

Submission by the United Nations High Commissioner for Refugees

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

Universal Periodic Review: *Fourth Cycle, 46th Session*

THE REPUBLIC OF VANUATU

I. BACKGROUND INFORMATION

The Republic of Vanuatu (hereinafter Vanuatu) is not a State party to the *1951 Convention relating to the Status of Refugees* or the *1967 Protocol relating to the Status of Refugees* (jointly referred to as the *1951 Convention*). Vanuatu is neither a State party to the *1954 Convention relating to the Status of Stateless Persons* (the *1954 Convention*) nor the *1961 Convention on the Reduction of Statelessness* (the *1961 Convention*). Vanuatu is a State party to various international human rights treaties.¹

Vanuatu's *Immigration Act No.17 of 2010* (Immigration Act), which came into effect on 7 February 2011, establishes the legal framework for refugee status determination (RSD) and the treatment of asylum-seekers and refugees. Considering the small number of identified individual cases, the situation of asylum-seekers, refugees and stateless persons have not been prominent concerns in Vanuatu. UNHCR understands that there are, and have been, asylum-seekers present in Vanuatu in 2023. UNHCR carries out its mandate and activities in Vanuatu remotely.

Vanuatu is highly susceptible to natural disasters—the rates and severity of which have been exacerbated by climate change—as well as other climate change impacts. Consequently, this increases the risks of displacement in Vanuatu and the Pacific region more generally.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Linked to 3rd cycle UPR recommendation no. 90.24²: "Continue to protect the rights of persons displaced within its territory as a consequence of natural disasters (Albania)"

UNHCR recognizes the Government of Vanuatu's ongoing commitment to protecting internally displaced people within its territory due to climate change and natural disaster impacts. Vanuatu has continued to build on its pre-existing efforts to address displacement—which included its adoption of the *National Policy on Climate Change and Disaster Induced Displacement* in 2018 and other action plans—through its consultation with regional and international bodies, participation in various projects, and developing new policies and appropriate facilities. UNHCR also commends Vanuatu's international efforts to galvanize the UN General Assembly to seek a legal opinion from the International Court of Justice (ICJ) on States' obligations to prevent and reduce climate change impacts, and to protect communities from these impacts. The ICJ's legal opinion will have implications for the protection of asylum-seekers, refugees, stateless people and those internally displaced due to, and in intersection with, climate change impacts.

¹ On 7 July 1993, Vanuatu acceded to the 1989 Convention on the Rights of the Child (CRC), and subsequently to both CRC Optional Protocols. Moreover, Vanuatu acceded to the 1966 International Covenant on Civil and Political Rights (ICCPR) on 21 November 2008, the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on 8 September 1995, and the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) on 12 July 2011.

² UN Human Rights Council, Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review: Vanuatu*, A/HRC/41/10, 5 April 2019, p. 17, para. 90.12.

In particular, UNHCR notes Vanuatu's engagement with IOM, the Internal Displacement Monitoring Centre, and the State-led Platform on Disaster Displacement. These relationships have enabled the Government of Vanuatu to strengthen its response to disasters and to assist displaced people, including through operationalizing the Displacement and Evacuations Centre alongside IOM.

In early March 2023, the Government of Vanuatu mobilized a targeted response alongside partners to the internal displacement caused by Cyclone Judy and Cyclone Kevin. The National Disaster Management Office (NDMO) estimated that these tropical cyclones impacted over 250,000 people in Vanuatu.³ The Government's intervention, through the NDMO, prioritized immediate protection needs, including opening evacuation centres across the country, delivering shelter kits and essential relief items, and monitoring the circumstances of individuals with particular vulnerabilities.

UNHCR is of the view that Vanuatu's sustained involvement at the regional and international levels will assist its efforts to respond—through national and regional frameworks, plans, agreements and other mechanisms—to the pressing issues of internal and cross-border displacement in the country and Pacific region. This engagement will better position the Government of Vanuatu to provide effective protection interventions, and to safeguard the lives and livelihoods of those displaced.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 3rd cycle UPR recommendations

Issue 1: Accession to the 1951 Refugee Convention and ensure appropriate protection of asylum-seekers and refugees

Linked to 3rd cycle UPR recommendation no. 91.12⁴

Vanuatu has not acceded to the *1951 Convention*. In general, accession to the *1951 Convention* greatly facilitates UNHCR's exercise of its mandate to provide international protection to refugees including mobilizing international support to address refugee situations that may arise in any country. 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.

UNHCR reiterates the concerns raised in its last UPR submission around the Immigration Act. The Immigration Act retains several provisions which are not consistent with the *1951 Convention* and international standards, thereby limiting the extent to which asylum-seekers and refugees can access protection in the country. While the Immigration Act refers to the *non-refoulement* principle—a cornerstone of the refugee protection regime, and which forms part of international human rights law and customary international law—there are stipulated exceptions to the application of that principle.⁵ These exceptions (and the manner in which they are framed), which include irregular entry, breach of a visa condition, or involvement with a people smuggler, go beyond the strictly articulated grounds for expulsion of a refugee provided for in articles 32 and 33 of the *1951 Convention*, as well as other international human rights and customary international law standards.

³ IOM, *Situation Report*, 28 March 2023, p. 1, available at: <https://roasiapacific.iom.int/sites/g/files/tmzbdl671/files/documents/2023-03/IOM%20Sitrep-fin-20230328.pdf>.

⁴ UN Human Rights Council, Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review: Vanuatu*, A/HRC/41/10, 5 April 2019, p. 17, para. 91.12.

⁵ Immigration Act, section 73(2), read together with Part 5 and Part 6.

Refugee Status Determination (RSD) processes prescribed in the Immigration Act are also at variance with the provisions of the *1951 Convention* and international standards. There are additional grounds for exclusion from refugee status, which well exceed those circumscribed in the *1951 Convention* and unduly limit the scope and application of protection for refugees within Vanuatu.⁶ For instance, any person who has been ‘convicted by a court in another country of an offence and sentenced to a term of imprisonment of 2 years or more, life imprisonment or death’ is excluded from recognition as a refugee in Vanuatu. There is no exception to this provision. As a consequence, refugees who have been persecuted by a State for *Convention* reasons through the judicial system, in contravention of international human rights law and standards, would be excluded from formal recognition as a refugee. UNHCR is of the view that analysis under article 1F(b) of the *1951 Convention*, excluding individuals from recognition as a refugee where they have committed a ‘serious non-political crime outside the country of refuge’ is more appropriately scoped.

By ratifying the *International Covenant on Civil and Political Rights* (ICCPR) and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT), and in line with customary international law, Vanuatu has international legal obligations to protect individuals from *refoulement*, including those who do not meet the refugee criteria for recognition as a refugee under the *1951 Convention*. This includes instances where they may face threats to their right to life, torture, or cruel or inhuman treatment or punishment in their country of origin. However, there are no provisions in the Immigration Act providing for a relevant procedure or some complementary form of protection in such circumstances, and in such cases the application exclusionary grounds in the Immigration Act would be at odds with Vanuatu’s obligations under these instruments.

Further, there are no ‘humanitarian exceptions’ contained in the Immigration Act which may apply in considering cessation of refugee status, contrary to the letter and spirit of the *1951 Convention*. The Immigration Act also does not clearly provide for family members to receive derivative refugee status from a principal applicant formally recognized as a refugee.⁷ Derivative status preserves family unity, a right enshrined in the ICCPR and CRC, *inter alia*.

UNHCR believes that amendments to the Immigration Act could also ensure that the Government of Vanuatu has adequate safeguards in place to identify individuals with potential protection needs and to refer them to engage with its RSD procedures. These preliminary processes facilitate access to protection for refugees, reduce the risks of *refoulement*, and ensure efficient asylum case processing.

States have the primary responsibility for safeguarding the human rights of all persons in their territory including asylum-seekers and refugees. Notwithstanding the relatively small number of identified cases, and competing domestic priorities, accession to the *1951 Convention*, and revision of the national legal framework would provide a clearer basis for the Government of Vanuatu to provide refugees with international protection, and a mechanism that enables the appropriate engagement and support of UNHCR and other relevant organisations as relevant.

Recommendations:

UNHCR recommends that the Government of Vanuatu:

- a) Accede to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol*.
- b) In consultation with UNHCR, undertake amendments to relevant provisions of the Immigration Act which are not consistent with the *1951 Convention relating to the Status of Refugees*.
- c) Adopt provisions for complementary protection in the Immigration Act, in line with its non-*refoulement* obligations under the ICCPR and CAT.

⁶ Immigration Act, section 65(2).

⁷ Immigration Act, section 64(1)(c).

Issue 2: Identifying and protecting stateless people, and preventing and reducing statelessness

Linked to 3rd cycle UPR recommendation no. 91.39⁸

Vanuatu's 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.

The *1954 Convention* provides for the identification of stateless persons and ensures minimum standards of treatment of stateless persons in respect to a number of economic, social and cultural rights. These include, but are not limited to, the right to education, employment, housing, and public relief. Importantly, this Convention also guarantees stateless persons a right to identity and travel documents and to administrative assistance.

The *1961 Convention* 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. Stateless persons are often discriminated against in their enjoyment of economic, social and cultural rights. An increase in the number of State parties to the Statelessness Conventions is essential to strengthening international efforts to prevent and reduce statelessness and ensuring full enjoyment of a number of these rights.

The *Constitution of the Republic of Vanuatu 1980*, in conjunction with the *Citizenship Act 1980*, sets out eligibility for nationality of Vanuatu. Children born to one or more citizens of Vanuatu automatically acquire nationality.⁹ The effect of Vanuatu's nationality laws is that a child born in the country to parents who are stateless, foreigners who are otherwise unable to pass on their nationality, or to parents who are unknown, will be rendered stateless.

Recommendations:

UNHCR recommends that the Government of Vanuatu:

- a) Accede to the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*.
- b) Undertake mapping studies and data collection to enable better identification of stateless people and of statelessness issues.
- c) Revise its nationality laws to provide access to citizenship for children born in Vanuatu who would otherwise be stateless, and for foundling children born in its territory to prevent statelessness.

Issue 3: Birth registration

Linked to 3rd cycle UPR recommendation no. 90.81¹⁰

The Government of Vanuatu's civil registration and vital statistics (CRVS) system continues to face various challenges in ensuring that all births are registered in the country. The rural population of Vanuatu may not have regular engagement with government bodies and civil registration processes, and recent natural disasters—including tropical cyclone Harold in 2020—caused significant displacement and thus further impeded civil registration activities. Moreover, there is limited coordination between government departments to collect, retrieve

⁸ UN Human Rights Council, Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review: Vanuatu*, A/HRC/41/10, 5 April 2019, p. 17, para. 91.39.

⁹ *Constitution of the Republic of Vanuatu 1980*, section 11.

¹⁰ UN Human Rights Council, Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review: Vanuatu*, A/HRC/41/10, 5 April 2019, p. 17, para. 90.81, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/099/76/PDF/G1909976.pdf?OpenElement>.

and access personal information and biodata.

Birth registration establishes a legal record of where a child was born and the parents to whom they were born. It serves as a form of proof for a person to confirm or acquire citizenship. A person without birth registration documents may not have access to a range of human rights, including education, health care, and employment. Accordingly, birth registration and effective CRVS systems are essential to ensure the right to a nationality and help to prevent risks of statelessness.

While Vanuatu has taken concrete steps to develop its CRVS system and to improve the rates of birth registration, a significant number of births in country remain undocumented. The Pacific Community (SPC) estimates that only 59% of births were registered by Vanuatu's Department of Civil Registration and Identity Management in 2018.¹¹

Recommendations:

UNHCR recommends that the Government of Vanuatu:

- a) Continue to strengthen its civil registration and vital statistics system and to ensure that the births of all children are registered, including through ongoing partnership with international and regional actors, education and outreach campaigns to people at risk of statelessness, and the implementation of relevant action plans and policies, such as the *National CRVS Strategic Plan 2017–2030*.

Additional protection challenges

Issue 4: Capacity-building and technical assistance

UNHCR reiterates its willingness to provide technical support in revising national refugee legislation and capacity building for Government officials; and to assist in contributing to the creation of the institutional capacity for the operationalization of a national refugee status determination procedure.

UNHCR stands ready to provide the Government of Vanuatu with timely and relevant advice, practical guidance, and operational support regarding the treatment of persons in need of international protection and the processing of asylum claims. Specifically, UNHCR can provide training to relevant officials to integrate good practices and international standards of refugee protection into operational guidelines and procedures. UNHCR can provide mentoring support to immigration and border control officials, police and detention or prison officials, the judiciary, and any other relevant stakeholders on fundamental principles for refugee protection.

Recommendations:

UNHCR recommends that the Government of Vanuatu:

- a) Seek UNHCR's technical support in revising national refugee legislation, capacity building for Government officials and assistance in the operationalization of a national refugee status determination procedure.
- b) Undertake capacity building efforts with UNHCR—including training—to relevant officials on integrating international standards on asylum refugee protection into operational guidelines and procedures.

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¹¹ Pacific Community, *Civil Registration and Vital Statistics in Vanuatu*, 2021, p. 8, available at: https://spccfpstore1.blob.core.windows.net/digitallibrary-docs/files/43/43a5b3af9f045f411707b0686d86e72f.pdf?sv=2015-12-11&sr=b&sig=EtYo%2B4mVJ1PxbV8wxsWrD3H3r%2FdZ%2B9g2hu00U6VJCVg%3D&se=2024-03-03T14%3A45%3A53Z&sp=r&rsc=public%2C%20max-age%3D864000%2C%20max-stale%3D86400&rsct=application%2Fpdf&rscd=inline%3B%20filename%3D%22CRVS_Vanuatu_2021.pdf%22.