



**Submission by the United Nations High Commissioner for Refugees
for the Office of the High Commissioner for Human Rights' Compilation Report**

- Universal Periodic Review:

NAURU

I. Background and Current Conditions

The Government of Nauru is not a party to the *1951 Convention relating to the Status of Refugees* or its *1967 Protocol*. Nauru has not acceded to the *1954 Convention relating to the Status of Stateless Persons*, nor to the *1961 Convention on the Reduction of Statelessness*.

In September 2001, certain Australian island territories, including Christmas Island, were excised from the operation of Australia's migration legislation. At the request of the Government of Australia (and in exchange for a significant aid package), Nauru hosted more than 1,600 asylum-seekers pending determination of their refugee status, during the years 2001-2007, who arrived at "excised offshore places", or were intercepted while attempting to enter Australia in an irregular manner.

In mid-2006, Nauru expressed an interest in acceding to the 1951 Refugee Convention, which undoubtedly related to the then Australian Government's desire to enact further legislation to strengthen the offshore processing arrangements. However, after the abandonment of the legislation, the Government of Nauru displayed no further interest and has not established a formal policy regarding asylum-seekers or refugees outside of the context of the Pacific Strategy.

UNHCR welcomed the closure by the Australian Government of the "Pacific Strategy" (originally "Pacific Solution") offshore refugee status determination processing arrangements in February 2008. However, Nauru expressed concern about the impact of the loss of revenue and aid associated with the offshore processing centre on their fragile economic situation and, in November 2009, the Government of Nauru indicated they would be prepared to reopen the Nauru Immigration Processing Facility to assist Australia in managing the increasing number of irregular maritime arrivals.

II. Achievements, Challenges and Recommendations

1. National system for refugee protection

Accession 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 refugee instruments, ensuring that the protection provided to refugees is more universal in scope and the burdens and responsibilities of governments are equitably distributed and consistently applied.

Notwithstanding the relatively small number of cases, and the competing domestic priorities, accession to the 1951 Refugee Convention and its 1967 Protocol, and establishment of a national legal framework, would provide a clearer basis for the Government of Nauru to provide refugees with international protection and to engage appropriately with relevant international organizations, including UNHCR.

While UNHCR believes that formal accession to the 1951 Refugee Convention provides States with the best framework within which national laws and regulations can be developed, it also recognizes that Nauru may be able to take other intermediary steps to develop an effective, balanced and credible national system for refugee protection, and stands ready to assist in capacity-building as outlined below.

Recommendation: UNHCR recommends that the Government of Nauru accedes to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol relating to the Status of Refugees*.

2. Accession to the Statelessness Conventions

Stateless persons who satisfy the refugee definition contained in article 1A(2) of the 1951 Refugee Convention are afforded the necessary international protection associated with that status. However, the international refugee protection regime does not specifically address the entitlement to rights of non-refugee stateless persons in need of international protection. Accession to the Statelessness Conventions would establish a framework to prevent and reduce statelessness, which would work to avoid the detrimental effects of statelessness on individuals and society by ensuring minimum standards of treatment of stateless persons, providing such persons with stability and security, and ensuring that certain basic rights and needs are met.

Accession to the 1954 Convention relating to the Status of Stateless Persons would establish a framework to protection such individuals, even though they are likely very few in number, and would work to avoid the detrimental effects of statelessness on individuals and society by ensuring minimum standards of treatment of stateless persons, providing such persons with stability and security, and ensuring that certain basic rights and needs are met.

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 human rights treaties. An increase in the number of States parties is essential to strengthening international efforts to prevent and reduce statelessness.

Recommendation: UNHCR recommends that the Government of Nauru accedes to the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*.

3. Capacity-Building and Technical Assistance

In accordance with UNHCR's Protection Strategy in the Pacific of August 2007, (excerpts of this document are attached for easy reference), the Office stands ready to provide the Government of Nauru with timely and relevant technical advice, practical guidance and operational support in relation to the treatment of persons in need of international protection and the processing of asylum claims. 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, and provide induction training, mentoring and supervision to new immigration and border-control officials, police and detention/prison officials and judiciary on fundamental principles and good practices for refugee protection and migration management, including the protection of internally displaced persons.

UNHCR also encourages Nauru to develop a rights-based disaster management and mitigation plan, within the regional and United Nations mechanisms, which should emphasize the process and adaptation of mitigation strategies and address potential internal and/or international displacement. Nauru is included in the planning for an emergency coordination and disaster management workshop for Micronesia in early 2011. Similar workshops have been conducted for Melanesia (2009) and Polynesia (2010).

UNHCR welcomes Nauru's participation in various Pacific regional mechanisms, including the *Pacific Immigration Directors' Conference* (PIDC) and the *Intergovernmental Asia Pacific Consultations on Refugees, Displaced Persons and Migrants* (APC). The PIDC Training Curriculum Map has elevated asylum/refugee awareness to "priority category" and PIDC-UNHCR cooperation on the delivery of the awareness/training programme was agreed to in 2009. UNHCR is of the view that Nauru's continued and active involvement at the regional and international levels will assist the development of national and collective responses to regional issues, including ensuring international standards of refugee protection within broader efforts to safeguard borders and manage migration.

UNHCR has engaged in a dialogue on some strategic issues in a Pacific Island Country (PIC) sub-group consisting of Nauru, the Marshall Islands, the Federated States of Micronesia, Tuvalu and Kiribati. In 2010, UNHCR established a work program with the relevant Nauru officials to complete a scoping and situation analysis, provide policy and legal advice, assist drafting legislation, regulations and Standard Operating Procedures (SOP), and conduct joint awareness-raising workshops and specialized training of officials.

Recommendation: UNHCR encourages the Government of Nauru, in consultation with UNHCR, to undertake awareness/education programs on asylum-seekers and refugees, especially for

Government officials, and to build institutional capacity for the development of a national refugee status determination procedure.

Human Rights Liaison Unit
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Annex

UNHCR proposal to strengthen refugee protection in the Pacific region¹

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 seven of the 16 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 Countries (PIC) 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 10-Point Plan that it would like to operationalize with States that face this common challenge.

UNHCR's Regional Office in Canberra believes that the 10-Point Plan may be particularly apposite in the Pacific region for those States wishing to strengthen their national 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 recognizes 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 specialized 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

¹ UNHCR's Regional Office in Canberra has regional coverage for Australia, New Zealand, Papua New Guinea, the Cook Islands, the Federated State of Micronesia, the Fiji Islands, Kiribati, the Marshall Islands, Nauru, Niue, Palau, Samoa, the Solomon Islands, Tonga, Tuvalu and Vanuatu. 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.

developed. It also recognizes that this is not the first step that Pacific Island Countries need to 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 recognized 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 Country 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 three 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 Country;
- 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.
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 Pacific region;
3. Providing regular advice, guidance and support to individual PIC Governments on policy and operational dimensions of international refugee protection. UNHCR would help States to develop and manage their immigration/borders effectively in ways that are fully compatible with applicable international law standards and available resources.
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
5. Providing technical advice and support to those States considering ratification of relevant international instruments, such as the 1951 Refugee Convention/1967 Protocol and the two Conventions on Statelessness and, where appropriate, human rights instruments.
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 PICs, whereby designated government officials would be able to contact UNHCR 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 PIC’s sovereign territory.

This would allow PICs 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); and,

- 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*