



Submission by the United Nations High Commissioner for Refugees
for the Office of the High Commissioner for Human Rights' Compilation Report
- Universal Periodic Review:

HAITI

I. Background and Current Conditions

UNHCR has maintained a temporary, emergency presence in Haiti since the 12 January 2010 earthquake, and did not have a physical presence prior to that time. Due to the natural disaster-induced nature of the current displacement, UNHCR's field involvement derives from a specific request to support the emergency protection response from the Office of the High Commissioner for Human Rights (OHCHR), as lead of the Protection Cluster.

UNHCR's support to OHCHR and the Protection Cluster at large has focused on addressing serious and sustained protection violations against internally displaced persons, related to: lack of safety and security, and violation of physical integrity in camps and settlements; sexual and gender-based violence; forced evictions and land/property rights problems; loss of civil documentation; and lack of protection of children and other particularly vulnerable groups. Given UNHCR's particular expertise, the agency has also provided support through implementation of quick impact projects to stabilize host communities and host families, and through cross-border operations including family tracing and family reunification (especially for unaccompanied and separated children), and dealing with the protection situation of earthquake victims evacuated to or otherwise fleeing to Dominican Republic.

Given the subsidiary, support role of UNHCR in Haiti in the post-earthquake period, UNHCR will limit its inputs to protection problems linked to the agency's core mandates: refugee protection and the prevention and reduction of statelessness.

Right to Nationality

Haiti is neither party to the *1954 Convention relating to the Status of Stateless Persons* nor the *1961 Convention on the Reduction of Statelessness*.

UNHCR is concerned with statelessness in Haiti in two different manifestations: (1) the risk of statelessness of Haitian children born in Haiti due to lack of birth registration and institutional deficiencies in civil registration in general, and (2) the risk of statelessness of children of Haitian descent born outside of Haiti to first generation Haitian migrants (born in Haiti) or successive generations of Haitian immigrants (themselves also born outside of Haiti). UNHCR would like to strengthen engagement and cooperation with the Government of Haiti and provide technical assistance to address both scenarios.

Haiti's Constitution establishes a *jus sanguinis* nationality framework. According to Article 11 of the Haitian Constitution, individuals possess Haitian nationality at the time of birth if they are born to a Haitian father or a Haitian mother who were themselves born Haitian and have not renounced their nationality. Article 11 specifically uses the term "*Nationalite Haïtienne d'origine*" (Haitian nationality of origin) to describe persons who are considered Haitian at birth by virtue of blood descent -- a term used to distinguish them from naturalized Haitians who, according to Article 12 (1), are foreigners who apply for and obtain Haitian nationality after five years of "continuous residence" in Haiti). Both "Haitians of origin" and naturalized Haitians can transmit Haitian nationality to subsequent generations under the *jus sanguinis* nationality regime.

Haitian law does not allow for dual nationality, thus, persons of Haitian descent who are born with another nationality, or acquire one after birth, are not considered to be nationals. By law, a Haitian national of origin (*haïtienne d'origine*) can reacquire Haitian nationality if the second nationality is renounced or lost, which constitutes an important means of reducing some cases of statelessness. However, this does not apply to naturalized Haitians who according to Articles 13(c) and 14 may lose nationality as a result of "continuous residence abroad...without duly granted authorization by a competent official"; in such cases, a naturalized Haitian who has lost Haitian nationality may not reacquire it except if "meeting all of the conditions and formalities imposed on aliens by the law". Other safeguards contained in the 1961 Convention on the Reduction of Statelessness are missing in the Haitian legal framework, including important safeguards against statelessness at birth.

Moreover, Article 2(3) of the Haitian nationality law prohibits persons not of black (Afro-) descent from attaining citizenship on birth in the territory.¹

Furthermore, *in practice*, the affirmative recognition of nationality through issuance of appropriate civil documentation, including birth registration, is highly problematic. Due to structural factors related to human and financial resources, weak institutions, lack of clear regulatory frameworks, and socio-economic factors within Haitian communities, there is a very high rate of lack of civil documentation among persons born in Haiti. This deficiency impacts Haitians' right to identity, their ability to exercise the broad spectrum of human rights and their risk of statelessness. It is estimated that between 20% and 40% of children born in Haiti are not registered at birth.²

¹ Tout individu né en Haiti, de père étranger ou, s'il n'est pas reconnu par son père, de mère étrangère, pourvu qu'il descende de la race noire.

² Nicola Sharp, *Technical Consultation of Global Partners Forum on Children Affected by HIV and AIDS: Technical Paper on Birth Registration* (2007), available at: http://www.unicef.org/french/aids/files/GPF-Birth_Registration.pdf

In addition, weak and under-resourced consular services in Haitian Embassies and Consulates abroad can contribute to increased risks of statelessness for persons of Haitian descent born outside of Haiti. Although the Constitutional framework bases nationality on descent (*jus sanguinis*), complying with the documentary requirements to demonstrate descent from a Haitian national is very difficult and costly for those outside of Haiti. An additional problem is the lack (to UNHCR's knowledge) of clear, concise written consular regulations on interpretation of the law. For example, in a 2008 survey conducted by UNHCR of four Haitian consulates in locations with the highest numbers of Haitians and their descendants living abroad, consular officials disagreed on how far, i.e. to which generation, lineage rights could extend to grant nationality.

The 12 January 2010 earthquake³ that devastated Haiti's capital and surrounding towns, exacerbated problems related to civil identity documentation, implying larger numbers of the population were rendered at risk of statelessness. Apart from the tremendous humanitarian assistance and protection needs of earthquake victims, the needs related to issuance of civil identity documents are enormous. Although there is no quantitative data available, it is likely that hundreds of thousands of IDPs could have lost their identity documents after the earthquake and are in need of new civil documents. Government institutions suffered great loss of staff, physical infrastructure and assets which severely weakened the operational capacity of the Government, including Civil Registry functions. More than one year after the earthquake, the need to rebuild government infrastructure, recruit and train relevant staff, and develop systems and structures to ensure proper civil documentation for all men, women and children, remains acute. Without adequate birth and civil registration systems in place, many protection risks are heightened, especially in relation to children (e.g. heightened risks of child trafficking, abduction and illegal adoption).

Refugees and Asylum-seekers

The Republic of Haiti acceded to the *1951 Convention on relating to the Status of Refugees* and its *1967 Protocol* (hereinafter jointly referred to as the *1951 Refugee Convention*) on 25 September 1984. The country has not yet passed any implementing legislation or administrative regulations on asylum or refugee status, nor has the Government established a national asylum procedure. The country's immigration law does not provide an adequate framework for refugee protection and asylum issues.

Haiti is not a country of intended destination for asylum seekers; however, its geographic location makes it a transit country. Some asylum seekers who have been forced to result to smugglers in order to seek safety have been abandoned in Haiti before reaching their intended destination of the US or Canada.

³ The 2010 earthquake left more than 200,000 persons dead, more than 300,000 injured, destroyed more than 250,000 homes and displaced more than 1.3 million inhabitants. As of January 2011, there continued to be an estimated 810,000 IDPs living in identified IDP sites and surrounding areas in the earthquake-affected zone, according to the Camp Coordination/Camp Management (CCCM) Cluster.

There are no national mechanisms for identifying asylum seekers or refugees amongst undocumented migrants in the territory. In fact, very little data is available to indicate how many undocumented migrants may transit or reside (permanently or temporarily) in Haiti. As a result, UNHCR and a local partner (GARR) in Haiti assume responsibility for identifying, screening, registering, counseling, providing humanitarian assistance to asylum seekers and refugees, and processing asylum claims through a UNHCR refugee status determination procedure. During the last five years, UNHCR has registered approximately twenty-five asylum seekers of diverse nationalities in Haiti.

The Government of Haiti has generally cooperated in the past with UNHCR to facilitate release from detention for bona fide asylum seekers, enabling UNHCR and its local partner to provide alternatives to detention for vulnerable persons of concern to UNHCR during refugee processing. However, refugees recognized by UNHCR in Haiti do not receive refugee documentation nor are they entitled to any form of legal status or documentation which allows them to work legally. Due to lack of temporary residency rights and/or work permits, refugees face the risk of *non-refoulement* and/or detention, are more vulnerable to labour exploitation, and are also highly dependent upon UNHCR for assistance to ensure basic survival. The Government of Haiti does not issue Convention Refugee Travel documents.

UNHCR facilitates durable solutions for all recognized refugees through resettlement or voluntary repatriation options, given the manifest lack of legal, socio-economic and security conditions in Haiti to integrate refugees. The Government does not currently facilitate any local integration options for refugees, which leaves those who do not qualify for resettlement or who cannot safely exercise the right to voluntarily repatriate to their home countries in a legal limbo.

II. Achievements and Best Practices

Right to Nationality

Following the earthquake, the Government of Haiti cooperated with UNHCR and local NGO partners to implement a pilot project in Leogane and Petit Goave to assist IDPs with recovery of identification documentation lost in the earthquake. Similar initiatives are needed elsewhere in Haiti to achieve impact on a much larger scale.

Refugees and Asylum-seekers

To date, refugees who have been recognized by UNHCR have not been subject to removal to their home country. As such, there are no known violations of the principle of *non-refoulement*. Authorities in Haiti have been cooperative in allowing UNHCR and its local partner (GARR) access to asylum seekers in detention, when they have been identified by other UN agencies or local NGO partners. The Haitian Government has also cooperated with UNHCR to facilitate the exit of Haitian nationals from Haiti to third countries for the purposes of family reunification.

III. Challenges and Constraints

Right to Nationality

There were many challenges and constraints to the prevention and reduction of statelessness prior to the earthquake. These included: (1) weak institutional capacity and lack of financial and human resources to address gaps and deficiencies related to birth registration and Civil Registry functions in general; (2) lack of clarity in the interpretation of nationality law, particularly as relates to children of Haitian descent born outside of Haiti; (3) weak and inconsistent consular services; (4) insufficient international cooperation in the area of documentation and civil registry, and the tendency to prioritize documentation projects on civil documents related to exercise of electoral rights rather than birth registry and documentation fundamental to right to identity. In the post-earthquake period, all of these challenges and constraints have been exacerbated, as weak institutions have been made even weaker as a result of loss of staff, destruction of infrastructure and assets, loss of individual civil documentation as a result of the earthquake itself, and the general humanitarian crisis which is absorbing the attention and resources of the international community.

Refugees and Asylum-seekers

Similar to other states and territories in the northern Caribbean, Haiti finds itself geographically located in a very complex migratory environment. Haiti is susceptible to the arrival of undocumented persons by air, sea and land, most of whom arrive unintentionally and/or with a view to transit to North America through smuggling networks, which often are unscrupulous and abandon economic migrants and asylum seekers along the route.

Asylum seekers, when detained along with the wider undocumented migrant population, have been held at the *Direction Centrale de la Police Judiciaire* (DCPJ) or other police sub-stations or prison facilities together with the regular criminal population. There is no separation of the undocumented migrant population from the regular prison population and the conditions in these detention centres are extremely poor. Asylum seekers, refugees, and other vulnerable persons (stranded migrants, etc.) are especially vulnerable when detained because they do not have family members in Haiti to bring them food, hygiene items and other basic needs, upon which detainees in the DCPJ and police sub-stations rely.

The Haitian Government has limited resources and capacity to cope with undocumented migrants, asylum seekers and refugees. The establishment of a fair, efficient and accessible procedure for identifying asylum seekers and determining refugee status requires financial and human resources and institutional capacity which are currently lacking, given other national priorities. Other national priorities, including governance and institution-building, public safety and security, the socio-economic situation, and response to natural disasters and public health crises take priority over migration and protection issues related to non-nationals. As such, it is expected that UNHCR's support to perform refugee status determination (RSD), provide material assistance and facilitate durable solutions will still be needed in the years to come. Nonetheless, there are less resource-intensive steps that the Government of Haiti can take to improve its coordination with UNHCR and enhance refugee protection in the country, as indicated in the recommendations below.

IV. Recommendations

Recommendations related to the Right to Nationality

- UNHCR recommends that the Government of Haiti accedes to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.
- Accession to the 1954 Convention relating to the Status of Stateless Persons would establish a framework to protect such individuals and would work to avoid the detrimental effects of statelessness on individuals and society by ensuring minimum standards of treatment of stateless persons, providing such persons with stability and security, and ensuring that certain basic rights and needs are met.
- 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 human rights treaties. An increase in the number of States parties is essential to strengthening international efforts to prevent and reduce statelessness.
- In the context of post-earthquake recovery efforts, the Government of Haiti should give appropriate priority to the recovery and strengthening of the Civil Registry system, both at the central and provincial levels, and the restoration (or first-time issuance) of civil identity documents to all Haitian nationals. In order to ensure full compliance with obligations under the Convention on the Rights of the Child, particularly the right to a nationality, legal reforms and institutional strengthening are needed to ensure that all children are registered at birth, and that the process of registration is accessible to all sectors of the population. Prioritization of birth registration and civil documentation for men, women and children is key to reducing protection risks, including trafficking and other forms of sexual and labour exploitation, in the post-earthquake environment.
- The Government of Haiti should work closely with UNHCR to jointly study and address institutional, legal, policy and regulatory gaps related to consular documentation for children of Haitian nationals who are born outside of Haiti, to ensure that children of Haitian descent born outside of Haiti, who qualify for acquisition of *jus sanguinis* nationality under Haitian law, are able to access documentary proof of nationality.
- The Government of Haiti should amend its nationality legislation to ensure it does not discriminate on the basis of race, ethnicity or gender.

Recommendations related to Refugees and Asylum-seekers

- The Government of Haiti should enhance dialogue and consultation with UNHCR in relation to any mixed migratory flows experienced by the country, including consulting with UNHCR and its local NGO partner (GARR) to address groups of undocumented migrants detected in its territory, including maritime and land border arrivals. This will enable UNHCR and its local partners to better support the Haitian Government to strengthen its migration management systems to include the necessary protection safeguards, including protection screening, identification, referral and status determination systems, as appropriate.

- The Government of Haiti should grant refugee identity documents, temporary residency and work permits to refugees recognized under UNHCR's Mandate, to create legal security for the small number of refugees in Haiti's territory and, in particular, to ensure respect for the principle of *non-refoulement*.
- In the medium term, the Government of Haiti should be encouraged to draft domestic refugee legislation, which will ensure full compliance with obligations under the 1951 Convention on the Status of Refugees and its 1967 Protocol. In the meantime, the Government should continue to collaborate closely with UNHCR to ensure alternatives to detention, *non-refoulement*, the right to work, the right to reside legally (at a minimum, temporarily) and durable solutions for refugees.

V. Capacity Building and Technical Assistance

At the moment, the Government in Haiti is in a critical period of humanitarian crisis as well as an important period of political transition. Installation of a new government as a result of the 2010/2011 national electoral process is tremendously important for the realization of refugee protection and the prevention and reduction of statelessness. UNHCR awaits with great interest the installation of a new government in Haiti and appointment of counterparts to address both refugee protection and statelessness issues.

UNHCR is hopeful that the new Government will demonstrate an interest in and willingness to work cooperatively with UNHCR and other relevant international organizations to analyze risks of statelessness, and find effective legal and operational strategies to enhance birth registration and civil registry systems to prevent and reduce risks of statelessness amongst the Haitian population inside and outside of Haiti. UNHCR is encouraged by the declarations made by presidential candidates Ms. Manigat and Mr. Martelly who have both stated that registration of all children at birth would be a priority of their presidential mandate.

While understanding that refugee policy is of lesser priority to the Government of Haiti and its people, UNHCR also stands ready to provide technical support in the development of national refugee policy and practice, including the drafting of national refugee legislation. UNHCR is likewise ready and willing to provide training and capacity building services related to mixed migration and refugee protection to designated staff within the Government of Haiti.

Finally, the Government should be strongly encouraged to engage with Haitian civil society, academia and other legitimate national stakeholders in Haiti, by consulting with these stakeholders, including them in capacity-building activities, and strengthening Government-civil society collaboration to face today's challenges related to both statelessness and refugee protection.

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March 2011**