

Protection in the absence of legislation in Trinidad and Tobago

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The Caribbean's many small island States are grappling with increasingly complex mixed migration flows, yet few have introduced refugee legislation. Trinidad and Tobago is in the process of doing so.

The island state of Trinidad and Tobago has seen increasing numbers of migrants in the past decade and is both a transit and destination point. Consistent with Caribbean trends, refugees of various nationalities are increasingly making it to Trinidad and Tobago's shores. 184 persons were registered as asylum seekers in Trinidad and Tobago in 2014, 209 in 2015 and 314 in 2016.¹ According to UNHCR, the UN Refugee Agency, the first few months of 2017 showed a doubling of 2016's figures, with 640 registered asylum seekers, refugees and other persons of concern as of May 2017. This rapid increase is expected to continue as there remains a backlog of persons to be registered; the total for 2017 is projected to be about 1,800.

Asylum seekers and refugees in Trinidad and Tobago come from six main countries – Cuba, Venezuela, Syria, Bangladesh, Jamaica, Colombia and Nigeria – representing a mix of both regional and extra-regional refugees. Previously, the majority hailed from Cuba and Syria but as of 2017 Venezuelans became the second largest group of asylum seekers. However, refugees and asylum seekers also represent many other countries of origin such as Pakistan, Congo, Mali, Sudan and Uganda. More widely, according to UNHCR statistics dated March 2017, the number of refugees and asylum seekers in the Caribbean region² rose by 50% between 2015 and 2016. The top ten countries of origin in descending order are El Salvador, Haiti, Honduras, Guatemala, Cuba, Venezuela, Colombia, Syria, Jamaica and Bangladesh.

Protection challenges and shortcomings

In the Independent Commonwealth Caribbean,³ only Belize has legislation for refugees, while Jamaica and Trinidad

and Tobago have a refugee policy but no legislation. Trinidad and Tobago acceded to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol in November 2000. To date, these have not been incorporated into domestic legislation but the drafting process to do so is now underway. This process is being undertaken in a commendably participatory way with the main stakeholders including the International Affairs Unit and the Immigration Division of the Ministry of National Security, UNHCR and the NGO Living Water Community (LWC).⁴

The good relationship among stakeholders has resulted in the protection of hundreds of refugees over the past three decades. A refugee policy, approved in June 2014,⁵ outlines rights that refugees are entitled to: a permit authorising their stay in the country, the right to work, identity papers, travel documents, public assistance (if unable to work and in need), medical care, freedom of movement, family reunification, educational opportunities and recreational activities, counselling for trauma or other psychological issues, and the right not to be expelled from the country (unless the refugee poses a threat to national security or to public order). It envisages a three-phased approach to enabling the government to assume responsibility for refugee protection and take over refugee status determination. Despite an overly ambitious timeline, capacity building of government actors has been taking place to enable them to assume this responsibility.

However, not all of the rights listed in the policy are actually accorded to the refugees. Other than freedom of movement, medical care and the right not to be expelled, in practice there is no right to work, no

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issuance of identity documents on handing over of passports to receive an order of supervision, no public assistance nor access to culturally sensitive psychological treatment, limited access to education for children, and no easy route to family reunification.

Any refugee or asylum seeker who wishes to claim protection in Trinidad and Tobago is bound by the Immigration Act and its regulations, and this makes it difficult to implement effective protection safeguards. Persons who enter or remain in Trinidad and Tobago without correct documentation may be treated as criminals (imprisoned and/or fined) and are likely to be detained in an administrative detention centre pending deportation to their countries of origin. The Act's rulings apply to asylum seekers and refugees as well, especially if they are in possession of false documents or are undocumented.

When asylum seekers register with UNHCR through LWC, and in line with procedures agreed in 2014, they are referred to the Immigration Division which grants them an order of supervision. This imposes a reporting requirement and protects the asylum seeker from *refoulement* or detention so long as they comply with the laws of the country. This alternative to detention was negotiated years ago with the Immigration Division along with the removal of the usual requirement of paying a bond. However, a recent case from the High Court of Trinidad and Tobago has indirectly called into question the legality of the current use of orders of supervision for asylum seekers and refugees. The stakeholders are due to meet to discuss the implications of this decision and to look at alternative solutions.

The refugee policy also recognises the three durable solutions promoted by UNHCR to help refugees rebuild their lives in dignity

and peace. In Trinidad and Tobago, however, as refugees cannot legally integrate into the country or work, UNHCR depends heavily on resettlement as the main possible solution for most refugees (traditionally in the United States). This can be lengthy and there is no guarantee that the refugees will be accepted by another country. With declining numbers of available resettlement spaces worldwide, local integration remains the *de facto* solution.

Additional protection concerns relate to LGBTI⁶ persons, children and women, in particular. Many LGBTI persons flee their home countries seeking refuge in Trinidad and Tobago. However, due to the country's cultural norms and Sexual Offences Act of 1986, they face many of the same protection concerns in Trinidad and Tobago that they had in their country of origin. Due to restrictions imposed by the Immigration Division, concerns over a lack of school places and a preference for enrolling refugees over asylum seekers, growing numbers of children remain out of school. There is little capacity for accommodating unaccompanied or separated children; this is due in part to a lack of bilingual personnel and in part to a shortage of spaces in children's homes.



In a classroom at the University of the West Indies in Trinidad, Professor of Linguistics Valerie Youseff assists an eight-year-old refugee from Colombia with English language exercises.

Meanwhile, with longstanding discrimination towards Latina women in Trinbagonian society, and entrenched misogyny, many refugee women face harassment daily and remain particularly vulnerable to exploitation and abuse. This vulnerability is exacerbated in the workplace where refugee women (and all refugees, for that matter) are forced to work in the informal economy.

Options in the face of limited resources and capacity

LWC is the only civil society organisation on the island that is dedicated to refugees. A recent partnership with the University of the West Indies, however, offers some hope for expansion of services through the provision of English language classes (and in the future perhaps offer courses on refugee studies). Another partnership envisions the provision of legal aid in collaboration with the local law school.

Arguably, like any other State, Trinidad and Tobago should ensure that basic legal obligations are met and access to asylum facilitated, despite not yet having domestic legislation in place. It should provide humanitarian assistance to those in need in a way that respects the dignity and security of all persons. While putting its

existing capacities and resources to use to effectively and efficiently guarantee the protection of refugees and all persons on its territory, its own limitations as a Small Island Developing State should be acknowledged, including its ongoing recession. Where Trinidad and Tobago falls short of being able to provide protection for the growing number of asylum seekers, the international community should consider how to provide appropriate, adequate support to ensure that those protection needs are met. The entire Caribbean could certainly benefit from additional international support.

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1. This does not include persons who spontaneously depart or refugees who are resettled to third countries.
2. This includes Belize.
3. This refers to English-speaking countries in the Caribbean which gained full independence from the United Kingdom.
4. LWC has partnered with UNHCR since 1989; UNHCR established a presence on the island in January 2016.
5. National Policy to Address Refugee and Asylum Matters in the Republic of Trinidad and Tobago, adopted by Cabinet in June 2014 www.refworld.org/docid/571109654.html
6. Lesbian, Gay, Bisexual, Transgender and Intersex