

The practical implications of the legal situation in the Republic of Trinidad and Tobago (T&T).

Leela Ramdeen, Attorney-at-Law, Chair, Catholic Commission for Social Justice (CCSJ) & of the Archdiocese of Port of Spain's Ministry for Migrants and Refugees (AMMR).

Introduction

Sincere greetings to everyone. My presentation is rooted in the context of my role, as the Chair of the Catholic Commission for Social Justice & of the Archdiocese of Port of Spain's Ministry for Migrants and Refugees. Underpinning my work is a belief that the sanctity of life and the inherent dignity of each human being is the foundation of a moral vision for society. The permanent character of my dignity is essentially linked to the dignity of others. If their dignity is trampled upon, mine becomes tarnished.

It is for this reason that I work with others in the Republic of Trinidad and Tobago (T&T) to meet the needs of those who come to our shores seeking a better life, and this includes encouraging our Government to look again at the legal and practical implications of not ratifying the 1951 Convention on the Status of Refugees and its 1967 Protocol. In my presentation, I shall share with you some of these implications.

Context

The total population of TT is approximately 1.4 million people. At its closest point, T&T is situated only 7 miles from Venezuela. It is a well-known fact that T&T has porous borders, and insufficient resources to patrol our borders. T&T is both a destination and transit country for mixed migratory movement, including a growing number of persons in need of international protection. During the last 10 years, migrants, refugees and asylum seekers have come to TT from over 30 countries. In T&T the Catholic Ecclesial Community, Living Water Community (LWC), is the implementing partner for UNHCR and has been working to meet the needs of migrants and refugees for more than 30 years.

During this period, UNHCR has registered over 15,000 asylum-seekers in T&T. The vast majority of registered asylum-seekers originate from Venezuela, Cuba, Syria, Bangladesh, Columbia, Jamaica, and Pakistan. There are many more who have come to T&T and who have not registered with UNHCR.

The on-going political and socio-economic developments in Venezuela have led to the influx of an estimated 146,000 Venezuelans to the Southern Caribbean over the past few years. Yet none of these countries has a legislative framework that gives effect to rights or adequate capacity to engage in protection sensitive responses to this displacement crisis. UNHCR estimates that there are approximately 40,000 Venezuelans living in T&T.¹ However, there is no accurate/official data on the numbers. In the face of human rights violations and the humanitarian crisis that exist in Venezuela, people continue to flee, seeking a better life in nearby countries.

On Dec 17, 2020, T&T's Prime Minister, Hon Dr Keith Rowley, said that T&T has taken on "into its bosom" more Venezuelan migrants on a per capita basis and a per square kilometre basis than any other country.²

Let me state from the outset, that the Catholic Church recognises that T&T cannot accommodate all those who may wish to come here. However, we continue to advocate for appropriate legislation and humane systems to be put in place to treat with those who do come to our shores.

The legal situation in T&T with regards to migrants and refugees

Firstly, I wish to share with you the legal situation in T&T with regards to migrants and refugees. The Republic of T&T acceded to the 1951 Convention on the Status of Refugees and its 1967 Protocol in November 2000. However, because T&T is a dualist state, and not a monist state, our Government must ratify and codify these into domestic legislation in order to incorporate these Conventions, and any other Convention or Treaty that it signs. Until this is done, migrants, refugees, and asylum seekers are not protected by local law.

Some legal luminaries are of the view that:

a. failure to domestically incorporate the treaty is an act of bad faith on the international level; and

b. T&T's actions to deport refugees is a breach of domestic law because T&T's signing of the treaty created a legitimate expectation that a refugee would be given sanctuary in T&T. A legitimate expectation creates procedural domestic rights.³

The Caribbean Court of Justice (CCJ) in *Boyce*⁴ acknowledged that a treaty can create a domestic legitimate expectation right. The Privy Council acknowledged same in *Thomas and Hillaire*⁵. In *Thomas* Lord Millette even suggested that it was possible to argue that human rights treaties may be exceptions to the dualist theory.

Not only has our Government not yet passed any implementing legislation or administrative regulations on asylum or refugee status, but it has also not established a national procedure for screening undocumented migrants and to identify asylum-seekers among mixed migratory groups. When asylum-seekers are identified, their claims are examined and decided by UNHCR. A draft policy was adopted by Cabinet in June 2014 and a Draft legislative bill has been produced and circulated to stakeholders for comments. A Refugee Unit was established at the Immigration Division (ID) within the Ministry of National Security (MNS), which is comprised of immigration officers who have all been trained by US Citizen & Immigration Services (USCIS), in cooperation with UNHCR, but it is still not functioning.

A practice had developed whereby a monthly stakeholder meeting was held between Living Water Community (LWC), UNHCR and the Ministry of National Security (including the International Affairs Unit and the Immigration Department (ID)) to deal with policy matters, and a monthly tripartite meeting between LWC, UNHCR and the ID was held to deal with individual cases. However, these meetings were suspended at the end of 2019.

T&T needs legal frameworks to provide a principled basis for the protection of the rights of migrants and refugees. It is important to note the Government's reasoning as to why there is no legislation to deal with migrants and refugees. More than 2 years ago, at an event marking International Men's Day hosted by the Bankers' Association of T&T, Attorney General, Hon. Faris Al-Rawi⁶ said:

"T&T cannot afford to put systems in place at this time to deal with refugees and asylum seekers. However, he has admitted it is an important discussion for T&T to start having since taxpayers will be the ones to foot the bill eventually when such things are put in place. T&T has signed the 1951 convention relating to the status of refugees and its 1967 protocol but is still yet to ratify them and therefore refugees and asylum seekers are not protected by local law.

"But Al-Rawi said statistics are needed to guide the policy. 'The current rate flow out of T&T is approximately 20-40 people per year, so it means that we're signing on as a country—to engage in holding all of the people in your local pot, with a rate flow out of 20-40 people per year. That's a dynamic that this country has to analyse to make sure that we can actually afford to deal with that...that is only one of the points, the other aspect is, well what other systems can we engage in and in fact there are protocols that we've engaged in right now, in terms of access to healthcare, certain access to education etc. So, we're working our way around the peripheries of it. We're in constant discussions with all of the entities.'

"On whether T&T can manage the refugee/asylum situation right now, the AG said, 'The math is, are we prepared from a policy perspective to manage this perspective right now, because once you turn that key, then you create rights and obligations which are actionable and then you have to be prepared to operationalise that law. One cannot easily jump into a situation, knowing that you can't operationalise immediately...It has to be done in a phased perspective...This is not something that one engages in an ad-hoc knee-jerk response. It has to be very carefully considered and that work is being done.'"

Two-week Registration process for Venezuelans in 2019

In 2019, T&T Government offered an amnesty to Venezuelans who had entered the country illegally. The period for registration lasted for two weeks - 31 May and 14 June 2019. 16, 523 Venezuelans registered during this period. This did not include their children who live here with them, and who were also granted permission to remain in T&T for the year. Those who registered were granted permission to remain in T&T and work legally for one year, with access to primary health care only. However, T&T's Minister of Health, Hon Terrence Deyalsingh said in October 2020, that under a Cabinet note passed in 2019, non-nationals are only able to access a certain level of health care free from the public system, that is, accident and emergency, maternity services, but any other type of service, T&T "is not able at this point in time to accommodate that free. That is a Cabinet decision taken in June 2019 and we looked at what our own nationals are expected to pay for when they go abroad."⁷ Note, though, that Venezuelans with health issues such as HIV/AIDS, Tuberculosis, and COVID-19, can access free health care.

As reported on TV6, on 26 June 2019, National Security Minister Stuart Young, speaking in the Senate, acknowledged there may still be some who did not register and promised the immigration laws would apply to them. He said that the Venezuelan registration does not get them "one step, one minute, one hour, closer to the calculation of time to become a citizen of Trinidad and Tobago."⁸

On December 17, 2020, Prime Minister, Dr Keith Rowley, announced that Registered Venezuelans will get another extension of their stay in Trinidad and Tobago, this time to June

3, 2021. The current registration cards expire on December 30. There was a previous extension from June to December 2020.

The Prime Minister said in the extension period the 16,000-plus registered Venezuelans will have to re-register. He said during that period, the Government would also sort out the issue of who will obtain visas, but he stressed: "One of the things we can't expect and which we won't do is mass deportation."

"During the six-month period there would be new and firm laws for persons who encourage the illegal trade (of human smuggling) and stiffer penalties for human trafficking," he said. The Prime Minister also announced the policy which currently allows the United Nations Commissioner for Human Rights (UNCHR) and Living Waters the right to register people who come into Trinidad and Tobago as migrants and other parties (refugees) "will have to change. The Government is in a position now to do it itself," he said.⁹

Practical implications of the absence of appropriate legislation

Undocumented "foreigners" who are taken into custody at entry points or during immigration raids, may suffer detention in the Immigration Detention Centre, prisons, and even in cells in police stations.

Previously, an "Order of Supervision" was issued by the immigration department and served as an alternative to detention for those people who voluntarily presented themselves to immigration authorities and are referred to Living Water Community. This "Order of Supervision" has been placed on a temporary moratorium as of May 2018. Asylum-seekers who are detained may be released on an Order of Supervision, pending payment of a bond.

As of 10th July 2019 LWC, had a record of 1,347 persons (including minors) reportedly detained from 2017 at the various prisons and places of detention. Of this number, there are registered asylum - seekers and persons who are not registered who may be seeking asylum.

Prosecution for illegal entry/breaching existing deportation orders has been a major challenge as the largest number of asylum-seekers in T&T are Venezuelan Nationals who are unable to acquire passports from their Government.

On 17 June 2019, 2 days after the 2-week registration process for Venezuelans was closed, T&T instituted a requirement that Venezuelans wishing to enter T&T must obtain a visa. Visas must be obtained from T&T's Embassy in Caracas and many Venezuelans cannot afford to go there. Also, there has been complaints about the lengthy process to obtain a visa.

Persons continue to enter T&T via unlawful channels. Some are subsequently arrested, detained and prosecuted. Many receive fines and in default of payment, prison sentences. Migrants have received fines in excess of Ten Thousand (\$10,000) TTD and prison sentences up to five (5) years.

There have also been many reports of cases of women allegedly victims of gender-based violence who share children with local TT Nationals. In these instances, legal support is needed for making police reports and sorting out custody arrangements.

The protection situation for Venezuelans in the Caribbean is particularly dire; in the absence of functioning Government-run asylum systems or alternative legal pathways, Venezuelans

continue to live in a situation of legal limbo and vulnerability to human smugglers, traffickers, forced prostitution, and various forms of exploitation. This makes it exceedingly difficult for Venezuelans to access basic services and the majority continue to live in the shadows, living and working in highly exploitative environments, suffering from discrimination and xenophobia.

As a result of their undocumented status under T&T's current legislative framework, asylum - seekers, migrants and refugees face many legal challenges. The most common issues are as follows:

1. Prosecution for illegal entry.
2. Prosecution for breaching existing deportation orders.
3. Prosecution for passports with irregular stamps.
4. Arrest/detention for working without a work permit.
5. Unlawful/Prolonged Detention.
6. Deportation/Refoulement.
7. Gender based violence; and
8. Denial of Venezuelan children from attending educational institutions.

Access to Education by Venezuelans

On Thurs 6 June 2019, at a post-Cabinet press conference in Port of Spain, PM Dr Keith Rowley, said that " 'Government cannot prevent Catholic schools from educating the children of Venezuelan migrants...if the Catholic church, in its pastoral work, gets involved with trying to educate the (Venezuelan) children who are not going to school, that is acceptable in TT.'

"He added that he welcomed the involvement of NGOs, churches, and volunteer organisations that were willing to assist migrant children in accessing education as those are positive efforts. 'If the school decides to take in certain people in their pastoral work, I don't know that the Government can say to the Catholic school, 'Don't let so and so come through your gate.' However, he says Government can and will indicate if they are unwilling to carry any liabilities that may result from the decision. He says once those liabilities are not created, there should be no issue.

"Minister of National Security and Communications Minister Stuart Young, who was also in attendance, said Government made it clear there was no guarantee of spaces in public schools for migrant children as its main priority was educating TT citizens."¹⁰

Archbishop Jason Gordon worked with Sharon Mangroo, CEO of the Catholic Education Board of Management, LWC, and other stakeholders to find more than 2,400 spaces to accommodate Venezuelan children in Catholic schools - those whose parents had registered in May-June 2019. However, to date, these children cannot access schools as the Minister of National Security has to grant a waiver for a student permit for each child, and this has not been done. Principals are rightly concerned that they can be fined and imprisoned if they fall foul of the law. Archbishop Jason continues to work behind the scenes striving to secure the waiver. At the moment, therefore, Venezuelan children are not in schools, and do not have access to online learning.

The work of CCSJ & AMMR

I have been the Chair of the Catholic Commission for Social Justice (CCSJ) for more than 15 years. In May 2018, Archbishop Jason Gordon established the Archdiocese of Port of Spain's Ministry for Migrants and Refugees (AMMR) and located it in CCSJ, with me as the Chair. We applied for and have recently received funding from the Julia Taft Refugee Fund via the US Federal State/Embassy. We have also partnered with UNICEF on a Project to meet the needs of up to 1,000 Venezuelan children whose parents did not register during the 2019 2-week amnesty, and who have psychosocial and other needs. For example, it is estimated that 109 Venezuelan children arrived in T&T unaccompanied or separated from their parents, or trafficked. We have appointed a Programme Coordinator to facilitate our work in this area, as well as a Case Management Officer - Alternative Care, whose aim is to support interventions to address the interim, medium and long-term care needs of unaccompanied and separated Venezuelan children.

At the moment 27 of the 61 Catholic parishes in T&T have established Parish Ministries for Migrants and Refugees (PMMRs), whose voluntary members seek to meet the varied needs of Venezuelan migrants. Five of the parishes run what is called: "Child Friendly Spaces". Before COVID-19, more than 500 Venezuelan children attended sessions at these centres in parish halls. The curriculum is limited, but the programme has some benefit, for example, for socialisation, access to meals, learning functional English and being able to practice their Spanish and maintain aspects of their culture. Because of the current "lockdown", due to the pandemic, online classes commenced recently. Only 144 Venezuelan children have signed up. Access to digital devices remains a problem.

Archbishop Jason has made it clear that "we (the church) have to welcome whoever comes and ensure whoever comes will be treated like a human being with decency, if we don't do this, we will be building the next problem for T&T in 10 to 20 years' time. We don't want that."¹¹

In line with the Church's policy and in keeping with Pope Francis' mandate to all Dioceses to welcome, protect, promote and integrate migrants and refugees, more than TT \$2 million was added by the Church to the Government's grant of TT\$2 million to arrange for hampers to be made available to those in need during the pandemic. Although the initial funds have been exhausted, the Church continues to raise funds to support this initiative.

It must be noted that, as well as CCSJ & AMMR, there are a number of other Organisations and religious communities that are involved in meeting the varied needs of Venezuelan migrants and refugees, and who are involved in advocacy work for them. For example, Living Water Community, UNHCR, IOM, TTVSOLNET (TT Venezuelan Solidarity Network), R4V Platform, Government Agencies and others.

Human Trafficking

Human Traffickers are making a fortune by transporting Venezuelans to T&T in dangerous circumstances. Advertisements stating that for the price of US \$300, one can be brought to T&T, are circulated on social media. Greed is feeding on the desperation of persons who wish to flee from poverty. The "stories" told to me and to those working with my Commission by those who do come to our shores, are heartrending.

On 17 December, speaking at a post Cabinet briefing, PM Rowley said there are going to be stiffer penalties for human smugglers. He said: "... there are people in Venezuela organising people to go to Trinidad and many of those persons are doing so for profit and they are called

traffickers. And we do know that there are people in Trinidad, integrated with that, receiving them and protecting them and assisting them in Trinidad. And the laws that we are going to upgrade will make it less attractive for our citizens in Trinidad and Tobago to do that. Because this is a matter which has grown in size and stature and complexity and we just have to evolve with it...If you have people (registered migrants) staying here and encouraging illegals to come here, then you are at the head of the line to go back home,” he stressed. “On the other hand, if you stayed here and are deemed a contributor and not involved in illegal activities and especially if you have skills, then we, like other states look at it in a certain way.”¹²

Sadly, there is some evidence that some members of our Police Service are among the traffickers. For example, two police officers - an Acting Inspector and an Acting Sergeant, were among three people charged with trafficking in person (child) for the purpose of exploitation, under Section 18 of the Trafficking in Persons Act. They were also charged with receiving a benefit knowing that it resulted from the offence of trafficking in a child, supporting a gang in the commission of gang-related activity and misbehaviour in public office. The Acting Inspector was additionally charged with sexual penetration of a child. The third accused, a bar manager, also faces a charge of supporting a gang in the commission of gang-related activity. As the media reported, during an anti-crime exercise, the men were among four suspects arrested by officers of a Special Task Force put together by the Commissioner of Police - assisted by officers of the Special Operations Response Team and the Inter-Agency Task Force, in conjunction with the Counter-Trafficking Unit, Ministry of National Security (toll-free Hotline at 800-4288 (4CTU)).¹³

Deportations and Court matters

Over the years a number of Venezuelans have been deported, contrary to the principle of non-refoulement. As Rochelle Nakhid, LWC, has rightly said: "Non-refoulement, or the principle of no return, is the cornerstone of refugee law and is also part of customary international law, making it binding on states. This principle states that refugees should not be returned to where their life may be in danger. Most refugees remain for many years in their host country and make significant contributions to its development. Resettlement is only reserved for the most vulnerable, which is less than 1% of all refugees worldwide.”

On 27 November 2020, 160 Venezuelan nationals who arrived in T& T illegally were deported to Venezuela by the Ministry of National Security. According to media reports: "The ministry stated via a media release that the deportations were carried out in conjunction with the Venezuelan authorities and in compliance with the laws of T&T. "The Ministry of National Security remains resolute in upholding the laws of the Republic of Trinidad and Tobago and in fulfilment of Government policy,” the release stated. You can access, via the link in the Reference section, further information about this issue and the role of the Court.¹⁴ There have also been other deportations in the past.

And you may have read about the group of 29 Venezuelan nationals, including 16 minors - including a 4-month-old baby, who were detained in November 2020 for illegally entering T&T, and were kept behind bars in a police cell. As the media reported, hours before a court hearing in which lawyers were due to demand permanent residence for them in the country, the group was placed in two private, unmarked vessels (pirogues) and escorted out to sea by coast guard back to Venezuela.

They never reached Venezuela and three days later, having been out at sea, they returned to T&T before being detained by police and placed in cells at the Erin Police Station, in the south of T&T. They were later transferred to the heliport in Chaguaramas, where illegal migrants are held. Recently, some of them were released into the care of their relatives.

Tragedies at sea

Over the past few years there have been reports of shipwrecks off the coast of Venezuela and on the high sea during which events some Venezuelans have drowned. You will be aware of the boating accident in Guiria in December in which 20 Venezuelans on their way to T&T drowned. It is greed that recently led to the owner of a pirogue built to carry 8 persons, to fill it instead, with 41 Venezuelans. As you will be aware, the boat overturned and sank, and 20 persons drowned.

In the wake of statements by the OAS, on 6 Jan 2021, the Government of T&T once again responded to the OAS' statements saying that "it views with grave concern what it calls 'the continued campaign of misinformation generated by the General Secretariat of the Organisation of American States (OAS) and its deliberate attempt to tarnish the good name and reputation of Trinidad and Tobago.

“The latest in the OAS's acts is its press release of December 30, 2020, titled *New Report Warns Number of Venezuelan Refugees and Migrants could Rise to 7-million in 2021*, in which it made reference to the tragic loss of life of 33 Venezuelans, but inaccurately stated that the remains of the deceased were found on the maritime border of Venezuela and Trinidad and Tobago, ' said the Keith Rowley-led Administration in a press release ...

"The statement added that factual records have detailed that the incident occurred in Venezuelan waters off the coast of Guiria. 'To use the tragic circumstance and, even the death of Venezuelan nationals, in such a manner is distasteful, reprehensible and goes against the purpose of the organisation and its General Secretariat. The Government of Trinidad and Tobago has called on the OAS to cease this activity,'"15

Conclusion

I agree with the International Organisation for Migration (IOM), that "humane and orderly migration benefits migrants and society." However, as well as the lack of a legal framework to address migration to T&T, there are other current challenges that stand as obstacles to progress in T&T. For example:

- a. the downturn/depression in the economy and the resultant loss of jobs.
- b. the impact of COVID-19. Venezuelans continue to arrive in T&T illegally through our porous borders, without screening or quarantine. Although I do not have statistics, it is clear from information received from NGOs and Government Agencies, that some of those who have come, including some who have been detained, had the virus on arrival, or contracted it after arrival.
- c. growing xenophobia, particularly in the current context in which many T&T citizens are losing their jobs because of Covid-19 restrictions and loss of income by many companies.

The Catholic Church will continue to work alongside the Government and other stakeholders in advocating for policy and legislative changes for the protection of migrants, refugees and asylum-seekers in Trinidad and Tobago. And we will continue to partner with others to play our part in meeting the humanitarian needs of our brothers and sisters who come to our shores seeking peace. Now that PM Dr Keith Rowley has assumed the Chair of CARICOM, which comprises 15 members of the Caribbean Community, it is hoped that he will seek their assistance in helping us to address this humanitarian crisis. I am of the view that a regional approach will certainly be helpful.

I end with the words of Pope Francis: "Migrants and refugees are not pawns on the chessboard of humanity." While sanctions and the political situation in Venezuela remain unchanged, let us use our human ingenuity to find a way forward to build just, inclusive communities.

I thank you.

REFERENCES

1. Latin America and the Caribbean, "Venezuelan refugees & migrants in the region," January 2019, Available at: <https://data2.unhcr.org/es/documents/download/68069>.
2. <https://www.stabroeknews.com/2020/12/18/news/regional/trinidad/trinidad-grants-extension-of-stay-to-registered-venezuelans/>.
3. See Articles 2(1), 15 and 18 in the Vienna Convention on the Law of Treaties 1969, (https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf).
4. Attorney-General v Jeffrey Joseph and Lennox Ricardo Boyce: 8 November 2006, CCJ Appeal No CV2 of 2006, on website of caribbeancourtofjustice.org.
5. Thomas and Haniff Hilaire v. Cipriani Baptiste (Trinidad and Tobago) [1999] UKPC 13 (17th March 1999) Privy Council Appeal No. 60 of 1998).
6. T&T Guardian report by Joel Julien - AG: No law for refugees, asylum seekers - <https://www.guardian.co.tt/news/ag-no-law-for-refugees-asylum-seekers-6.2.719051.d3618d40c5>.
7. Newsday report: Paula Lindo, Sunday 25 October 2020. [Deyalsingh: No free cancer treatment for Venezuelan teen \(newsday.co.tt\)](https://www.newsday.co.tt/news/16-523-venezuelans-registered-in-exercise-no-they-cant-vote/article_bd94c87a-9823-11e9-8e3b-a7bca3d764ae.html)
8. https://www.tv6tnt.com/news/local/16-523-venezuelans-registered-in-exercise-no-they-cant-vote/article_bd94c87a-9823-11e9-8e3b-a7bca3d764ae.html
<https://data2.unhcr.org/es/documents/download/68069>).
9. Ria Taitt's report in T&T's Express on 17 December 2020.

10. Newsday report: <https://newsday.co.tt/2019/06/06/pm-migrant-children-can-attend-catholic-schools/>.
11. Newsday report: <https://newsday.co.tt/2019/12/22/archbishop-wants-to-enrol-venezuelan-children-in-catholic-schools/>.
12. Newsday report by Sean Douglas, Thursday 17 December 2020: [Rowley: Stiffer penalties for human smugglers \(newsday.co.tt\)](https://newsday.co.tt/2020/12/17/rowley-stiffer-penalties-for-human-smugglers)
13. Express report, 24 February 2020: [Senior cops charged with child trafficking, supporting gang | News Extra | trinidadexpress.com.](https://www.trinidadexpress.com/news/2020/02/24/senior-cops-charged-with-child-trafficking-supporting-gang/)
14. https://trinidadexpress.com/newsextra/160-venezuelans-deported/article_243ce37c-31df-11eb-93ff-870a155c2b4e.html.
15. http://www.jamaicaobserver.com/international/trinidad-calls-on-oas-to-cease-campaign-of-misinformation_211499.

Ms. Leela Ramdeen

Chair, Catholic Commission for Social Justice & Archdiocese's Ministry for Migrants and Refugees

Email: socialjustice@catholictt.org

Office Telephone: 622-6680

Mobile: 299-8945

Website: <http://rcsocialjusticett.org>

Facebook: <https://www.facebook.com/ccsitt>

Instagram: ammrccatholictt

Twitter: @ammrcatholictt1

