

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, 37th Session

SAINT KITTS AND NEVIS

I. BACKGROUND INFORMATION

Saint Kitts and Nevis is a State party to the *1951 Convention relating to the Status of Refugees* (the *1951 Convention*) since 1 February 2002 but has not yet acceded to the *1967 Protocol*. The country has yet to accede to the *1954 Convention relating to the Status of Stateless Persons* (the *1954 Convention*) and to the *1961 Convention on the Reduction of Statelessness* (the *1961 Convention*).

Saint Kitts and Nevis is part of the Leeward Island chain of the Lesser Antilles and is among the Caribbean countries affected by mixed movements of population as a country of transit and destination. However, Saint Kitts and Nevis is yet to implement legislation or administrative regulations on asylum or refugee matters, and it has not established a national asylum system. Therefore, when asylum-seekers are identified by UNHCR or non-governmental organizations in St Kitts and Nevis, their claims are examined and decided by UNHCR under its international protection mandate from the Regional Office in Washington.

As of January 2020, Saint Kitts and Nevis hosted four refugees according to UNHCR's records. However, it is possible that there may be more individuals in need of international protection that UNHCR is not aware of, given the absence of a national asylum system and UNHCR's lack of access to meaningful information from the Government about the nature and size of movements to the country. At the end of 2019, the Caribbean hosted an estimated 113,500 Venezuelans who fled the ongoing crisis in their country. Therefore, the growing number of Venezuelans fleeing to or transiting through the Caribbean region is also likely to increase the number of refugees reaching Saint Kitts and Nevis, which would create new challenges and demand appropriate solutions.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Since the recommendations of the 2nd cycle UPR, specific policies or practices in Saint Kitts and Nevis related to refugee protection have not been published. However, UNHCR commends Saint Kitts and Nevis' participation to the *Caribbean Migration Consultations (CMC)*, a State-led regional process launched by Caribbean countries and territories in 2016, with the support of UNHCR and the International Organization for Migration (IOM). The CMC serves as a regional platform to promote Government-led regional policy dialogue focused on coordinated, rights-based and effective management of issues related to migration and forced displacement in the Caribbean. The CMC follows the principles and commitments made by countries and territories in the *Brazil Declaration and Plan of Action*, with a framework for regional solidarity on issues related to refugees, displaced persons, and stateless persons in Latin America and the Caribbean.¹ Saint Kitts and Nevis participated in the CMC Consultations in December 2016 and 2017, April and September 2018, March, June, and December 2019. UNHCR commends the Government's participation to these

¹ *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>.

consultations and encourages continued involvement in the initiative to support and advocate for the development of a national asylum system.

UNHCR also welcomes the Government's participation to the *Consultation Meeting of Latin America and the Caribbean* in February 2018 in Brasilia, which was part of the process of regional consultations leading to the adoption of the *Global Compact on Refugees* by the U.N. General Assembly in December 2018. UNHCR also commends Saint Kitts and Nevis' adoption of the *Global Compact on Refugees* as well as the *Global Compact on Migration* in 2018.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 2nd cycle UPR recommendations

Issue 1: Ratification of the 1967 Protocol

Linked to 2nd cycle UPR recommendation no. 92.75: "Accede the 1967 Protocol relating to the Status of Refugees"²

Saint Kitts and Nevis noted the recommendation made during the second cycle of the UPR on the country to "[a]ccede the 1967 Protocol relating to the Status of Refugees.". The country has not taken any steps to accede to the *1967 Protocol*, limiting the application of the *1951 Convention* that they ratified in 2002 and depriving it of any effect on its territory.

The *1967 Protocol* extends dramatically the scope of the *1951 Convention*, expanding its geographical and temporal scope and therefore granting protection more widely.³ The *1951 Convention* is limited to refugees within Europe or in Europe and elsewhere fleeing events occurring before 1951.⁴ The *1967 Protocol* removed those limitations, giving the *1951 Convention* universal coverage. Until the country accedes to the *1967 Protocol*, Saint Kitts and Nevis's ratification of the *1951 Convention* would remain without application and meaningful effect in today's global refugee crisis. Accession to the *1967 Protocol*, therefore, should be a priority for the Government.

UNHCR is aware that resources in the region are limited in dealing with migration flows, and also that other national priorities may take precedence over the accession to international instruments. However, Saint Kitts and Nevis currently finds itself positioned in one of the most complex regions in terms of forced displacement due to the rising numbers of individuals fleeing Venezuela. Therefore, given the growing human mobility concerns in the Caribbean region, refugee protection is an issue deserving immediate action by the Government. Accession to the *1967 Protocol* would be an important step towards tackling protection needs domestically as well as regionally and will allow for a more systematic and timely identification and processing of individuals in need of international protection as well as receive support and solidarity from the international community.

The *Brazil Declaration and Plan of Action*, a regional protection framework, seeks to improve protection and to deliver solutions for refugees, displaced persons, and stateless persons. The *Brazil Declaration* also encourages accession to the *1967 Protocol*, and was adopted by

² UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Saint Kitts and Nevis*, 15 December 2015, A/HRC/31/16, available at: <https://www.refworld.org/docid/56c2ecf04.html>.

³ UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Serie, vol. 606, p. 267, available at: <https://www.refworld.org/docid/3ae6b3ae4.html>.

⁴ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Serie, vol. 189, p. 137, available at: <https://www.refworld.org/docid/3be01b964.html>.

29 countries and three territories in Latin America and the Caribbean.⁵ Therefore, acceding the *1967 Protocol* and adopting the *Brazil Declaration and Plan of Action* would not only complement Saint Kitts and Nevis's commitments under the *1951 Convention*, but it would also bring the country in line with regional efforts to enhance international protection.

Recommendations:

UNHCR recommends that the Government of Saint Kitts and Nevis:

- Accede to the *1967 Protocol relating to the Status of Refugees*.⁶

Issue 2: Protection of asylum-seekers and refugees

Linked to 2nd cycle UPR recommendation no. 92.74: "Guarantee the protection of refugees in conformity with the obligations of the 1951 Convention relating to the Status of Refugees"⁷

Saint Kitts and Nevis has noted the recommendation made during the second cycle of the UPR on the country to "[g]uarantee the protection of refugees in conformity with the obligations of the 1951 Convention relating to the Status of Refugees." As noted above, Saint Kitts and Nevis is a party to the *1951 Convention*, yet it has not to date developed and implemented a system of protection for refugees on its territory.

Even without the *1967 Protocol*, the *1951 Convention* lays down some minimum standards for the treatment of refugees. These are access to the courts, primary education, work, and the provision of documentation. The *1951 Convention* also prohibits *refoulement* and provides that those entering the country illegally to seek asylum should not be penalized for it. While UNHCR is not aware of efforts to expatriate persons of concern from the country, the absence of domestic legislation or of an administrative system addressing asylum applications results in individuals lacking access to the rights set out in the *1951 Convention*. Ultimately, the absence of a national asylum system denies individuals the right to seek asylum and hinders regional efforts to provide protection to populations of concern.

Again, while UNHCR understands that other domestic concerns may take up national resources, the number of individuals in need of international protection, including those who are undocumented, stateless or at risk of stateless, in the region is rising, and Caribbean countries are expected to continue facing increasing challenges in coping with influx of persons in need of international protection. Establishing domestic mechanisms to address asylum applications is thus urgently needed, and UNHCR is ready to assist in their implementation throughout the region.

UNHCR therefore stands ready to assist Saint Kitts and Nevis in developing its own asylum system in line with the *1951 Convention* principles. UNHCR is prepared to assist the Government by providing training on best practices to the appropriate entities, and to enable a transition from UNHCR's Refugee Status Determination system to national asylum mechanisms that will ensure the identification, assistance and protection of refugees in the country.

⁵ Signatory countries agreed to "invite those countries that have not yet done so, to consider accession or ratification, as appropriate, to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol [...]." *Brazil Declaration*: "A Framework for Cooperation and Regional Solidarity to Strengthen the International Protection of Refugees, Displaced and Stateless Persons in Latin America and the Caribbean" 3 December 2014, available at: <https://www.acnur.org/5b5101644.pdf>.

⁶ Accession to the *1967 Protocol relating to the Status of Refugees* and related conventions was recommended during the 2nd cycle UPR examination of Saint Kitts and Nevis. See: *Report of the Working Group on the Universal Periodic Review: Saint Kitts and Nevis*, 15 December 2015, A/HRC/31/16, para. 92.75 (recommended by Timor-Leste).

⁷ UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Saint Kitts and Nevis*, 15 December 2015, A/HRC/31/16, available at: <https://www.refworld.org/docid/56c2ecf04.html>.

Recommendations:

UNHCR recommends that the Government of Saint Kitts and Nevis:

- a) Consider the passage of domestic refugee legislation and/or develop administrative regulations, policies and procedures, to ensure that the country is in full compliance with its obligations under the 1951 Convention;⁸
- b) Develop a national refugee status determination procedure and build the capacity of Government officials to successfully undertake refugee status determination, with UNHCR's technical support;
- c) Take steps to progressively assume the responsibility of refugee protection and engage in a transition process from UNHCR's Refugee Status Determination system to a national one;
- d) Facilitate full and open access to asylum procedures for persons who have expressed a fear of returning to their country of origin; and
- e) Ensure *non-refoulement* of all persons in need of international protection through the establishment of protection-sensitive entry mechanisms, proper screening of persons in need of international protection and other safeguards.

Additional protection challenges

Issue 3: Prevention of statelessness and protection of stateless persons

Saint Kitts and Nevis is not a State party to the *1954 Convention relating to the Status of Stateless Persons* or to the *1961 Convention on the Reduction of Statelessness*.

The *1954 Convention* sets the minimum rights and standards of treatment that are to be afforded to stateless persons, including a right to education, housing, employment, to identity and travel documents and to administrative assistance.⁹ The *1961 Convention* is forward-looking, thus aimed at preventing statelessness and reducing it over time.¹⁰ It provides an international framework to ensure that individuals have a right to a nationality and it requires that States take steps to prevent statelessness at birth and later in life. Most significantly, it requires that children born in a country's territory obtain that country's nationality if they cannot acquire another country's nationality.

In 2014, UNHCR launched the *Global Action Plan to End Statelessness* encouraging States to take 10 actions toward the eradication of statelessness, including acceding to the *UN Statelessness Conventions*.¹¹ The Global Campaign aims to eradicate stateless by the 2024 horizon and at the mid-point of the Campaign, a High-Level Event took place in October 2019 in Geneva to take stock of the progress made by the international community collecting pledges by Member States to achieve the Campaign's goal in the five remaining years of the Campaign.

Similarly, the "*Eradicating Statelessness*" program of the *Brazil Action Plan* recommends that States (i) accede to the *Statelessness Conventions*; (ii) promote the harmonization of internal regulations and practices on nationality with international standards; (iii) facilitate

⁸ Guaranteeing the protection of refugees in accordance with the obligations of the 1951 Convention was recommended during the 2nd cycle UPR examination of Saint Kitts and Nevis. See: *Report of the Working Group on the Universal Periodic Review: Saint Kitts and Nevis*, 15 December 2015, A/HRC/31/16, para. 92.74 (recommended by Djibouti), available at: <https://www.refworld.org/docid/56c2ecf04.html>.

⁹ UN General Assembly, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, available at: <https://www.refworld.org/docid/3ae6b3840.html>.

¹⁰ UN General Assembly, *Convention on the Reduction of Statelessness*, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175, available at: <https://www.refworld.org/docid/3ae6b39620.html>.

¹¹ UN High Commissioner for Refugees (UNHCR), *Global Action Plan to End Statelessness 2014-2024*, November 2014, <https://www.refworld.org/docid/545b47d64.html>.

universal birth registration; establish fair and effective procedures to determine statelessness; (iv) adopt internal protection regulations that guarantee the rights of stateless persons; (v) facilitate the naturalization of stateless migrants; (vi) confirm nationality by issuing appropriate documentation; (vii) and facilitate the automatic restitution of nationality as a remedy for the arbitrary deprivation of nationality, as well as the adoption of inclusive legislation and policies for the recovery of nationality.¹²

It is thus necessary for the Government to take further steps in line with international efforts to end statelessness and accede to the *Statelessness Conventions* to work towards the eradication of statelessness everywhere.

As there is no reliable information or data on the number of stateless persons or those at risk of stateless in the country, it necessary for the Government of St. Kitts and Nevis to do a thorough assessment of their population to ensure no person is stateless or at risk of statelessness.

Recommendations:

UNHCR recommends that the Government of Saint Kitts and Nevis:

- a) Accede to the *1954 Convention relating to the Status of Stateless Persons* and to the *1961 Convention on the Reduction of Statelessness*; and
- b) Conduct a thorough assessment of the population to assess and identify persons who are stateless or at risk of statelessness.

UNHCR
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¹² *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>.