

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

KINGDOM OF TONGA

I. BACKGROUND INFORMATION

The Kingdom of Tonga is not a State party to the *1951 Convention relating to the Status of Refugees*, nor to its *1967 Protocol* (hereafter the 1951 Convention). The Kingdom of Tonga is not a State party to the *1954 Convention relating to the Status of Stateless Persons*, nor to the *1961 Convention on the Reduction of Statelessness*.

The Kingdom of Tonga acceded to the *1965 Convention on the Elimination of Racial Discrimination* on 16 February 1972 and to the *1989 Convention on the Rights of the Child* on 6 November 1995, but is not a State party to any other international human rights treaty.

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 Tonga. To UNHCR's knowledge, there are two persons of concern in Tonga; one refugee (mandated by UNHCR) and his daughter (with derivative status). His wife, also present on the territory, is not a refugee. The Government of Tonga has offered all three of them temporary residence in the Kingdom of Tonga, while their claims to international protection were being assessed by UNHCR. Permanent solutions outside of Tonga are currently being considered.

II. ACHIEVEMENTS AND BEST PRACTICES

UNHCR welcomes Tonga's participation in the *Pacific Immigration Directors' Conference* (PIDC). UNHCR is of the view that Tonga's 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.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Issue 1: Accession to the 1951 Convention

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 establishment of a national legal framework would provide a clearer basis for the Government of Tonga 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 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 Tonga needs to take to develop effective, balanced and credible national systems for refugee protection.

Recommendation:

UNHCR recommends that the Government of the Kingdom of Tonga accede to the 1951 Convention.

Issue 2: Capacity-Building and Technical Assistance

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.

In accordance with UNHCR's Protection Strategy in the Pacific of August 2007¹, the Office stands ready to provide the Government of the Kingdom of Tonga 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.

Recommendations:

¹ Excerpts of this document are attached for easy reference.

UNHCR recommends that the Government of Tonga 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.

UNHCR recommends that the Government of Tonga accept UNHCR's training to relevant officials to integrate 'good practices' and international standards of asylum/refugee protection into operational guidelines and procedures.

UNHCR also encourages the Kingdom of Tonga 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.

Issue 3: Preventing and Reducing Statelessness

Stateless persons which 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.

The *1954 Convention relating to the Status of Stateless Persons* 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, the Convention also guarantees stateless persons a right to identity and travel documents and to administrative assistance.

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

Pursuant to Tonga's Nationality Act, children born in Tonga can only acquire nationality, if one of their parents is also Tongan.² This means that if a child is born in Tonga to parents who are stateless or to foreigners who are unable to pass on their nationality to the child, the child will be stateless.

² Section 2: The following persons shall be deemed to be Tongan subjects:(a) any person born in Tonga to a Tongan Parent;
(b) any person born abroad of a Tongan father;
(c) any person born abroad of a Tongan mother

Recommendations:

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

Tonga's Nationality Act should be reformed to include a safeguard against statelessness which provides that children born in the territory, who would otherwise be stateless, acquire Tongan nationality.

Human Rights Liaison Unit
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Annex

UNHCR proposal to strengthen refugee protection in the Pacific region ³

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. ⁴

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.

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.

³ 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.

⁴ 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 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/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 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**