



**UNHCR**

United Nations High Commissioner for Refugees  
Haut Commissariat des Nations Unies pour les réfugiés

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Mr. Alistair Walters  
Human Rights Commission  
Grand Cayman KY-1-1103  
Cayman Islands

Dear Mr. Walters,

I wish to extend my sincere gratitude for receiving me on 8 April 2014, and discussing issues of interest to the United Nations High Commissioner for Refugees (UNHCR).

I would like to thank you specifically for discussing in detail the important report that the Human Rights Commission (HRC) issued on Cuban Migrants in the Cayman Islands. As indicated during our (regrettably) brief meeting, UNHCR commended the Cayman Islands for the good policies and practices adopted and implemented in the areas of asylum and refugees. This relates in particular to the adoption by the Cayman Islands of the Immigration Law that contains a Chapter on Asylum, which also provides for an Immigration Appeals Tribunal as well as the establishment of a functioning Refugee Unit.

In the same vein, I also commended the Government on the democratic process in the country as exemplified by the Human Rights Commission report on Cuban Migrants. On the issues examined and/or yet to be looked into by the HRC, I would like to state that it is of paramount importance that the processing of individuals arriving within mixed migration flows, as it is quite often the case with Cuban nationals arriving by boat, be conducted in accordance with international norms and standards. In this regard, UNHCR agrees with the HRC's recommendation that an audit be conducted on how the processing of migrants arriving by sea is carried out. This is very significant as proper processing avoids any potential *refoulement* of persons in need of international protection. In this respect, I have offered, not only to HRC but also to the Cayman Islands Government officials, UNHCR's expertise on the matter. I did also discuss the issue with the Cayman Islands Red Cross and the Director, Ms. Jondo Obi, promised to consult with their funding sources to consider covering a project on the functioning of the Government's processing system of irregular migrants arriving by boat in the Cayman Islands. The project would be carried out by various, relevant stakeholders. I will be liaising on this matter with Ms. Obi and the Red Cross and UNHCR could propose a draft project for other stakeholders' review/comments.

On the issue of facilitating the onward movement by sea of irregular migrants who are already in the territorial waters of the Cayman Islands, and while the Government has sought legal guidance, I wish to state that while the Cayman Islands rightly and commendably adopts measures to not only ensure the safety and security of maritime transportation but also takes appropriate steps to preserve and protect the right to life

and treat all concerned persons in a humane manner respectful of their human rights, UNHCR remains concerned that helping on irregular migrants may be at variance with the duty of the Cayman Islands to prevent and combat smuggling and trafficking in persons in accordance with applicable international criminal law, including the obligation to investigate and prosecute smuggling and trafficking-related crimes, while protecting the rights of smuggled persons and trafficking victims. Facilitating onward movements of irregular migration could also lead to the violation of the cardinal principle of *non-refoulement* should persons in need of international protection not be accorded the opportunity to seek protection in the Cayman Islands, as per the latter's international obligations under the 1951 Convention Relating to the Status of Refugees, and subsequently find themselves returned to a situation where their life and freedom would be endangered. Also, uncoordinated, facilitated onward irregular maritime movements could result in situations where the individuals concerned are refused disembarkation by other States. I wish to note that this position has been shared with the Government.

Regarding the Human Rights Commission's recommendation for the adoption of "know your rights" guidelines to be shared with arriving irregular migrants, I wish to reiterate that UNHCR is ready to provide assistance in this regard and could share some good practices applied in similar contexts.

I also wish to inform you that UNHCR also raised the issue of the implementation of the Memorandum of Understanding (MOU) with Cuba, particularly as it pertains to the principle of confidentiality of asylum-seekers. I was informed that the Cayman Islands Government will be discussing the contents of the MOU with the Government of Cuba in the near future. UNHCR would like to reiterate that divulging the identity of individuals who, upon arrival and processing, express the fear to return to Cuba could unwittingly lead to *sur place* refugee cases. Should the notification period not be reasonable, it would mean that the screening process would need to be conducted expeditiously so as to respect not only the provisions of the MOU but also the principle of confidentiality as it relates to persons seeking asylum in the Cayman Islands. UNHCR requested the Cayman Islands Government to share any revised draft MOU, for review/comments.

At the time of our meeting, I had not visited the Immigration Detention Centre (IDC). There were at least 50 detainees at the time of my visit and a significant number of them were eager to be repatriated and seemed to not understand the cause of the delayed return to Cuba. I was also informed that a few individuals among the 16 who expressed fear and wished their refugee claims to be processed by the Cayman Islands Government, "withdrew" their asylum applications. The reasons for the withdrawal of their asylum applications were not known to me as I did not have the opportunity to discuss the matter directly with the individuals concerned. I, however, also interacted with an unmarried couple from Cuba, who had lodged their individual asylum claims, and were pursuing the claims.

I visited the dormitories and bathroom facilities of the IDC and found the conditions below the recommended international standards. I wish to note that detainees seemed satisfied with the food while they complained about medical care (which is virtually non-existent) at IDC. Regarding the conditions at IDC, I wish to inform that I discussed the matter subsequently with Mr. Wesley Howell, who indicated that an assessment of the Centre was conducted by a British Consultant who made significant recommendations aimed at improving the conditions at IDC. It is also UNHCR's view that the conditions at IDC should be brought to recognized international detention standards levels.

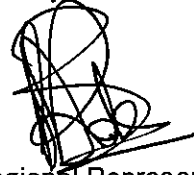
Lastly, we talked about the training activities that UNHCR – and UNHCR/IOM - has conducted in the Cayman Islands and that one of the key Conclusions of the above-mentioned May 2013 Caribbean Regional Conference is on training and capacity-

building. UNHCR has started training and capacity-building in some countries in the region. Please do not hesitate to contact me should you identify training needs for Government officials dealing with asylum, refugee and nationality- as well as statelessness-related matters.

I remain at your disposal should you have any questions on the issues we discussed as well as on any matter of relevance to UNHCR.

On behalf of UNHCR, I wish to reiterate our gratitude for the hospitality that Mr. Ali Shah Yusufi has received from the Cayman Islands and it is our hope that he will be granted local integration possibilities in the country. I look forward to enhancing UNHCR's cooperation with, and support to, the Government of the Cayman Islands on issues of mutual concern.

Yours sincerely,



Buti Kale  
Deputy Regional Representative  
for the USA and Caribbean