

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 KIRIBATI

I. BACKGROUND INFORMATION

The Republic of Kiribati (hereinafter referred to as *Kiribati*) is neither a State party to the *1951 Convention relating to the Status of Refugees* nor its *1967 Protocol relating to the Status of Refugees* (hereinafter referred to jointly as the *1951 Convention*). Kiribati succeeded to the *1954 Convention relating to the Status of Stateless Persons* (hereinafter referred to as the *1954 Convention*) and the *1961 Convention on the Reduction of Statelessness* (hereinafter referred to as the *1961 Convention*) on 29 November 1983 (hereinafter referred to jointly as the *Statelessness Conventions*).

Kiribati is a small-island developing state that has a total land area of 810 square kilometres and consists of 33 atolls and islands, spread across approximately a third of a million square kilometres of the Pacific Ocean, of which 21 islands are inhabited.¹ In 2010, Kiribati's population was estimated at 103,371.² Kiribati is particularly vulnerable to the effects of climate change and rising sea levels, with an average elevation of less than two metres above sea level.

The economy faces significant constraints common to other island atoll states. These include its small size, remoteness and geographical fragmentation, a harsh natural environment with infertile soils, limited exploitable resources and the need to create jobs and promote growth for an expanding population. Kiribati relies heavily on fishing licence fees and remittances from Kiribati citizens employed abroad, mainly as seafarers.

To UNHCR's knowledge, there are no asylum-seekers, refugees or stateless persons in Kiribati.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

UNHCR welcomes Kiribati's participation in various regional and international mechanisms, including the *Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime*; the *Pacific Immigration Directors' Conference*; the *Nansen Initiative Pacific Consultations* and the *United Nations Conference on Small Island Developing States*. Kiribati's continued and active involvement at the regional and international level will assist the

¹ See Parliament of Kiribati website available at <http://www.parliament.gov.ki/>

² World Health Organization and Ministry of Health and Medical Services, Kiribati *Health Service Delivery Profile Kiribati*, 2012

development of collective responses, which may incorporate, and indeed harmonize national, regional and international efforts to safeguard border security, manage migration, and ensure that international standards of refugee protection are met.

In addition to its participation in the Nansen Initiative Pacific consultations, in September 2014, Kiribati will be attending the Third UN Conference on Small Island Developing States in Samoa where the impact of climate change on sustainable development will be one of the main issues on the agenda. Supplementing the Government's participation in regional and international initiatives addressing this issue, UNHCR welcomes the implementation of proactive initiatives and policies by the Government to prepare its population for the onset of climate change through mitigation, adaptation and relocation measures. In particular, the Kiribati Adaptation Program – Phase III, which will run from 2012 to 2016, seeks to strengthen Kiribati's ability to provide people with safe water and maintain resilient coastal infrastructure.³

To address relocation of the population due to climate change, the Government has implemented its "Migration in Dignity" policy, which supports citizens migrating abroad in search of employment and educational opportunities.⁴ Within this policy, the Kiribati government has initiated an Education for Migration programme. In addition, the Kiribati government has purchased land in Fiji for potential relocation and to ensure food security for its population, as its own arable land is becoming increasingly threatened by salination and rising sea levels. Of note is that the President of Fiji has indicated that Fiji will accept some or all of the Kiribati population for resettlement in the event that Kiribati is rendered uninhabitable due to climate change.⁵

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Issue 1: Climate Change

UNHCR recognizes that climate change poses a unique set of challenges for many small island-developing states, especially Kiribati. Kiribati is already experiencing the effects of climate change caused by rising sea levels, salination and storms of increasing frequency and severity.

In a worst-case scenario, rising sea levels in the Pacific will expose populations to the gradual loss of territory, and potable water scarcity, and will have serious impacts on traditional livelihood activities. UNHCR calls for the international community to ensure a stronger and better-coordinated response to the displacement resulting from both sudden - and slow - onset disasters, and from the effects of climate change, both within countries and across international borders. The latter is particularly compelling due to the fact that many persons displaced across international borders from environmental factors are often not considered 'refugees' under the *1951 Convention*, which constitutes a serious protection gap.

³ Office of the President, Kiribati Climate Change - Adaptation, <http://www.climate.gov.ki/category/action/adaptation/kiribati-adaptation-program/kiribati-adaptation-program-phase-iii/> Note, Phase III extends on the achievements of two previous phases, which piloted a number of critical adaptation measures such as mangrove planting, construction of sea walls and rainwater harvesting.

⁴ Office of the President, Kiribati Climate Change - Relocation, <http://www.climate.gov.ki/category/action/relocation/>

⁵ Fiji Supports Kiribati On Sea Level Rise, Press Release SUVA, Fiji, 11 February 2014
<http://www.climate.gov.ki/2014/02/20/fiji-supports-kiribati-on-sea-level-rise/>

UNHCR's engagement on climate change stems from its concern about addressing gaps in the international protection regime affecting forcibly displaced persons. Climate change is already driving the migration and displacement of populations around the globe. Natural disasters, natural resource scarcity, social tensions and conflict over inadequate resources can all cause population movements, both within States and across borders. Displacement can, in turn, lead to competition with host communities and result in disputes over land or the use of limited resources (e.g. potable water).

The consequences of displacement, and the gaps in the international protection regime on natural disasters and climate change displacement led to the Nansen Conference on Climate Change and Displacement, from which the Nansen Principles, and later the Nansen Initiative, was established in 2012 to build consensus on a global protection agenda in relation to the needs of people displaced by natural disasters and climate change across borders. In May 2013, the Nansen Initiative Pacific consultations were held in the Cook Islands, which were attended by representatives from across the region, including Kiribati. The participants recognized the need to strengthen mitigation and adaptation efforts to allow people to stay in their homes, but agreed that in the context of natural disasters and climate change these developments require action and resource mobilization to be taken at community, national, regional and international levels.⁶

Recommendation:

- Continue to actively participate in regional and international initiatives and fora to address the need for a more coherent and consistent approach to the protection of people displaced due to natural disasters and climate change and the prevention of the future risk of statelessness amongst its population.

Issue 2: National System for Refugee Protection

Kiribati has not acceded to the *1951 Convention* and has not implemented legislation or regulations for refugee status determination.

Although UNHCR acknowledges that Kiribati is geographically isolated from asylum and migration routes, accession to the *1951 Convention* greatly facilitates UNHCR's task of mobilizing international support to address refugee situations that may arise in any country.

Recommendation:

- Accede to the *1951 Convention*.

Issue 3: Statelessness

UNHCR appreciates that Kiribati is a State party to the Statelessness Conventions. UNHCR believes that an increase in the number of State parties to the Statelessness Conventions and their implementation are essential to strengthen international efforts to prevent and reduce

⁶ Conclusions: Nansen Initiative Pacific Regional Consultation, 24 May 2013, Rarotonga, Cook available at <http://www.nanseninitiative.org/sites/default/files/Conclusion%20Document%20Nansen%20Initiative%20Pacific%20Consultation.pdf>

statelessness, and to ensure the full enjoyment of human rights. Fully implementing the Statelessness Conventions will act as a positive example for other States in the region to follow.⁷

UNHCR welcomes that Kiribati has certain legislative provisions in place which contribute to the prevention of statelessness and the realisation of Kiribati's relevant international legal obligations. For example:

- (a) Kiribati's nationality law provides that any person born in Kiribati after 11 July 1979 is entitled to citizenship at birth, unless he or she becomes a citizen of another country at birth. Only limited exceptions apply, for example, if the child's "father possesses such immunity from suit and legal process as is accorded to any envoy of a foreign sovereign power accredited to Kiribati and neither of his parents is a citizen of Kiribati" or if "his father is a citizen of a country with which Kiribati is at war and the birth occurs in a place then under occupation of such country".⁸
- (b) There is no provision in the nationality law that permits the loss or withdrawal of citizenship for persons who reside abroad or which permits the loss or withdrawal of citizenship for persons whose spouse or registered partner loses citizenship.

However, a number of important gaps with Kiribati's international obligations relating to the prevention and reduction of statelessness and the realisation of the right to a nationality remain. For example:

- (a) Women cannot pass Kiribati nationality to their children by descent if the child is born abroad, which does not comply with CEDAW Article 9(2).⁹
- (b) There is no protection in Kiribati's nationality law to ensure that children who are found on the territory but whose parents are unknown acquire Kiribati nationality.¹⁰
- (c) Kiribati citizenship can be renounced during the process of acquiring a new nationality without "an assurance of acquiring the nationality of that foreign country".¹¹
- (d) The limited exceptions to the circumstances in which a child acquires nationality as a result of being born on the territory of Kiribati could cause statelessness amongst children who do not acquire another nationality.

⁷ Kiribati is also a State party to the International Covenant on Civil and Political Rights (hereinafter referred to as the "ICCPR"), the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter referred to as the "CEDAW"), the Convention on the Rights of the Child (hereinafter referred to as the "CRC") and the Convention on the Rights of Persons with Disabilities (hereinafter referred to as the "CRPD") which provide complementary protections to the Statelessness Conventions.

⁸ *Constitution (Kiribati Independence Order 1979)* [Kiribati], 1980, available at: <http://www.refworld.org/docid/3ae6b4eab.html> [accessed 23 June 2014], Article 25.

⁹ *Ibid.*

¹⁰ Cf 1961 Convention, Article 2, CRC Article 7, ICCPR, Article 24 and CRPD, Article 19.

¹¹ *Citizenship Act, Cap 18* [Kiribati], 1 September 1998, available at: <http://www.refworld.org/docid/3eb6886c4.html> [accessed 23 June 2014], Article 9(2)(b) and

Recommendation:

- Close the remaining gaps in the Citizenship Law to prevent and reduce statelessness and to further comply with Kiribati's international legal obligations.

Issue 3: Capacity Building and Technical Assistance

In accordance with UNHCR's Protection Strategy in the Pacific of November 2011, (excerpts of this document are attached for ease of reference) and the challenges and constraints identified above, UNHCR stands ready to provide the Government of Kiribati with timely and relevant advice, practical guidance and operational support should any asylum-seeker, refugee, or stateless person arrive at the border of the territory of Kiribati and indicate a need for international protection. UNHCR is also able to provide awareness/education programmes on asylum-seekers and refugees and capacity building for officials in relation to the treatment of persons in need of international protection.

UNHCR stands ready to discuss with the Government of Kiribati any aspects of displacement that reflect the specific needs, demands and practical realities of Kiribati.

Recommendation:

- Accept UNHCR's support in terms of capacity building for Government officials.

**Human Rights Liaison Unit
Division of International Protection
UNHCR
June 2014**

Annex

UNHCR's Strategy to strengthen refugee protection in the Pacific region¹²

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 Pacific Immigration Directors Conference (PIDC) is seen as a positive and practical example.¹³

Perhaps 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 8 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, New Zealand and Fiji, 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, UNHCR seeks to engage states in the complex issue of the nexus between asylum and migration. In particular UNHCR has developed a Ten Point Plan (TPP) that it is operationalizing with states that face this common challenge.

UNHCR's Regional Office in Canberra believes that the TPP is 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.

Framework for Protection

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 Regional Office in Canberra 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 recognizes 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. UNHCR advocates that a balanced migration system is 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

¹² The UNHCR Regional Office, based in Canberra, has regional coverage for Australia, New Zealand, Papua New Guinea, Fiji, Solomon Islands, Vanuatu, Tonga, Samoa, Cook Islands, Niue, Tuvalu, the Federated States of Micronesia, Republic of the Marshall Islands, Nauru, Kiribati, and Palau. UNHCR also has a Country Office in Port Moresby, Papua New Guinea.

¹³ 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.

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 recognizes that each Pacific island state has its own geopolitical, 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.

Capacity Building Approach

For this reason, UNHCR has developed a capacity-building approach that offers individual states advice and support at a level that matches the realities in each state. 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 takes 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); and
- the resources (staffing and financial) available to each state to develop laws, regulations and their ability to achieve self-sufficiency over time. 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.

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. Cooperates/liases and builds partnerships with other regional bodies such as PIDC, International Organization for Migration (IOM) and agencies of the United Nations that may be concerned with the unauthorized movement of people into and through the PI region;
3. Provides regular advice, guidance and support to individual Pacific Island governments on policy and operational dimensions of international refugee protection. UNHCR assists states to develop and manage their immigration/borders effectively 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. Provides 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 (Convention Against Torture (CAT), International Covenant on Civil and Political Rights (ICCPR) (stakeholders: legislative officials, judicial bodies, Foreign Affairs, OHCHR) ;
6. Provides 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. Establishes 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 involves a 'triage' approach for individual asylum cases whereby designated Pacific Island officials can seek 'real-time' advice, technical support and appropriate assistance from UNHCR (even in urgent cases). This allows Pacific Island states and UNHCR to identify persons in need of international protection and prioritize the steps required to secure their interim protection, assessment and case management. Such steps 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, regularization 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
November 2011**