

Submission by the United Nations High Commissioner for Refugees

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

Universal Periodic Review:

2nd Cycle, 25th Session

ANTIGUA AND BARBUDA

I. BACKGROUND INFORMATION

Antigua and Barbuda acceded to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* (hereinafter jointly referred to as the *1951 Convention*) in September 1995. Antigua and Barbuda succeeded to the *1954 Convention relating to the Status of Stateless Persons* (the *1954 Convention*) in 1988. The State is not yet a party to the *1961 Convention on the Reduction of Statelessness* (the *1961 Convention*).

As of August 2015, Antigua and Barbuda hosted ten refugees recognized under UNHCR's mandate and five asylum-seekers. No statistical data regarding the number of stateless persons in Antigua and Barbuda is currently available to UNHCR.¹

The Government has not yet adopted legislation or regulations governing asylum procedures or the rights of refugees in Antigua and Barbuda. As a result, UNHCR, through its partnership with the Antigua and Barbuda Red Cross, registers asylum-seekers and advises the Government on refugee status determination (RSD). In the absence of a legal framework, there is a need to strengthen guarantees against *refoulement*.

Given its location along the Lesser Antilles chain of islands, Antigua and Barbuda is predisposed to receiving mixed migratory movements as both a destination and transit country for migrants, including persons in need of international protection. The diversity of migration to Antigua and Barbuda is enhanced by and contributes to the diversity of the local population, which is made up of residents and citizens with ancestral ties to other countries in the Caribbean, the Americas, the Middle East, Europe, Africa, and Southeast Asia.

¹UNHCR, *Statistics on Stateless Persons*, 20 November 2014, available at: <http://www.unhcr.org/546e01319.html>.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

UNHCR commends Antigua and Barbuda for its constructive presence at the May 2013 Regional Conference on the Protection of Vulnerable Persons in Mixed Migration Flows – Promoting Cooperation and Identification of Good Practices, which was jointly organized by UNHCR and IOM in The Bahamas. Participants discussed issues of common concern, such as the effective protection of persons moving in mixed migration flows, and regional cooperation in addressing such flows.

UNHCR also welcomed the participation of Antigua and Barbuda 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*² was adopted. The participation of Antigua and Barbuda 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 Antigua and Barbuda to continue to work with UNHCR and other States in the region to advance on the objectives outlined in the *Brazil Plan of Action*.

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. The main objective of the *Regional Solidarity with the Caribbean* programme is to promote a regional dialogue, which may lead to the establishment of a Regional Consultative Mechanism (RCM) for the efficient management of mixed migratory flows.³

Finally, UNHCR welcomed the establishment of an *ad hoc* Eligibility Committee to review asylum applications received in Antigua and Barbuda in 2015. Convened by the Governor General, the Eligibility Committee included representation from various Government agencies, as well as the Red Cross and UNHCR in an advisory capacity. The act of convening the Eligibility Committee as well as the work of its members represented a positive step towards establishing an asylum system in Antigua and Barbuda. UNHCR encourages the

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

³ The four main areas of action for a Regional Consultative Mechanism are: (1) strengthen cooperation between countries of origin, transit and destination of asylum-seekers and refugees, in order to increase national and regional capabilities to optimize the management of mixed movements and implement comprehensive responses under a framework of rights, with a focus on maritime protection of persons; (2) progressively establish asylum systems through the formulation of public policies and internal regulations and implement procedures for the identification and differentiated assistance of groups in situation of vulnerability, guaranteeing access to refugee status determination procedures and alternatives to detention for asylum-seekers, refugees and accompanied and unaccompanied children; (3) formulate programmes that promote durable solutions, including measures that promote integration in local communities and the inclusion of refugees in national plans and policies, as well as the promotion of international cooperation and regional solidarity to facilitate resettlement of refugees, including South American countries, and voluntary return of migrants, and thus relieve the disproportionate burden in some island countries; and (4) implement measures to favour coordination in the Caribbean to promote the adequate implementation of procedures of refugee status determination.

Government of Antigua and Barbuda to further institutionalize these procedures by drafting and implementing regulations and legislation governing asylum and refugee protection.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Issue 1: Protection of asylum-seekers and refugees

Linked to 1st cycle UPR recommendation no. 69.22: “Build upon the ad hoc national procedure to process asylum claims as a good practice and develop it further (Israel).”⁴

Antigua and Barbuda lacks legislation or regulations governing asylum procedures and defining the rights of refugees. In the absence of a domestic legal framework for refugee protection, Antigua and Barbuda has employed an *ad hoc* approach to refugee status determination for those asylum-seekers identified periodically. UNHCR, through its partnership with the local Red Cross, conducts registration of asylum-seekers and engages in an advisory role on RSD in Antigua and Barbuda.

In 2015, the Red Cross and UNHCR initially identified a group of 10 Syrian asylum-seekers who were detained in Antigua and Barbuda and threatened with removal to their country of origin, a place of ongoing armed conflict and mass forced displacement. Despite their expressed fear of return to Syria, they were not provided with information about or access to a RSD procedure by the Government. These asylum-seekers were detained together with other Syrian nationals in response to concerns expressed by Government officials that Antigua and Barbuda was being used as a transit point for irregular migration.⁵ Out of a total of 17 Syrian nationals who were detained, 15 had sought asylum in Antigua and Barbuda as of August 2015.

The Prime Minister and Cabinet designated the detained Syrians as *persona non grata* – through a group determination process – and asserted the Government’s authority to remove them from Antigua and Barbuda even if they were eventually found to be refugees.⁶ While they remained under threat of expulsion, UNHCR registered these asylum-seekers, interviewed them, and engaged in an advisory role regarding their eligibility for refugee protection in Antigua and Barbuda.

In response, the Governor General of Antigua and Barbuda convened an Eligibility Committee to conduct refugee status determination, with the Red Cross and UNHCR serving in an advisory role. As of August 2015, the Eligibility Committee had examined 10 out of the 15 Syrian asylum-seekers’ cases and recommended that they be granted asylum in Antigua and Barbuda as refugees under the *1951 Convention*. The legal and practical effect of this designation remained uncertain, however, given the lack of a legislative framework governing refugee protection and asylum in Antigua and Barbuda.

⁴ “Report of the Working Group on the Universal Periodic Review –Antigua and Barbuda,” A/HRC/19/5, December 2011, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/173/87/PDF/G1117387.pdf?OpenElement>.

⁵ See, e.g., *Benjamin Clears 14 Syrians of Trafficking/Smuggling Charge*, Antigua Observer, 27 July 2015, available at: <http://antiguaobserver.com/benjamin-clears-14-syrians-of-trafficking-smuggling-charge/>.

⁶ *Id.*

Therefore, while to UNHCR's knowledge, Antigua and Barbuda has not violated the principle of *non-refoulement*, increased safeguards and minimum due process guarantees in removal proceedings are needed to prevent the *refoulement* of persons in need of international protection from Antigua and Barbuda.⁷

UNHCR has shared sample legislation and is prepared to continue to provide support to the Government of Antigua and Barbuda to draft legislation to translate its international refugee protection obligations into domestic law, and to develop and implement RSD procedures that meet minimum due process guarantees. Even in the absence of refugee legislation, Antigua and Barbuda should formalize the mandate and authority of the Eligibility Committee, adopt procedures for the identification and referral of asylum-seekers, and train Government officials likely to come into contact with asylum-seekers on these procedures. UNHCR is prepared to offer support for training and capacity-building to the Government of Antigua and Barbuda throughout this process.

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, Antigua and Barbuda would be implementing the abovementioned 1st cycle UPR recommendation no. 69.22.

Recommendations:

UNHCR recommends that the Government of Antigua and Barbuda:

- a. Develop, enact and implement refugee legislation consistent with international standards, to ensure fair and efficient procedures for conducting refugee status determination, including appeals, so as to guarantee the rights of all recognized refugees in Antigua and Barbuda;
- b. Facilitate access to asylum procedures for persons who have expressed a fear of returning to their country of origin thus ensuring the respect for the principle of *non-refoulement* of asylum-seekers and refugees;
- c. Ensure that refugees are treated in the same manner as permanent residents with regards to employment authorization;
- d. Ensure the issuance of documents or other ID cards for refugees, since the lack of documentation creates obstacles in exercising a wide range of refugees' rights; and
- e. Take the necessary steps to ensure full access to fundamental rights for asylum-seekers and refugees.

Issue 2: Address challenges in the context of mixed migration

Along with other countries in the Caribbean, Antigua and Barbuda faces a complex phenomenon of mixed migratory movements. As a country of both destination and transit of migrants, including persons in need of international protection, Antigua and Barbuda 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

⁷ See, e.g., *Hurst Says Door Closed to Refugees*, Antigua Observer, 19 June 2015, available at: <http://antiguaobserver.com/hurst-says-door-closed-to-refugees/>; *No Refugees Here*, Antigua Observer, 20 June 2015, available at: <http://antiguaobserver.com/no-refugees-here/>.

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 Antigua and Barbuda's current practice of detaining migrants – including vulnerable migrants such as asylum-seekers – even in cases where the persons detained entered and remained lawfully in the national territory; were not charged with violating any law; were in possession of valid identity documents which they presented to the authorities; and had affirmatively exercised their right to seek asylum prior to their detention. UNHCR encourages the Government of Antigua and Barbuda to pursue alternatives to detention for migration management, to ensure that any restriction on migrants' 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 any detention of migrants is neither arbitrary nor indefinite.

Trafficking of persons is of great concern to UNHCR since a coordinated approach to prevent trafficking and protect victims of trafficking has not been fully developed in the region. Antigua and Barbuda has been identified as both a destination and transit country for victims of human trafficking, particularly for women from other countries in the Caribbean who are trafficked for purposes of sexual exploitation and forced domestic labour.⁸

In its submission for the 1st cycle UPR of Antigua and Barbuda, UNHCR commended the Government for its adoption in 2010 of the *Trafficking in Persons Prevention Act*. A 2014 report, however, noted that Antigua and Barbuda did not report any prosecutions, convictions, or punishments of trafficking offenders under the *Act*.⁹ UNHCR recommends that the Government continue efforts to implement the *Act* and establish a formal procedure for identifying victims of trafficking, clearly differentiating between victims and perpetrators of human trafficking, pursuing alternatives to detention for victims, and referring them to necessary services, including asylum procedures if appropriate. By strengthening efforts to combat human trafficking and ensure the protection of victims of trafficking, the Government would be fulfilling two of the recommendations made during the 1st cycle UPR.¹⁰

Recommendations:

UNHCR recommends that the Government of Antigua and Barbuda:

- a. Enhance dialogue and consultation with UNHCR regarding mixed migratory movements experienced by the country, including through consultations on individuals or groups of undocumented migrants detected in Antigua and Barbuda;
- b. Strengthen efforts to identify victims of trafficking, ensure that they have an opportunity to apply for asylum, and facilitate their access to other necessary services;

⁸ UN Habitat, *Antigua and Barbuda: National Urban File* (2011), <http://unhabitat.org/books/antigua-and-barbuda-national-urban-sector-profile/>.

⁹ US Department of State, *2014 Trafficking in Persons Report- Antigua and Barbuda*, available at: <http://www.state.gov/j/tip/rls/tiprpt/countries/2014/226668.htm>

¹⁰ "Report of the Working Group on the Universal Periodic Review: Antigua and Barbuda," A/HRC/19/5, 14 December 2011, recommendation no. 67.21: "Continue efforts aimed at combating human trafficking, protecting victims of trafficking and improving the conditions of shelters (Ecuador);" and recommendation no. 67.22: "Fully implement the 2010 legislation on combating human trafficking and put an end to the impunity of those responsible for this act (France)," available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/173/87/PDF/G1117387.pdf?OpenElement>.

- c. Provide enhanced training to law enforcement, immigration, and judicial officials to better identify and protect vulnerable migrants in mixed migration movements, including asylum-seekers, refugees, stateless persons and victims of trafficking; and
- d. Pursue alternatives to detention for migration management and establish legal and procedural safeguards to ensure that migrants are not subjected to arbitrary or indefinite detention.

Issue 3: Prevention of statelessness and protection of stateless persons

Linked to 1st cycle UPR recommendation no. 68.7: “Ratify the 1961 Convention on the Reduction of Statelessness (Slovakia).”

Antigua and Barbuda succeeded to the *1954 Convention relating to the Status of Stateless Persons* (the *1954 Convention*) in 1988, with reservations to Articles 23, 24, 25, and 31. The country is not yet a State party to the *1961 Convention on the Reduction of Statelessness* (the *1961 Convention*).

In its response to Slovakia’s recommendation to accede to the *1961 Convention* during the 1st cycle UPR, Antigua and Barbuda indicated the need for broad consultations to consider accession.¹¹

In October 2013, the UN High Commissioner for Refugees called for the “total commitment of the international community to end statelessness.”¹² Additionally, in 2014, UNHCR launched the *Global Action Plan to End Statelessness: 2014 - 2024*¹³ (the *Global Action Plan*), which was developed in consultation with States, civil society and international organizations, and sets out a guiding framework comprised of 10 Actions that need to be undertaken to end statelessness within 10 years. Action 9 of the *Global Action Plan* promotes accession to the *UN Statelessness Conventions*.

Moreover, the *Brazil Declaration and Plan of Action*, which Antigua and Barbuda adopted by acclamation in December 2014 at the 30th anniversary of the *1984 Cartagena Declaration on Refugees*, identifies statelessness as a regional concern and calls on States to accede to both *Statelessness Conventions*.¹⁴

¹¹ See “Addendum to the Report of the Working Group on the Universal Periodic Review of Antigua and Barbuda,” A/HRC/19/5/Add.1, 15 March 2012, paras. 20 and 21 on Recommendation no. 68.7:

“20. This Convention is designed to allow for Contracting States to grant nationality or refrain from depriving persons of the nationality of the State in certain circumstances. It does not impose any financial obligations on the State, but requires the passage of legislation to provide for the granting of its nationality in prescribed circumstances.

21. In determining whether to become party to this Convention, consultations will be required with the relevant government departments and possibly civil society, given the framework of our Constitution and citizenship legislation which currently prescribe the qualifications and conditions for the granting and revocation of citizenship to prevent undue financial burden on or for security reasons on a small island economy.”

¹² High Commissioner’s Closing Remarks to the 64th Session of UNHCR’s Executive Committee, 4 October 2013, available at: <http://unhcr.org/525539159.html>.

¹³ UNHCR, *Global Action Plan to End Statelessness: 2014 – 2024*, November 2014, available at: <http://www.unhcr.org/statelesscampaign2014/Global-Action-Plan-eng.pdf>.

¹⁴ *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>.

There is a global and regional consensus on the importance of acceding to the *Statelessness Conventions*. They are key international treaties designed to ensure that every person has a nationality and that stateless persons enjoy a basic set of human rights. The *Statelessness Conventions* do not stand alone, but complement a much broader range of international legal standards, particularly those contained in human rights treaties.

The *1961 Convention* complements the *1954 Convention* to which Antigua and Barbuda is already a State party. It 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. Against the backdrop of the global and regional consensus reflected in the UNHCR *Global Action Plan* and the *Brazil Plan of Action*, Antigua and Barbuda should be encouraged to accede to the *1961 Convention* as an important action to end statelessness.

Lastly, Antigua and Barbuda should be encouraged to re-examine and consider withdrawing its reservations to the *1954 Convention*, particularly to Article 31. Article 31 restricts a State from expelling a lawfully present stateless person without due process of law, barring concerns related to national security or public order. The text of Antigua and Barbuda's reservation to the *1954 Convention* reads: "The Government of Antigua and Barbuda can only undertake that the provisions of articles 23, 24, 25 and 31 will be applied in Antigua and Barbuda so far as the law allows."¹⁵ Antigua and Barbuda's laws regarding the expulsion of foreigners include the *Undesirable Persons Expulsion Act*, which permits Antigua and Barbuda to expel any person not born in Antigua and Barbuda, including a naturalized citizen, but grants the person the right to appeal the expulsion order, albeit on very limited grounds.¹⁶ Therefore, even stateless persons lawfully present in Antigua and Barbuda and entitled to protection according to Antigua and Barbuda's obligations under the *1954 Convention* may be at heightened risk of expulsion, as a result of the State's reservation to Article 31. Stateless persons' enjoyment of their human rights is fundamentally threatened by expulsion, as they have no country of nationality to which they can return.

Furthermore, in this regard, we would like to note that protection against *refoulement* is a fundamental principle of customary international law, in addition to a principle reflected in Article 3 of the *1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* and Article 33 of the *1951 Convention* (regarding refugees). Antigua and Barbuda should be encouraged to ensure that its laws regarding expulsion of foreigners are in accordance with the objective and purpose of both its treaty and its international customary law obligations and provide minimum due process guarantees against *refoulement*, including for stateless persons.

Recommendations:

UNHCR recommends that the Government of Antigua and Barbuda:

¹⁵ See: https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2&lang=en#EndDec.

¹⁶ *Undesirable Persons Expulsion Act*, available at: <http://laws.gov.ag/acts/chapters/cap-450.pdf>.

- a. Accede to the *1961 Convention on the Reduction of Statelessness*;
- b. Withdraw its reservations to the *1954 Convention relating to the Status of Stateless Persons*, particularly its reservation to Article 31; and
- c. Ensure minimum due process guarantees against *refoulement* of stateless persons.

Human Rights Liaison Unit
Division of International Protection
UNHCR
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ANNEX

Excerpts of Recommendations from the 1st cycle Universal Periodic Review

ANTIGUA AND BARBUDA

We would like to bring your attention to the following 1st cycle UPR recommendations relating to issues of interest and persons of concern to UNHCR with regards to Antigua and Barbuda.

I. Universal Periodic Review

Recommendation ¹⁷	Recommending State	Position ¹⁸
67.21. Continue efforts aimed at combating human trafficking, protecting victims of trafficking and improving the conditions of shelters	Ecuador	Supported
67.22. Fully implement the 2010 legislation on combating human trafficking and put an end to the impunity of those responsible for this act.	France	Supported
68.7. Ratify the 1961 Convention on the Reduction of Statelessness.	Slovakia	Supported ¹⁹
69.22. Build upon the ad hoc national procedure to process asylum claims as a good practice and develop it further.	Israel	Noted

¹⁷ All recommendations made to Antigua and Barbuda during its 1st cycle UPR can be found in: “Report of the Working Group on the Universal Periodic Review: Antigua and Barbuda,” A/HRC/19/5, 14 December 2011, available at: <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/AGSession12.aspx>.

¹⁸ Antigua and Barbuda’s views and replies can be found in the Addendum, A/HRC/19/5/Add.1, 15 March 2012, available at: <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/AGSession12.aspx>.

¹⁹ Addendum paras. 20 – 21: “This Convention is designed to allow for Contracting States to grant nationality or refrain from depriving persons of the nationality of the State in certain circumstances. It does not impose any financial obligations on the State but requires the passage of legislation to provide for the granting of its nationality in prescribed circumstances. In determining whether to become party to this Convention, consultations will be required with the relevant government departments and possibly civil society, given the framework of our Constitution and citizenship legislation which currently prescribe the qualifications and conditions for the granting and revocation of citizenship to prevent undue financial burden on or for security reasons on a small island economy.”