

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, 23rd Session

SAINT KITTS AND NEVIS

I. BACKGROUND INFORMATION

Saint Kitts and Nevis is a State party to the *1951 Convention relating to the Status of Refugees* (the *1951 Convention*) since February 2002, but has not yet acceded to its *1967 Protocol*. The country has neither acceded to the *1954 Convention relating to the Status of Stateless Persons* (the *1954 Convention*), nor to the *1961 Convention on the Reduction of Statelessness* (the *1961 Convention*).

Located along the chain of islands of the Lesser Antilles, Saint Kitts and Nevis is among the Caribbean countries affected by mixed migratory movements of undocumented persons. UNHCR has had access to little information about the nature, size and scope of movements of undocumented persons arriving to or transiting through Saint Kitts and Nevis, but has received information suggesting that Saint Kitts and Nevis may sometimes be a point of transit for Haitian nationals *en route* to the French territories of Guadeloupe and/or Martinique.

The country also has not passed implementing legislation or administrative regulations on asylum or refugee matters, nor established a national asylum procedure. When asylum-seekers are identified, their claims are referred to UNHCR's Honorary Liaison in Saint Kitts and Nevis and are then examined and decided by UNHCR's regional office in Washington under the agency's mandate. As of December 2014, Saint Kitts and Nevis hosted one refugee. However, due to the lack of procedures to identify and protect refugees in the country, it is possible that there are other persons in need of international protection of whom UNHCR is not aware.

Within the context of mixed migration, it is important that *all* Caribbean countries – whether countries of destination or of transit – develop their capacities to appropriately manage these movements, including mechanisms to identify those persons within mixed flows who may be in need of refugee protection. At present, to UNHCR's knowledge, Saint Kitts and Nevis has not taken the necessary steps to accede to the *1967 Protocol*, to develop legislation on asylum matters, or to establish administrative mechanisms to identify and register asylum-seekers and to decide their asylum claims.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

UNHCR is not aware of specific policies or practices in Saint Kitts and Nevis to identify asylum-seekers within mixed migratory movements and to provide them with differentiated treatment, including access to an asylum procedure. As such, it is difficult for UNHCR to comment on achievements and best practices.

When asylum-seekers have come to the attention of UNHCR and/or UNHCR's partner in Saint Kitts and Nevis, the Government has fully cooperated with UNHCR. This cooperation has included facilitating UNHCR access to detained asylum-seekers for review of their claims, as well as access to migrants for general screening purposes.

Regarding victims of trafficking, UNHCR commends the Government's adoption of the *2008 Trafficking in Persons Act*, which prohibits the exploitation of all persons for prostitution and commercial sexual use.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Issue 1: Protection of asylum-seekers and refugees

Saint Kitts and Nevis is one of only six States in the Caribbean region that has not acceded to the *1967 Protocol relating to the Status of Refugees*. The *1967 Protocol* extends the personal scope of the *1951 Convention* by eliminating the geographic and time limitations contained in the *1951 Convention* and is therefore essential for the effective protection of refugees. Given the regional context and protection challenges, accession to the *1967 Protocol* should be a priority.

Similar to neighbouring States and territories in the Caribbean, Saint Kitts and Nevis finds itself geographically located in a very complex migratory environment and is thus susceptible to the arrival of undocumented persons by air and sea. Limited resources are available to Caribbean Governments in general to cope with the undocumented arrival of non-nationals. At the same time, the donor community does not pay sufficient attention to the migratory challenges in the sub-region. Other national priorities will normally take priority over the issue of undocumented migration. These are challenges that are faced throughout the region, and constrain more pro-active engagement on the issue of refugee protection within the context of mixed migration.

UNHCR encourages Saint Kitts and Nevis to establish a national legal framework to provide refugees with international protection. UNHCR is prepared to provide support to the Government of Saint Kitts and Nevis 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 migration flows and assist persons in need of international protection.

Recommendations:

UNHCR recommends that the Government of Saint Kitts and Nevis:

- Accede to the *1967 Protocol relating to the Status of Refugees*;¹
- Consider the passage of domestic refugee legislation and/or develop administrative regulations, policies and procedures, to ensure that the country is in full compliance with its obligations under the *1951 Convention*;
- Develop a national refugee status determination procedure and build the capacity of Government officials to successfully undertake refugee status determination, with UNHCR's technical support;
- Facilitate full and open access to asylum procedures for persons who have expressed a fear of returning to their country of origin and to ensure *non-refoulement* of all persons in need of international protection; and
- Pay due attention to the gender-related dimensions of refugee status, asylum, nationality and statelessness of women as set out in the CEDAW *General Recommendation No. 32*.²

Issue 2: Address challenges in the context of mixed migration

Like other countries in the region, Saint Kitts and Nevis is facing a complex phenomenon of mixed migratory movements across the Caribbean. It is crucial that all Caribbean countries – whether countries of destination or of transit – develop their capacity to appropriately manage these movements with a coordinated approach. There is a need for regional cooperation in data collection and analysis, protection-sensitive entry systems, reception arrangements, mechanisms for profiling and referral, differentiated processes and long-term solutions. This type of regional cooperation is outlined in the *Brazil Declaration and its Plan of Action* adopted in December 2014 by 28 States and territories in Latin America and the Caribbean on the occasion of the 30th anniversary of the *1984 Cartagena Declaration on Refugees*.³

¹ Accession to the *1967 Protocol relating to the Status of Refugees* and related conventions was recommended during the 1st cycle UPR examination of Saint Kitts and Nevis. See: Report of the Working Group of the Universal Periodic Review: Saint Kitts and Nevis, A/HRC/17/12, 15 March 2011, para. 76.21 (recommended by Trinidad and Tobago), available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/118/07/PDF/G1111807.pdf>.

² UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women*, 5 November 2014, CEDAW/C/GC/32, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fGC%2f32&Lang=en

³ The *Brazil Plan of Action* incorporates the Conclusions from the four regional Consultations, including the Caribbean Sub-Regional Consultation. The Government of Saint Kitts and Nevis participated in the Caribbean Sub-Regional Consultation, which took place on 10 and 11 September 2014 in the Cayman Islands, as well as in the Brasilia Ministerial Meeting on 2-3 December 2014. See: <http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=t3/fileadmin/Documentos/BDL/2014/9865>.

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 its extensive maritime borders and limited financial, technical, human and material resources. In response to these challenges, the “Regional Solidarity with the Caribbean Programme” was introduced. The main objective of this programme is to promote a regional dialogue, which may lead to the establishment of a Regional Consultative Process (RCP) for the efficient management of mixed migration.⁴

UNHCR encourages Saint Kitts and Nevis to work with other States in the region to implement the objectives outlined in the *Brazil Declaration and Plan of Action*, especially those objectives that are tailored to the Caribbean reality.

Regional coordination is also needed to prevent and protect trafficking victims in the Caribbean. UNHCR commends the State’s passage of the *2008 Trafficking in Persons Act*.⁵ To further strengthen protections for victims of trafficking, UNHCR encourages Saint Kitts and Nevis to amend the *Act* to include the right of trafficking victims to seek asylum.⁶ While Part III of the *Act* calls for “reasonable protections” for the victim and his/her family, it does not articulate the kinds of protection available to trafficking victims in Saint Kitts and Nevis.

Recommendations:

UNHCR recommends that the Government of Saint Kitts and Nevis:

- Further engage in an enhanced dialogue with UNHCR in relation to the mixed migratory flows experienced by the country, including through consultations on groups of undocumented migrants detected in its territory;
- Strengthen efforts to ensure that victims of trafficking are provided with an opportunity to seek asylum and enjoy the corresponding rights and services;
- Develop standard operating procedures for identifying and appropriately channeling cases of victims of trafficking who express a fear of return to their home country and

⁴ Four main areas of action for a Regional Consultative Process are outlined in Chapter 5 of *Brazil Plan of Action*, specifically: (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 non-accompanied 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.

⁵ *Trafficking in Persons (Prevention) Act*, 2008.

⁶ Canada recommended the Government of Saint Kitts and Nevis to “Take measures to study trafficking in persons in the country and formulate a broad strategy against trafficking, which should include the prosecution and punishment of traffickers.” Report of the Working Group on the Universal Periodic Review, A/HRC/WG.6/10/L.10 (3 February 2011), available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/118/07/PDF/G1111807.pdf>.

who therefore should be given access to an asylum procedure under UNHCR's mandate; and

- Gather information on the numbers of undocumented persons known to have arrived to and/or transited through the territory, the nationalities of these persons, and what steps were taken (if any) to determine whether any of these individuals had specific protection needs or feared being returned to their country of origin due to violence, conflict or persecution.⁷

Issue 3: Prevention of statelessness and protection of stateless persons

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

In October 2013, the UN High Commissioner for Refugees called for the “total commitment of the international community to end statelessness.”⁸ Additionally, in 2014 UNHCR launched the *Global Action Plan to End Statelessness: 2014 - 2024* (the *Global Action Plan*), which was developed in consultation with States, civil society and international organizations, and set out a guiding framework comprised of 10 Actions that need to be taken to end statelessness within 10 years. Action 9 of the *Global Action Plan* promotes accession to the *UN Statelessness Conventions*.⁹

Moreover, the *Brazil Plan of Action* includes a chapter related to the eradication of statelessness in the Americas that promotes accession to both *Statelessness Conventions*.¹⁰

There is a global and regional consensus on the importance of acceding to the *Statelessness Conventions*. The *1954 Convention* and the *1961 Convention* are key international treaties designed to ensure that every person has a nationality and that stateless people enjoy a basic set of human rights. The *Statelessness Conventions* do not stand alone, but complement a much broader range of international legal standards, in particular those contained in human rights treaties.

The *1954 Convention* establishes minimum standards of treatment for stateless persons in respect of a number of rights. These include, but are not limited to, the right to education, employment and housing. Importantly, the *1954 Convention* also guarantees stateless people 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. It

⁷ A recommendation was made to “[t]ake measures to study trafficking in persons in the country and formulate a broad strategy against trafficking, which should include the prosecution and punishment of traffickers” during the 1st cycle UPR examination of Saint Kitts and Nevis. See: Report of the Working Group of the Universal Periodic Review: Saint Kitts and Nevis, A/HRC/17/12, 15 March 2011, para. 75.29 (recommended by Canada), available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/118/07/PDF/G1111807.pdf>.

⁸ High Commissioner's Closing Remarks to the 64th Session of UNHCR's Executive Committee, 4 October 2013: <http://unhcr.org/525539159.html>

⁹ UNHCR, *Global Action Plan to End Statelessness: 2014 – 2024*, November 2014, <http://www.unhcr.org/statelesscampaign2014/Global-Action-Plan-eng.pdf>

¹⁰ *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>.

requires that States establish safeguards in their nationality laws to prevent statelessness at birth and later in life.

Against the backdrop of the global and regional consensus reflected in the UNHCR *Global Action Plan* and the *Brazil Plan of Action*, Saint Kitts and Nevis should be encouraged to accede to the two international *Statelessness Conventions* as an important action to end statelessness globally.

Recommendation:

UNHCR recommends that the Government of Saint Kitts and Nevis:

- Accede to the *1954 Convention relating to the Status of Stateless Persons* and to the *1961 Convention on the Reduction of Statelessness*.

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