

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, 35th Session

GUYANA

I. BACKGROUND INFORMATION

Guyana is located on the North coast of South America, along the Caribbean Sea. Guyana is not a State Party to the *1951 Convention relating to the Status of Refugees*, nor to its *1967 Protocol* (hereafter, jointly referred to as the *1951 Convention*). Furthermore, Guyana is not a State Party to the *1954 Convention relating to the Status of Stateless Persons* (hereafter the *1954 Convention*), nor to the *1961 Convention on the Reduction of Statelessness* (hereafter the *1961 Convention*).

Currently, matters related to asylum-seekers and refugees in Guyana are overseen by UNHCR's regional office in Washington. In the absence of national asylum and refugee legislation and procedures in Guyana, UNHCR conducts registration and refugee status determination (RSD) based on its mandate and undertakes the search for durable solutions for recognized refugees. Voluntary repatriation and resettlement in a third country are the only established durable solutions presently for refugees in Guyana. As of May 2019, there are 40 asylum-seekers, and 26 recognized refugees in Guyana. Furthermore, UNHCR has stationed two staff members in Guyana to support the Government's and inter-agency response to the needs of people coming from Venezuela (Venezuelans and Guyanese returnees).

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Venezuela continues to experience a significant outflow of Venezuelans to neighbouring countries, including Guyana, which shares a land border with Venezuela. UNHCR commends the generosity of the people and Government of Guyana for their international solidarity in allowing Venezuelans to enter the country and their willingness to assist displaced Venezuelans and Guyanese returning from Venezuela. Venezuelans in Guyana have been able to access life-saving medical care free of charge at public health facilities, and Venezuelan youth are attending local schools in Guyana. The Government has also provided for the issuance of temporary, three-month stay permits for Venezuelans, allowing them to regularize their presence in the country (although they are unable to work legally with these permits). These measures have helped to provide temporary protection for Venezuelans in Guyana through pathways other than seeking asylum.

UNHCR welcomes the Government's participation in 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 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 Guyana and other 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.

UNHCR commends Guyana's participation in a series of regional trainings on matters related to refugee protection and statelessness, including the *UNHCR Annual Regional Courses on International Refugee Law and Statelessness*. The process leading to the adoption of the *Global Compact on Refugees* by the U.N. General Assembly in December 2018, including its Comprehensive Refugee Response Framework, included a series of regional preparatory consultations, including the *Consultation Meeting of Latin America and the Caribbean* in February 2018 in Brasilia, in which Guyana participated. Guyana's participation in these regional events has helped to contribute to enhanced dialogue, exchange of good practices, and capacity-building on refugee protection in the context of mixed movements.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Issue 1: Protection of asylum-seekers and refugees

Guyana is one of only five States in the Caribbean region (and the only country in South America) that has not acceded to the international refugee instruments. At the 21st UPR session in 2015, the Government noted that it was considering ratifying the *1951 Convention* and its 1967 Protocol.¹ Nonetheless, Guyana has not ratified either instruments, and reiterated prior concerns that “with competing priorities for limited resources, Guyana does not consider the drafting and adoption of national refugee legislation a priority at this time.”² Given the regional context and protection challenges, including growing numbers of Venezuelans in Guyana who are in need of international protection, UNHCR believes that Guyana should be encouraged to take concrete steps towards accession to the *1951 Convention* as a matter of priority.³ While Guyana has largely adopted a welcoming approach to refugees and other persons in need of international protection, greater efforts to identify persons in need of international protection are needed.

UNHCR notes that the principle of *non-refoulement* constitutes one of the cornerstones of refugee protection and is enshrined in Article 33 of the *1951 Convention*. This principle, which is quintessential for the protection of refugees and asylum-seekers, is currently widely acknowledged to constitute customary international law, and thus is applicable to all states.⁴ In the absence of a national asylum system which provides for refugee status determination and guarantees respect for the principle of *non-refoulement*, there remains a risk that vulnerable people in search of protection might be turned back at the borders and denied access to the territory without adequate protection screening and consideration to their need for international protection. The lack of a national legal and institutional framework on international protection

¹ UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Guyana*, 13 April 2015, A/HRC/29/16, available at: <https://www.refworld.org/docid/5571735b4.html> at para. 7.

² UN Human Rights Council, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21*, 19 January 2015, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/005/59/PDF/G1500559.pdf?OpenElement>, ft. note 18.

³ International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), *Concluding observations on the initial report of Guyana*, 28 May 2018, CMW/C/GUY/CO/1, at para. 33, available at: <https://www.ohchr.org/en/countries/lacregion/pages/gvindex.aspx>

⁴ See UN High Commissioner for Refugees (UNHCR), *The Principle of Non-Refoulement as a Norm of Customary International Law. Response to the Questions Posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in Cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93*, 31 January 1994, available at: <https://www.refworld.org/docid/437b6db64.html>;

also places refugees and asylum-seekers living in Guyana at a heightened risk of violations of other fundamental human rights. Since refugees and asylum-seekers in Guyana do not have legal status, they are not able to fully exercise their rights and freedoms, most notably in the area of employment. Without access to work authorization, asylum-seekers and refugees have very limited opportunities to achieve self-reliance, and women and children will be particularly vulnerable to sexual exploitation and trafficking.⁵

Accession to the *1951 Convention* and establishment of a national legal framework would provide a basis for the Government of Guyana to offer refugees international protection and a more formal engagement with international organizations like UNHCR. UNHCR is prepared to provide support to the Government of Guyana to develop a national refugee policy, including the drafting of national refugee legislation. UNHCR remains ready to provide training and capacity-building services to Government staff, civil society members and academics, in order to strengthen the Government's capacity to manage mixed movement flows and assist persons in need of international protection.

Recommendations:

UNHCR recommends that the Government of Guyana:

- (a) Accede to the *1951 Convention* and its *1967 Protocol*;
- (b) Adopt national refugee legislation and develop policies and refugee status determination procedures to ensure full compliance with the *1951 Convention*;
- (c) Establish a government agency responsible for receiving and screening asylum-seekers, victims of trafficking and other individuals, who may arrive in Guyana and who may be in need of international protection, to ensure that they are referred to the correct procedures and receive necessary protection and assistance;
- (d) Ensure that refugees and other beneficiaries of international protection promptly receive identity documents, residence rights and are provided with a work permit to ensure self-reliance, discourage informal employment to prevent exploitation, and facilitate integration, without discrimination;
- (e) Seek the technical assistance of UNHCR in developing national asylum legislations and refugee status procedures; and
- (f) Build the capacity of Government officials to successfully undertake refugee status determination, with UNHCR's technical support.

Issue 2: Responding to the Venezuela Situation

The deteriorating humanitarian situation in Venezuela has led to significant numbers of Venezuelans as well as Guyanese (and Guyanese descendants) returning from Venezuela crossing into neighboring Guyana, and requiring various forms of humanitarian assistance and international protection.⁶ Upon entry into Guyana, Venezuelans are registered by the immigration authorities and provided with a temporary, three-month stay permit. Although currently the Government registers Venezuelans through a paper-based system, UNHCR welcomes the initiative of the Government of Guyana to roll out a digitalized system for the registration and documentation of Venezuelans, with the support of UNHCR. At present, renewal of the permit is a lengthy process that may require up to three months. As a result, Venezuelans are not always able to maintain their legal status in the country, a situation that

⁵ CEDAW, *Concluding Observations – Guyana*, CEDAW/C/GUY/CO/7-8, 7 August 2012, available at: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGUY%2fCO%2f7-8&Lang=en.

⁶ Guyana: Joint UNHCR-IOM Fact-Finding and Border-Monitoring Mission Report (April 2018).

makes them especially vulnerable to various forms of exploitation and abuse, including human trafficking.⁷

While the provision of stay permits has helped to provide temporary protection through pathways other than seeking asylum, Venezuelans are unable to work legally with these permits. Without access to work authorization, Venezuelans have very limited opportunities to achieve self-reliance and mainly work in the informal sector. This can lead to negative coping mechanisms and make Venezuelans, particularly women, vulnerable to sexual exploitation and trafficking. It has been reported that many Venezuelan women engage in sex work as a survival strategy in Guyana.

Although the Government of Guyana has taken steps to facilitate Venezuelans' access to medical care and education, challenges remain in terms of language barriers, lack of knowledge about services available, lack of required documentation to enroll in school and high transportation costs to reach facilities. In an effort to respond to these challenges, the Government of Guyana has established a *Multi-agency Coordinating Committee for addressing the influx of Venezuelan Migrants into Guyana*, which is chaired by the Minister of Citizenship and brings together several public institutions, ministries and UN agencies. The Coordinating Committee is seen as a best practice in the region. UNHCR is a member of the Committee and is supporting the Government of Guyana within the framework of the Regional Inter-Agency Coordination Platform established by UNHCR and IOM in September 2018 and the Regional Refugee and Migrants Response Plan (RRMRP).⁸

Recommendations:

UNHCR recommends that the Government of Guyana:

- (a) Continue in its commendable efforts to launch a digitalized system for the registration and documentation of all Venezuelans with the support of UNHCR;
- (b) Consider to ensure that issuance of documentation to Venezuelans through the new digitalized system automatically grants long term residency rights as well as access to the regular labour market;
- (c) Enhance prevention and responses to trafficking in persons (especially in relation to the trafficking of women and girls) and, where necessary, facilitate survivors' access to asylum procedures and international protection; and
- (d) Gather information on the numbers of undocumented persons known to have arrived to and/or transited the territory, the nationalities of these persons, and what steps were taken (if any) to determine whether any of these individuals had special protection needs or feared being returned to their country of origin due to violence, conflict or persecution.

Issue 3: Accession to the Statelessness Conventions

Guyana is neither a State party to the *1954 Convention* nor to the *1961 Convention*. According to the current nationality law in Guyana, children born in Guyana are citizens by birth, and children born outside of Guyana may be granted citizenship if either the mother or the father is a Guyanese citizen. Citizenship is not conferred automatically through marriage and requires registration. Non-nationals who do not have a valid passport and who marry a Guyanese citizen

⁷ For example, the local organisation Venezuela Support Group found that, of 266 Venezuelans assisted between 15 June and 26 July, half were single women, and over 15 percent were victims of human trafficking in Guyana.

⁸ The Regional Inter-Agency Coordination Platform complements and strengthens national and regional responses of governments, consistent with the principles outlined in the New York Declaration for Refugees and Migrants. For more information, please see: <https://r4v.info/en/situations/platform>.

are at risk of deportation from Guyana. The deteriorating humanitarian situation in Venezuela has also led to significant numbers of Guyanese (and Guyanese descendants) to return from Venezuela. In some cases, these individuals lack proof of their right to Guyanese nationality⁹ and may be at risk of statelessness if they are not recognized as Guyanese citizens, and do not have any other nationality.

Birth registration is fundamental to the protection of children and to the prevention of statelessness. Failure to document a person's legal existence can prevent the effective enjoyment of a range of human rights, including access to education and health care. Because birth registration legally establishes the place of birth, proof of age, and parental affiliation, it serves as important documentary proof to acquire the parents' nationality or the nationality of the State in which the child is born. It also provides children with a degree of protection against child labour, illegal adoption, early marriage, sexual exploitation, and trafficking. In this regard, UNHCR welcomes the efforts of the Government of Guyana to achieve universal birth registration and encourages the relevant authorities to continue their plans to facilitate birth registration of vulnerable communities and those in remote areas.

Guyana is encouraged to accede to the international instruments dedicated to preventing and reducing statelessness and ensuring the protection of stateless populations. Accession to the *1954 and 1961 Conventions* would establish a stronger framework to prevent and reduce statelessness and avoid the detrimental effects of statelessness on individuals and society by ensuring minimum standards of treatment for stateless persons. The *1954 Convention* safeguards minimum standards of treatment for stateless persons in respect to a number of fundamental rights. These include, but are not limited to, the right to education, employment, housing and public relief. Importantly, the *1954 Convention* also guarantees stateless persons a right to identity and travel documents and to administrative assistance. The *1961 Convention* 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. An increase in the number of State parties to the two aforementioned Statelessness Conventions is essential to strengthen international efforts to prevent and reduce statelessness and ensuring full enjoyment of a number of human rights. UNHCR has mandate responsibilities to address statelessness with regard to the identification, prevention and reduction of statelessness and the protection of stateless persons. UNHCR is prepared to provide support to the Government of Guyana in the field of statelessness.

Recommendation:

UNHCR recommends that the Government of Guyana:

- (a) Accede to the *1954 and 1961 Conventions*;
- (b) Increase access to, and awareness of the importance of, birth registration and birth certificates, especially in rural and hinterland areas;
- (c) Increase efforts to determine Guyanese nationality among returning Guyanese, taking into consideration that they often lack documentation and may face challenges in providing proof of their right to Guyanese nationality; and
- (d) Introduce stateless determination procedures especially to address the situation of individuals arriving from Venezuela, who are unable to prove their link to both Venezuelan and Guyanese nationality, and may therefore be stateless.

UNHCR, July 2019

⁹ Guyana: Joint UNHCR-IOM Fact-Finding and Border-Monitoring Mission Report (April 2018). [On file with UNHCR; for limited distribution].

ANNEX

Excerpts of Concluding Observations and Recommendations from UN Treaty Bodies and Special Procedures' Reports - Universal Periodic Review:

GUYANA

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

I. Treaty Bodies

Committee on Migrant Workers

CMW/C/GUY/CO/1, 28th Session
22 May 2018

Legislation and Application

8. The Committee notes with appreciation that articles 40 and 149 of the Constitution guarantee, respectively, the fundamental rights and freedoms of all individuals in the State party, and protection from discrimination, including on the grounds of race and place of origin. It also notes that article 154 (A) of the Constitution stipulates that every individual is entitled to the rights enshrined in the international human rights treaties acceded to by the State party. Chapter III and IV of the Constitution further provide for fundamental rights and freedoms of the individuals. Nevertheless, the Committee expresses concern about domestic legislation referring to "expulsion of undesirables" and "prohibited migrants". The Committee also expresses concern about regulations that allow the detention of migrants, fines for migrants in irregular situations and unclear procedures for expulsion or for submitting cases to court.

Border Management

33. The Committee recommends, in line with OHCHR Recommended Principles and Guidelines on Human Rights at International Borders, that the State party:

- a) **Respect its human rights obligations at all border crossings, including the right to due process for all migrants regardless of their status;**
- b) **Ensure that border governance measures address and combat all forms of discrimination by State and private actors at international borders, and are in accordance with the principle of *non-refoulement* and the prohibition of arbitrary and collective expulsions;**
- c) **Ensure that migrants who have suffered human rights violations or abuses as a result of border governance measures have equal and effective access to justice and remedies, and that violators are prosecuted and appropriately punished;**
- d) **Allocate sufficient budgetary resources to strengthen border governance, ensuring that facilities are equipped to provide human rights-based and proportionate responses to migrants arriving at international borders, and**

that border authorities are trained in international human rights law relevant to their work, including gender equality training;

- e) **Ratify the 1951 Convention relating to the Status of Refugees and its 1967 Protocol and adopt national refugee legislation which establishes fair and efficient refugee status determination procedures, and ensure that persons in need of international protection have access to national services, including health services and access to employment. In the meantime, the State Party should take all necessary measures aiming at enacting comprehensive national policies for the support of Venezuelans migrant workers and their families entering and remaining in Guyana.**

Data Collection

16. The Committee notes that the State party has in the past received financial support from international institutions to strengthen the Guyana Bureau of Statistics and the statistical capacity of various ministries to generate and manage a database to inform policy making. However, **the Committee regrets the absence of disaggregated statistical information that would enable it to assess the extent to which the rights set out in the Convention are implemented in the State party, in particular with regard to Guyanese migrant workers abroad and their conditions of employment, the situation of returnees, migrants in transit, women and unaccompanied child migrants, victims of trafficking, and foreign migrant workers in the State party.**

17. The Committee recommends that the State party improve its data collection system, in line with the Sustainable Development Goals (Target 17.18), **to ensure that data is collected on the status of migrant workers in the State party, both documented and undocumented, migrant workers in transit, victims of trafficking, and nationals working abroad. The Committee also encourages the State party to provide complete data on migration flows including with information and statistics that are disaggregated by sex, age, nationality, reason for entry and departure from the country, and the type of work performed in order to effectively impact relevant policies and the implementation of the Convention.** In cases where it is not possible to obtain precise information, for example, in the case of migrant workers in an irregular situation, the Committee would request that the State party provide data based on social and academic research, civil society and human rights institutions reports, in order to gather comprehensive information which facilitates the follow up by authorities and policy makers on the migrant workers situation in the country.

Training and Dissemination of Information

23. The Committee recommends that the State party:

- a) **Develop education and training programmes on the rights of migrant workers and members of their families under the Convention and that such programmes be made available to all officials and persons working in the area of migration, in particular law enforcement and border authorities, judges, prosecutors, and relevant consular officials, as well as national, regional and local officials, social workers and civil society organizations;**
- b) **Take further steps to ensure access by migrant workers to information and guidance on their rights under the Convention in all commonly used languages in the State party, in particular through pre-employment and pre-departure orientation programmes;**

- c) **Strengthen its work with civil society organizations and the media to disseminate information about and to promote the Convention throughout the State party;**
- d) **Organize trainings for social media reporter's and local government authorities aiming at ensuring positive knowledge and use of the Convention.**

Due Process, Detention and Equality before the Courts

36. The Committee regrets that under section 9 of the Aliens (Immigration and Registration) Act and section 34 of the Immigration Act, the detention of irregular migrants is not an exceptional measure of last resort. **It also expresses concern at reports that migrants may be detained in the same facilities as individuals who have been charged and detained under criminal law.**

37. **The Committee recommends that the State party ensure that its national laws, policies and practices adequately respect the right to liberty and prohibition of arbitrary detention of migrant workers and members of their families. In particular, it recommends that the State party:**

- a) **Ensure that administrative detention is used only as a measure of last resort and non-custodial, community based alternatives are provided, in line with the Committee's general comment No. 2 (2013) on the rights of migrant workers in an irregular situation and members of their families;**
- b) **Ensure that children are not detained on the basis of their parents' status and adopt alternatives to detention that allow children to remain with family members and/or guardians;**
- c) **Decriminalize irregular migration and ensure that migrant workers and members of their families have access to legal aid, effective remedies, justice and consular services, and that the guarantees enshrined in the Convention are upheld, in full compliance with articles 16 and 17 of the Convention;**
- d) **Provide information, in its next periodic report, on the number of migrant workers arrested, detained and expelled for immigration-related infractions, the reason for their detention and expulsion and their detention conditions, including the length of detention.**

Birth Registration and Nationality

44. The Committee notes that according to the Guyana Citizenship Act, children born in Guyana are citizens by birth, and that children born outside of Guyana may be granted citizenship if either the mother or the father is a Guyanese citizen. **The Committee, however, expresses concern about obstacles in accessing birth registration, especially among migrant workers and communities in rural and hinterland areas.**

45. The Committee recommends that the State party ensure that all children, including children of migrant workers, are registered at birth and issued personal identity documents in line with target 16.9 of the Sustainable Development Goals, and that it raise awareness on the importance of birth registration among communities in rural and hinterland areas as well as among migrant workers and members of their families, especially those in an irregular situation. **The Committee also encourages the State party to accede to the 1954 Convention**

relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Committee on the Elimination of Discrimination Against Women

CEDAW, 52nd Session

9-27 July 2012

24. The Committee is concerned at the continuing prevalence of trafficking in women and girls in the country, including internal trafficking, and at the low reporting rate. The Committee is also concerned at the lack of shelters and counselling services in the State party for victims of trafficking and the exploitation of prostitution.

25. The Committee calls upon the State party to fully implement article 6 of the Convention, including by:

- a) Addressing the root causes of trafficking and prostitution, including poverty, so as to eliminate the vulnerability of girls and women to sexual exploitation and trafficking, and to make efforts to ensure the recovery and social reintegration of victims;
- b) Providing training in how to identify and deal with victims of trafficking and in provisions of anti-trafficking legislation to the judiciary, law enforcement officials, border guards and social workers in all parts of the country, especially in rural and remote areas;
- c) Ensuring systematic monitoring and periodic evaluation, including the collection and analysis of data on trafficking and exploitation of women in prostitution, and to include such data in its next periodic report;
- d) Increasing cooperation at the international, regional and bilateral levels with countries of origin, transit and destination to prevent trafficking through information exchange and to harmonize legal procedures aimed at prosecution of traffickers; and
- e) Taking the steps necessary to ensure that trafficked women and girls have access to high-quality medical care, counselling, financial support, adequate housing, training opportunities and free legal services.

Convention Against Torture

CAT, 37th Session

6-24 November 2006

8. The Committee regrets the lack of information on the compliance by the State party with article 3 of the Convention.

The Committee would like to remind the State party of the absolute nature of the prohibition on expelling, returning (*refouler*) or extraditing a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture, as established by article 3 of the Convention. The State party should submit in its next periodic report information regarding the implementation of article 3 of the Convention in cases of extradition, expulsion or return (*refoulement*) of foreigners.