



Submission by the United Nations High Commissioner for Refugees

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

-Universal Periodic Review:

TUVALU

I. BACKGROUND INFORMATION:

Tuvalu has been a State party to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* since March 1986, but it does not have implementing legislation, regulations or an operational framework for refugee status determination.

Tuvalu is not a State party to the *1954 Convention relating to the Status of Stateless Persons* or to the *1961 Convention on the Reduction of Statelessness*.

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

II. ACHIEVEMENTS AND BEST PRACTICES

UNHCR welcomes Tuvalu's participation in Pacific regional mechanisms, including the *Pacific Islands Forum* and the *Pacific Immigration Directors' Conference (PIDC)*.

UNHCR is of the view that Tuvalu's continued and active involvement at the regional level will assist in strengthening the region's efforts to safeguard national and border security, manage migration, and uphold international standards of refugee protection.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Issue 1: Climate Change

UNHCR recognizes that climate change poses a unique set of challenges for small island developing states, including Tuvalu, which is ranked as extremely vulnerable to climate change

by the South Pacific Applied Geoscience Commission (SOPAC), using the Environmental Vulnerability Index. In a worst-case scenario of rising sea levels in the Pacific, populations will face gradual loss of territory, potable water scarcity and serious impacts on traditional livelihood activities. UNHCR believes that the international community needs 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 or across State borders.

UNHCR's engagement on the climate change issue stems from its concern about filling gaps in the international legal 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). UNHCR welcomes the UNDP-Pacific Centre's initiative to look at the links between climate change, disasters and conflict.

Since people displaced across international borders by environmental factors would most often not be considered 'refugees' under the *1951 Refugee Convention*, there are presently no provisions for their protection and assistance. There are nonetheless clear links between environmental degradation and climate change on the one hand and displacement on the other. For this reason, UNHCR included climate change, natural disasters and displacement among the subjects considered by a series of expert roundtables on the occasion of the commemoration of the 60th anniversary of the 1951 Refugee Convention. These discussions fed directly into Norway's Nansen Conference on Climate Change and Displacement in June 2011, which generated the 'Nansen Principles', which explicitly recognize that, "A more coherent and consistent approach at the international level is needed to meet the protection needs of people displaced externally owing to sudden-onset disasters."

UNHCR also plays a role in supporting States and UN Country Teams in internal displacement situations. UNHCR and the Office of the High Commissioner for Human Rights (OHCHR) co-chair the Pacific Humanitarian Protection Group and, in consultation with UNOCHA and the Resident Coordinator, deployed a Protection Officer to map and analyse key protection concerns and needs in disaster preparedness and response in the region.

Recommendation: UNHCR would like to encourage Tuvalu to contribute actively to the Nansen Initiative,¹ launched by Switzerland and Norway to address the need for a more coherent and consistent approach to the protection of people displaced externally, i.e. across international borders, by sudden- and slow-onset onset disasters, including those triggered by climate change.

¹ UNHCR offered to work with States to develop a guiding framework or instrument to apply to situations of external displacement other than those covered by the 1951 Refugee Convention, in particular regarding displacement resulting from climate change and natural disasters. At the Ministerial Meeting in December 2011 several States pledged to work with all relevant stakeholders to determine how best to fill this international normative gap. This is the genesis of the Nansen Initiative. The overall goal of this State-led process is to gradually build consensus on key principles and elements regarding the protection of persons displaced across borders that then sets the agenda for future action at domestic, regional and international level.

Issue 2: National System for Refugee Protection

UNHCR appreciates Tuvalu's accession to the *1951 Convention*, notwithstanding its geographic isolation from asylum and migration routes, since accession greatly facilitates UNHCR's task of mobilizing international support to address refugee situations that may arise in any country.

UNHCR notes that Tuvalu does not have implementing legislation, regulations or an operational framework for refugee status determination at this stage.

Recommendation: UNHCR recommends that the Government of Tuvalu incorporate its obligations under the *1951 Convention* into its legislative framework in order to provide a clearer basis for the international protection of refugees.

Issue 3: Accession to the Statelessness Conventions

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 rights of non-refugee stateless persons in need of international protection. Thus, accession to the Statelessness Conventions would establish a framework to prevent and reduce statelessness and to 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.

Furthermore, 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.

An increase in the number of States parties to the two Statelessness Conventions is essential to strengthening international efforts to prevent and reduce statelessness and to ensuring full enjoyment of important rights.

Tuvalu does have certain legislative provisions in place to prevent statelessness and grant protection to stateless persons:

- (i) under section 8 of Tuvalu's Citizenship Act, a Tuvaluan citizen cannot renounce his/her citizenship except if he/she has citizenship elsewhere or is renouncing for the purpose of obtaining citizenship elsewhere; and,

- (ii) under section 43 of the Constitution, foundlings (abandoned children) discovered in Tuvalu are considered to have been born on the territory of the State and granted citizenship.
- (iii) pursuant to regulation 7(3) of the Passports Ordinance 1979, a ‘stateless person’ outside Tuvalu can obtain a Tuvalu passport for the sole purpose of travel to Tuvalu if he or she can show a ‘connection with Tuvalu’².

However, Tuvalu’s Constitution (Part III) provides that children born in Tuvalu can only acquire nationality if one of their parents is also Tuvaluan. This means that if a child is born in Tuvalu to parents who are stateless or foreigners who are unable to pass on their nationality to the child, the child will be stateless. The renunciation provision may also lead to statelessness in cases where nationals renounce their Tuvaluan nationality to acquire a foreign nationality but subsequently fail to acquire it.

Recommendations:

UNHCR recommends that the Government of Tuvalu consider acceding to the *1954 Convention relating to the Status of Stateless Persons* and to the *1961 Convention on the Reduction of Statelessness*.

UNHCR recommends that the Government of Tuvalu amend legislation to include a safeguard against statelessness that provides that children born in the territory, who would otherwise be stateless, acquire Tuvaluan nationality, and that nationals can only renounce their Tuvaluan nationality, if they possess or have an assurance to acquire a foreign nationality.

Issue 4: Capacity-Building and Technical Assistance

In accordance with UNHCR’s Strategy to strengthen refugee protection in the Pacific region of November 2011³, and taking into account the challenges and constraints identified above, the Office stands ready to provide the Government of Tuvalu 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 Tuvalu and indicate a need for international protection.

UNHCR is also able to provide awareness/education programmes on asylum-seekers and refugees, technical support in drafting national refugee legislation and capacity-building for officials as regards the treatment of persons in need of international protection and the processing of asylum claims.

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

² ““connection with Tuvalu” means such connection with Tuvalu whether by descent, marriage or residence, as would have entitled a person to be deemed to belong to Tuvalu under the provisions of section 16 of Schedule 2 to the Tuvalu Order 1975,” Tuvalu Passports Ordinance, 1979, L.N.8/87, LN.11/79, Section 2(1).

³ UNHCR’s strategy to strengthen refugee protection in the Pacific region is included as Annex II to this document.

Recommendation: UNHCR recommends that the Government of Tuvalu accept UNHCR's technical support in drafting national refugee legislation, capacity-building for Government officials and assistance in the development of a national refugee status determination procedure.

**Human Rights Liaison Unit
Division of International Protection
UNHCR
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ANNEX I

Excerpts of Concluding Observations and Recommendations from UN Treaty Bodies - Universal Periodic Review:

TUVALU

We would like to bring your attention to the following excerpts, taken directly from Treaty Body Concluding Observations and Recommendations relating to issues of interest and concern to UNHCR with regards to Tuvalu.

Treaty Body Concluding Observations and Recommendations

Committee on the Elimination of Discrimination Against Women

CEDAW/C/TUV/CO/2, 44th Session

7 August 2009

Principal areas of concern and recommendations

Disaster management and mitigation

55. While noting the vulnerability of the State party to serious environmental and climatic change, as noted in paragraph 5 above, and the risk of internal relocation within the State party or international displacement, which would give rise to considerations of statelessness, the Committee is concerned that the State party does not have disaster management and mitigation plans in place to address potential internal and/or international displacement.

56. **The Committee recommends that the State party develop disaster management and mitigation plans in response to the potential displacement and/or statelessness arising from environmental and climatic change and that women, including women in the outer islands, be included throughout the planning processes and adoption of such strategies. The State party is encouraged to seek assistance from the Office of the United Nations High Commissioner for Refugees for this purpose. The Committee recommends that the State party ensure that a gender perspective is integrated in all sustainable development policies and plans.**

ANNEX II

UNHCR's Strategy to strengthen refugee protection in the Pacific region⁴

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.⁵

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.

⁴ 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.

⁵ 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.

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 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/liaises 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
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