

**Submission by the United Nations High Commissioner for Refugees
for the Office of the High Commissioner for Human Rights' Compilation Report -
Universal Periodic Review:**

VANUATU

I. BACKGROUND AND CURRENT CONDITIONS

The Republic of Vanuatu ratified the *1989 Convention on the Rights of the Child (CRC)* and subsequently acceded to both *CRC Optional Protocols*. Furthermore, the Republic of Vanuatu has acceded to the *1966 International Covenant on Civil and Political Rights*, to the *1979 Convention on the Elimination of All Forms of Discrimination against Women* and to the *1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

The Republic of Vanuatu is not, however, a State party to the *1951 Convention relating to the Status of Refugees* or its *1967 Protocol*. Neither is Vanuatu a State party to the *1954 Convention relating to the Status of Stateless Persons* nor the *1961 Convention on the Reduction of Statelessness*.

In view of the small number of persons in need of international protection, issues related to forced displacement and statelessness are not among the priorities of the Government of Vanuatu. At the date of this submission, UNHCR is aware of only two refugees in Vanuatu. Both are awaiting resettlement to a third country.

II. ACHIEVEMENTS AND BEST PRACTICES

1. Refugee protection

UNHCR appreciates the Government of Vanuatu's respect for the principle of *non-refoulement* and its willingness to cooperate with UNHCR to ensure that any person in need of international protection is able to apply for asylum and have his/her claims assessed in an effective manner.

UNHCR particularly welcomes efforts made by the Government to codify refugee status determination processes in national legislation with the enactment of *Immigration Act No.17 of 2010*, notwithstanding the fact that Vanuatu has not acceded to the *1951 Convention* or its *1967 Protocol*.

2. Birth registration

Birth registration helps to prevent statelessness by establishing a legal record of where a child was born and who his or her parents are. As such, it serves as a key form of proof of whether a person has acquired nationality by birth or by descent. Failure to document a person's legal existence can prevent the effective enjoyment of a range of human rights, including access to education and health care.

Therefore, birth registration is essential to ensuring the right of every child to acquire a nationality, by establishing an important form of proof of the link between the individual and the State and thereby serves to prevent statelessness. UNHCR welcomes "The Civil Status (Registration) Act of 1971 (Revised Edition 2006 of Laws of The Republic of Vanuatu)" which makes birth registration compulsory and guarantees free birth registration.

UNHCR commends Vanuatu for trialing a mobile birth registration system in 2010 which resulted in registration of close to 17,000 children in Tafea Province, or 87 per cent of all children 0-18 years. The birth registration system simplifies the process by allowing birth registration information about a newborn baby to be entered into a pre-programmed mobile phone which sends the data to a specific Civil Registry database. Based on an assessment of the success of this birth registration system, it may be expanded to other parts of the country, and integrated into routine reporting structures across the health and civil registry offices to ensure the sustainability of the system. Further, the Civil Registry conducted awareness sessions on the importance of birth registration in different communities in Luganville followed by the registration campaign of children which was free of charge.¹

Vanuatu, as a member of the Secretariat of the Pacific Community (SPC), has undertaken to improve the collection of birth and death statistics under the Pacific Vital Statistics Action Plan (2011-2014), supported by partners of the Brisbane Accord Group (BAG). Vanuatu has taken an important step in establishing a national civil registration and vital statistics committee which consists of key stakeholders, including the Civil Registry Office, the Vanuatu National Statistic Office and the Ministry of Health, to oversee an assessment of the Civil Registration and Vital Statistics system, as well as to develop a national plan in order to improve registration practices, particularly birth and death registration, in Vanuatu.

3. Nationality and statelessness

The provisions of the Citizenship Act of 1980 (Revised Edition 1988 of Laws of The Republic of Vanuatu) appear to meet a number of international standards with respect to the prevention and reduction of statelessness. For example, both Ni-Vanuatu parents equally confer citizenship to children who are born on the territory as well as those who are born abroad; citizens of Vanuatu can only voluntarily renounce their nationality for the purpose of obtaining another nationality once they hold the new nationality; and there is no provision stipulating loss or withdrawal of Ni-Vanuatu nationality for persons who have long-term residence abroad.

¹ United Nations Children's Fund (UNICEF), *Looking Back and Moving Forward: A Review and Update on UNICEF's Work for Pacific Island Children, 2009/2010*, available at: [http://www.unicef.org/pacificislands/Looking_Back_Moving_Forward_internet_version\(1\).pdf](http://www.unicef.org/pacificislands/Looking_Back_Moving_Forward_internet_version(1).pdf)

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Issue 1: Accession to the 1951 Refugee Convention and its 1967 Protocol

Accession to the *1951 Refugee Convention* and its *1967 Protocol* greatly facilitates UNHCR's task of mobilizing international support to address refugee situations that may arise in any country. UNHCR believes that it is necessary to broaden the base of State support for these international refugee instruments, ensuring that the protection provided to refugees is more universal in scope, and the burdens and responsibilities of governments more equitably distributed and consistently applied.

Notwithstanding the relatively small number of asylum-seekers and refugees, and the competing domestic priorities, accession to the *1951 Refugee Convention* and its *1967 Protocol* would establish a clearer basis for the Government of Vanuatu to provide refugees with international protection. Accession to the *1951 Refugee Convention* and its *1967 Protocol* would also serve to underpin Vanuatu's national legal framework.

Recommendation:

UNHCR recommends that the Republic of Vanuatu:

- Accede to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol*.

Issue 2: Development of a national legal framework for Refugee Protection

UNHCR welcomed the opportunity to comment on the national legal framework underpinned by the Immigration Act No.17 of 2010 ("the legislation"). Unfortunately many of the recommendations made by UNHCR were not incorporated into the final Act. UNHCR is concerned that the legislation is not fully in line with international standards.

The following are UNHCR's key observations:

- That Section 65 of the legislation provides additional grounds for exclusion from refugee status which go beyond the exhaustive list of grounds set out in Article 1 D, E and F of the *1951 Refugee Convention*.
- That the concept of a "safe third country" found in Sections 65(2)(i) and (j) does not constitute a principle of refugee protection. These provisions would be more suitably placed in procedural rules relating to determination of whether an applicant is entitled to have his/her claim to refugee status considered.
- While the legislation partially incorporates the provisions of the *1951 Convention* there are a number of sections where the language should be adopted in full. UNHCR recommends including the specific wording of the *1951 Convention*, in particular with regard to Sections 65(2)(a) and (d), Section 70, and Section 73(2) of the legislation.
- That in relation to Section 70, which deals with cessation of refugee status, there is no consideration for "humanitarian exceptions", which is a non-derogable right spelled out in the *1951 Convention*.
- That Section 73(2) of the legislation provides an exception to the prohibition of the *non-refoulement* principle. UNHCR notes that the principle of *refoulement* is accepted as a peremptory norm of customary international law from which no derogation is permitted. UNHCR is concerned that this section of the legislation could allow Vanuatu

to remove a person based on his/her involvement with a human smuggler. The exceptional grounds on which a recognized refugee can be expelled are set out in articles 32 and 33 of the *1951 Refugee Convention* and require careful procedural guidelines. The State has other means at its disposal, short of expulsion, including application of the criminal law, which would be better suited to such issues. UNHCR, therefore, recommends that Section 73(2) be amended so that it remains consistent with Articles 32 and 33(2) of the *1951 Refugee Convention*.

- That the legislation could be further strengthened by providing for complementary protection to persons who do not meet the criteria of the refugee definition contained in the *1951 Convention*, but who are nevertheless in need of international protection and must be protected against *refoulement*. This would also be in conformity with Vanuatu's international obligations under the *1966 International Covenant on Civil and Political Rights* and the *1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

Recommendations:

UNHCR recommends that the Republic of Vanuatu:

- Further amend the enacted legislation in light of UNHCR's observations.
- Codify its international obligations under the *1966 International Covenant on Civil and Political Rights* and the *1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* to provide complementary protection to persons who do not fall within the scope of the *1951 Refugee Convention*, but who nevertheless are in need of international protection.

Issue 3: Access to Birth Registration

As noted above, Vanuatu has taken steps to improve the rates of birth registration in the country, especially by strengthening partnerships with UN agencies and technical experts in the region, and by taking steps to develop a national strategic plan for the improvement of the Civil Registration and Vital Statistics system. According to official data from the Civil Registry of Vanuatu, birth registration coverage in the country is 75 per cent. However, a concern remains over the low rate of birth registration for children under 5, which currently reaches 40 per cent.

Recommendation:

UNHCR recommends that the Republic of Vanuatu:

- Continue to take steps to ensure that births of all children are registered, by developing and implementing a national strategic plan for the improvement of Vanuatu's Civil Registration and Vital Statistics' regime which ensures that asylum-seekers, refugees and persons at risk of statelessness have their births registered.

Issue 4: Prevention of Statelessness and Protection of Stateless Persons

Vanuatu is neither a State party to the *1954 Convention relating to the Status of Stateless Persons* nor the *1961 Convention on the Reduction of Statelessness*. Accession to the Statelessness Conventions would establish a stronger framework to prevent and reduce statelessness and avoid the detrimental effects of statelessness on individuals and society by ensuring minimum standards of treatment for stateless persons.

The *1954 Convention relating to the Status of Stateless Persons* ensures minimum standards of treatment for stateless persons in respect to a number of fundamental rights. These include, but are not limited to, the right to education, employment, housing and public relief. Importantly, the 1954 Convention also guarantees stateless persons a right to identity and travel documents and to administrative assistance.

The *1961 Convention on the Reduction of Statelessness* establishes an international framework to ensure the right of every person to a nationality by establishing safeguards to prevent statelessness at birth and later in life. This treaty is therefore complementary to standards contained in other human rights treaties that address the right to a nationality. An increase in the number of State parties to the two Statelessness Conventions is essential to strengthening international efforts to prevent and reduce statelessness and ensuring full enjoyment of a number of these rights.

UNHCR welcomes several safeguards against statelessness are found in the Citizenship Act of the Republic of Vanuatu. However, UNHCR has observed that there are existing gaps between the current nationality law and international standards that aim to prevent and reduce statelessness. For instance, there is no safeguard that provides for the grant of citizenship to otherwise stateless children born on the territory and foundlings of unknown parentage found in Vanuatu do not acquire the nationality as of right.

Recommendations:

UNHCR recommends that the Republic of Vanuatu:

- Undertake a study of the domestic laws and practices with a view to future revision to better comply with the standards set out in the *1954 Convention* and the *1961 Convention*.
- Accede to the *1954 Convention relating to the Status of Stateless Persons* and to the *1961 Convention on the Reduction of Statelessness*.

Issue 5: Capacity-Building and Technical Assistance

UNHCR acknowledges the Government of Vanuatu's interest in training and capacity-building related to issues of forced displacement, involving different governmental and inter-governmental actors. UNHCR stands ready to support capacity-building activities and to provide further technical advice to Vanuatu on refugee status determination.

Recommendation:

UNHCR recommends that the Government of Vanuatu:

- Accept UNHCR's technical support in revising national refugee legislation, building the capacity of Government officials to undertake refugee status determination, and developing a national refugee status determination procedure.

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