficking and provided space in medical facilities and long term shelters to assist trafficking victims. Further, the Government announced that it is developing a campaign in English and in Creole to raise awareness of human trafficking.

In 2012, the Government of the Bahamas officially appointed a 13-member commission that will look into amending the Constitution, including provisions to end gender-based discrimination against women.

In October 2012, the Government confirmed that it will resume the sharing of its protection screening forms with UNHCR, a long-standing practice which had been discontinued in 2007. This is expected to further enhance cooperation with UNHCR with respect to persons in need of international protection. Moreover, the Government of The Bahamas has started to consider alternatives to detention for refugees, asylum-seekers and on certain occasions, for migrants based on humanitarian grounds. The Government has also taken steps in 2012 to provide permanent residency for several long-term recognized refugees in The Bahamas, mainly of Cuban and Haitian origin.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Issue 1: Protection of asylum-seekers and refugees

Similar to neighbouring Caribbean States, the Bahamas is located in a complex migratory environment and susceptible to the arrival of irregular migrants. A particular challenge for the Government is, on the one hand, honouring its international obligations under the *1951 Convention* by identifying persons that might be in need of international protection in a mixed migratory context, while, on the other hand, respecting its obligations embodied in migration agreements, which require expedited processing and removal of migrants, particularly Cubans and Haitians.

UNHCR is also concerned that the Bahamian Government routinely shares detainees' information with authorities in their country of origin. This is particularly problematic for Cuban nationals whose asylum claims are based on State persecution.

UNHCR is ready to provide technical support to the Bahamian Government to develop a national refugee policy, including the drafting of national refugee legislation. UNHCR remains ready to provide training and capacity-building services to government staff, civil society members and academics, in order to strengthen its capacity to manage mixed migration flows. UNHCR is also more than willing to provide technical assistance for a Caribbean cooperation plan to address problems like rescue-at-sea situations that are of a regional nature.

Recommendations:

- UNHCR encourages the Bahamas to adopt national refugee legislation, particularly in light of the sample legislations that UNHCR provided the Government in January 2012.
- UNHCR recommends that the Government of Bahamas accept UNHCR's technical support in drafting national refugee legislation, capacity building for Government officials and assistance in the development of a national refugee status determination procedure.
- UNHCR encourages the Bahamas to facilitate full and open access to asylum procedures for persons who have expressed a credible fear of returning to their country of origin and to ensure *non-refoulement* of all persons in need of international protection.
- UNHCR strongly recommends that the Bahamas fully respect the principle of confidentiality with regard to information on asylum applications and refrain from sharing migrants' information with government authorities in their countries of origin¹ until it has been appropriately determined that the respective persons are not in need of international protection.
- UNHCR encourages the Bahamas to find durable solutions for Cuban refugees who have been residing in the Bahamas for several years and whose permanent residency applications remain pending with the Cabinet.
- UNHCR encourages the Bahamas to strengthen enforcement of the Trafficking in Persons Prevention and Suppression Act by thoroughly and transparently investigating suspected traffickers, developing standardized procedures to identify trafficking victims,

¹ "Memorandum of understanding between the Government of the Bahamas and the Government of Cuba" of 12 January 1996.

and allocating resources to assist trafficking victims. Any victims of trafficking who may be in need of international protection should be given the opportunity to apply for asylum in the Bahamas.

Issue 2: Detention of persons in need of international protection

All persons entering the Bahamas in violation of immigration law, including asylum-seekers, are usually detained.² There is no maximum length of detention specified in the law.³ Although the Carmichael Detention Centre is designed to be a temporary holding center pending deportation, in reality, some migrants are held there for prolonged periods of time – weeks, even months. It is UNHCR’s understanding that the facility had the capacity to hold 500 detainees with tent space for an additional 500. However, sections of the facility have been closed due to fire damage, and the remaining portions of the facility are overcrowded with anywhere from 75 to 250 detainees.

Detention conditions at Carmichael are substandard and human rights organizations have extensively documented serious concerns relating to the inhumane treatment and physical and psychological abuse of detainees.⁴

The detention of asylum-seekers and refugees should only be used as a last resort, where necessary and justified. Alternatives to detention should be sought and given preference, in particular for certain categories of vulnerable persons. If detained, asylum-seekers should be entitled to minimum procedural guarantees, including the possibility to contact and be contacted by UNHCR.

UNHCR’s 2012 Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers highlight that “the position of asylum-seekers may differ fundamentally from that of ordinary migrants in that they may not be in a position to comply with the legal formalities for entry. They may, for example, be unable to obtain the necessary documentation in advance of their flight because of their fear of persecution and/or the urgency of their departure. These factors, as well as the fact that asylum-seekers have often experienced traumatic experiences, need to be taken into account in determining any restrictions on freedom of movement based on illegal entry or presence.”⁵

Recommendations:

- The Government should ensure that refugees and asylum-seekers are not penalized for illegal entry and stay in the country, that the detention of asylum-seekers is only used as a

² Bahamas Detention Profile, International Detention Project at:

http://www.globaldetentionproject.org/fileadmin/docs/Bahamas_Detention_Profile_2011.pdf

³ The Immigration Department recently released two asylum seekers from Detention upon UNHCR’s recommendation that they be recognized as refugees. They are allowed to work in the Bahamas.

⁴ Bahamas Detention Profile, International Detention Project at:

http://www.globaldetentionproject.org/fileadmin/docs/Bahamas_Detention_Profile_2011.pdf

⁵ See the UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention (2012), Guideline 1 entitled “The right to seek asylum must be respected” at: <http://www.unhcr.org/refworld/docid/503489533b8.html>.

last resort, and where necessary, for as short a period as possible and that judicial safeguards are in place to prevent arbitrary and/or indefinite detention.

- UNHCR respectfully repeats its recommendation that the Government not only contemplate improving detention conditions but, more importantly, also consider alternatives to detention, especially for asylum-seekers, refugees, stateless persons and other vulnerable individuals.

Issue 3: Preventing and Reducing Statelessness

Stateless persons who satisfy the refugee definition contained in article 1A(2) of the *1951 Convention* are afforded the necessary international protection associated with that status. However, the international refugee protection regime does not specifically address the entitlement to rights of non-refugee stateless persons in need of international protection. Accession to the Statelessness Conventions would establish a framework to prevent and reduce statelessness, in order to avoid the detrimental effects that this can have on individuals and society, and to ensure minimum standards of treatment of stateless persons, providing such persons with stability and security, and ensuring that certain basic rights and needs are met.

The *1954 Convention relating to the Status of Stateless Persons* ensures minimum standards of treatment of stateless persons in respect to a number of economic, social and cultural rights. These include, but are not limited to, the right to education, employment, housing, and public relief. Importantly, the Convention also guarantees stateless persons a right to identity and travel documents and to administrative assistance.

Furthermore, the *1961 Convention on the Reduction of Statelessness* establishes an international framework to ensure the right of every person to a nationality by establishing safeguards to prevent statelessness at birth and later in life. This treaty is therefore complementary to standards contained in other human rights treaties. An increase in the number of State parties is essential to strengthening international efforts to prevent and reduce statelessness and ensuring full enjoyment of a number of these rights.

The Bahamian Constitution establishes that every person born in the Bahamas has Bahamian nationality if either or both parents are citizens of the Bahamas. The Constitution however, lacks a safeguard to prevent statelessness amongst children who are born in the Bahamas to parents who are stateless or unknown or to parents who are foreigners and unable to confer their nationality on their children. Persons born to foreign parents in the Bahamas may not acquire Bahamian nationality before turning eighteen. Administrative instructions and wide use of discretion sometimes hamper and delay attainment of nationality. In addition, although the Bahamas has ratified the Convention on the Rights of the Child, which *inter alia*, confirms the right of every child to a nationality (Article 7), the Constitution fails to make provision for the grant of Bahamian nationality to foundlings found on the territory of the Bahamas, who therefore risk being left stateless.

Further, although the Bahamas has acceded to the Convention on the Elimination of Discrimination Against Women which provides, *inter alia*, for gender equality in nationality matters (Article 9), under the Bahamian Constitution children born abroad to Bahamian mothers

cannot acquire Bahamian nationality at birth; only children born of Bahamian fathers can do so.⁶ In order to acquire Bahamian nationality, children born in wedlock to Bahamian mothers while living outside of the Bahamas must submit a registration application after the age of 18 but before the age of 21. These children must renounce citizenship to any other country prior to registration, so they cannot have dual citizenship. Such discrimination against women in nationality legislation may lead to statelessness of children, where the child is unable to acquire the father's nationality because he is stateless, unknown or cannot confer his nationality under the laws of his State of nationality. Further, pursuant to the Constitution, only Bahamian men are have the right to confer their citizenship on their foreign spouses, whereas Bahamian women do not have an equivalent right. Discrimination against women in this respect impedes the reduction of statelessness where women are unable to confer their nationality on their stateless spouses and also creates further risks of statelessness amongst children.

To UNHCR's knowledge, the Bahamas have no specific provisions in its national legislation to either avoid situations of statelessness or to extend protection to stateless individuals who are lawfully present. The threat of statelessness primarily affects Bahamian-born Haitians because they cannot always gather or obtain official documents confirming their Haitian nationality. As a result, these individuals face constant threats of detention or deportation and have difficulty accessing education and healthcare, opening bank accounts, and acquiring legal employment.⁷

Recommendations:

- UNHCR recommends that the Government of the Bahamas accede to the *1954 Convention relating to the Status of Stateless Persons* and to the *1961 Convention on the Reduction of Statelessness*.
- Introduce a statelessness determination procedure to identify stateless persons within the Bahamas and to afford them protection.
- UNHCR recommends amendment to the provisions of 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.
- UNHCR recommends amendment of discriminatory provisions of the Constitution, in order to allow women to pass their nationality to their children or to their spouses of foreign nationality on an equal basis with men.

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⁶ Background Note on Gender Equality, Nationality Laws and Statelessness, UNHCR, March 8, 2012 at <http://www.unhcr.org/cgi-bin/texis/vtx/home/opendocPDFViewer.html?docid=4f5886306&query=barbados>

⁷ "Immigration policy set for changes," Tribune, June 10, 2011, available at: http://www.tribune242.com/06102011_at-immigration_news_pg1.