



Submission by the United Nations High Commissioner for Refugees

for the Office of the High Commissioner for Human Rights' Compilation Report

- Universal Periodic Review:

THE REPUBLIC OF THE FIJI ISLANDS

I. Background and Current Conditions

Fiji succeeded to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees (collectively '1951 Refugee Convention') on 12 June 1972.

Fiji also succeeded to the 1954 Convention relating to the Status of Stateless Persons on 12 June 1972, but is not a party to the 1961 Convention on the Reduction of Statelessness.

In view of the small number of individual cases and more pressing domestic issues, asylum-seekers, refugees, stateless persons and internally displaced persons are not prominent concerns in Fiji.

II. Achievements and Best Practices

UNHCR welcomes the introduction of the *Immigration Act 2003*, in particular, the enactment of "Part 6: Determination of Refugee Status" and the *Immigration Regulations 2007* on 3 January 2008, which together establish a clear legal framework to assess claims for asylum.

The Government of Fiji continues to respect the fundamental principle of *non-refoulement*, and works closely with UNHCR to fulfil its obligations under the 1951 Refugee Convention.

III. Future Challenges and Recommendations

Despite establishing a legal framework to assess refugee claims, Fiji needs to strengthen its capacity to undertake refugee status determination effectively and in a timely manner.

In order to do so, the Government of Fiji is encouraged to:

- (i) develop of a cadre of trained officials capable of assessing individual cases pursuant to Fiji's obligations under the 1951 Refugee Convention;
- (ii) allocate adequate resources to allow officials to carry out their work expeditiously;
- (iii) put in place clear protocols/instructions for border officials and law enforcement officials;
- (iv) ensure expeditious processing of claims for international protection in close cooperation with UNHCR, IOM and other stakeholders; and
- (v) provide recognized refugees with work rights and other entitlements in a non-discriminatory way.

The Fiji Immigration Department would in particular benefit from further capacity building and training in principles of international refugee and human rights law, interview techniques, and assessment drafting. The absence of any clear standard operating procedures (SOPs), relating to the receipt and registration of asylum-seekers, adjudication of refugee claims and appeal procedures, issuance of appropriate documentation, and timely endorsement by the relevant authorities, restricts the timely and conclusive finalization of refugee claims made to the Government of Fiji. One individual in Fiji who was assessed to be a refugee by both UNHCR and the Government of Fiji in 2006 was advised of his refugee status at the end of 2008. As of August 2009, he is still awaiting formal written advice of his status, proper documentation allowing residence in Fiji and travel documents.

In this regard, it is important to ensure that asylum-seekers and refugees receive adequate material support to enable them to possess some degree of self-sufficiency and dignity throughout the refugee status determination process. This could be achieved either through the grant of a work permit and/or limited financial assistance. Upon finalization of their decision, refugees should be entitled to a residence permit and travel documentation which will, in turn, enable refugees to make positive contributions to Fiji.

UNHCR acknowledges the Government of Fiji's efforts to enhance the standard of treatment of stateless persons as demonstrated by its succession to the *1954 Convention relating to the Status of Stateless Persons*.

UNHCR also welcomes the recent gazette of the *Citizenship of Fiji Decree 2009* (Decree No. 23) and *Citizenship of Fiji Regulations 2009* (Legal Notice No. 38) on 8 July 2009 which, inter alia, provide for acquisition of Fijian Citizenship notwithstanding the prior possession of another nationality and identifies measures for the prevention of statelessness.

However, UNHCR believes that accession to the *1961 Convention on the Reduction of Statelessness* would further contribute to international efforts to enhance the protection of stateless persons, contribute to the prevention of statelessness, and provide the basis to develop domestic legislation on statelessness.

IV. Capacity Building and Technical Assistance, if applicable.

In accordance with UNHCR's Protection Strategy in the Pacific of August 2007 (attached) and the challenges and constraints identified above, the Office stands ready to provide the Government of Fiji with timely and relevant technical advice, practical guidance and operational support should any asylum-seeker, refugee, or stateless person arrive at the border of the territory of Fiji and indicate a need for international protection.

Specifically, UNHCR can provide practical advice and training to relevant officials to integrate 'good practices' and international standards of asylum/refugee protection into operational guidelines and procedures. Further, UNHCR can provide induction training, mentoring and supervision to new immigration and border-control officials, police and detention/prison officials and judiciary on basic principles and good practices for refugee protection and migration management.

**Protection Policy and Legal Advice Section
Division of International Protection Services
UNHCR
September 2009**

UNHCR proposal to strengthen refugee protection in the Pacific region ¹

Context

States within the enormous geographical region of the Pacific have developed many interstate mechanisms and fora to address the social, political, security and economic issues that they share. One significant area of cooperation has been around issues of security, border control and migration management, of which the PIDC is seen as a positive and practical example. ²

Perhaps far less developed, are the common networks and strategies to address the particular issues of forced migration, notably asylum-seekers and refugees in the Pacific region. Only 7 of the 15 states covered by UNHCR in the region have formally acceded to the principal international instrument for refugee protection – the 1951 Convention relating to the Status of Refugees. Apart from the notable exception of Australia and New Zealand, most states in the region have little or no legislative or regulatory framework for refugee protection. Given their size and more pressing priorities most Pacific island states have not developed the capacity, expertise or experience to address refugee issues on their own.

As part of UNHCR's global protection strategy, it is seeking to engage states in the complex issue of the nexus between asylum and migration. In particular it has developed a Ten-Point-Plan (TPP) that it would like to operationalise with states that face this common challenge.

UNHCR's Regional Office in Canberra believes that the TPP may be particularly apposite in the Pacific region for those states wishing to strengthen their national

¹ The UNHCR Regional Office, based in Canberra, has regional coverage for Australia, New Zealand, Papua New Guinea, Solomon Islands, Nauru, Fiji, Tonga, Samoa, Cook Islands, the Federated State of Micronesia, Republic of the Marshall Islands, Niue, Tuvalu and Vanuatu, Kiribati. UNHCR also has a country Office in Port Moresby, PNG.

² The PIDC has produced model legislation on asylum and already undertakes some analysis of people smuggling. These initiatives would complement the activities proposed by UNHCR in its strategy.

capacity to deal with asylum-seekers and refugees within a broader response to migratory movements.

Whilst the number of refugees moving into and through the Pacific region is likely to remain small, such cases, nonetheless, can present problems to small island states that have limited or no capacity to deal with the particular challenges that such cases present.

Strategy

UNHCR recognises that refugees are often part of a broader movement of people but that their protection needs - and the responsibilities this places on states – demands a specialised response. The Office is well-placed in the region to offer states that specialist support and advice.

Whilst UNHCR believes that formal accession to the 1951 Refugee Convention provides states with the best framework within which national laws and regulations can, over time, be developed, it also recognises that this is not the first step that Pacific Island states need take to develop effective, balanced and credible national systems for refugee protection.

In the Pacific region, it is clear that refugee protection cannot be divorced from states' efforts to manage migration, particularly at their borders, in a more structured way. UNHCR is convinced that a balanced migration system should be able to protect a state's sovereign borders, obtain considerable benefits from migration and, importantly, ensure that people who have been forcibly displaced from their own countries by persecution and serious human rights abuses are able to find safety and protection in accordance with recognised international standards. Put briefly, the two concerns of border control and refugee protection are not mutually exclusive. Rather, they can be mutually reinforcing and complementary.

UNHCR recognises that each Pacific island state has its own geo-political, economic and resource constraints and that it is neither desirable nor realistic to develop a 'one size fits all' model for asylum and refugee protection.

Whilst some Pacific states have already acceded to the 1951 Refugee Convention and are working towards strengthening their national capacity to deal with refugees with a minimum of support from UNHCR, other states have neither the resources nor the need to develop elaborate refugee protection systems.

For this reason, UNHCR has developed a capacity-building strategy that offers individual states advice and support at a level that matches the realities in each state. Over the next 3 years, UNHCR is prepared to support 'tailor-made' protection frameworks and practical advice and procedures that reflect the specific needs, demands and practical realities of each participating state.

The strategy will take into account the following factors:

- The number and complexity of asylum-seekers claims likely to be received by the individual Pacific island state;
- The existence and capacities of other national and international partners (e.g. PIDC, IOM, national institutions, NGOs, UN Country Team etc.)

- The resources (staffing and financial) available to each state to develop laws, regulations and their ability to achieve self-sufficiency over time. For example, in the early stages, UNHCR would play a more 'hands-on' support role while, over time, this could be reduced to an advisory and support role as each state strengthens its competence and self-sufficiency on asylum and refugee protection issues.

Proposed Areas of Support/Activities

1. Scoping and regular analysis of patterns and trends of asylum-seekers and refugees moving through the region, including movements of individuals or groups likely to be in need of international protection. This analysis could also contribute to other studies carried out by the PIDC (e.g. annual report on people-smuggling) to provide a deeper understanding of the causes and profiles of people movement in the region;
2. Cooperating/liaising and building partnerships with other regional bodies such as PIDC, IOM and agencies of the United Nations that may be concerned with the unauthorised movement of people into and through the PI region;
3. Providing regular advice, guidance and support to individual PI governments on policy and operational dimensions of international refugee protection. UNHCR would help states to develop and manage their immigration/borders effectively but in ways that are fully compatible with applicable international law standards and available resources: (*stakeholders*: senior government officials in relevant departments/ministries of immigration, justice, foreign affairs, police and law enforcement and human rights bodies as required);
4. Providing practical advice and training to relevant officials on how to integrate 'good practices' and standards of asylum/refugee protection into relevant immigration laws, regulations and operational guidelines (*stakeholders*: middle management officials in relevant ministries/departments; partners include IOM);
5. Providing technical advice and support to those states considering ratification of relevant international instruments such as the 1951 Refugee Convention and the two Conventions on Statelessness and, where appropriate, human rights instruments (CAT, ICCPR) (*stakeholders*: legislative officials, judicial bodies, Foreign Affairs, OHCHR) ;
6. Induction training, mentoring and supervision to new immigration and border-control officials, police and detention/prison officials and judiciary on basic principles and good practices for refugee protection and migration management;

7. Establish a practical network between UNHCR and interested PI states whereby designated government officials (focal points) would be able to contact UNHCR (through its Regional Office in Canberra and Country Office in Port Moresby) in a '24/7 hotline' to obtain technical advice, practical guidance and operational support as to how to manage individual cases that have indicated protection needs in the PI's sovereign territory.

Note : This aspect of the project envisages a '*triage*' approach for individual asylum cases whereby designated PI officials can seek 'real-time' advice, technical support and appropriate assistance from UNHCR (even in urgent cases).

This would allow PI states and UNHCR to identify persons in need of international protection and prioritise the steps required to secure their interim protection, assessment and case management. Such steps could include:

- Interviewing and assessing their need for international protection in a fair, efficient and timely fashion;
- Ensuring vulnerable asylum-seekers and refugees receive appropriate care and support while solutions are explored and implemented (reception, housing, shelter, regularisation of legal status on interim basis);
- Assessing and finding appropriate solutions for refugees (and, where appropriate, exploring other options for non-refugees with the assistance of other agencies, such as IOM under its Assisted Voluntary Return (AVR) programmes, where appropriate.

UNHCR Regional Office
Canberra
16 August 2007

Elements of the Ten–Point-Plan which will guide UNHCR’s strategy and activities in the Pacific

1. *Collaboration among key partners*
2. *Data Collection and analysis*
3. *Protection-sensitive entry management (in-country, borders and at sea)*
4. *Reception arrangements*
5. *Mechanisms for profiling and referral*
6. *Differentiated processes and procedures*
7. *Solutions for refugees*
8. *Addressing secondary movement*
9. *Return arrangements and alternative migration options for non-refugees*
10. *Information strategy in countries of origin, transit and arrival*

APPENDIX I: Map of South Pacific Islands

