

**Submission by the United Nations High Commissioner for Refugees**

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

**Universal Periodic Review: 3rd Cycle, 29th 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 enacted asylum or refugee legislation, nor is there any policy or regulatory framework to implement its obligations under the *1951 Convention*. In the absence of an asylum system established under domestic law or policy, asylum-seekers and refugees are managed by the Government of The Bahamas on an *ad hoc* basis, with UNHCR conducting mandate refugee status determination (RSD) for those asylum-seekers to whom access is granted. Presently, there are 13 refugees recognized under UNHCR's mandate and 18 registered asylum-seekers in The Bahamas. In the absence of a legal framework for asylum, there is a need to strengthen guarantees against *refoulement*.

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 Bahamas is subject to complex mixed migration flows and protection-at-sea challenges. For example, in 2015, at least 1,200 persons were intercepted moving irregularly through The Bahamas in more than 30 separate maritime incidents, and in 2016, that number rose to over 60 documented maritime incidents.<sup>1</sup> While a majority originate from within the Caribbean, an increasing number of irregular migrants are coming from outside the Americas to The Bahamas. This makes identifying persons in need of protection – including refugees and stateless persons, as well as victims of human trafficking and other vulnerable groups, such as unaccompanied minors – particularly challenging.

**II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS**

The Government of The Bahamas has taken steps to establish a Refugee Administration Unit (under the Department of Immigration) and a Migration Task Force (under the auspices of the Office of the Attorney General), which both seek to address refugee issues. The Refugee Administration Unit is mandated by the Ministry of Foreign Affairs and Immigration to assess asylum cases that come to its attention through screening at places of immigration detention or otherwise. In March 2015, the Government formed an inter-agency Migration Task Force tasked by the Attorney General's Office to draft standard operating procedures for the Refugee Administration Unit, and to consider the development of refugee legislation and accession to the UN Statelessness Conventions. UNHCR plays an advisory role on the Migration Task Force and in consultation with the Refugee Administration Unit.

Following the last UPR Session in 2013, the Government of The Bahamas made changes to the Carmichael Road Detention Center, where immigration detainees are held, to address concerns raised

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<sup>1</sup> According to monitoring of public media reports of interdictions-at-sea of persons traveling irregularly through the territory of The Bahamas.

regarding the conditions of immigration detention. Specifically, two new dormitories were erected, more female staff members were hired, and access to medical assistance for detainees was improved. In early 2015, The Bahamas also identified a “safe-house” for women and their minor children awaiting deportation, so that they are no longer detained at the Carmichael Road Detention Center.

UNHCR established a small presence in The Bahamas in May 2014, which has been welcomed by the Government. UNHCR is providing ongoing technical support to strengthen the Refugee Administration Unit and institutionalize the RSD procedure through the Migration Task Force.

UNHCR welcomed the participation of The Bahamas in the Ministerial Meeting held in Brasilia in December 2014 on the occasion of the 30th anniversary of the 1984 Cartagena Declaration on Refugees, at which the *Brazil Declaration and Plan of Action*<sup>2</sup> was adopted. The participation of The Bahamas in this high-level event demonstrates the State’s commitment to play a constructive role in strengthening regional cooperation on protection of refugees and stateless persons. UNHCR encourages The Bahamas to continue to work with UNHCR and other States in the region to advance on the objectives outlined in the *Brazil Plan of Action*.<sup>3</sup>

In 2016, The Bahamas participated in the inaugural Caribbean Migration Consultations (CMC), an inter-governmental effort co-hosted by Trinidad and Tobago and Belize, and facilitated jointly by UNHCR and the International Organization for Migration (IOM), with the participation of CARICOM. The CMC has among its goals to identify ways to address the complex phenomenon of mixed migration through the development of migration policies with a rights-based approach. The Bahamas’ participation in these regional events has helped to contribute to enhanced dialogue and capacity-building on refugee protection in the context of mixed migration.

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

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

**Linked to 2<sup>nd</sup> cycle UPR recommendation no. 92.98:** “Consider the effective implementation of the provisions of the Convention Relating to the Status of Refugees of 1951, in particular the principle of non-refoulement, the access to a procedure and confidentiality for asylum-seekers (Ecuador).”<sup>4</sup>

The aforementioned 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 sheer volume of irregular migration 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 RSD procedure. For example, out of more than 5,000 persons deported from The Bahamas in 2015, many of whom were nationals of refugee-producing countries, not a single person was registered as an asylum-seeker or either granted or denied asylum that year by the Government of The Bahamas. This suggests that individuals who may be in need of refugee protection are unable to access asylum in The Bahamas.

While there is currently no written framework governing asylum in The Bahamas, there are written agreements for the expedited removal of irregular migrants from Cuba and Haiti, respectively.

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<sup>2</sup> Regional Refugee Instruments & Related, *Brazil Declaration and Plan of Action*, 3 December 2014, available at: <http://www.refworld.org/docid/5487065b4.html>.

<sup>3</sup> The Brazil Plan of Action includes a *Framework and a Roadmap for Cooperation and Regional Solidarity to Strengthen the International Protection of Refugees, Displaced and Stateless Persons in Latin America and the Caribbean* and contains innovative proposals on how to address the main humanitarian challenges affecting the region. Chapter 5 of the Brazil Plan of Action, “Regional Solidarity with the Caribbean for a Comprehensive Response on International Protection and Durable Solutions,” highlights the “special challenges” the Caribbean region faces in the management of mixed migration movements, especially in light of the extensive maritime borders and limited financial, technical, human and material resources.

<sup>4</sup> All recommendation made to Bahamas during its 2nd cycle UPR can be found in: “Report of the Working Group on the Universal Periodic Review of Bahamas” (22 March 2013), A/HRC/23/8, available at: <http://ohchr.org/EN/HRBodies/UPR/Pages/BSSession15.aspx>.

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 tension with The Bahamas' international obligations under the 1951 Convention, which require that asylum-seekers have access to an RSD procedure - with associated guarantees of confidentiality and minimum procedural safeguards, including the right to appeal a denial of asylum - prior to their removal from the territory.

UNHCR will continue to provide support to the Government of The Bahamas, to draft legislation to translate its international refugee protection obligations into domestic law, and to develop and implement asylum procedures that meet minimum due process guarantees. Even in the absence of refugee legislation, The Bahamas should be strongly encouraged to formalize the mandate and authority of the Refugee Administration Unit, adopt procedures for the identification and referral of asylum-seekers, and train Government officials on these procedures. By formalizing its asylum procedures and taking steps to systematically identify, register, assess the claims of, and protect the rights of persons in need of international protection, The Bahamas would be implementing the abovementioned 2nd cycle UPR recommendation no. 92.98.

### **Recommendations:**

UNHCR recommends that the Government of The Bahamas:

- a) Develop, enact and implement refugee legislation consistent with international standards, to ensure fair and efficient procedures for conducting refugee status determination, including appeals, as well as respect for the rights of recognized refugees, so as to guarantee the rights of all asylum-seekers and refugees in The Bahamas;
- b) Facilitate full and open access to asylum procedures for persons who have expressed a fear of return to their country of origin, thus ensuring respect for the principle of non-*refoulement*; and
- c) Respect the principle of confidentiality with regard to the identity and claims of asylum-seekers and refugees, and refrain from sharing asylum-seekers' and refugees' information with government authorities in their countries of origin.

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

**Linked to 2<sup>nd</sup> cycle UPR recommendation no. 92.93: "Use detention as a last resort and treat asylum-seekers in accordance with international human rights standards and in compliance with the principle of non-*refoulement* (Brazil)."**

Along with other countries in the Caribbean, The Bahamas faces a complex phenomenon of mixed migratory 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 to establish protection-sensitive entry systems, reception arrangements, mechanisms for the profiling and referral of vulnerable migrants, differentiated processes, and long-term solutions. When addressing these aspects of migration 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 thus notes with concern The Bahamas' current practice of systematically detaining all persons interdicted at sea in an irregular migratory status, including asylum-seekers. Access to legal representation remains rare for asylum-seekers and refugees in detention. Access by UNHCR to asylum-seekers and refugees in detention has improved beginning in 2017 after consultations with the Ministry of Foreign Affairs and Immigration.

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,<sup>5</sup> 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.

### **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, victims of human trafficking, minors, and other vulnerable individuals on the move are not subjected to arbitrary or indefinite detention;
- b) Ensure that detention of asylum-seekers and refugees in particular is used only as a last resort, and where justified under international law;
- c) Enhance dialogue and consultation with UNHCR regarding mixed migratory movements experienced by the country; and
- d) 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**

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 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 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;<sup>6</sup>
- (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;<sup>7</sup>
- (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.

The Constitution and the *Nationality Law of 1973* also lack legal safeguards to prevent statelessness from occurring amongst children born in the territory who are otherwise stateless. This includes children who are born in The Bahamas to parents who themselves are stateless, or whose identity is unknown, or to parents who are foreigners but are unable to confer their nationality to their children. Persons born to foreign parents in The Bahamas are only able to register as Bahamian citizens at the age of 18. Unless children in the categories listed above are able to acquire another citizenship at birth, they will remain stateless until they can register as Bahamian citizens at age 18.

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<sup>5</sup> 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>. Please also refer to the Concluding observations of the Committee on the Elimination of Discrimination against Women, adopted at its 52<sup>nd</sup> session, 6 August 2012, [CEDAW/CBHS/CO/1-5](#), paragraphs 29 and 30 d).

<sup>6</sup> Children born abroad to Bahamian mothers cannot acquire Bahamian nationality at birth; only children born of Bahamian fathers can do so. 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.

<sup>7</sup> Pursuant to the Bahamian 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.

On 7 June 2016, Bahamians voted 'no' to a government-endorsed constitutional referendum that would have amended the nationality laws to grant equal rights to Bahamian men and women to transmit nationality to their children and spouses. Despite this setback, UNHCR encourages The Bahamas to continue its efforts to ensure gender equality in citizenship matters.

Amongst the population of Haitian descent in The Bahamas, which constitutes the largest ethnic minority in the islands, significant barriers to acquiring the civil registration documents from Haiti that support a claim for Haitian nationality, juxtaposed with the lack of access to Bahamian citizenship until the age of 18, leaves the population of Haitian descent at a distinct risk of statelessness. Without nationality documents, they also face threats of detention or deportation, and have difficulty accessing education and healthcare, opening bank accounts, and acquiring legal employment.

On 1 November 2014, the Government of the Bahamas introduced a revised Immigration Policy that required all non-nationals resident in The Bahamas to hold a passport of their nationality, bearing evidence of legal residence in the country, or face deportation. Given the aforementioned difficulties obtaining documentation of citizenship, including for persons who may be eligible for Bahamian citizenship at age 18 but undocumented until that time, UNHCR is concerned about the impact of this policy on persons of Haitian descent who may be stateless or at risk of statelessness.

In October 2013, the UN High Commissioner for Refugees called for the "total commitment of the international community to end statelessness."<sup>8</sup> Additionally, in 2014, UNHCR launched the "*Global Action Plan to End Statelessness: 2014 - 2024*" (the *Global Action Plan*), which was developed in consultation with States, civil society and international organizations, and set out a guiding framework comprised of 10 Actions that need to be undertaken to end statelessness within a decade. Action 9 of the *Global Action Plan* promotes accession to the *1954 and 1961 Conventions*.<sup>9</sup> Moreover, the *Brazil Declaration and Plan of Action* identify statelessness as a regional concern and call on States to accede to the *Statelessness Conventions* so as to eradicate statelessness by 2024.<sup>10</sup>

The *1954 Convention* is an important instrument to ensure non-discrimination in the enjoyment of human rights by stateless persons. Accession by The Bahamas to the *1954 Convention* would establish a framework to ensure enjoyment of human rights by stateless persons. The Convention establishes an internationally recognized status for stateless persons. It also recognizes a number of key rights such as freedom of religion; freedom of association; access to courts; freedom of movement; identity documentation and; internationally recognized travel documents.

The *1961 Convention* establishes an international framework to ensure the right of every person to a nationality, and requires that States establish safeguards in their nationality laws to prevent statelessness at birth and later in life. In recent years, a growing number of persons in the Caribbean have been affected by statelessness, as a result of policy changes in the region. These persons may be in need of international protection. This highlights the importance of States presenting unified support for a baseline of legal protection for stateless persons and working to reduce and prevent statelessness. Accession to the *1961 Convention* would place The Bahamas among the growing number of States that are supporting UNHCR's campaign to eradicate statelessness within the next eight years,<sup>11</sup> which aims to empower stateless persons, promote the establishment of statelessness determination procedures, and to develop research programmes on the impact of statelessness on individuals, taking into account age, gender and diversity.

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<sup>8</sup> UNHCR, *High Commissioner's Closing Remarks to the 64th Session of UNHCR's Executive Committee*, 4 October 2013, available at: <http://unhcr.org/525539159.html>.

<sup>9</sup> UNHCR, *Global Action Plan to End Statelessness: 2014 – 2024*, November 2014, available at: <http://www.unhcr.org/statelesscampaign2014/Global-Action-Plan-eng.pdf>.

<sup>10</sup> *Brazil Plan of Action*: "A Common Roadmap to Strengthen Protection and Promote Sustainable Solutions for Refugees, Displaced and Stateless Persons in Latin America and the Caribbean within a Framework of Cooperation and Solidarity," 3 December 2014, available at: <http://www.refworld.org/docid/5487065b4.html>.

<sup>11</sup> The year 2014 marked the 60th anniversary of the *1954 Convention*. In commemoration, UNHCR launched its *Global Campaign to eradicate statelessness by 2024*. UNHCR, *A Campaign to End Stateless Launched on the 60th Anniversary of the 1954 Convention relating to the Status of Stateless Persons*, February 2014, available at: <http://www.unhcr.org/53174df39.html>.

Against the backdrop of the global and regional consensus reflected in the UNHCR *Global Action Plan* and the *Brazil Plan of Action*, UNHCR encourages The Bahamas to accede to the *1954 Convention* and to the *1961 Convention*, and amend national legislation regarding the conferring of nationality as important actions to end statelessness globally.

**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, in conjunction 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;
- e) Introduce a statelessness determination procedure to identify stateless persons and afford them protection within The Bahamas.

**UNHCR**  
**June 2017**

## ANNEX

### Excerpts of relevant Recommendations from the 2nd cycle Universal Periodic Review, Concluding Observations from UN Treaty Bodies and Recommendations of Special Procedures mandate holders

#### THE BAHAMAS

We would like to bring your attention to the following excerpts from the 2nd cycle UPR recommendations, UN Treaty Monitoring Bodies' Concluding Observations, and recommendations from UN Special Procedures mandate holders' reports relating to issues of interest and persons of concern to UNHCR with regards to Bahamas.

#### I. Universal Periodic Review (Second Cycle – 2012)

Recommendation <sup>12</sup>	Recommending State/s	Position <sup>13</sup>
<b>Refugees and asylum-seekers</b>		
92.92. Take further legal measures to increase the visibility and transparency of asylum applications, ensuring an open process for claimants and consistency with human rights principles	Australia	Supported <sup>14</sup>
92.93. Use detention as a last resort and treat asylum seekers in accordance with international human rights standards and in compliance with the principle of non-refoulement	Brazil	Supported <sup>15</sup>
92.96. Adopt immigration policies that protect the human rights of immigrants and refugees and promote the integration of racial minorities among the population of Bahamas	Spain	Supported
92.98. Consider the effective implementation of the provisions of the United Nations Convention Relating to the Status of Refugees of 1951, in particular the principle of non-refoulement, the access to a procedure and confidentiality for asylum seekers	Ecuador	Supported
<b>Trafficking in persons</b>		
92.26. Consolidate the positive results in the fields of human development, the ratification of international instruments, trafficking in persons and combatting violence against women	Viet Nam	Supported

<sup>12</sup> All recommendations made to Bahamas during its 2nd cycle UPR can be found in: "Report of the Working Group on the Universal Periodic Review of Bahamas" (22 March 2013), A/HRC/23/8, available at: <http://ohchr.org/EN/HRBodies/UPR/Pages/BSSession15.aspx>.

<sup>13</sup> Bahamas's views and replies can be found in: *Addendum* (30 May 2013), A/HRC/23/8/Add.1, available at: <http://ohchr.org/EN/HRBodies/UPR/Pages/BSSession15.aspx>.

<sup>14</sup> **Addendum:** "Immigration and Detention Policies are under review; drafts 2013 Regulations for the Detention Centre have been submitted to the Attorney General for further consideration. UPR recommendations to be considered for relevant incorporation."

<sup>15</sup> **Addendum:** "The Bahamas, insofar as it is capable, treats asylum seekers in accordance with international human rights standards and in compliance with the principle of non-refoulement."

92.70. Coordinate with NGOs to ensure effective implementation of formal procedures to guide police and relevant government officials on how to identify victims of forced labour and forced prostitution among vulnerable groups, refer them to available services, and actively pursue traffickers	United States of America	Supported <sup>16</sup>
92.71. Continue to strengthen its domestic framework and institutions to combat human trafficking	Singapore	Supported
92.72. Ensure effective enforcement of the Trafficking in Persons Act and continue to combat trafficking in persons as well as arms smuggling and drug trafficking	Sri Lanka	Supported
92.73. Intensify human rights mainstreaming in policy and action in combating illegal migration and human rights trafficking	Viet Nam	Supported
<b>Sexual and gender-based violence</b>		
92.35. Amend the Sexual Offences and Domestic Violence Act to criminalize marital rape	Norway	Supported
92.56. Continue with the policies to tackle gender based violence and the programme of “Swift Justice”	Turkey	Supported
92.58. Deploy further efforts in order to prevent and punish violence against women and abuses, in particular those related to domestic violence	Italy	Supported
92.59. Ensure that a comprehensive consultation process with all stakeholders, including civil society, is carried out during the design of the Strategic Plan for the Management, Prevention and Elimination of Domestic Violence	Chile	Supported
92.60. Strengthen its efforts and measures aiming at combating violence against women and girls	Algeria	Supported
92.61. Fully implement and strengthen the legislative framework to fight against domestic violence, sexual aggressions and rape, including marital rape	France	Supported
92.62. Adopt a law on violence against women and girls in all settings as well as a strategy for its implementation	Mexico	Supported <sup>17</sup>
<b>SOGI</b>		

<sup>16</sup> **Addendum:** “On-going, additional training on first response, identification, interview and victim care of trafficked persons is anticipated; Additional public awareness campaigns are in progress. A suspect of Trafficking in Persons (TIP) has been charged with 2 counts of Trafficking in Persons, 2 counts of Unlawful Withholding of Identification, and 2 counts of Transporting Persons for the Purpose of Prostitution. The TIP Committee, Taskforce and Protocol and Guidelines remain operational. The Government actively pursues technical assistance and training, having recently participated in Seminars on Mixed Migration flows through the UNHCR and the IOM (April and May 2013).”

<sup>17</sup> **Addendum:** “The Bahamas has adopted relevant legislation through Domestic Violence (Protection Orders) Act, 2007 and the Sexual Offence (Amendment), 2008; Strategy for implementation is ongoing.”



92.76. Include sexual orientation as a prohibited ground of discrimination in its Constitution Reform process	New Zealand	Noted <sup>18</sup>
92.77. Modify its legal framework in order to protect sexual minorities against discrimination	Norway	Noted
92.78. Repeal all provisions that discriminate against persons on the grounds of their sexual orientation, including in the Domestic Violence Act (Protection Orders) and the Sexual Offences and Domestic Violence Act	United Kingdom of Great Britain and Northern Ireland	Noted
92.79. Adopt legislation that prohibits discrimination on the basis of sexual orientation and gender identity, and reinforce existing constitutional provisions that prohibit discrimination based on race and national origin	United States of America	Noted
92.80. Establish and implement policies and initiatives to address discrimination on the grounds of sexual orientation or gender identity	Uruguay	Noted
92.81. Promote the necessary measures to repeal provisions discriminating people on the grounds of sexual orientation, including those contained in the Sexual Offences and Domestic Violence Act, and the Penal Code	Uruguay	Noted
92.82. Consider the possibility of furthering the measures to eliminate all discriminatory treatment on the grounds of sexual orientation	Argentina	Noted
<b>Right to a nationality</b>		
92.39. Strengthen the resources given to the Office of Women's Affairs and consider the possibility of complying with the recommendations of UNHCR and CEDAW, concerning the abolition of the legal provisions that prevent the transmission of nationality to Bahamian women	Paraguay	Supported
92.40. Consider amending the legislation regarding the transmission of nationality to children of Bahamian mothers born abroad and foreign spouses in order to ensure full and effective equality of rights between men and women in this area	Peru	Supported
92.41. Ensure that Bahamian women are able to pass their nationality to their children on equal footing with men, including by withdrawing the reservation to Article 9 (2) of CEDAW	Slovakia	Supported
92.42. Consider revising relevant legislation on the matter of transfer of nationality from parents to children to ensure equal rights between men and women	Thailand	Supported
92.43. Raise public awareness about the equality of rights of women with regard to nationality, consider amending the	Guatemala	Supported

<sup>18</sup> **Addendum:** “There is no formal or positive legal discrimination against persons in The Bahamas based on sexual orientation or gender identity, although it is not included as a prohibited ground of discrimination in the Constitution, or legislation which prohibits discrimination in specific areas. Neither have there been any reported cases where anyone has alleged discrimination the basis of sexual orientation. It should be noted that The Bahamas is generally supportive of efforts to combat all forms of discrimination against persons and to promote tolerance. This matter will be considered by the Constitutional Reform Commission. The Government awaits its report.”

national legal system to ensure the equal rights for women and men in this area, and continue working and promoting national initiatives aimed at gender equality in the country		
<b>Birth registration</b>		
92.44. Take the necessary measures to ensure universal birth registration, regardless of the immigration status of the parents	Mexico	Supported
<b>Stateless persons</b>		
92.94. Devise and implement an appropriate determination procedure to identify stateless persons within the Bahamas and afford them adequate protection	Ireland	Supported <sup>19</sup>
<b>Migrants</b>		
92.95. Consider alternative non-custodial measures for migrants in an irregular situation, with particular attention to the specific needs of women, children – including unaccompanied children – and vulnerable categories of migrants	Peru	Noted <sup>20</sup>
92.97. Consider the possibility of mainstreaming a human rights approach into the immigration policies	Argentina	Supported

## II. Treaty Bodies

### Committee on the Elimination of Discrimination against Women

Concluding Observations, (6 August 2012), [CEDAW/CBHS/CO/1-5](#)

#### **Constitutional and legislative protection of women from discrimination**

13. While noting that the Constitution (chap. 3, article 15) protects the rights of all citizens, regardless of race, place of origin, political opinions, colour, creed or sex, the Committee remains concerned that the State party's Constitution and national legislation do not contain an explicit definition of discrimination in accordance with article 1 of the Convention, or provisions on the equal rights of women in line with article 2 (a) of the Convention. The Committee is also concerned that article 26 (1) of the Constitution does not protect against discrimination with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law. The Committee is further concerned that the State party has not withdrawn its reservation to article 2 (a) of the Convention on the ground that the referendum held in 2002, on the incorporation of a definition of discrimination against women into the Constitution and domestic legislation, was unsuccessful.

#### **14. The Committee recommends that the State party:**

<sup>19</sup> **Addendum:** "Persons who do not qualify for Bahamian citizenship, and, who, for whatever reason, cannot obtain citizenship through their country of origin, can apply for a certificate of identify, which serves as an official, state authorisation identification document."

<sup>20</sup> **Addendum:** "The Bahamas 2008 Trafficking in Persons (Prevention & Suppression) Act provides for noncustodial measures for trafficked migrants; Renovations to the current detention centre are underway; finances have been allocated to address several recommendations for improvement of the detention centre."

- (a) **In partnership with the Bahamas Constitutional Review Commission, take steps to repeal article 26 (1) of the Constitution and ensure that an explicit definition of discrimination, in line with article 1 of the Convention as well as provisions on the equal rights of women in line with article 2 (a) of the Convention, be included in the Constitution or in other appropriate legislation;**
- (b) **Take all the necessary measures to withdraw its reservation to article 2 (a) of the Convention related to the integration of the principle of equality of women and men into the Constitution or other appropriate legislation.**

### **Stereotypes and harmful practices**

21. The Committee notes with appreciation the existence of the National Parenting Programme, which challenges parents to move away from the traditional roles of women and men, and the current review of the Health and Family Life Curriculum of the Ministry of Education to address gender stereotypes. However, the Committee expresses its deep concern at the persistence of adverse cultural norms, practices and traditions, as well as patriarchal attitudes and deep-rooted stereotypes regarding the roles, responsibilities and identities of women and men in the family (according to which men are considered breadwinners and women family caregivers), in the workplace, in politics and in society. The Committee notes that stereotypes contribute to sex-based inequalities in all areas of life and the persistence of violence against women.

**22. The Committee recommends that the State party put in place, without delay, a comprehensive strategy with a results-oriented approach to eliminate stereotypes that discriminate against women in the family, in the workplace, in politics and in society, in conformity with articles 2 (f) and 5 (a) of the Convention. Such measures should include concerted efforts, carried out within a clear time frame and in collaboration with civil society, to educate and raise awareness about this subject, targeting women and men at all levels of society, and should involve the school system and the media.**

### **Violence against women**

23. The Committee welcomes the campaign undertaken against rape, the launching of various initiatives to combat violence against women and the enactment of the Sexual Offences and Domestic Violence Act 1991 and the Domestic Violence (Protection Orders) Act 2007. However, the Committee is concerned about:

- (a) The high prevalence of violence, including rape, in the State party and the persistence of domestic violence;
- (b) The lack of a comprehensive law addressing violence against women;
- (c) The postponement of the adoption of an amendment to the Sexual Offences and Domestic Violence Act 1991, criminalizing marital rape;
- (d) The lack of a comprehensive plan that addresses all forms of violence against women and girls;
- (e) The slowness of the justice system and its negative impact on women victims of violence;
- (f) The limited number of State-run shelters for victims of domestic violence, particularly in the Family Islands, and the lack of access to shelters for women with sons over the age of 10 years;
- (g) The absence of data on reported cases of gender-based violence and on prosecution and conviction rates with respect to violence against women, and the delay in

establishing a protocol for the systematic and regular gathering and analysis of data and information on all forms of violence against women.

**24. The Committee urges the State party to:**

- (a) **Consider adopting a comprehensive law addressing violence against women;**
- (b) **Promptly raise awareness among the population on the criminal nature of marital rape and amend the Sexual Offences and Domestic Violence Act 1991 to criminalize marital rape;**
- (c) **Adopt a comprehensive plan that addresses all forms of violence against women and girls and a strategy for its implementation;**
- (d) **Take necessary measures to ensure speedy access to justice for women victims of all forms of gender-based violence;**
- (e) **Provide adequate assistance and protection to women victims of violence, in particular psychosocial rehabilitation and an adequate number of shelter facilities, including in the Family Islands, specializing in the protection of victims of domestic violence and accepting women with their children;**
- (f) **Collect comprehensive statistical data on violence against women, disaggregated by sex, age and relationship between the victim and perpetrators, including data on the number of complaints, prosecutions and convictions, and on the sentences imposed on perpetrators of sexual and gender-based violence and include such data in the next report of the State party.**

**Trafficking and exploitation of prostitution**

25. While noting the enactment of the Trafficking in Persons (Prevention and Suppression) Act 2008, the Committee remains concerned about:

- (a) The absence of effective implementation of the Act and the absence of cases brought before the court since the Act came into force;
- (b) The absence of policies and programmes addressing prevention, protection, assistance and legal support for victims of trafficking, including those who are exploited in forced prostitution;
- (c) The number of children involved in prostitution and child pornography and the lack of awareness-raising activities among the actors directly related to the tourist industry about children, and presumably girls, engaged in certain activities related to tourism who are at risk of becoming involved in commercial sexual exploitation;
- (d) The criminalization of prostitution (imprisonment for five years) through the Sexual Offences and Domestic Violence Act 1991 (para. 8 (a)).

**26. The Committee recommends that the State party:**

- (a) **Ensure the effective enforcement of the Trafficking in Persons (Prevention and Suppression) Act 2008; strengthen the Government's Inter-Ministry Committee on Trafficking in Persons and the Trafficking in Persons Task Force to this effect; and, further to the 2008 Act, finalize without delay, the draft national plan of action with a results-oriented approach, including specific indicators and targets;**
- (b) **Strengthen mechanisms for the investigation, prosecution and punishment of trafficking offenders;**

- (c) **Develop policies and programmes addressing prevention, protection, assistance and legal support for victims of trafficking, including those who are exploited in forced prostitution, and establish special shelters for women victims of trafficking;**
- (d) **Take the necessary measures to eliminate child pornography and raise awareness among the actors directly related to the tourism industry about children, and presumably girls, engaged in certain activities related to tourism who are at risk of becoming involved in commercial sexual exploitation;**
- (e) **Review its prostitution policy and relevant legislation, in particular the Sexual Offences and Domestic Violence Act 1991, with a view to decriminalizing women's involvement in prostitution, ensuring that women involved in the sex trade are not punished and discouraging male demand for prostitution;**
- (f) **Increase efforts aimed at international, regional and bilateral cooperation with countries of origin, transit and destination in order to prevent trafficking through information exchange and to harmonize legal procedures aimed at the prosecution and punishment of traffickers.**

### **Nationality**

29. The Committee is concerned that the State party does not see itself as bound by the provisions of article 9 (1) and (2) of the Convention on the ground that Bahamian citizens voted, in a constitutional referendum, against the withdrawal of the constitutional provision preventing women from passing their nationality to their children or to their spouses of foreign nationality. Moreover, the Committee is concerned about the penalization of asylum seekers for illegal entry and stay in the country and about their conditions of detention, which are particularly inadequate for women and children.

### **30. The Committee recommends that the State party:**

- (a) **Raise awareness among the population on the equal rights of women and men with regard to transmission of nationality;**
- (b) **Amend its Constitution and relevant domestic laws to grant Bahamian women equal rights with men regarding the transmission of their nationality to their children or to their spouses of foreign nationality;**
- (c) **Withdraw its reservation to article 9 (2) of the Convention;**
- (d) **Ensure that refugees and asylum seekers, in particular women and girls, are not penalized for illegal entry and stay in the country, that detention of asylum seekers is used only as a last resort, where necessary and for as short a period as possible, and that safeguards against refoulement are fully implemented; improve the conditions in detention facilities for women asylum seekers in accordance with international standards; and ensure the provision of adequate health facilities and services, in particular for pregnant women.**

### **III. Special Procedures Mandate Holders**

#### **Report of the Special Rapporteur on trafficking in persons, especially women and children**

Addendum: Mission to the Bahamas (5 June 2014) [A/HRC/26/37/Add.5](#)

#### **A. Forms and manifestations of trafficking in persons**

4. The Bahamas is a transit and destination country for trafficked persons from the Caribbean region and from Central and South America. Due to its geographical location, its proximity to the United States of America and its porous coastal borders, spanning about 100,000 square miles, the Bahamas is a major transit country for migrants attempting to enter the United States. Criminals and migrant smugglers have taken advantage of the migration fluxes to lure and deceive victims, promising to take them to the United States but actually taking them to the Bahamas, increasing their vulnerabilities to trafficking and exploitation as well as to criminalization by authorities for irregular entry into the country. According to information gathered, migrants from the subregion pay US\$ 5,000 or more to be smuggled to the United States via the Bahamas. The Special Rapporteur met with women from the Dominican Republic who had been deceived, then transported in precarious and dangerous conditions to the Bahamas, where they were abandoned, blindfolded, in a house, only for law enforcement officers to raid the house and arrest them a few days later.

#### **(b) National framework**

15. At the national level, the Constitution protects individuals from inhuman and degrading treatment (art. 17) and prohibits slavery and forced labour (art. 18). The Bahamas enacted the Trafficking in Persons (Prevention and Suppression) Act in 2008, which includes the definition of trafficking in persons as set by article 3 of the Palermo Protocol and establishes criminal offences for trafficking in persons. The anti-trafficking legislation punishes unlawful withholding of identification papers, transporting a person for the purpose of exploitation, including commercial sexual exploitation, forced labour, practices similar to slavery, servitude and the illicit removal of organs.

#### **(c) Immigration policy**

21. The Bahamas is located in a complex migratory environment and exposed to substantial irregular migration flows. In 2009, the International Organization for Migration (IOM) estimated that between 20,000 and 50,000 undocumented Haitians were living in the Bahamas.<sup>1</sup> The Immigration Act of 1967 contains provisions on the entry, residence, transit, and exit of migrants, and also criminalizes violations related to immigration status. Immigration officers have the authority to detain anyone refused entry pending removal from the country (sect. 25, para. 4). Any foreign national apprehended in the country after having irregularly crossed the Bahamian borders is subject to detention and removal (sect. 26).

22. The Act stipulates that irregular migrants are liable to pay a fine of up to US\$ 300 dollars and/or imprisonment for up to 12 months (sect. 19, para. 2). Irregular migrants have been detained in the Carmichael Road Detention Centre, the only dedicated immigration detention centre in the country, which is located in Nassau. At the time of the Special Rapporteur's visit the centre housed 133 detainees comprising 12 to 15 different nationalities, including several detainees from India, the Dominican Republic, Cuba, Haiti and Colombia, one from Kenya, one from Eritrea and one from Ghana, among others. The Special Rapporteur expressed concern with regard to the poor conditions and the length of detention, which do not meet international standards. The centre was obviously overcrowded, as the main section for men had a capacity of only 70 beds and one room for sanitary facilities.

#### **A. Conclusions**

**78. The Bahamas has demonstrated commitment in combating trafficking in persons, including through the ratification of international instruments on trafficking, the adoption of a national law to combat trafficking in persons in accordance with the Palermo Protocol and the development of a multisectoral approach to provide assistance and remedies to victims.**

**79. The Office of the Attorney General has set out good practices in cooperating with the Jamaican authorities and creating a precedent for bilateral joint investigations of cases of trafficking. The trial of the two cases of human trafficking before the magistrate court and**

the Supreme Court, although coming late, sends a strong message to potential traffickers. The existence of agreements for mutual legal assistance between the Bahamas and countries such as the United States of America, the United Kingdom of Great Britain and Northern Ireland and Canada is also positive, as is the country engagement with international organizations to enhance capacity-building at the national level.

80. However, the country lacks a comprehensive assessment of the trends and scope of trafficking, and victims are rarely identified or referred to assistance programmes. The restrictive immigration policy leading to the Government's rapid deportation of migrants, who arrive mainly by boat, especially from Haiti and the Dominican Republic, informed by existing memorandums of understanding with the countries involved, may lead to the arrest, detention and deportation of potential victims of trafficking without providing the opportunity for identification and assistance. The Special Rapporteur's fears are heightened by the fact that there is a capacity gap in terms of ability for quick and accurate identification of victims of trafficking.

81. While the Government has started to incorporate information on human trafficking into the regular training curriculum of the Royal Bahamas Police Force and the Royal Bahamas Defence Force, there is an urgent need to scale this up and continually enhance the knowledge and skills of those front-line officers to identify and protect trafficked persons.

82. Labour inspectors are unable to carry out their functions of inspection and monitoring of companies to ensure compliance with labour standards, including, importantly, to assist in the identification of trafficked persons and potential victims of trafficking, because they have insufficient human capacity and a limited mandate.

83. Comprehensive assistance for victims remains at a preliminary stage. While victims are provided with some assistance, there is no specialized shelter for trafficked persons which can respond to victims and provide them with the psychological, medical, language and other support services they may need. Furthermore, assisted victims do not have access to compensation or a monthly allowance, nor can they work while awaiting the outcome of the legal proceedings, which often takes several months.

84. While acknowledging the Government's efforts to raise awareness, prevention is still at an early stage. The general population and civil society remain unaware of both the issue of trafficking and the government action taken to combat and prevent it. Existing tools, such as the hotline to report vulnerable or endangered women and children, need to be advertised further, and awareness of the different activities undertaken by the Government to tackle the issue should be raised in order to mobilize and ensure partnerships with grass-roots organizations that may come in direct contact with potential victims of trafficking.

## **B. Recommendations**

86. With respect to the international framework, the Special Rapporteur recommends that the Government:

- (a) Ratify, without delay, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography;
- (b) Ratify, without delay, the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness;
- (c) Establish, with countries of origin and countries of destination, bilateral and multilateral agreements for exchange of information, mutual legal assistance and safe returns in order to jointly tackle the root causes of trafficking in persons in the region;

- (d) **Develop and review existing safe migration pathways for seasonal or temporary workers.**

**87. With respect to the national framework, the Special Rapporteur recommends that the Government:**

- (a) **Carry out a national baseline study in collaboration with an independent research institute, bilateral partners and civil society to document the scope and trends of trafficking at the national level;**
- (b) **Finalize and rapidly adopt the national action plan to combat trafficking in persons based on a human rights and victim-centred approach, setting out clear objectives, responsibilities and indicators to measure progress, and allocate a dedicated budget for its implementation;**
- (c) **Establish a systematized and harmonized data collection system on the phenomenon of human trafficking. Data on victims of trafficking should include their countries of origin and be disaggregated by, inter alia, sex, age and the nature and type of trafficking involved; the system should also include information on traffickers and data on investigations, prosecution rates and sentencing;**
- (d) **Create by law, in order to enhance coordination and efforts at combating trafficking, an office of an independent national rapporteur or an equivalent mechanism charged with the responsibility to implement, monitor and evaluate activities aimed at combating human trafficking;**
- (e) **Amend the Employment Act in order to provide protection for domestic workers in accordance with international legal standards.**

**88. With respect to identification, training and capacity-building, the Special Rapporteur recommends that the Government:**

- (a) **Specifically outline and harmonize identification protocols using the Government's guidelines to combat trafficking in persons, developing a range of red flags and indicators to be used while screening vulnerable persons and undocumented migrants;**
- (b) **Establish a national referral mechanism whereby anyone can, even anonymously, report potential victims;**
- (c) **Raise awareness on the distinction between cases of trafficking and irregular migration while underlining the impact of mixed migration flows on trafficking;**
- (d) **Provide comprehensive training programmes on effective reporting on trafficking in persons to enhance knowledge and awareness of human trafficking for all stakeholders, including the police, the defence force, immigration and border agents, prosecutors, judges and lawyers, as well as for labour inspectors, civil society organizations and the media;**
- (e) **Train all stakeholders involved in providing short- and long-term assistance and care to victims of trafficking.**

**89. With respect to support services for victims of trafficking, while the Special Rapporteur acknowledges the efforts made to develop a plan to assist victims of trafficking, she notes that the guidelines remain general, and recommends that the Government:**



- (a) Protect and assist all victims of trafficking, including child victims, with full respect for their human rights, and integrate a human rights-based approach in the investigation of trafficking cases;**
- (b) Make provision for appropriate support, including the establishment of separate shelters for child victims of trafficking and adults. Shelters should also be made available outside the capital city;**
- (c) Maintain close cooperation with the International Organization for Migration and the Office of the United Nations High Commissioner for Refugees for the safe return of trafficked victims to their country of origin, having due regard to the need, if any, of international protection of the victims and the application of the principle of non-refoulement;**

**90. With respect to prosecution, the Special Rapporteur recommends that the Government:**

- (a) Improve the justice delivery system to ensure speedy adjudication of cases of trafficking while guaranteeing fair-trial rights consistent with a human rights-based approach to criminal justice responses;**
- (b) Ensure that in the prosecution of cases of trafficking, victim/witness protection before, during and after the trial is duly implemented to avoid reprisal.**

**91. With respect to prevention, the Special Rapporteur recommends that the Government:**

- (a) Step up efforts to raise awareness about all forms of trafficking in persons, including for domestic servitude, forced labour and sexual exploitation, in order to promote understanding of what constitutes trafficking among the general population and the foreign community. In that regard, all family islands of the Bahamas should be sensitized and efforts should not be concentrated in the capital city alone;**
- (b) Translate its efforts into concrete actions and conduct surveys to assess the impact of the awareness-raising campaigns, which should be extended to the whole country and especially to areas where there is a high concentration of persons in a vulnerable position. Moreover, the language factors must be taken into account when developing public-awareness supports;**
- (c) Empower non-governmental organizations, including through increased interaction and the provision of funds, to conduct sensitization on trafficking and to handle complaints related to trafficking at the grass-roots level;**
- (d) Launch widespread campaigns to raise public awareness on this issue using media outlets, including television and radio stations, and other channels of communication in order to promote a common understanding of the phenomenon of trafficking and to encourage reporting from the general population.**