

Human Rights Dimensions of Venezuelan Asylum Seekers in Trinidad and Tobago

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Abstract

The international human rights' framework which operates to protect asylum seekers is comprehensive and robust. It serves to not only protect those who claim refugee status but also sets out the duties imposed on States relative to these types of claims. However, the enforcement of the human rights norms in a national context may not always resemble the concept in theory. As such, the refugee situation in Trinidad and Tobago is a complex minefield where the executive seeks to balance domestic security issues; international human rights obligations; national policies and the enforcement of legislation. It is in this context that this paper will examine the boundaries of the rights of asylum seekers, specifically from Venezuela, in Trinidad and Tobago using domestic laws and international human rights sources as the basis for the rights delineation. There will also be a careful analysis of the existing duties which are accepted by the Trinidad and Tobago government through ratification of international treaties and the operation of customary international law. To this end, the foregoing discussion of the legal and policy considerations of the rights and duties of asylum seekers, will create fertile ground for a critical evaluation of the execution of certain policy decisions regarding asylum seekers taken by the Trinidad and Tobago government. In looking at the entire scenario which operates in the twin-island Republic, there will be an opportunity to propose ways to strengthen the existing legal and policy regimes in Trinidad and Tobago which will realise the existing legal duties of the State and the rights which are

enjoyed by persons who seek protection of the State under the international refugee framework.

Keywords: asylum seekers, refugees, human rights, Trinidad and Tobago

Introduction

The resultant exodus of individuals from countries facing civil unrest has shone a light on the level of protection of refugees globally. This issue is as much an international legal issue as it is a domestic one. However, the non-compliance by States, with their international obligations under the Refugee Convention and the Protocol,ⁱ has far-reaching implications for those seeking protection under this legal framework. To this end, many persons who have illegally entered countries seeking asylum, are still considered to have breached certain domestic immigration laws. This is contrary to the international refugee framework. Therefore, there is a close connection between the domestic laws and the international standards for refugee protection.

The situation is further exacerbated when one considers the case of large-scale migration of persons to countries with a smaller land-size or resource availability than the country of origin. The everyday effect of this reality is seen in the mass migration of persons from Venezuela into the small island State of Trinidad and Tobago. The problem is made more severe by the woefully inadequate domestic legal and policy regimes for refugee protection in Trinidad and Tobago. It is the aim of this paper to analyse the international obligations that fall to Trinidad and Tobago under the Refugee Conventionⁱⁱ and its accompanying Protocol and identify the domestic protection offered by Trinidad and Tobago to asylum seekers, specifically as it relates to the Venezuelan migrants into Trinidad and Tobago. There will then be a need to show how the gaps in the legal protection, will allow for multiple human rights breaches that extend beyond the refugee context.

This paper will be divided into the following five sections. First, a context will be set by identifying the Venezuelan and Trinidadian and Tobagonian social and geographical situation which has contributed to the current migration issue. Second, there will be a discussion of the boundaries of the legal obligations that exist for Trinidad and Tobago internationally under the Refugee Conventionⁱⁱⁱ and the Protocol.^{iv} Third, it will be necessary to look at the domestic legal framework in Trinidad and Tobago for asylum-seekers. Fourth, the international human rights obligations which are affected by the way Trinidad and Tobago addresses the situation of refugees will be examined, with focus on not only the applicants but the resultant impact on children and women in the host country. Fifth, there will be a recommendation on how to best bring the domestic obligations into compliance with the international duties for Trinidad and Tobago.

Part I - Context Setting: Trinidad and Tobago and Venezuela

As a starting point, and for the sake of accuracy, the terms “asylum-seeker”, “refugee” and “migrant” must be explained. An asylum-seeker is a person who has left his country of origin seeking protection from persecution but who has not been legally recognised as a refugee and is awaiting a decision on his claim.^v A refugee is a person who was determined to be such, after their asylum claim was considered.^{vi} A migrant is generally considered to be neither an asylum-seeker nor a refugee but would capture persons who is outside his country of origin.^{vii} It is now possible to examine the context for the current discussion.

Venezuela has a population of 32,756,093^{viii} and Trinidad and Tobago has a population of 1,359,193.^{ix} The size of Venezuela is 912,050 square kilometres^x and the size of Trinidad and Tobago is 4,800 square kilometres.^{xi} At present, Venezuelan nationals are fleeing their home for reasons such as violence, food insecurity and medicine shortages.^{xii} Trinidad and Tobago being only 756 kilometres north of Venezuela^{xiii} represents a close escape for the people of Venezuela from the extant hardships there. In other words, lying just seven miles off the coast

of Venezuela, Trinidad and Tobago will remain a destination for many of those people seeking refuge.^{xiv}

According to a Report from the United Nations High Commissioner for Refugees (UNHCR) in 2019, the estimated total number of refugees from Venezuela to the Caribbean region was approximately 221,857 persons.^{xv} Consequent on this fact, Trinidad and Tobago has seen an exponential increase in refugees and asylum seekers in recent years. As of 2022, Trinidad and Tobago has received approximately 40,000^{xvi} Venezuelans^{xvii} but according to official national estimates, there are only around 24,000 Venezuelan migrants in Trinidad and Tobago.^{xviii} In fact, in 2019, an internal review by Trinidad and Tobago's only immigration detention centre (IDC), which was made public in March 2020 by a parliamentary inquiry, showed disagreements between government bodies over the official estimate. While there may be many factors which could have caused this inconsistency within the IDC, it goes without saying that the disparity between actual and official numbers is demonstrative of the extent of the problem Trinidad and Tobago has in handling the refugee crisis.

Some have argued that the low official numbers by government agencies is due to the fact that many migrants enter the country by irregular means and never have interactions with government systems or officials.^{xix} If one were to accept the unofficial figure, according to a report by Refugees International, Trinidad and Tobago would have the highest per capita Venezuelan population in the Caribbean.^{xx} Unfortunately, whether it is as a result of the high numbers of Venezuelan migrants or limited national resources to process them, there is a significant backlog of pending claims. The United Nations High Commissioner for Refugees (UNHCR) reported as of September 30, 2020 that there were 14,241 pending asylum claims in Trinidad and Tobago and 2,514 recognised refugees.^{xxi} At the time of writing this paper, it is assumed that this number would have increased and not reduced in light of continuing economic conditions in Venezuela.

Beyond the problems that the Trinidad and Tobago government faces in dealing with the arrival of the migrants, there are also domestic cultural challenges that the Venezuelans face on arrival in Trinidad, even if lawfully. There are very serious concerns about xenophobia^{xxii} against Venezuelans in the country.^{xxiii} Some have even argued that the treatment of the migrants by law enforcement officers is extreme and worthy of condemnation by international human rights standard bearers. For example, on Saturday 6 February, 2022, the Trinidad and Tobago Coast Guard, opened fire on a Venezuelan pirogue that was entering the waters off the southern coast of Trinidad and in so doing, killed a nine-month old baby and wounded the child's mother.^{xxiv} This incident received attention from the international press.^{xxv} The challenges faced by the Government of Trinidad and Tobago can be seen in the response to this event. Shortly after the incident, the Prime Minister, Dr. Keith Rowley, stated the following:

"We are inundated with guns, ammunition and trafficked humans across that border. Our border patrol attempts to stop a craft that refused to comply and acted aggressively towards lawful, reasonable and professional orders under international protocols and law. Our officer on patrol under professional orders attempted to disable the craft in the darkness of the ocean. The craft could easily have been carrying any cargo of guns, ammunition, killers or anything on the move. There was an accident in which unfortunately a passenger child was regrettably killed."^{xxvi}

Preliminary statements from the Coast Guard revealed that the TTS Scarborough (name of the Coast Guard vessel) was patrolling Trinidad's south coast and shots were fired upon the other vessel as it tried to ram the Coast Guard.^{xxvii} The Minister of National Security, Mr. Fitzgerald Hinds, initiated an investigation into the shooting and death shortly after the incident.^{xxviii} The findings are still unavailable but this most recent incident is really a culmination of a pattern of treatment that reflects a general misunderstanding of the State's duties to asylum seekers.

On this latter point, there are even allegations of mistreatment by law enforcement officers when the migrants are kept in national detention centres for illegal entry into Trinidad and Tobago. In recent months, there was even a pre-action protocol letter that was served on the Minister of National Security for the psychological manipulation and threats meted out to detainees by officials at the Detention Centre at the Heliport in Chaguaramas.^{xxix}

Therefore, it cannot be denied that it is a combination of both the socio-economic conditions in Venezuela and weak legal structure for refugee protection in Trinidad and Tobago that make the problems for asylum seekers as severe as they have been. However, in order to fully flesh out the extent of the severity, one must first to examine the international standards for refugee protection which are applicable to Trinidad and Tobago.

Part 2 - International Refugee Framework

Trinidad and Tobago became bound, at the international level, on 10 November 2000, when it acceded to the 1951 United Nations Convention Relating to the Status of Refugees (Refugee Convention) and its accompanying Protocol Relating to the Status of Refugees.^{xxx} However, there has been no direct incorporation of the international refugee obligations on Trinidad and Tobago in its domestic law.

It is a well-accepted principle of treaty law that States must perform their treaty obligations in good faith.^{xxxi} Building on this point, the International Court of Justice (ICJ) also held that the principle of “good faith” is a legal principle which forms an integral part of the *pacta sunt servanda* rule.^{xxxii} To this end, it can be stated that compliance with the Refugee Convention is not optional but mandatory. In fact, a critical analysis of the Refugee Convention is relevant to delineate the boundaries of the obligations for Member States.

The Refugee Convention defines a refugee as a person who:

“owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his

nationality; and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who not having a nationality and being outside the country of his former habitual residence ..., is unable or owing to such fear, is unwilling to return to it.”^{xxxiii}

While the foregoing sets out the grounds on which a person could be deemed a refugee, it should be noted that the scope of the Refugee Convention was actually broadened in 1967 when the European geographical limitations were removed and opened up to a global reformulation of the refugee phenomenon.^{xxxiv} The consequence of this change in the international legal refugee framework, makes both the Refugee Convention and the Protocol applicable in a Trinidad and Tobago context. Moreover, it must be remembered that in accordance with Article 27 of the Vienna Convention on the Law of Treaties (VCLT), a State Party to a treaty may not invoke the provisions of its internal law as justification for its failure to perform a treaty.^{xxxv} This means that a State is not permitted to rely on its absent or deficient domestic legal regime as a basis for breaching its obligations established under the Refugee Convention and the Protocol.

There is a need to also recognise that there is an interconnected relationship between the Refugee Convention and the wider normative international human rights framework. This is demonstrated in the fact that the Preamble of the Refugee Convention affirms the principle that human beings should enjoy certain fundamental rights and freedoms,^{xxxvi} which were previously articulated both in the UN Charter^{xxxvii} and the Universal Declaration of Human Rights.^{xxxviii} It emphasises that refugees are entitled to international protection because their human rights are under threat. It also reinforces the importance of international cooperation in addressing the ‘heavy burdens’^{xxxix} of granting asylum.

This point leads naturally into the idea of “burden sharing” which is relevant to the present discourse. “Burden sharing” was first used to refer to the need for sharing responsibility for protection of refugees in situations of mass influx.^{xl} Over time, the concept has been

interpreted to include two facets. The first is the provision of financial assistance for countries of asylum and the second refers to “physical” burden-sharing which is referred to as the dispersal of refugees among States.^{xli} The reason this point is addressed is to show that the resource argument advanced by countries against accepting asylum seekers is faulty. That is not to say that resource limitations is not a valid point for host countries but that there are mechanisms within the international frameworks to lend support to countries that face these resource challenges. The direct result of a misunderstanding of the resource argument is the tendency by States to return persons to their countries of origin which is in direct contravention of the non-refoulement principle which is both found in customary international law^{xlii} and in the Refugee Convention. According to Article 33(1) of the Convention:

“No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”^{xliii}

It must be highlighted that there can be no reservation to Article 33 because it is considered to be “the cornerstone of asylum and international refugee law”^{xliv} by the UNHCR and a jus cogens norm.^{xlv} This means that it is a non-derogable rule of international law and whether or not States are parties to the Refugee Convention, the obligation exists for all States. Another principle that has a similar status to that of non-refoulement is the concept of non-discrimination which, as set out in Article 3 of the Refugee Convention, states that “the Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.”^{xlvi} When one considers both the non-refoulement and non-discrimination obligations, it is possible to see that States have a duty to ensure that persons seeking asylum must all be treated equally and not be returned, until a determination of the application has been made. Any decision to distinguish, on arrival, a person of a specific nationality from other applicants and subsequently return that person

based on such discrimination constitutes two significant breaches of the international framework for refugee protection.

Closely connected to the idea of non-refoulement and non-discrimination is the concept of non-penalisation. As set out in Article 31(1) of the Refugee Convention:

“The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.”^{xlvii}

This principle is essential to the differentiation between immigration offences generally and persons who are seeking asylum. In both situations there may be breaches of national immigration laws which may accompany attendant criminal consequences. However, for persons seeking asylum, the normal punishment for immigration infractions ought not to be applied. In fact, the inclusion of this prohibition is demonstrative of the acceptance by Member States that, in fleeing persecution, persons may not always enter using the legal border entry points of the country in which they are seeking refuge with all the relevant documentation and following the lawful procedures.^{xlviii}

The danger in the present discussion is the wide ambit of discretion which is afforded States in determining refugees. That is to say that pursuant to Article 1 of the Refugee Convention, each State is allowed to determine the parameters of support to be given. In other words, the Convention sets out who would be entitled to a grant of asylum or refugee status but no obligation is necessarily placed on a State to do so. Some authors have argued that while there is a right to seek asylum, there is no corresponding duty on States to grant such asylum.^{xlix} The breadth of this could explain the significant variations in approaches by States in how the granting of asylum is facilitated, if at all.

As set out before on the discretionary approach on the determination of claims, which is a feature of the Refugee Convention structure, one must look at the Refugee Status Determination (RSD) process itself, as a vital part of being recognized as a refugee. The RSD is the legal or administrative process by which deciding agencies determine whether a person is a refugee. The UNHCR sets out that “recognition of his refugee status does not make him a refugee, but declares him to be one.”^l This point is important as the declaratory nature of refugee status is directly connected to the status of a refugee and will impact the benefits which may accrue to him after such a determination.

Therefore, States are under obligations to ensure that there are appropriate procedures in place which assist in the determination of whether an applicant is a refugee in accordance with the Refugee Convention. Not surprisingly, in many States where international protection is offered to refugees, there are robust RSD procedures and processes, some of which have been established in legislation or outlined in administrative manuals. In other States, ad hoc procedures exist, which can lead to violations of many core principles in the international refugee protection framework. The fact is that the Refugee Convention is, in many ways, an attempt to empower asylum seekers by clothing them with the necessary rights to, not only survive, but also thrive. It is a form of enfranchisement. That being said, the Refugee Convention ought not to be seen as the upper limits of protection which ought to be extended to asylum seekers. To the contrary and in accordance with the international human rights framework, they are to be seen as the basic minimum standard of protection. In other words, States must not fall below the articulated standards, but they are free to do more. This is why some academics have described the Refugee Convention as “a universal minimum guarantee of basic liberties for refugees.”^{li} It is now a good place to commence the examination of the domestic legal infrastructure in place in Trinidad and Tobago to deal with refugees, in particular Venezuelan asylum-seekers.

Part 3 - The Domestic Legal and Policy Refugee Framework

Legislation

The Government of Trinidad and Tobago has done little to meaningfully incorporate its obligations under the Refugee Convention into its national laws. As such, the laws that regulate refugees in Trinidad and Tobago can be found in the **Immigration Act**.^{lii} This Act was enacted by Parliament in 1969 (and commenced in 1976) and the dates are important in respect of Government policy related to refugees. As is seen in a Cabinet Minute Number 4809 dated 16 November, 1979, the following excerpt is instructive on Government's position in the area of refugees. It provides that:

“[R]equests for the granting of refugee status on political and economic grounds continue to be dealt with under the appropriate sections of the Immigration Laws of Trinidad and Tobago governing the grant of resident status.”^{liii}

The Cabinet also agreed that:

“[C]ases of refugees from natural disasters be left open and be decided when need arises, on the basis of the circumstances prevailing in Trinidad and Tobago at the particular period of time.”^{liv}

The effect of these paragraphs from the Cabinet Minute indicates that it was the Government's intention to not only have the Immigration Act address issues related to refugees but also that the ad hoc approach was deliberately intended to be used by Trinidad and Tobago in relation to a specific category of asylum seekers. It should be highlighted at this juncture that the recognition of environmental refugees actually extends coverage to a category that is not explicitly covered by the Refugee Convention. While the UNHCR now recognises the displacement caused by climate change, the Trinidad and Tobago formulation was ahead of its time while also being deficient in respect of acknowledging the well-accepted categories of refugees in the Refugee Convention. What is definite, is that the laws in Trinidad and

Tobago, since that first articulation of national policy in 1979, remained untouched for decades. What has therefore evolved over time and on an ad hoc basis, is the application of some sections of the Immigration Act. It is therefore necessary to look at the Immigration Act, in some detail, to fully appreciate the domestic legal framework in Trinidad and Tobago that is applicable to refugees.

Section 5(1) of the Immigration Act defines a resident as, inter alia, “a person to whom permission has been granted by the Minister under section 6 to become a resident”^{lv} as well as “such other persons on whom the Minister may confer the status of a resident.”^{lvi} This provision statutorily grants, to the Minister, a wide discretion to confer residency to any person he considers fit. This wide discretion statutorily granted to the Minister is a trend that runs through the Immigration Act and also leaves space for potential arbitrariness or inconsistency. Another issue that pervades the Immigration Act is the fact that it is not refugee-centric legislation and therefore there is a tendency to treat asylum seekers like any other category of persons entering the country. For example, **section 10** of the **Immigration Act**^{lvii} empowers the Minister to “issue a written permit authorising any person to enter Trinidad and Tobago or, being in Trinidad and Tobago, to remain therein.”^{lviii} This permit is commonly referred to as a “Minister’s Permit” but applies equally to a person seeking entry into Trinidad and Tobago for reasons other than those set out in the Refugee Convention as for those persons who seek asylum pursuant to the international refugee framework. The consequence of this is that there is no separate process to address the claims for asylum and this can result in applying the same standards to different categories of persons. It should also be noted that for the life of the permit, a stay of execution of any deportation order that may have been made against the person concerned is put in effect.^{lix} It can be argued that while the effect of the permit is to allow a person to remain in Trinidad, its legal construct could be contrary to the non-penalisation principle because the legal regime creates a default position that the person is

subject to deportation for having committed a crime for the way in which the person entered Trinidad and Tobago.

Another mechanism which can be used to allow persons to remain in Trinidad and Tobago is captured by **section 17(1)** of the **Immigration Act** which authorises the Chief Immigration Officer (CIO), subject to any order or direction to the contrary by the Minister, to grant conditional release or an Order of Supervision to any person taken into custody or detained. The effect of this is again premised on the commission of a crime by the recipient of the Order of Supervision. Similar to the operation of the Minister's Permit, the Order of Supervision could be construed as being contrary to the non-penalisation provision. While the Minister may have a statutory discretion which can be exercised in respect of all persons seeking asylum, **section 40** of the **Immigration Act** directly impacts many Venezuelans who seek to enter Trinidad to seek asylum. **Section 40** provides that:

40. Any person who-

- (a) comes into Trinidad and Tobago at anyplace other than a port of entry and fails to report to an immigration officer for examination;
- (b) comes into, remains in or attempts to leave Trinidad and Tobago by means of-(i) a passport that has been tampered with, or a false or improperly issued passport, visa, medical certificate or other document; or
- (ii) any other false, misleading or fraudulent method, knowing it to be false, misleading, fraudulent or otherwise improper; [...]

is liable on summary conviction for a first offence to a fine of fifty thousand dollars and to imprisonment for three years, and on any subsequent conviction to a fine of one hundred thousand dollars and to imprisonment for five years.

Section 40 is of importance to the Venezuelan migrant situation, as most Venezuelan migrants enter Trinidad and Tobago through illegal ports of entry, having entered by boat on the

southern border of Trinidad and Tobago. As such, in the absence of any specific law that protects refugees and is consistent with the non-penalisation obligation of the State, most Venezuelan migrants end up arrested and detained, having been found to be in violation of **section 40(a)**, in particular, of the Immigration Act.

Perhaps one of the clearest articulations of the deficiencies of the Immigration Act to the plight of Venezuelan migrants can be found in **section 50** which allows for an application for residency where a person has been ordinarily resident in the country for a period of five (5) years. However, only persons who fall into categories outlined in **section 9** of the Immigration Act are entitled to apply and, unfortunately, the category of refugee or asylum seeker is not one so identified under this section.

It should also be highlighted that the Immigration Act specifically creates two categories of persons who belong to the prohibited class of immigrants. They are persons who are charges on public funds^{lx} and persons who have entered into the jurisdiction illegally, or would have used false documentation to so do.^{lxi} It is easy to see that Venezuelan migrants would enter Trinidad and Tobago illegally and would require financial support from Trinidad and Tobago. In essence, the **Immigration Act** has criminalised features of a refugee.

The totality of the foregoing demonstrates that the failure of Trinidad and Tobago to develop a policy that caters to refugees and have legislation that realises the obligations contained in the Refugee Convention, create space for significant hardship for asylum seekers. In other words, the policy position of Cabinet in its 1979 Minute, has in essence, limited the breadth and depth of the arrangements required to protect the fundamental rights of refugees. Additionally, the current framework, or lack thereof in Trinidad and Tobago, fails to provide for refugee status determination, the administration of rights or durable solutions.^{lxii} The deficiencies of the system were manifested in recent deportation orders that were issued in respect of Venezuelan migrants and operated not only in breach of the non-refoulement

provision but also that of non-penalisation. It is now relevant to discuss the policy position of the Government of Trinidad and Tobago to ascertain whether there is the intention to modify the existing legal regime dealing with refugees.

Policy

It is necessary to examine the Government of Trinidad and Tobago's policy of 2014, which sought to confront the issue of refugees nationally. This policy was entitled, "A Phased Approach towards the Establishment of a National Policy to address Refugee and Asylum Matters in the Republic of Trinidad and Tobago".^{lxiii} While the Government (i) approved the National Policy to Address Refugee and Asylum Matters in the Republic of Trinidad and Tobago (Refugee Policy) in 2014; (ii) engaged in capacity-building and training of immigration officials, and (iii) established a Refugee Unit in the Ministry of Education, there still is no resultant legislation coming out of the policy.

Despite this legislative shortcoming, the Refugee Unit works in close coordination with its implementing partners: the UNHCR; a local faith-based organization, the Living Water Community (LWC), the Rape Crisis Society and the Family Planning Association of Trinidad and Tobago. These groups ensure that the Refugee Status Determination (RSD) process is conducted for asylum-seekers. To this end, the Government of Trinidad and Tobago is not solely responsible for the screening, registering, counselling and provision of humanitarian assistance to asylum-seekers as they await the outcome of the RSD.

In this context, in May 2019, the Trinidad and Tobago Government installed the Migrant Registration Framework through the Ministry of National Security, in collaboration with the Ministry of Health and the statutory body of the Children's Authority. The registration process enabled migrants, whether lawfully in Trinidad or not, to be given work permits valid for one

year with a requirement that they be paid nothing less than minimum wage by employers.^{lxiv}

Persons who were first registered were allowed to re-register in April 2021 under similar conditions^{lxv} and a further extension granted until the end of 2022.^{lxvi}

One would assume that the registration process was instituted to allow the Government to know the numbers of Venezuelan migrants in Trinidad and Tobago under some national immigration policy. However, since persons who were not registered in 2019 were not allowed to register in 2020, the policy, if it existed, would have been undermined. This is advanced because a snapshot of the migrants in 2019 would not be a true reflection of the situation as we moved into 2020, 2021 and now 2022. This is particularly poignant when one considers that the COVID-19 pandemic globally began around March 2020 and could have precipitated the movement of persons from economically disadvantaged conditions. As such, it is important for the Trinidad and Tobago Government to confront the procedures necessary to process these migrants in a timely manner and decide whether they meet the requirements for refugee status. With the failure of the system to allow persons, who have entered Trinidad and Tobago after the initial registration, there leaves open the opportunities for serious human rights breaches of asylum seekers by law enforcement.

Part 4 - International Human Rights Dimensions

The refugee crisis is a cross-cutting human rights phenomenon which transcends the immediate challenges of the asylum seeker himself. This means that there are human rights issues which are underscored by axes of oppression of gender, age and sexual orientation which make the migrant and his/her family more vulnerable than other persons who experience discrimination. In fact, anti-immigrant stigma which has exacerbated racial/ethnic health disparities in Trinidad and Tobago has generated racialised fears among residents that undocumented migrants are potential carriers of disease.^{lxvii} Further, while local newspaper articles report on the manifestation of xenophobia towards Venezuelans in the form of

evictions from rented accommodation, a 2019 International Organization for Migration (IOM) Report noted that 70% of their Venezuelan respondents felt discriminated against because of their nationality.^{lxviii} It must also be acknowledged that leaving one's country of origin and abandoning one's physical possessions to enter another country illegally cannot be an easy decision. It is characterised by fear, uncertainty, loss but it is still done because it allows for the hope of a better life. Therefore, the construct of refugees as illegal aliens who want to steal jobs from locals^{lxix} is an unfair and inaccurate misrepresentation of the true causes of the refugee crisis. In fact, this kind of thinking belies the xenophobia which is characteristic of the treatment of Venezuelans by Trinidadians and Tobagonians.

Taking this issue in a more disaggregated manner, it is possible to demonstrate how Trinidad and Tobago has potentially violated obligations under other international human rights instruments because of the way it has treated Venezuelan migrants seeking asylum. In particular, the obligations under the Convention on the Rights of the Child (CRC)^{lxx} and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)^{lxxi} will be discussed.

Children

In turning the attention to the plight of children, it is important to recognise that several Articles in the CRC are germane to the migrant context. These Articles include those which deal with non-discrimination,^{lxxii} the best interests of the child,^{lxxiii} the right to education,^{lxxiv} the rights to life, survival and development^{lxxv} and the right to be heard.^{lxxvi} Furthermore, in looking at certain decisions taken by the Government of Trinidad and Tobago related to children, it can be seen how children's rights are being eroded by virtue of their placement in the migrant grouping. To this end it is necessary to examine the issues of (i) separation of children from parents; (ii) border-control practices; (iii) return; (iv) detention and (v) access to education.

Many of the situations that relate to children demonstrate an overlay of multiple issues simultaneously. On 17 November 2020, local authorities detained 29 Venezuelan citizens, including 16 children, one of them four months old, as their boat arrived on the shores of Trinidad and Tobago.^{lxxvii} Some children were travelling alone to join families. The Coast Guard sent them back to Venezuela in two small boats.^{lxxviii} This singular case shows the risks children face on entering Trinidad and Tobago as asylum seekers. It is also demonstrative of breaches of not only non-penalization and non-refoulement but also substantive human rights obligations in international instruments. Of note in this situation was the decision by a High Court Judge in Trinidad and Tobago that the deportations had occurred before legal proceedings were completed.^{lxxix} This case demonstrates that deportations are being carried out by Trinidad and Tobago authorities without due process which constitutes violations not only under the Constitution^{lxxx} of Trinidad and Tobago but also under the prohibition from arbitrary arrest or detention in Article 9 of the International Covenant on Civil and Political Rights.^{lxxxi}

It must also be acknowledged that even the Committee on the Rights of the Child, which is responsible for monitoring compliance with the CRC, has urged countries not to return unaccompanied or separated children to a country where there “substantial grounds for believing that there is a real risk of irreparable harm.”^{lxxxii} This clearly shows that there have been a multiplicity of human rights challenges that arise in the Government’s treatment of migrant children in Trinidad and Tobago. However, there all is not lost as there have been positive steps made in relation to education of migrant children in Trinidad and Tobago.

In December 2019, the Government of Trinidad and Tobago announced that Catholic schools could educate children of Venezuelan migrants and Presbyterian school boards indicated a willingness to assist in providing accredited education to migrant children.^{lxxxiii} This position was supported by Parliament and the Ministry of Education which resolved to “ensure that

migrant children face no stumbling blocks with respect to the process for the registration at schools.”^{lxxxiv} So while there are serious issues of human rights violations of the rights of child migrants, there is an attempt to accommodate children’s right to education.

Women

The social, political and economic dimensions of the Venezuelan migrant situation make it ripe for human rights violations, not only against children but also women. In this vein, female asylum seekers encounter challenges which touch on (i) equality and non-discrimination on the basis of sex;^{lxxxv} trafficking and sexual and gender-based violence;^{lxxxvi} protection and empowerment;^{lxxxvii} equality before the law and access to justice;^{lxxxviii} and nationality.^{lxxxix}

The failure of the government to properly manage its borders, has resulted in a burgeoning illegal sex trafficking business in Trinidad and Tobago. According to statistics from the Caribbean Community (CARICOM), over 21,000 Venezuelan women, both adults and minors, have been victims of human trafficking in the period 2015-2021. What is most disturbing is that the 2019 CARICOM Human Trafficking study revealed that corruption at the hands of state officials and law enforcement officers was a significant factor in the facilitation of human trafficking between Venezuela and Trinidad and Tobago.^{xc}

It is important to recognise that there are also attempts by local law enforcement officials to combat the rogue elements within the service. As was seen in January 2022, twenty-seven Venezuelan women were rescued from a human-trafficking ring who were forced into an illegal sex industry.^{xcⁱ} This reveals clear violations of Article 6 of the CEDAW which sets out States parties’ legal obligation to “Take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women”.^{xcⁱⁱ} Beyond the boundaries of human trafficking and sex work, Venezuelan migrants also experience ridicule and humiliation by Trinidad and Tobago’s immigration officials.^{xcⁱⁱⁱ} While by itself,

these may not amount to human rights violations, they can lead to a culture that facilitates discrimination.

The import of the foregoing example of the challenges faced by Venezuelan women in Trinidad and Tobago is that there is a close connection between the gaps in national protection of migrants generally and the human rights violations experienced by this group in society, sometimes even at the metaphoric hands of the government. It would, however, be untrue to assert that the national legal framework did not intervene in the current migrant crisis. The treatment of women directly or indirectly by the participation of officials in the trafficking impacts the rights of non-discrimination, equality before the law and access to justice and protection and empowerment. The fact is that there would be a general lack of trust in public offices as a result of the corruption and involvement by officials in criminal activities which affect women. As a result of this, it is possible to conclude that the treatment by Trinidad and Tobago towards migrants generally, not only results in breaches of the Refugee Convention but also other specialised international human rights treaties.

Part 5 - Bringing Laws Into Compliance

There is a practical legal challenge in Trinidad and Tobago as a result of the failure of Trinidad and Tobago to bring legislation into effect domestically which properly reflects the breadth of the international obligations which exist in the Refugee Convention. Of moment to the present discussion is the case of **Attorney General of Barbados v Joseph and Boyce**,^{xciv} which demonstrates that “the courts have recognised that mandatory effect can be given to un-enacted treaties in order to give effect to fundamental values embodied in them.”^{xcv} As was held by Justices De La Bastide and Saunders in a joint judgement at the Caribbean Court of Justice “the legal impact of unincorporated international treaties upon the domestic body politic, will assume increasing importance given the tendency towards globalisation in the

regulation of matters such as crime, trade, human rights and the protection of the environment, to mention but a few.^{xcvi}

What this reinforces is the need for human rights-related issues to be regulated by statute, particularly where the State has agreed internationally to the content of international human rights treaties by signature, ratification or accession. As articulately put by Professor Kaczorowska, “[t]he ratification of international treaties by the executive creates legitimate expectations and, therefore, a state should not be allowed to use the excuse that a treaty has not been enacted into domestic law to deny a solemn promise or undertaking made at the international level.”^{xcvii}

It follows, therefore, that the logical conclusion to signature or accession is the implementation of the relevant treaty into domestic law, where required. This principle is supported by the Advisory Opinion of the Permanent Court of International Justice (the predecessor to the ICJ) in **The Exchange of Greek and Turkish Populations**^{xcviii} in which the Court held that a State is obliged to bring its municipal law into conformity with its obligations under international law.

Apart from the issue of incorporation of international obligations, there are several ways that Trinidad and Tobago can improve its response to the influx of Venezuelans fleeing their country and the dire circumstances they would confront upon their return.^{xcix} One would be to institute a special regularization process, which would allow the undocumented migrants currently in the country to apply for residency and work permits.^c It can be argued that this is what was achieved by the registration of Venezuelan migrants in 2019 and the granting of permission to reside and work during the pendency of their application process for refugee status. There has also been advanced the requirement for anti-xenophobia campaigns, the strengthening of the local civil society capacity and encouragement of donor and State support for refugees, asylum-seekers and migrants.^{ci} The combined effect of these measures in

conjunction with clear State policy and specialised legislation can greatly help Trinidad and Tobago meet its international obligations and consequently improve the treatment and lives of the real victims of exodus from Venezuela: the people.

Conclusion

As the economic, political and social conditions in Venezuela persist, there will be a constant movement of persons from that country to other places where they think they can live a better life. From a perspective of distance and cost of transport only, Trinidad and Tobago represents an ideal destination for persons who may seek asylum. This phenomenon of leaving one's country in search of an alternative place to live is regulated by the Refugee Convention. While Trinidad and Tobago is a State Party to the Refugee Convention, the country has failed to incorporate its international obligations into its domestic legislative framework. This is not a discretion of the State but a duty imposed on it by its status as a Member of the Vienna Convention on the Law of Treaties. Moreover, the failure to implement legislation has resulted in a reliance by Trinidad and Tobago on its Immigration Act to cater to the nuances of the international refugee normative and legal framework. This is coupled with a lack of a clearly defined national refugee policy. The consequence of these factors has resulted in an opportunity for serious breaches of the international human rights of persons who may be seeking asylum in Trinidad and Tobago. While there are notable efforts by the State in relation to the education of children and the protection of women who may be victims of human trafficking, the complicity of other State actors in the breaches initially, results in a proverbial chicken and the egg situation. In essence, if the person causing the harm seeks to stop the harm, then can the harm be realistically put to an end.

It is acknowledged that there are resource issues involved in a small-island developing State like Trinidad and Tobago grappling with the real tangible consequences of a mass influx of persons from outside. Unfortunately, the lack of a clear policy on the issue only makes the

situation that much worse. There does appear to be an internal conflict within the Government itself where progress is being made on some fronts but undermined by the lack of follow-through to legislative intervention in this area. Instead, policy and legislation from the last century is being used to equip State actors to confront this modern phenomenon. If Trinidad and Tobago does not bring its national policy and legislative framework up to mark, consistent with modern standards, it runs the risk of being seen, by the international community, as not only facilitating the breaches but also being complicit in the human rights violations.

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- ^{xiv} Melanie Teff, “Forced Into Illegality: Venezuelan Refugees and Migrants in Trinidad and Tobago”, Refugees International, Field Report January 2019, Website: <https://reliefweb.int/sites/reliefweb.int/files/resources/Trinidad%2Band%2BTobago%2BReport%2B-%2BJanuary%2B2019%2B-%2B2.0.pdf> at page 4.
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^{xvii} Melanie Teff, “Forced Into Illegality: Venezuelan Refugees and Migrants in Trinidad and Tobago”, Refugees International, Field Report January 2019, Website: <https://reliefweb.int/sites/reliefweb.int/files/resources/Trinidad%2Band%2BTobago%2BReport%2B-%2BJanuary%2B2019%2B-%2B2.0.pdf> at page 4.

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