



Submission by the United Nations High Commissioner for Refugees

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

-Universal Periodic Review:

CUBA

I. BACKGROUND INFORMATION AND CURRENT CONDITIONS

1. Legal Framework

Cuba has not ratified either the *1951 Convention on the Status of Refugees* or its *1967 Protocol* (hereinafter jointly referred to as the *1951 Refugee Convention*). Cuba has, however, endorsed the Mexico Declaration and Plan of Action to Strengthen the International Protection of Refugees in Latin America, adopted on 16 November 2004.

In addition, Cuba is not a State party to the *1954 Convention relating to the Status of Stateless Persons* or the *1961 Convention on the Reduction of Statelessness*. In 2007, Cuba ratified the *Convention against Trans-national Organized Crime*, but has not taken any action to sign its two Protocols on smuggling and trafficking (*Palermo Protocols*).

Cuba's legislation on asylum is based on those Latin American conventions on territorial and diplomatic asylum to which the country is party (the Conventions of Havana (1928), Montevideo (1933), and Caracas (1954)). Although the Cuban Constitution does not mention the status of refugees, its Article 13 does provide for the granting of asylum to persons persecuted for their political activities. The wording of this Article corresponds to the Latin American asylum conventions mentioned above (insofar as Article 13 asylum is strictly political and discretionary), but does not include International Refugee Law standards. Nevertheless, the Regulations of the Migration Law (1978) provide in their Article 80 that the migration category of 'temporary resident in Cuba' will be granted to – *inter alia* - political asylees and refugees. The term 'refugee' is defined as "those foreigners and persons without citizenship whose entry is allowed in the national territory, because they had to flee their country due to a social disaster/calamity, armed conflict, cataclysm or other natural phenomena and who will remain temporarily in Cuba in so far as the normal conditions in their country of origin are re-established."¹ UNHCR is not aware of any instances in which this definition has been applied in practice.

¹ Aquellos extranjeros y personas sin ciudadanía cuya entrada se autorice en el territorio nacional por tener que emigrar de su país a causa de calamidad social, bélica, por cataclismo u otros fenómenos de la naturaleza y que

Neither refugee legislation nor any kind of national refugee status determination mechanism currently exists in Cuba. UNHCR mandate recognition is therefore the only avenue by which persons can access international protection in Cuba. Cuba observes the *non-refoulement* principle and offers “*de facto*” temporary protection to refugees recognized under UNHCR mandate, until such time as they are resettled to a third country.

2. Population of concern

Cuba’s refugee population lives in an urban context. The number of asylum-seekers arriving in Cuba and seeking UNHCR protection is relatively low. Between 2008 and 2011, a total of 62 persons requested refugee status under mandate of whom 33 persons were recognized as refugees. As of 17 September 2012, there are 64 refugees recognized under mandate. There are also 9 asylum-seekers whose refugee claims are pending.

Cuba hosts another 360 refugees who are students on Governmental scholarships – mainly from the Tindouf refugee camps of Algeria. These persons are considered to be temporary residents by Cuban authorities until their studies are completed at the secondary vocational or tertiary levels, at which point they are expected to return to the refugee camps of Tindouf.

Of particular interest in 2012 was the arrival of Syrian asylum-seekers to Cuba, whose cases were assessed by UNHCR on an emergency basis in order to prevent their *refoulement*. Following UNHCR’s intervention, the Cuban authorities have allowed Syrian asylum-seekers to remain in Cuba while their asylum claims are processed by UNHCR. In this context, UNHCR notes the imposition by the Cuban Government of tight timeframes for the completion of the refugee status determination process. Specifically, the process must be completed within 60 days of the applicant’s arrival in Cuba, irrespective of the date of his/her application to UNHCR for international protection. The Cuban Government’s position is that, upon the expiration of the 60 days’ timeframe, only persons recognized as refugees by UNHCR will be allowed to remain in Cuba. It is important to note, though, that in the special case of the Syrian refugees, UNHCR has been given a 6 month deadline to resettle those persons found to be refugees (27 cases/50 individuals).

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Access to Health and Education

Even though refugees do not have a regularized migration status during their stay in Cuba, they have access to health and education, as well as to other rights, including *inter alia* access to courts, police protection (in case of need), freedom of religion, and *de facto* freedom of movement. Through UNHCR, refugees also receive housing and small subsistence allowances.

permanecerán temporalmente en Cuba en tanto se restablezcan las condiciones normales en su país de origen. Decreto No 26, Reglamento de la Ley de Migración (1978) / ARTICULO 80. – “Se clasifican como Residentes Temporales, los asilados políticos y los refugiados.”; Accesible at <http://www.cubalegalinfo.com/migracion/reglamento-ley-de-migracion/reglamento-de-la-ley-de-migracion-cuba>

III. CHALLENGES AND RECOMMENDATIONS

Issue 1: Accession to International Refugee Law Instruments

Cuba is not a State party to the *1951 Refugee Convention*; UNHCR's mandate recognition is currently the only way persons can obtain international protection in Cuba. Accession to the 1951 Refugee Convention and establishment of a national legal framework would provide a clearer basis for the Government of Cuba to provide refugees with international protection. UNHCR believes that it is necessary to broaden the base of State support for the international refugee instruments, ensuring that the protection provided to refugees is more universal in scope and the burdens and responsibilities of governments are equitably distributed and consistently applied. In this context, UNHCR welcomes the recommendations made by three UN Treaty Bodies, the Committee against Torture², the Committee on the Rights of the Child³ and the Committee on the Elimination of Racial Discrimination⁴ encouraging Cuba to ratify the 1951 Convention.

Recommendation: UNHCR recommends that Cuba accede to the *1951 Convention on the Status of Refugees*. UNHCR wishes to reaffirm its commitment to assisting the Government of Cuba in its accession to such instruments as well as their effective implementation in the country.

Issue 2: Full Compliance with the Non-Refoulement Principle

Cuba's ratification of the *Convention Against Torture* (CAT) expresses the State's commitment not to expel, return, or extradite any person at risk of torture (*non-refoulement* principle), as required by CAT's Article 3. Nevertheless, despite Recommendation No 2 formulated during Cuba's 2009 Universal Periodic Review and accepted by the Government of Cuba,⁵ UNHCR is not aware of the existence of any legal or administrative rules or procedures in Cuba to facilitate: (a) the identification of non-citizens eventually at risk of torture in another country; (b) the assessment and determination of individual claims to be at risk if returned to a third country; (c) the implementation of the prohibition against sending any person to a country where s/he could be at risk of torture; or (d) the establishment of mechanisms by or under which the State could offer protection to individuals in this situation (such as, for example, the provision of migration status). Indeed, as the Committee on the Elimination of Racial Discrimination noted in its 2011 Conclusions, Article 215 of the Cuban Criminal Code provides that illegal entry into Cuban territory is a criminal offence, and requires border control personnel to 'return all persons who attempt to enter the country without satisfying immigration requirements'.

Recommendation: UNHCR recommends that Cuba establish legal and administrative rules or procedures to protect non-citizens, including migrants, at risk of persecution and/or torture in

² UN Committee against torture (CAT), Concluding Observations of the Committee against Torture: Cuba, 23 May 2012, CAT/C/CUB/CO/2, para. 9, available at: <http://www2.ohchr.org/english/bodies/cat/cats48.htm>

³ UN Committee on the Rights of the Child (CRC), *Concluding Observations of the Committee on the Rights of the Child: Cuba*, 20 June 2011, CRC/C/CUB/CO/2, para 58, available at: <http://www2.ohchr.org/english/bodies/crc/crcs57.htm>.

⁴ UN Committee on the Elimination of Racial Discrimination (CERD), *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Cuba*, 10 May 2011, CERD/C/CUB/CO/14 - 18, para 19, available at: http://www2.ohchr.org/english/bodies/cerd/docs/co/Cuba_AUV_sp.pdf.

⁵ Recommendation No. 2- Continue its action to align, to strengthen and to make compatible national legislation with its international obligations in accordance with the treaties to which it is a party.

their country of origin, and urges Cuba to fully respect the principle of *non-refoulement*. UNHCR hopes to enhance its collaboration with the Cuban authorities in the identification of persons at risk of *refoulement*, and stands ready to assist in the implementation of measures to avoid *refoulement*.

Issue 3: Establishment of an Identification and Referral Mechanism

Since 2008, no case of detention of asylum-seekers has been reported in Cuba; when in the past asylum-seekers were detained, Cuba always allowed UNHCR to access the detention centre(s). However, UNHCR is not aware of the existence of any identification and referral mechanisms giving persons in need the opportunity to seek international protection. No surveys are conducted either at Cuba's airports or in migration detention centres. As such, it is possible that persons in need of international protection may be detained and even expelled without having had the opportunity to seek international protection.

Additionally, UNHCR is not aware of any Governmental measures to identify and protect victims of trafficking, particularly those who may face security risks if returned to their countries of origin or last habitual residence. It is important to highlight that some victims of trafficking and smuggled persons may be in need of international protection as refugees. UNHCR therefore encourages Cuba to take measures to ensure such persons are informed of their right to seek asylum, and draws Cuba's attention to UNHCR's *Guidelines on International Protection No. 7: The application of Article 1A(2) of the 1951 Convention...to victims of trafficking and persons at risk of being trafficked*.⁶

Recommendation: UNHCR recommends that Cuba establish official identification and referral mechanisms for persons in need of international protection. UNHCR stands ready to assist the Government in establishing such mechanisms.

Issue 4: Local Integration of Refugees

As at 17 September 2012, there are 64 refugees recognized under UNHCR mandate lacking legal status in Cuba. In addition, there are 360 refugee students in the country (358 from Western Sahara, 1 from Palestine, and 1 from Colombia), who were invited by the Government to complete their education in Cuba on scholarships funded by the Government. These students are considered foreign temporary residents, and are therefore provided with identity documents (*carne de identidad del extranjero*) that grant them an adequate level of protection. Under current Government policy and practice, local integration is not an option for refugees in Cuba.

Recommendation: Recalling the recommendation made by the Committee on the Elimination of Racial Discrimination in 2011,⁷ in which it called on Cuba to 'adopt the legislative and administrative measures necessary to guarantee protection for refugees [and] asylum-seekers',

⁶ UNHCR, *Guidelines on International Protection No. 7: The application of article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked*, 7 April 2006, HCR/GIP/06/07, available at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=443679fa4&page=search>.

⁷ Committee on the Elimination of Racial Discrimination (CERD), *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Cuba*, 8 April 2011, CERD/C/CUB/CO/14-18, para 19 (expressing concern about 'the lack of an enabling legal framework for the local integration of persons present in Cuban territory who require international protection'), available at <http://www2.ohchr.org/english/bodies/cerd/cerds78.htm>.

UNHCR encourages Cuba to make all necessary arrangements to accord refugees similar treatment to that which is granted to alien permanent residents in the country. This is both practicable and important, keeping in mind the very low number of UNHCR mandate refugees and the long average period – about two years – they spend in Cuba prior to being resettled (resettlement being the only durable solution available⁸). In this connection, the Government of Cuba may wish to consider allowing refugees to work on a self-employed basis.

Issue 5: Refugees' Migration Status and Documentation

Currently, Cuba does not grant mandate refugees any migration status or assistance. As the Committee Against Torture noted in its 2012 Concluding Observations, refugees 'are unable to obtain a work permit and have no access to housing and other public services', although, as noted above, they are provided with free health services and education.⁹ UNHCR considers that conferring refugees the migration status of 'temporary resident' as set forth in the national legislation on migration will contribute to addressing this gap,¹⁰ as this status would automatically grant refugees the right to work, and would facilitate UNHCR's efforts to ensure that refugees have access to other opportunities, including subsidized food and shelter or accommodation alternatives paid in national currency, on the same terms and conditions as other foreigners registered as permanent residents in Cuba.

Recommendation: UNHCR recommends that Cuba consider granting mandate refugees, during the period of their stay in Cuba, the migration status of 'temporary residents,' and providing them with documentation pursuant to the sub-classification of refugees set forth in the national legislation on migration.

Issue 6: Accession to the Statelessness Conventions

Stateless persons who satisfy the refugee definition contained in the *1951 Refugee Convention* are afforded the international protection associated with that status. However, the international refugee protection regime does not specifically address the rights of non-refugee stateless persons. In many countries, stateless persons and the children of stateless persons are often subject to discrimination. The *1954 Convention* is an important instrument that ensures non-discrimination in the enjoyment and exercise by stateless persons of their human rights.

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 to the two Statelessness Conventions is essential to strengthening international efforts to prevent and reduce statelessness and ensuring full enjoyment of a number of these rights.

⁸ See Committee Against Torture (CAT), *Concluding Observations of the Committee Against Torture: Cuba*, 25 June 2012, CAT/C/CUB/CO/2, para 9, available at <http://www2.ohchr.org/english/bodies/cat/cats48.htm>.

⁹ Committee Against Torture (CAT), *Concluding Observations of the Committee Against Torture: Cuba*, 25 June 2012, CAT/C/CUB/CO/2, para 9, available at <http://www2.ohchr.org/english/bodies/cat/cats48.htm>.

¹⁰ Art 80 of the Decreto No 26, Reglamento de la Ley de Migración (1978) on its last paragraph says that "During their stay in the national territory, political asylees and refugees may undertake paid jobs." ("Durante su estancia en el territorio nacional, los asilados políticos y refugiados podrán desempeñar labores remuneradas.")

In this context, UNHCR welcomes the concluding observations of the Committee on the Elimination of Racial Discrimination and the Committee against Torture on Cuba, which recommended the Government to accede to the *1954 Convention relating to the Status of Stateless Persons* and to the *1961 Convention on the Reduction of Statelessness*.¹¹

UNHCR reaffirms its commitment to provide technical support in any process contributing to avoid situations of statelessness.

Recommendation: UNHCR recommends that Cuba follow those Treaty Bodies' Concluding Observations, which recommended¹² its accession to the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*. The Government of Cuba should also be encouraged to consider amending national legislation with a view to granting Cuban nationality to children born of Cuban nationals, when such children would otherwise be stateless. UNHCR is ready to support efforts made by the Government of Cuba in this direction.

**Human Rights Liaison Unit
Division of International Protection
UNHCR
October 2012**

¹¹ See further the UN Committee on the Elimination of Racial Discrimination (CERD), *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Cuba*, 10 May 2011, CERD/C/CUB/CO/14 - 18, para 19, available at: http://www2.ohchr.org/english/bodies/cerd/docs/co/Cuba_AUV_sp.pdf. and UN Committee on the Rights of the Child (CRC), *Concluding Observations of the Committee on the Rights of the Child: Cuba*, 20 June 2011, CRC/C/CUB/CO/2, para 31, available at: <http://www2.ohchr.org/english/bodies/crc/crcs57.htm>

¹² As recommended also by the UN Committee on the Elimination of Racial Discrimination (CERD), *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Cuba*, 10 May 2011, CERD/C/CUB/CO/14 - 18, para 19, available at: http://www2.ohchr.org/english/bodies/cerd/docs/co/Cuba_AUV_sp.pdf. and UN Committee on the Rights of the Child (CRC), *Concluding Observations of the Committee on the Rights of the Child: Cuba*, 20 June 2011, CRC/C/CUB/CO/2, para 31, available at: <http://www2.ohchr.org/english/bodies/crc/crcs57.htm>

Annex

Excerpts of Concluding Observations and Recommendations from UN Treaty Bodies - Universal Periodic Review:

CUBA

We would like to bring your attention to the following excerpts from UN Treaty Monitoring Bodies' Concluding Observations and Recommendations relating to issues of interest and persons of concern to UNHCR with regards to Cuba.

**CAT/C/CUB/CO/2
COMMITTEE AGAINST TORTURE, 48th session
25 June 2012**

Non-refoulement and access to a fair and expeditious asylum procedure

9. The Committee is concerned about the lack of an appropriate legal framework for the protection of refugees, asylum seekers, and stateless persons. While noting the information provided by the State party to the effect that persons identified as refugees by the Office of the United Nations High Commissioner for Refugees are permitted to remain in the country while their resettlement is arranged, the Committee is concerned that this de facto temporary protection does not include recognition of refugee status on the part of the Cuban authorities. It also notes with concern that, although refugees and asylum seekers have access to free health services and education, they are unable to obtain a work permit and have no access to housing and other public services. The Committee is concerned that, since there is no prospect of local integration, resettlement in a third country is the only permanent solution possible for refugees in Cuba. The State party should also ensure that all cases of forced deportation are carried out in a manner consistent with the provisions of the Convention. The Committee expresses its concern about the lack of information provided on the circumstances in which the repatriation of illegal Haitian immigrants takes place. It also regrets the lack of information about any existing migration management mechanisms that facilitate the identification of persons requiring international protection (arts. 2, 3, 11 and 16).

The Committee recommends that the State party should:

- (a) Adopt the legislative measures necessary to ensure the protection of refugees, asylum seekers, and stateless persons. To this end, it urges the State party to consider ratifying the Convention relating to the Status of Refugees and the Protocol relating to the Status of Refugees, as well as the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness;**
- (b) Establish mechanisms for the identification and referral of refugees and other persons who have specific requirements in the context of mixed migration flows, so that their protection needs can be met;**
- (c) Facilitate the process of local integration of refugees in Cuban territory, working in association with the Office of the United Nations High Commissioner for Refugees;**

(d) Amend the current legislation governing migration (Act No. 1312 on Migration and Act No. 1313 on the Status of Foreigners, both of 1976).

Prolonged pretrial detention, detention for offences against State security and releases on extra-penitentiary leave

11. The Committee notes the delegation's clarification that the Cuban legal system does not allow for the use of incommunicado detention. However, the Committee remains concerned about NGO reports that recount situations of protracted pretrial detention and indefinite detention, in application of article 107 of the Criminal Procedure Act, which appear to affect persons deprived of their liberty especially for political reasons. The Committee regrets the lack of information provided on the number and status of detainees accused of offences against State security, pursuant to article 243 of the Criminal Procedure Act. Lastly, the Committee is concerned about the ambiguous legal situation of prisoners released on extra-penitentiary leave and about information received concerning arbitrary restrictions on their personal freedom and freedom of movement. The Committee expresses particular concern about the situation of José Daniel Ferrer and Oscar Elías Biscet (arts. 2, 11 and 16).

The State party should take all necessary measures to:

(a) (...)

(d) Ensure respect for the personal liberties and freedom of movement of persons released on extra-penitentiary leave, including their right to return to Cuba.

CRC/C/CUB/CO/2

COMMITTEE ON THE RIGHTS OF THE CHILD, 57th session

3 August 2011

Name and nationality

30. The Committee is concerned that children born abroad to Cuban parents who are outside the categories to transmit nationality, as provided for in article 29 of the Constitution of the State party, are at risk of being left in a stateless situation.

31. The Committee recommends that the State party take the necessary measures to ensure the right of the child to a nationality, including by reviewing and amending the national legislation in order to provide safeguards against statelessness. The Committee also reiterates the recommendation made by the Committee on the Elimination of Racial Discrimination (CERD/C/CUB/CO/14-18, para. 19) to ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Follow-up to the United Nations Study on violence against children

38. The Committee encourages the State party to:

(a) Prioritize the elimination of all forms of violence against children, including by ensuring implementation of the recommendations of the United Nations Study on violence against children, paying particular attention to gender;

(b) Provide information concerning the implementation by the State party of the recommendations of the study in its next periodic report, particularly those highlighted by the Special Representative of the Secretary General on violence against children, namely:

(i) The development of a national comprehensive strategy to prevent and address all forms of violence against children;

(ii) The introduction of an explicit national legal ban on all forms of violence against children in all settings; and

(iii) The consolidation of a national system of data collection, analysis and dissemination, and a research agenda on violence against children.

(c) Cooperate with and seek technical assistance from the Special Representative of the Secretary General on violence against children, UNICEF, OHCHR, World Health Organization (WHO) and other relevant agencies, inter alia, ILO, UNESCO, UNHCR, United Nations Office on Drugs and Crime (UNODC), as well as NGO partners.

58. The Committee recommends that the State party ratify the Convention relating to the Status of Refugees (1951) and its Protocol (1967).

CERD/C/CUB/CO/14-18

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION, 78th session

8 April 2011

16. The Committee takes note of the information provided by the delegation on measures adopted by the State party to combat trafficking in human beings, particularly trafficking in women and children for the purpose of sexual exploitation, but regrets the lack of information on the scale of the domestic trafficking problem and its incidence among the population of African descent (art. 5, subpara. (b)).

The Committee requests that the State party include in its next periodic report detailed information, disaggregated by sex, age, ethnic group and nationality of the victims, on the number of investigations, convictions and sentences handed down in cases of trafficking in human beings for purposes of sexual or labour exploitation.

17. The Committee takes note of information provided by the delegation which indicates that the Cuban authorities are close to concluding their study of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Palermo Protocol) (art. 5, subpara. (b)).

The Committee encourages the State party to accelerate its ratification procedures in respect of the Palermo Protocol.

18. The Committee takes note of the information provided by the delegation on current initiatives to amend the legislation governing migration (Act No. 1312 on Migration and Act No. 1313 on the Status of Foreigners, both of 1976) and the 1948 Citizenship Act. It regrets, however, the fact that very little official information is available on irregular immigration in the period under consideration and, in particular, arrivals of Haitian boat people and their subsequent

repatriation under the Tripartite Memorandum of Understanding signed by Cuba, Haiti and the International Organization for Migration (IOM) in February 2002 (art. 5, subparas. (d) and (e)).

The Committee recommends that the State party amend its legislation on migration and the status of foreigners and its laws on citizenship without delay in order to prevent statelessness. In accordance with general comments No. 11 (1993) and No. 30 (2004) on non-citizens, the Committee urges the State party to guarantee respect for the rights and freedoms of non-citizens present in Cuban territory, regardless of whether or not they have documentation or whether their status is regular or irregular.

19. The Committee is concerned about the lack of an enabling legal framework for the local integration of persons present in Cuban territory who require international protection (art. 5, subparas. (d) and (e)).

The State party should adopt the legislative and administrative measures necessary to guarantee protection for refugees, asylum-seekers and stateless persons.

The Committee strongly encourages the State party to consider the possibility of ratifying the Convention relating to the Status of Refugees and the Protocol relating to the Status of Refugees, the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness.

20. The Committee takes notes with concern of the explanation provided by the State party in relation to the application of article 215 of the Criminal Code, which establishes that illegal entry into Cuban territory is a criminal offence and that border control personnel “shall return all persons who attempt to enter the country without satisfying immigration requirements” (art. 5).

The Committee would like to have additional information on the mechanisms in place to ensure that decisions concerning the return or expulsion of foreigners at Cuban borders conform to the standards and principles established in international human rights law, in particular the principle of non-discrimination.