

# Haitian Migration to the Bahamas and The *Global Compact for Safe, Orderly and Regular Migration*: For a Human Rights Analysis

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Article abstract

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# **HAITIAN MIGRATION TO THE BAHAMAS AND THE GLOBAL COMPACT FOR SAFE, ORDERLY AND REGULAR MIGRATION: FOR A HUMAN RIGHTS ANALYSIS**

*Karine Galy\**

This article assesses the Bahamas' implementation of the *Global Compact on Safe, Orderly, and Regular Migration* adopted in 2018, particularly in light of its human rights provisions generally and migrants specifically. Indeed, this pact, prepared under the auspices of the UN, is the first intergovernmental agreement to propose a global and comprehensive approach to migration. It is intended to be both a complementary instrument and a synthesis of the body of standards available, particularly in terms of protecting the rights of people in a migration situation. The challenge is to propose an approach to migration as a positive factor requiring cooperation at all levels and demanding a strengthening of human rights for migrants. At the domestic level, however, and despite the general impetus in favor of the Pact, States are still attached to migration policies that are not very favorable to the reception of migrants, based in particular on local circumstances, ideological, economic, health, security or management of migratory flows... The Caribbean region is particularly permeable to this approach to immigration, following the example of the Bahamas, for which Haitian migration is above all “a problem”. Indeed, the choice of this country to comply with the provisions of the Pact, comes up against a conception of Haitian migration based on security, detention, and expulsion, without measures respectful of the imperatives of protection that would allow for the identification of persons in need of international protection, including certain Haitian migrants born in the Bahamas.

Cet article évalue l'application par les Bahamas du *Pacte mondial pour des migrations sûres, ordonnées et régulières (Pacte)* adopté en 2018, notamment à la lumière des dispositions relatives aux droits de la personne de manière générale et des migrants de manière spécifique. En effet, ce pacte, préparé sous les auspices des Nations unies, constitue le premier accord intergouvernemental qui propose une approche globale et exhaustive des migrations. Il se veut à la fois un instrument complémentaire et une synthèse du corpus normatif disponible, notamment en matière de protection des droits des personnes en situation de migration. Le défi consiste à proposer une approche des migrations en tant que facteur positif nécessitant la coopération à tous les niveaux et exigeant un renforcement des droits de la personne en faveur des migrants. Sur le plan interne cependant, et malgré l'élan général en faveur du pacte, les États restent encore attachés à des politiques migratoires peu favorables à l'accueil des migrants, se fondant notamment sur des circonstances locales, des considérations idéologiques, économiques, sanitaires, de sécurité ou de gestion des flux migratoires... L'espace caraïbe est particulièrement perméable à cette approche de l'immigration, à l'exemple des Bahamas pour lesquels la migration haïtienne constitue avant tout « un problème ». En effet, le choix de ce pays de se conformer aux prescriptions du pacte, se heurte à une conception de la migration haïtienne fondée sur la sécurité, la détention et l'expulsion, sans mesures respectueuses des impératifs de la protection qui permettraient d'identifier les personnes nécessitant une protection internationale, y inclus certains migrants haïtiens nés aux Bahamas.

Este artículo evalúa la implementación por parte de Bahamas del *Pacto Mundial para una Migración Segura, Ordenada y Regular (Pacto)* adoptado en 2018, particularmente a la luz de las disposiciones de derechos humanos en general y las disposiciones de derechos de los migrantes específicamente. De hecho, este *Pacto*, preparado bajo los auspicios de la ONU, es el primer acuerdo intergubernamental que propone un enfoque global y exhaustivo de la migración. Se pretende que sea a la vez un instrumento complementario y una síntesis del conjunto de normas disponibles, en particular en lo que respecta a la protección de los derechos de las personas en situación de migración. El desafío es proponer un enfoque de la migración como un factor positivo que requiere cooperación a todos los niveles y requiere un fortalecimiento de los derechos humanos de los migrantes. A nivel nacional, sin embargo, y a pesar del impulso general a favor del *Pacto*, los Estados siguen comprometidos con políticas migratorias poco favorables a la acogida de migrantes, basadas en

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particular en circunstancias locales, ideológicas, económicas, sanitarias, de seguridad o de gestión de los flujos migratorios... El área del Caribe es particularmente permeable a este enfoque de la inmigración, siguiendo el ejemplo de las Bahamas, para las cuales la migración haitiana es sobre todo “un problema”. En efecto, la decisión del país de cumplir con los requisitos del *Pacto* choca con una concepción de la migración haitiana basada en la seguridad, la detención y la expulsión, sin medidas que respeten los imperativos de protección que permitirían identificar a las personas necesitadas de protección internacional, incluidos algunos migrantes haitianos nacidos en las Bahamas.

International migration or population mobility across international borders is illustrated by the fact that individuals for various reasons cross borders.<sup>1</sup> Thus, according to figures from the United Nations Statistics Division, the total number of migrants in the world in 2020 is estimated at 281 million.<sup>2</sup> In Latin America and the Caribbean alone, they represent approximately 14.8 million people,<sup>3</sup> including 1.8 million of Haitian origin,<sup>4</sup> this last element represents an interesting case of study when it comes to observing that Haitian migration in a country like Bahamas, has distinctive features.

Overall and from the outset, in the Caribbean, emigration, that is, leaving one's country for various reasons (by choice or by constraint, in a planned or unplanned manner) and settling in a host country,<sup>5</sup> is part of a geopolitical context marked by a certain number of factors that are constituted by colonization, globalization, bipolarization and then multi-polarization of the world, which is not without impact on migration policies that oscillate between encouragement and restriction. In any case, Haitian migration bears witness to a tradition and a culture that have transformed Haiti into a "migratory power" and make it the third largest country of origin for migrants after the Dominican Republic and Cuba. However, the real volume of this migration remains underestimated,<sup>6</sup> particularly following the 2010 earthquake, which caused massive population movements. Although it is not possible, within the limits of this study, to identify the many facets of these essentially informal and poorly documented migratory flows, it should be noted that this process is marked by a great deal of heterogeneity (political isolation of Haiti, differences in language, economic conditions, etc.), one of the common features of which is the construction of an immigration around the issue of work. Temporary or permanent, it includes, among others, agricultural workers, domestic workers, but also more and more merchants who move throughout the Caribbean basin. Formally, Haitian migration, which includes

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<sup>1</sup> Alice Sironi, Céline Bauloz & Milen Emmanuel, eds, *Glossary on Migration*, International Migration Law no 34 (Geneva: International Organization for Migration, 2019) at 113, online (pdf): *IOM UN Migration* <publications.iom.int/books/international-migration-law-ndeg34-glossary-migration>.

<sup>2</sup> DESA, "International Migrant stocks" (last modified 5 April 2021), online: *Migration Data Portal* <www.migrationdataportal.org/fr/themes/population-de-migrants-internationaux>.

<sup>3</sup> *Ibid.*

<sup>4</sup> IOM, *World Migration Report 2020* (Geneva: International Organization for Migration, 2019) at 105, online (pdf): *IOM UN Migration* <publications.iom.int/books/world-migration-report-2020> [IOM, 2020].

<sup>5</sup> Emigration is the subject of particular attention in international texts, first and foremost the *Universal Declaration of Human Rights*, GA Res 217A (III), UNGAOR, 3<sup>rd</sup> Sess, Supp No 13, UN Doc A/810 (1948), which in its Article 13 recognizes a real right to emigration. Gerard-François Dumont, "Gouvernance internationale et politique migratoire" in Éric De Moulins-Beaufort & Philippe Poirier, eds, *Gouvernance mondiale et éthique au XXI<sup>e</sup> siècle*, (Paris: Collège des Bernardins, Lethielleux, 2012), 141.

<sup>6</sup> Paul Bénédict, "Migration et pauvreté en Haïti : impacts économiques et sociaux des envois de fonds sur l'inégalité et la pauvreté?" (Paper delivered at the Journée thématique "Envois de fonds, inégalité et pauvreté dans les pays en développement" of the Groupe d'économie et développement du Laboratoire d'analyse et de recherche économiques – Économie et Finance Internationale de l'Université Bordeaux 4, 16 October 2008), online: *Munich Personnel RePEc Archive* <mpra.ub.uni-muenchen.de/39019/>.

both circular and permanent elements,<sup>7</sup> involves movements between Haiti and the Dominican Republic, the Bahamas, Guyana, the Netherlands Antilles, Guadeloupe, the Turks and Caicos Islands, among others, to arrive more recently in countries such as Brazil<sup>8</sup> or Chile.<sup>9</sup>

Among these destinations, the migration between Haiti and the Bahamas has some distinctive features related to its demographic importance. In the Bahamas, according to information relayed by the Immigration and Refugee Board of Canada, the number of Haitians living in this country is approximately 80,000 or nearly 25 % of the total population, estimated at 342,049.<sup>10</sup> The International Organization for Migration (IOM) reports that there are between 20,000 and 50,000 illegal Haitians in the Bahamas.<sup>11</sup> Formally, this country was formed by successive migratory contributions, diversified and hierarchical in their types and functions, whether it be colonization, trafficking or planned or unplanned migration. This migration, once desired, is now stigmatized.<sup>12</sup> This situation is amplified during the electoral period, when the Haitian migration issue, which touches the identity foundations of the changing Bahamian society, is closely linked to a representation of the invasive and miserable Haitian immigrant.<sup>13</sup> However, by its characteristics and importance, the Haitian migration to the Bahamas reveals that it is not only a process, a phenomenon of interest to statisticians, historians or geographers, but that it also reflects above all a movement of people. Indeed, according to geography expert Frederic Piantoni, “‘Mobility’, ‘migration’: these two terms qualify the movement of individuals.”<sup>14</sup> The individual is at the center of all migration and is protected by law in his or her dual capacity as a human person and migrant. This justifies why there is a multitude of legal instruments, whether universal, regional or other, that protect the rights of the human person in general, and of migrants in particular. It is therefore necessary to question, among other things, the application of human rights standards in the implementation of migration policies. Moreover, such a correlation between migration and human rights leads to a holistic approach to the governance of migration.

<sup>7</sup> Cédric Audebert, “Caribbean Migration Spaces and Transnational Networks: The Case of the Haitian Diaspora” in Myriam Moïse & Fred Reno, eds, *Border Transgression and reconfiguration of Caribbean Spaces* (Cham, Switzerland: Palgrave Mc Millan, 2020) 71.

<sup>8</sup> Éric De Montalembert, “Les dynamiques contemporaines des migrations africaines et haïtiennes vers le Brésil”, *Confins* 51 (2021), online: *Open Edition Journals* <journals.openedition.org/confins/38339>.

<sup>9</sup> IOM, *Migrations en Haïti : profile migratoire national 2015* (Port au Prince: Organisation internationale pour les migrations, 2015) at 27-28, online (pdf): *IOM UN Migration* <publications.iom.int/books/migration-en-haiti-profil-migratoire-national-2015> [IOM, *Haïti*].

<sup>10</sup> Immigration and Refugee Board of Canada, “Bahamas and Haiti: Treatment of Haitians in the Bahamas” (7 June 2012), online: *Refworld* <www.refworld.org/docid/4feae6c82.html>.

<sup>11</sup> IOM, *Haïti*, *supra* note 9 at 27-28

<sup>12</sup> William J Fielding et al, “The Stigma of being ‘Haitian’ in the Bahamas” *The College of the Bahamas Research Journal* 14 (2008) 38 at 43; Charmane Perry, “‘You can’t speak Creole in here. English only’: Experiences of Stigma and Acts of Resistance among Adults of Haitian Descent in the Bahamas” *International Journal of Bahamian Studies* 26 (2020) 61 at 68-69.

<sup>13</sup> Ian Strachan, “The Haitian Problem” (1 June 2011), online: *Bahamas Local* <www.bahamaslocal.com/newsitem/24022/The\_Haitian\_problem.html>.

<sup>14</sup> Frederic Piantoni, *Migrants en Guyane* (Arles-Cayenne: Actes Sud, Musée des cultures guyanaises, 2011) at 7.

At the international level, this approach has informed the conclusion of the *Global Compact for Safe, Orderly and Regular Migration*<sup>15</sup> (*Global Compact*) dated December 19th, 2018, to which the Bahamas has subscribed. Indeed, this non-binding text aims to exploit the full potential of migration and strengthen the rights of migrants by proposing to strengthen international cooperation in migration management.<sup>16</sup> The method, although classic, has the originality of wanting to fill in the gap in the implementation of the commitments of States with regard to the main international instruments, by proposing concrete, measurable actions with the objective “to maximize the benefits of migration rather than obsess about minimizing risks”.<sup>17</sup>

However, this ambitious approach of the *Global Compact* already allows us to foresee all the difficulties linked to the rights of migrants in a country like the Bahamas, where Haitian migration in particular is considered a problem,<sup>18</sup> and for which the responses provided are mostly introduced from a security perspective.<sup>19</sup> In theory, migration policies are the set of objectives and means deployed by the State in order to control and regulate the presence of migrants and migratory flows on its territory, but immigration policies can encourage immigration as well as seek to limit or even eliminate it. In this respect, the fundamental right to free movement is limited by the sovereign right of the State to decide on the criteria for admission and expulsion of non-nationals, particularly when they are in an irregular situation. However, this prerogative is exercised within the limits of their human rights obligations and any agreements or conventions they have concluded that limit their sovereignty in this area, for example, in the context of a regional mobility regime. However, in the Bahamas, migration policies towards Haitians are based on the control of individuals and differentiated rights according to their status, and most often generate direct or indirect discrimination<sup>20</sup> which is still the basis of the structures of Bahamian society today.

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<sup>15</sup> *Global Compact for Safe, Orderly and Regular Migration*, GA Res 73/195, UNGAOR, 73rd Sess, UN Doc A/Res/73/195 (2019) [*Global Compact*].

<sup>16</sup> Secretary General, *Making Migration work for all*, UNGAOR, 72nd Sess, UN Doc A/72/643 (2017).

<sup>17</sup> *Ibid* at 3.

<sup>18</sup> Dawn I Marshall, *‘The Haitian Problem’: Illegal Migration to the Bahamas* (Mona, Jamaica: University of the West Indies, 1979).

<sup>19</sup> Darren A Henfield, *Making the national security council “better in the Bahamas” to resolve illegal migration* (Thesis, Naval Postgraduate School, 2015) [unpublished].

<sup>20</sup> Direct discrimination occurs if an individual or group experiences unfavourable treatment because of their immigrant background (access to employment for example). Indirect discrimination refers to a situation in which formally equal treatment has, or may have, the effect of disadvantaging immigrants, and which cannot be justified on other grounds. On the normative level, the provisions relating to non-discrimination are provided for example in Articles 7 of *Universal Declaration of Human Rights*, *supra* note 5; 2 and 26 of the *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976); 1 of the *American Convention on Human Rights*, 22 November 1969, 1144 UNTS 144; or 14 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 November 1950, 213 UNTS 221 (entered into force 3 September 1953). In the light of Advisory Opinion No 18 of the Inter-American Court issued in 2003 on the legal status of migrant workers, non-discrimination is elevated to the rank of *jus cogens* norms. See *Juridical Condition and Rights of the Undocumented Migrants* (2003), Advisory Opinion OC-18/03, Inter-Am Ct HR (Ser A) No 18. For doctrine, see Ludovic Hennebel & Helene Tigroudja, *Traité de droit international des droits de l’homme*, 2<sup>nd</sup> ed (Paris: Pedone, 2018).

What measures has the Bahamas implemented to comply with the recommendations of the *Global Compact*? Has the structural discrimination characterizing the country's migration policies changed, particularly in terms of health, environmental, social and other conditions?

Examining the progress of the *Global Compact*'s provisions in a country such as the Bahamas leads to the observation of the contradiction that exists there with regard to migration. Oscillating between acceptance and reticence in the face of the *Global Compact*, the practices of this country suggest an equivocal approach to this instrument with regard, in particular, to respect for the fundamental rights of migrants. Indeed, if this country is determined to respect the prescriptions of the *Global Compact*, it does not necessarily give it a legal reality (I), which translates into real denials of the rights of Haitian migrants, thus characterizing a flawed approach to the *Global Compact* (II).

## **I. An Equivocal Approach to *The Global Compact on Migration***

Although the Bahamas supports the guiding principles of the *Global Compact*, it presents an ambiguous overview, particularly with regard to the objectives of strengthening the rights of migrants and promoting inclusive migration.

### **A. The Contrasting Objectives of Taking Migrants' Rights into Account: Haitians at the Frontiers of Human Rights**

The analysis of the extent of migrants' rights in a territory distinct from their territory of origin is assessed, among other things, in the light of imperatives related to respect for human rights.<sup>21</sup> In fact, while the nation-state remains a major influence in determining migration and immigration policies, the internationalization of migration issues is accompanied by a strong consideration of the rights of migrants, thus limiting the prerogatives of States.<sup>22</sup>

In this regard, the *Global Compact*, while reaffirming the sovereign right of States to define their migration policies, emphasizes that the exercise of State sovereignty must allow for the protection of migrants' rights. Governments have a responsibility to ensure that all migrants can enjoy the rights guaranteed and protected by human rights, just like everyone else.

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<sup>21</sup> Jacques Amar, "Les migrations contemporaines entre droits de l'homme, liberté de circulation et droit au retour" *Hommes & migrations* 1306 (April 1st, 2014) 141.

<sup>22</sup> Antoine Pécoud, "Liberté de circulation et gouvernance mondiale des migrations" *Éthique publique* 17:1 (2015), online: *OpenEdition Journals* <journals.openedition.org/ethiquepublique/1749>. Hélène Tigroudja, "Migrations, vulnérabilité et dignité dans la jurisprudence de la Cour interaméricaine des droits de l'homme" *Titre VII* 1:6 (2021) 77.

This is what the Bahamas stated during the debates at the time of the adoption of the pact:

For the Bahamas, the *Global Compact* represents a significant opportunity to galvanize bilateral and multilateral cooperation on international migration. Appreciating the non-legally binding nature of the Compact, and asserting the sovereign rights of all countries to determine their migration policies and management, based on their respective national needs and priorities, The Bahamas considers the objectives of the Compact as a catalogue of tools that Governments can select to best fulfil their commitment to safe, orderly and regular migration. Moreover, The Bahamas recognizes the important nexus between migration, human rights and sustainable development, and, that efforts toward safe, orderly and regular migration necessarily contribute to the promotion and protection of human rights and Agenda 2030.<sup>23</sup>

This pledge, which led to the adoption of the Pact by this country on December 19, 2018, was reiterated on World Migrants Day in 2020, with the Minister of Foreign Affairs, emphasizing on the one hand, the contribution of migration to the economic development of the country, the necessary fight against irregular migration, and on the other hand, its investment in the implementation of contemporary policies that promote the fair treatment of all human beings.<sup>24</sup>

The Regional Review Meeting on the implementation of the *Global Compact* for the Latin American and Caribbean region, held from April 26th to 28th, 2021, provided an opportunity to examine the progress made by States in relation to the objectives of the *Global Compact* and to analyze, on the basis of a questionnaire, the measures implemented since 2018.<sup>25</sup> Bahamas does not appear in the report, which does not allow to have a clear vision on the implementation of the text.

The country's approach to the *Global Compact* is, moreover, in close congruence with its approach to migrants' rights with regard to the international corpus in general. Indeed, the situation of the Bahamas *vis-à-vis* the multiplicity of international legal instruments relating to human rights, and particularly with regard to those to which this country has subscribed, presents a contrasting panorama.<sup>26</sup> This

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<sup>23</sup> H.E. Ms Sheila Carey, Address (Statement delivered at the Intergovernmental Conference to adopt the Global Compact for Safe, Orderly and Regular Migration, Marrakesh, Morocco, 10-11 December 2018) at 3, online (pdf): *United Nations* <[www.un.org/en/conf/migration/assets/pdf/GCM-Statements/bahamas.pdf](http://www.un.org/en/conf/migration/assets/pdf/GCM-Statements/bahamas.pdf)>.

<sup>24</sup> "International Migrants Day 2020" (2020), online: *The Government of the Bahamas: Ministry of foreign affairs* <[mofa.gov.bs/international-migrants-day-2020/](http://mofa.gov.bs/international-migrants-day-2020/)>.

<sup>25</sup> "Latin America and the Caribbean" (last visited 4 June 2023), online: *UN Network on Migration* <[migrationnetwork.un.org/country-regional-network/latin-america-caribbean#](http://migrationnetwork.un.org/country-regional-network/latin-america-caribbean#)>.

<sup>26</sup> It's for example the case of the *International Convention on the Elimination of All Forms of Racial Discrimination*, 7 March 1966, 666 UNTS 1 (entered into force 4 January 1969, succession by Bahamas 5 August 1975); the *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, 1249 UNTS 1 (entered into force 3 September 1981, accession by Bahamas 6 October 1993). Otherwise, this country has not ratified the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, 18 December 1990, 2220 UNTS 3 (entered into force 1 July 2003), online: *United Nations Treaty Collection* <[treaties.un.org/Pages/showDetails.aspx?objid=080000028004b0a9&clang=\\_en](http://treaties.un.org/Pages/showDetails.aspx?objid=080000028004b0a9&clang=_en)>.



multitude of instruments and their varying degrees of signature and ratification are a source of uncertainty as to the minimum rights to be applied to migrants, because this country, through the reservations made, limits certain internationally protected rights, such as the right to nationality<sup>27</sup>. Indeed, the Bahamas presents the profile of a country that has ratified or acceded to the main universal texts relating to human rights, but most often with reservations or declarations<sup>28</sup>. Thus, with regard to the New York *Convention on the Rights of the Child*, to which the country has been a party since 1991, but has entered a reservation to Article 2, which states that State Parties

shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.<sup>29</sup>

With respect to the *Convention on the Elimination of All Forms of Discrimination against Women*, the Bahamas has entered a reservation to Article 2(a), Article 9(2) and Article 29(1).<sup>30</sup> From the latter perspective, such restrictions shed light on the findings noted by the Special Rapporteur on violence against women during her mission to the Bahamas, who, in her 2018 report, notes:

The Special Rapporteur is concerned that many of the individuals she met told her that many migrant women who are victims of gender-based violence decline to call the police for assistance, for fear of possible deportation. During her visit, the Special Rapporteur was made aware of the implementation of measures purportedly aimed at curbing irregular migration, which results in the detention and swift deportation of hundreds of individuals, disproportionately targeting the community of Haitian descent, some of whom may have been born in the Bahamas.<sup>31</sup>

Moreover, the treatment of Haitian migrants in an irregular situation has not changed much in light of the country's adoption of the *Global Compact*, particularly in spite of Objective 13, which states that the detention of irregular migrants should be a last resort and should not be prolonged excessively.<sup>32</sup> The government's security policy towards irregular migration shows differentiated behaviour for Haitian migrants whose repatriation time is estimated to be between one and two weeks<sup>33</sup> and for whom the minimum rights that should be guaranteed are not always respected (right to contact

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<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

<sup>29</sup> *Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990, ratification by Bahamas 20 February 1991).

<sup>30</sup> William A Schabas, "Reservations to the convention on the Elimination of all Forms of Discrimination Against Women and the Convention on the Rights of the Child" (1997) 3:4 *Wm & Mary J Women & L* 79.

<sup>31</sup> *Report of the Special Rapporteur on violence against women, its causes and consequences, on her mission to the Bahamas*, UNHRCOR, 38<sup>th</sup> Sess, Un Doc A/HRC/38/47/Add.2 (2018) at 6 [*Report of the Special Rapporteur on violence against women*].

<sup>32</sup> The Bahamas, "The Bahamas 2020 Human Rights Report" (2020) at 5, online (pdf): *US Department of State* <[www.state.gov/wp-content/uploads/2021/03/BAHAMAS-2020-HUMAN-RIGHTS-REPORT.pdf](http://www.state.gov/wp-content/uploads/2021/03/BAHAMAS-2020-HUMAN-RIGHTS-REPORT.pdf)> [The Bahamas, "2020"].

<sup>33</sup> *Ibid.* at 5.

any person of their choice—lawyers, family members, non-governmental organizations, UNHCR, etc.—, to have access to appropriate medical care, and, if necessary, to have an interpreter and free legal assistance).<sup>34</sup> The situation is all the more peculiar because among the Haitian migrants in an irregular situation there are also people who were born in the country but who are not eligible for citizenship.<sup>35</sup>

The occurrence of the Covid-19 pandemic, although leading to a slowdown in deportation procedures, did not result in any particular measure being taken. For example, in June 2019, while the government suspended repatriation flights to Haiti due to the pandemic, at the Carmichael Road detention centre, a group of Haitian migrant detainees, frustrated by their prolonged detention, damaged fences and staged a short hunger strike. Ten days after the protest, the government repatriated 75 migrants to Haiti.<sup>36</sup> Similarly, the Global Migration Organization noted some 14 repatriations to Haiti between October 10<sup>th</sup>, 2019, and July 21<sup>st</sup>, 2020.<sup>37</sup>

In contrast, the treatment accorded to migrants in the wake of climatic phenomena reveals the efforts of government authorities to mitigate or even adapt to environmental factors and to build resilience in this regard. Thus, the *Bahamas 2019 Human Rights Report* notes that Hurricane Dorian displaced thousands of residents of Grand Bahama, Abaco, and the surrounding cays. While many evacuees stayed with family and friends, the government accommodated more than 2,000 persons, including many undocumented migrants—mostly Haitian—in shelters in New Providence. In the immediate aftermath of the storm, the government implemented a universal policy of providing emergency humanitarian assistance and social services to all, regardless of immigration status, including access to schooling for displaced children.<sup>38</sup>

However, the author, Mrs. Miriam Cullen, notes that

Before the hurricane, and in line with its protection obligations, The Bahamas had suspended repatriation of irregular Haitian arrivals in 2019 due to

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<sup>34</sup> Although there is no specific instrument dealing with the issue of the rights of irregular migrants, the main international human rights instruments can be used to guarantee the minimum rights of irregular migrants. A combined reading of these texts makes it possible to identify the main civil and political rights that States must respect in order to effectively prevent human rights violations against vulnerable people such as irregular migrants (right to life, prohibition of torture, the right to have contact with the consular authorities of their country of origin...). In this regard, the case law of the Inter-American Court of human rights is enlightening: in an important judgment rendered on 23 November 2010, *Vélez Lóor c Panama*, the Court clarified the meaning of the notion of due process applied to expulsion disputes. It interprets it in particular in the light of Article 25 of the *American Convention on Human Rights*, 22 November 1969, 1144 UNTS 123 (entered into force 18 July 1978), but also with regard to non-discrimination. As she said, whether or not the person has entered and established regularly on the territory of a State, the latter must allow him to challenge, individually, effectively and with suspensive effect, the decision to remove him from the territory. *Case of Vélez Lóor v Panama* (2010), Preliminary Objections, Merits, Reparations, and Costs, Inter-Am Ct HR (Ser C) No 218 at paras 100ff.

<sup>35</sup> The Bahamas, “2020”, *supra* note 32.

<sup>36</sup> *Ibid.*

<sup>37</sup> IOM, 2020, *supra* note 4 at 105.

<sup>38</sup> The Bahamas, “The Bahamas 2019 Human Rights Report” (2019) at 8, online (pdf): *US Department of State* <[www.state.gov/wp-content/uploads/2020/02/BAHAMAS-2019-HUMAN-RIGHTS-REPORT.pdf](http://www.state.gov/wp-content/uploads/2020/02/BAHAMAS-2019-HUMAN-RIGHTS-REPORT.pdf)> [The Bahamas, “2019”].

ongoing civil unrest in Haiti. It assessed that to return irregular migrants would be a violation of the principle of non-refoulement. However, after the hurricane, repatriations of irregular Haitian arrivals resumed in earnest.<sup>39</sup>

These various examples show how difficult it is to find solutions to the rights of Haitian migrants, who, therefore, often find themselves on the margins of host societies, despite the stated objectives of promoting inclusive migration.

## **B. The uncertain ambition of inclusive immigration: Haitians on the margins of Bahamian society**

Immigration is closely associated with changes in Bahamian society, marked by a heavy social context.<sup>40</sup> This context generates discrimination and sometimes even exacerbated communitarianism. The responses to these changes are most often cyclical, depending on the election period, and are part of political instrumentalization, leading to the implementation of restrictive migration policies. Indeed, the attainment of independence and, in general, democratization has made immigration more visible and has transformed it into a political objective for the various political parties. Thus, an analysis of the discourse on Haitian immigration in the press shows that the most-used register of communication has to do with national identity, even racialized nationalism.<sup>41</sup> These discourses are most often translated into restrictive policies towards migrants in general, and Haitians in particular. Specifically, because of the laws governing the situation of foreigners, the status of Haitians in Bahamian society oscillates between visibility tinged with discrimination and invisibility marked by exclusion. Thus, although the domestic law of the Bahamas emphatically prescribes equal rights for nationals and foreigners, with the general exception of political rights, the legislative evolution of this country makes it more difficult to regularize foreigners and sometimes even leads to discrimination and inequalities regarding Haitian migrants. Thus, and according to the observation made by the Special Rapporteur on violence against women during her mission to the Bahamas:

Many migrant women and women of Haitian descent live in poor and densely populated shanty towns, where they are confronted with an array of challenges, including discrimination on the grounds of gender and ethnic origin. In addition to the discrimination they face, many do not have identity documents and national passports, which hampers their ability to obtain a job or a house. Their low socioeconomic status and social exclusion exposes them to multiple and intersecting forms of violence, including domestic violence.<sup>42</sup>

<sup>39</sup> Miriam Cullen, “Disaster, Displacement and International Law: Legal Protections in the Context of a Changing Climate” *Politics and Governance* 8:4 (2020) 270.

<sup>40</sup> Fielding et al, *supra* note 12 at 38-50; David Allens, “Conceptions of Race Beyond North America: The subversion of the Colonial Racial Contract in The Bahamas” *Caribbean Quilt* 5 (2020) 12.

<sup>41</sup> See e.g. Strachan, *supra* note 13. See also Charmane M Perry, “Invasion from the South: Social Construction of the Haitian ‘Other’ in the Bahamas” (2014) 20:1 *Intl J Bahamian Studies* 1.

<sup>42</sup> *Report of the Special Rapporteur on violence against women, supra* note 31 at 6.

Moreover, if we can observe although Chapter III of the 1973 Constitution<sup>43</sup> prescribes equal rights for all, this equality can only be understood in the light of Articles 21 to 26, which allow discrimination on the basis of race, colour or origin, when this is necessary for the maintenance of order.

In any case, in this country, the issue of migration, and particularly Haitian migration, which touches the foundation of the identity of this changing society, is generally considered as the adjustment variable of democratic construction. In this regard, it should be noted that while Haiti and the Bahamas share a common history related to the plantation economy and slavery, the Bahamas is primarily a transit destination. One of the ways for Haitians to cross to these islands is indeed illegal immigration. The boat people, whose initial choices were more oriented towards the United States of America, were rejected towards the Bahamian coasts where the Haitians settled little by little by abandoning their illegal status. In general, the geographical proximity as well as the level of development of the Bahamas explain the attraction of Haitians for this group of islands. Thus, there is a strong Haitian community that was founded first around the networks of merchants that have developed throughout the region. The growth of this community is also mainly due to the women of the underground sector who contributed to the development of the popular economy of the area. Thus, this country experienced, especially in the early sixties, some examples of integration in terms of Haitian immigration.

However, under the influence of anti-Haitian electoral rhetoric, the migration policy of the Bahamian government is focused on security imperatives<sup>44</sup> and therefore deportations and expulsions of undocumented Haitians, with no measures respecting the imperatives of protection that would allow the identification of people in need of international protection, and with no effective guarantees against deportation.<sup>45</sup> In fact, to

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<sup>43</sup> “The Constitution of The Commonwealth of The Bahamas” (1973), online: *Constitute project* <[www.constituteproject.org](http://www.constituteproject.org)> [“Constitution of The Bahamas”].

<sup>44</sup> Henfield, *supra* note 19.

<sup>45</sup> Although “[t]he principle of non-refoulement is most often referred to in the context of refugee protection, given its codification in Article 33 of the *Convention relating to the Status of Refugees (Refugee Convention)* and in regional refugee law instruments[, o]ver the past decades, however, the principle has also been included in human rights treaties, such as the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Article 3), the *International Convention for the Protection of All Persons from Enforced Disappearance* (Article 16) and in regional human rights instruments.”: Tilman Rodenhäuser, “The principle of nonrefoulement in the migration context: 5 key points” (30 March 2018), online: *ICRC* <<https://blogs.icrc.org/law-and-policy/2018/03/30/principle-of-non-refoulement-migration-context-5-key-points/>>.

In the inter-American system, the Commission adopted Resolution no 04/2019 on 7 December 2019, *Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Human Trafficking*, who provide guidance to the states regarding their duties to respect, protect, promote and guarantee the human rights of all persons in contexts of human mobility, as well as to serve as a guide to the state authorities in the development of legislation, regulations, administrative decisions, public policies, practices, programs and relevant case-law. The Commission also adopted on 24 October 2021, Resolution no 2/2021, *Protection of Haitians in Human Mobility: Inter-American Solidarity*, in which it noted the “recent exacerbation of the social, political, and institutional crisis, permeated by the grave context of structural poverty, which hinders the effective protection of the human rights of the Haitian population” and specifically with regard to deportations and other returns of Haitian nationals. See also Inter-American Commission on Human Rights, Press Release, “IACHR and UN’s Special Rapporteur Condemn Excessive Use of Force and Deportations of Migrants from Haiti at the United States’ Southern

deal with the problem of Haitian immigration, the Bahamian government is advocating a two-pronged approach characterized on the one hand by policies of regularization and control of regular immigration and particularly that related to migrant workers, and on the other hand, by restrictive and even sometimes coercive policies to fight against irregular immigration, which, in the light of the *Global Compact*, translates into the perpetuation of a certain form of marginality of Haitians.

## II. A flawed approach to the *Global Compact* on Migration

The analysis of this country gives some indication of the situation of Haitian migrants, which is marked by a restrictive legal framework that generates exclusion, while revealing some distinctive features. The Bahamas, while determined to comply with the *Global Compact*, does not necessarily give it legal effect. In other words, despite a marked interest in the text and its considerations in favour of the recognition of rights for migrants, this country, in practice, does not seem to give them consistency. The weaknesses in the implementation of the *Global Compact* can be seen particularly in the light of Objective 4, which is intended to encourage States to adopt good practices in the granting of proof of legal identity,<sup>46</sup> which is contradictorily reflected in the maintenance or reinforcement of policies that lead to the denial of the rights of Haitian migrants.

### A. The issue of granting proof of legal identity: Haitians and the denial of rights

The fourth objective of the *Global Compact* requires States “to guarantee the right of every individual to a legal identity” with a view to “ensuring the legal identity of a migrant upon entry, throughout his or her stay and upon his or her return, and to guaranteeing rigorous migration procedures.”<sup>47</sup>

In the Bahamas, as elsewhere, the issue of identity documents (card, birth certificate, etc.) is central to the “legality” of migrants. The absence of such identification documents has consequences for the situation in the country, as the individual concerned is denied access to the health system, education, civil and political rights<sup>48</sup> and citizenship in general. From the outset, the immigration law provides procedures for granting permanent residence certificates to migrants, but with some specificities regarding Haitians. Thus, according to Article 13

The Board may, in its absolute discretion, upon application being made in the prescribed form and on payment of the prescribed fee, grant a permanent

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Border” (4 October 2021), online: *OAS Press Releases* <[www.oas.org/en/iachr/jsForm/?File=/en/iachr/media\\_center/preleases/2021/260.asp](http://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2021/260.asp)>.

<sup>46</sup> Objectives for safe, orderly and regular migration: 4. “Ensure that all migrants have proof of legal identity and adequate documentation” in *Global Compact*, *supra* note 15 at para 16 of the annex.

<sup>47</sup> *Global Compact*, *supra* note 15 at para 20 of the annex.

<sup>48</sup> Charmaine M Perry, “‘Real Bahamian’ and ‘Paper Bahamians’: Haitians as perpetual Foreigners” *Latin American and Caribbean Ethnic Studies* 18:1 (2022) 122.

residence certificate to any person who — (a) is not less than eighteen years of age; (b) is of good character; and (c) in his application has stated his intention of residing permanently in The Bahamas.<sup>49</sup>

In addition, the following article specifies that when a foreigner applying for a permanent residence certificate is “a husband, [he must have] lived continuously with the other party to the marriage for a period of not less than five years.”<sup>50</sup> This last provision, which is discriminatory, is supplemented by a practice specific to Haitians, since “Haitian nationals who are able to provide documentary proof, exclusive of Haitian passports, that the department accepts as evidence under cover of an affidavit from a notary public, of their continuous residence in The Bahamas prior to January 1985, can obtain permanent resident status.”<sup>51</sup> The officer of the Department of Immigration stated that this provision is not set out in the *Immigration Act* because it is “an exceptional measure that applies only to Haitians.”<sup>52</sup>

In addition to the issue of certificates of permanent residence, the problem of the regularity of the presence of Haitians in the Bahamas is also linked to the conditions of acquisition of citizenship. Indeed, the legal link between the individual and the State is considered from the point of view of citizenship, which is considered as the status of a person recognized by the laws and customs of the State and which confers rights and duties. These provisions, which are found in Chapter 2 of the 1973 Constitution (Chapter 2 Citizenship, Sections 3(2), 6, 7, 8, 9, 10 and 14(1)),<sup>53</sup> in the *Bahamas Nationality Act (2001)*<sup>54</sup> and in the *Immigration Act 1967*<sup>55</sup> as amended (1967, 1997, 2012, 2015), depend heavily on both an application of the principles of *jus soli* and *jus sanguini*, but also on the application of differential treatment depending on whether the person was born before or after independence. In general, in addition to acquisition by adoption or naturalization, Bahamian citizenship is acquired by descent, with Section 6 of the Constitution providing that a person born after 9 July 1973, to a Bahamian parent, becomes a Bahamian citizen. In addition, the Constitution provides for the acquisition of citizenship in a number of ways including through the allegiance procedure and legal residence.

<sup>49</sup> *Bahamas Immigration Act*, LRO 1/2010, c 191 (1967), online (pdf): *Bahamas Laws Online* <laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1967/1967-0025/ImmigrationAct\_1.pdf>.

<sup>50</sup> *Ibid.*, art 14(d).

<sup>51</sup> Immigration and Refugee Board of Canada, “Bahamas and Haiti: Whether a citizen of Haiti who is married to a citizen of the Bahamas can obtain permanent residence in the Bahamas; conditions that can lead to the revocation of permanent resident status of a person in that situation, particularly whether that status can be revoked if that person leaves the Bahamas or if their spouse dies; the conditions to be met by a person in that situation to reacquire permanent resident status; whether a person who is a permanent resident of the Bahamas can renew a business license even if their spouse, a citizen of the Bahamas, is deceased” (7 June 2012), online : *Refworld* <www.refworld.org/docid/50ebfd3d2.html>.

<sup>52</sup> *Ibid.*

<sup>53</sup> “Constitution of The Bahamas”, *supra* note 43.

<sup>54</sup> *The Bahamas Nationality Act*, c 190 (2001) online: *Bahamas Laws Online* <laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1973/1973-0018/BahamasNationalityAct\_1.pdf>.

<sup>55</sup> Strachan, *supra* note 13.

With regard to the situation of foreigners, two provisions are particularly noteworthy. The first concerns the acquisition of citizenship by marriage as provided for in Section 10. Thus, a woman married to a man may acquire Bahamian citizenship as long as the marital relationship continues. However, a woman cannot pass on Bahamian citizenship to her foreign spouse or to a child fathered by him.<sup>56</sup> Thus, it can be seen that the Bahamian normative framework includes laws that discriminate against the recognition of women's derived citizenship and enshrines a system of citizenship by descent, derived exclusively from the paternal line. The second, prescribed by Section 7 of the Constitution, concerns the acquisition of citizenship by persons born in the Bahamas to non-Bahamian parents after independence, that is, children born in the Bahamas to both non-Bahamian parents or to a Bahamian mother with a non-Bahamian father. Clearly, children of Haitians born in the Bahamas do not acquire citizenship by application of the *jus soli* theory. They must prove that they were born and raised in the Bahamas. The law also provides that they have one year after their 18<sup>th</sup> birthday to begin the citizenship application process at the immigration office. However, for Haitians, the processing of applications takes forever.<sup>57</sup> This discriminatory system was put in place in 1973, apparently to impede access to Bahamian citizenship for Bahamian-born children of Haitian descent. However, we can already see the difficulties that arise from this article are perceptible since the application of which leaves a whole series of descendants of Haitians in an unclear legal situation. In most cases, they can claim the nationality of their parents provided, of course, that the latter are able to declare them to the consular or diplomatic authorities in the territory or are able to justify their Haitian identity documents.

This particularity in the treatment of Haitian descendants, in addition to its discriminatory nature, is of obvious interest from a legal point of view, particularly with regard to situations of statelessness that are created.

## **B. Consequences of the legal provisions of the Bahamas: the problem of statelessness of Haitian's descendants**

One of the most glaring problems regarding the situation of Haitians in this country is that of the *de facto* or *de jure* statelessness of the children of Haitians born

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<sup>56</sup> In international law and particularly in European human rights law, the European Court of Human Rights has had the opportunity to examine the question of the attribution of nationality by highlighting the discrimination caused by a difference in treatment between children born outside marriage and those resulting from the marital bond: *Genovese c Malta*, No 53124/09, (11 October 2011). The organs of the inter-American system have examined situations of statelessness resulting from the domestic law of States which arbitrarily and discriminatory exclude access to nationality for children of Haitian origin (*Case of the Yean girls and Bosico v Dominican Republic* (2005), Preliminary Objections, Merits, Reparations and Costs, Inter-Am Ct HR (Ser C) No 130 at para 156). See also IACHR, *Human Mobility Inter-American Standards* (OAS, 2016) at para 57, online (pdf): [OAS <www.oas.org/en/iachr/reports/pdfs/HumanMobility.pdf>](http://www.oas.org/en/iachr/reports/pdfs/HumanMobility.pdf). At the universal level, UNHCR, *Briefing on Gender Equality, Nationality and Statelessness Laws* (8 March 2018), online (pdf): [Refworld <https://www.refworld.org/pdfid/5aa10fd94.pdf>](https://www.refworld.org/pdfid/5aa10fd94.pdf) at 6.

<sup>57</sup> *Report of the Special Rapporteur on violence against women, supra* note 31 at 5.

in this territory, in total contradiction with the provisions of the *Global Compact*, which require States to

Strengthen measures aimed at reducing statelessness, in particular through the registration of births of migrants, ensuring that women and men have the same capacity to pass on their nationality to their children and granting nationality to children born in the territory of another State, in particular when the children would otherwise be stateless, with full respect for the fundamental right to a nationality and in accordance with national legislation.<sup>58</sup>

In the Bahamas, Article 7 of the Constitution, which provides that children born to non-Bahamian parents are not entitled to citizenship until their 18<sup>th</sup> birthday, creates a situation of statelessness for minors whose parents are unable to grant them citizenship.<sup>59</sup> This provision is in contradiction with the main international texts and particularly the *Universal Declaration of Human Rights* which prescribes in its Article 15 the right of every person to nationality.<sup>60</sup> Otherwise, the *Convention on the Rights of the Child* guarantees the right of children to be registered immediately after birth and to acquire a nationality, and establishes the obligation of State parties to ensure the application of these rights, in particular when they would otherwise be stateless.<sup>61</sup> This means that they must acquire a nationality at birth or as soon as possible after birth.<sup>62</sup>

In relation to the situation of Haitians, it should be considered that if the Haitian Constitution grants nationality by application of the theory of *jus sanguini*, such a provision effectively renders third generation descendants stateless, at least during the first 18 years of their lives.<sup>63</sup> In the meantime, and in accordance with the provisions of the 1973 Constitution, minors of 18 years of age, born on the territory after 10 July 1973, are granted a certificate of identification issued for five years. This certificate allows them to move freely within the country, but is not equivalent to a passport that allows them to open a bank account, travel abroad or vote.<sup>64</sup> Much more, since 2014,

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<sup>58</sup> *Global Compact*, *supra* note 15 at Objective 4, art 20a).

<sup>59</sup> “Constitution of The Bahamas”, *supra* note 43, art 7 : “Persons born in The Bahamas after 9th July 1973 of non-citizen parents. 7.(1) A person born in The Bahamas after 9th July 1973 neither of whose parents is a citizen of The Bahamas shall be entitled, upon making application on his attaining the age of eighteen years or within twelve months thereafter in such manner as may be prescribed, to be registered as a citizen of The Bahamas: Provided that if he is a citizen of some country other than The Bahamas he shall not be entitled to be registered as a citizen of The Bahamas under this Article unless he renounces his citizenship of that other country, takes the oath of allegiance and makes and registers such declaration of his intentions concerning residence as may be prescribed”.

<sup>60</sup> *Universal Declaration of Human Rights*, *supra* note 5.

<sup>61</sup> *Convention on the Rights of the Child*, *supra* note 29, art 7.

<sup>62</sup> UN Refugee Agency, *Guidelines on Statelessness No. 4: Ensuring Every Child’s Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness*, UNHCROR, 2012, UN Doc HCR/GS/12/04 at para 11.

<sup>63</sup> Article 11 of the Haitian Constitution of 1987 provides: “Has Haitian nationality of origin, any individual born of a Haitian father or a Haitian mother who themselves were born Haitians and had never renounced their nationality at the time of birth”: *Constitution of the Republic of Haiti*, 10 March 1987, online: *Wipo IP portal* <[www.wipo.int/wipolex/fr/text/217597](http://www.wipo.int/wipolex/fr/text/217597)>.

<sup>64</sup> The Bahamas, “2019”, *supra* note 38 at 63-69.



and with no improvement since the adoption of the *Global Compact*, the author, Abdul Knowles notes that

Bahamian authorities implemented a new immigration policy requiring everyone living in the Bahamas to have a passport of their nationality. This replaced certificates of identity that were previously issued, including persons born to foreign parents legally residing in The Bahamas. In addition, identification documents previously issued to children of illegal Haitian residents were discontinued. This leaves many Haitian-Bahamian stateless. After the age of 18, Haitian-Bahamians can apply to be legally recognized, however, approval is not guaranteed. Many Haitian-Bahamians hold Haitian passports after turning 18. However, according to one Haitian diplomat interviewed, ‘the Bahamian government has created a maze of rules and processes for Haitian-Bahamians seeking citizenship. It can take between 2-6 years to obtain citizenship, which is not guaranteed’ (Mesamours, 2018). Therefore, securing legal documentation which recognizes them as legal residents is a basic goal of Haitians, since without documentation, they are unable to accomplish things necessary for their livelihoods. These include, opening a bank account, getting a driver’s license, buying a home, etc. Previously, children of Haitian migrants were permitted to attend government school with Haitian identity cards. However, without Bahamian residency, it has become increasingly difficult.<sup>65</sup>

In 2012, following the general election that brought Perry Christie to power, the government appointed a commission chaired by Senator Sean McWeeney to make proposals to strengthen fundamental rights and freedoms, with a particular focus on provisions relating to citizenship. The commission submitted its report in 2013<sup>66</sup> and highlighted the legal uncertainty faced by young descendants of Haitian minors. It suggested the establishment of a think tank to propose amendments to the Constitution, which, to date, has not yet been made.

Nor has the country’s subscription to the *Global Compact* provided any impetus for a reduction in statelessness. The U.S. Department of State’s 2021 report notes that

Not all individuals born in the country are automatically afforded citizenship. For example, children born in the country to non-Bahamian parents, to an unwed Bahamian father and a non-Bahamian mother, or outside the country to a Bahamian mother and a non-Bahamian father do not acquire citizenship at birth. The government did not effectively implement laws and policies to provide certain long-term residents the opportunity to gain nationality in a timely manner and on a non-discriminatory basis. There was little progress in advancing legislation intended to address the issue of statelessness.<sup>67</sup>

<sup>65</sup> Abdul D Knowles, “Case Study: Preventing and Resolving Conflict Between Bahamian Nationals and the Haitian Diaspora that Reside in The Bahamas” (2018) 1:2 *Intl J L & Public Administration* 65.

<sup>66</sup> Commonwealth of The Bahamas, *Report of the Constitutional Commission into the Review of the Bahamas Constitution* (Nassau: Government of The Bahamas, 2013), online: *The Government of The Bahamas* <[www.bahamas.gov.bs/wps/wcm/connect/7c2fe440-cb66-4327-9bf3-432131510cc4/Constitution+Commission+Report+2013\\_8JULY2013.pdf?MOD=AJPERES](http://www.bahamas.gov.bs/wps/wcm/connect/7c2fe440-cb66-4327-9bf3-432131510cc4/Constitution+Commission+Report+2013_8JULY2013.pdf?MOD=AJPERES)>.

<sup>67</sup> The Bahamas, “The Bahamas 2021 Human Rights Report” (2021) at 10, online (pdf): *US Department of State* <[www.state.gov/wp-content/uploads/2022/02/313615\\_BAHAMAS-2021-HUMAN-RIGHTS-REPORT.pdf](http://www.state.gov/wp-content/uploads/2022/02/313615_BAHAMAS-2021-HUMAN-RIGHTS-REPORT.pdf)>.

Such a situation is most often a source of renunciation on the part of the persons concerned, none of whom are in a position to apply for citizenship, preferring to give up for fear of deportation or loss of future claim to Bahamian citizenship. According to the U.S. Department of State report,

In two separate cases, persons born in The Bahamas to non-Bahamian parents were still awaiting the government's determination on their nationality—one had waited 19 years and another 21 years—after submitting their applications. In both situations the individual relied on their employer to sponsor and renew their work permits each year to maintain legal status.<sup>68</sup>

However, some progress has been made during the Covid-19 pandemic, as the government, in order to ensure the continuity of the online education service, has provided tablets to all children, including those without legal status.

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The legal framework regarding citizenship in the Bahamas produces exclusion, particularly with regard to Haitians and requires legislative changes on the part of this State. Efforts in 2016 by the government to amend nationality laws, with the intention of granting equal rights to men and women in the transmission of nationality to children, did not succeed.<sup>69</sup>

However, the Bahamas is showing signs of change, the Bahamas' interest in the *Global Compact* reveals a desire for change, even if efforts remain to be made in terms of more inclusive migration that respects migrants' rights. By way of illustration, the 2020 report notes that during the Covid-19 pandemic, the government provided computer tablets to students enrolled in the government-subsidized school lunch program, including children without legal status.<sup>70</sup> However, and more generally, the example of the Bahamas is emblematic of difficulties to implement a genuine public policy on migration at the international level. This last one is irrepressibly hampered by migration policies that oscillate between an obsession with security and the importance of sovereignty, thus hindering a vision of migration as a positive engine for change in societies and a factor in the construction of national identities.

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<sup>68</sup> *Ibid.*

<sup>69</sup> On 7 June 2016, Bahamians voted 'no' to a government-endorsed constitutional referendum that would have amended the nationality laws to grant equal rights to Bahamian men and women to transmit nationality to their children and spouses. Despite this setback, UNHCR encourages the Bahamas to continue its efforts to ensure gender equality in citizenship matters. See UNHCR, "Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights' Compilation Report Universal Periodic Review: 3rd Cycle, 29th Session" (June 2017), online (pdf): [UN Human Rights Office of the High Commissioner <uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=4844&file=EnglishTranslation>](https://www.unhcr.org/refugees/wp-content/uploads/2017/06/UN-HCR-Submission-UPR-3rd-Cycle-29th-Session-June-2017.pdf).

<sup>70</sup> The Bahamas, "2020", *supra* note 32 at 11.