



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

THE REPUBLIC OF THE MARSHALL ISLANDS

I. Background and Current Conditions

The Marshall Islands is not a State party to the 1951 Convention relating to the Status of Refugees (hereafter the 1951 Convention) nor its 1967 Protocol. The Marshall Islands is not a State party to the 1954 Convention relating to the Status of Stateless Persons or 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 the Marshall Islands. UNHCR is not aware of any persons of concern in the Marshall Islands at the date of this submission.

II. Achievements and Best Practices

UNHCR welcomes the Marshall Islands' participation in the *Pacific Immigration Directors' Conference* (PIDC). UNHCR is of the view that the Marshall Islands' increased involvement at the regional and international levels will assist the development of national and collective responses to regional issues, which may incorporate and harmonize regional efforts to safeguard national and border security, manage migration and ensure international standards of refugee protection.

In this regard, the Government of the Marshall Islands may wish to consider participation in the *Intergovernmental Asia Pacific Consultations on Refugees, Displaced Persons and Migrants* (APC). The APC provides a forum for active dialogue, information exchange and practical activities relating to population movements, including refugees, displaced persons and migrants. Its aim was to promote dialogue and explore opportunities for greater regional cooperation on these matters.

III. Future Challenges and Recommendations

UNHCR recognizes that climate change poses a unique set of challenges for many Pacific Island Countries, including the Marshall Islands, due to rising sea levels, salination, the incidence of storms of increasing frequency and severity, and increasing climate variability.

While people displaced by climatic (natural) factors are not ‘refugees’ under the 1951 Convention, there are nonetheless clear links between environmental degradation or climate change, and social tensions and conflict. Experiences in other Pacific Island Countries demonstrate that displacement can lead to competition with a host community and lead to conflict, often over land or the use of limited resources (e.g. potable water). The worst case scenario, involving complete submersion under rising sea levels, may cause widespread ‘external displacement’ and a *de facto* or *de jure* loss of the sovereign State itself. UNHCR’s mandate and experience in the field of statelessness may be relevant in that situation.

UNHCR welcomes the recent initiative of the UNDP-Pacific Centre and the Pacific Island Forum Secretariat (PIFS) to look at the links between climate change, disasters and conflict. UNHCR and OHCHR co-lead the recently established IASC Pacific Humanitarian Protection Cluster (PHPC) to support States and the UN Country Team in other types of displacement and, in consultation with UNOCHA and the Resident Coordinator, have deployed a protection officer to map and analyse key protection concerns and needs in disaster preparedness and response in the region. The PHPC has also established a standby Pacific Emergency Team (PET).

IV. 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), and the challenges and constraints identified above, the Office stands ready to provide the Government of the Marshall Islands with timely and relevant technical advice, practical guidance and operational support, as regards 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 and including IDPs.

UNHCR also encourages the Marshall Islands to develop a rights-based disaster management and mitigation plan, within the regional and United Nations mechanisms, which emphasizes the process and adaptation of mitigation strategies, addressing as well the potential internal and/or international displacement.

V. Recommendations

UNHCR recommends that the Government of the Marshall Islands accedes to the 1951 Convention and its 1967 Protocol 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 these 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 Convention and its 1967 Protocol, and establishment of a national legal framework would provide a clearer basis for the Government of the Marshall Islands to provide refugees with international protection, and a mechanism that enables the appropriate engagements of relevant international organisations like UNHCR and IOM.

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 this is not necessarily the first step that the Marshall Islands need to take to develop effective, balanced and credible national systems for refugee protection.

UNHCR reiterates its disposition to provide awareness/education programmes on asylum-seekers and refugees, technical support in drafting national refugee legislation and capacity-building for Government officials, as well as to assist in contributing to the creation of the institutional capacity for the development of a national refugee status determination procedure.

UNHCR recommends that the Government of the Marshall Islands accedes to the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*. Stateless persons who satisfy the refugee definition contained in article 1A(2) of the 1951 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, in order to avoid the detrimental effects that this can have on individuals and society, and ensure minimum standards of treatment of stateless persons, providing such persons with stability and security, and ensuring that certain basic rights and needs are met.

UNHCR recommends that the Government of the Marshall Islands consider participation in the *Intergovernmental Asia Pacific Consultations on Refugees, Displaced Persons and Migrants (APC)*.

Human Rights Liaison Unit
Division of International Protection Services
UNHCR
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Annex

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 operationalize 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 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.

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.

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 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 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.
2. Cooperating/liasing 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 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 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 PI States, 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 PI's sovereign territory.

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