

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 THE FIJI ISLANDS

I. BACKGROUND INFORMATION

The Republic of Fiji (“Fiji”) succeeded to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* on 12 June 1972. Fiji also succeeded to the *1954 Convention relating to the Status of Stateless Persons* on 12 June 1972, but is not yet a party to the *1961 Convention on the Reduction of Statelessness*.

The 2003 Immigration Act¹ constitutes the statutory basis for refugee status determination (RSD) in Fiji’s domestic law. The Fiji Department of Immigration (DOI) is responsible for managing immigration to Fiji, including the provision of asylum. In view of the small number of persons in need of international protection in Fiji and other domestic priorities, issues related to forced displacement are not prominent concerns in Fiji. To UNHCR’s knowledge, there are 14 persons of concern in Fiji, comprising five refugees and nine asylum-seekers. But to UNHCR’s knowledge, there is no reported statistics on the number or profile of stateless persons in Fiji.

II. ACHIEVEMENTS AND BEST PRACTICES

a) *Asylum-seekers and refugees*

UNHCR wishes to acknowledge the positive spirit of engagement enjoyed with the DOI and the commitment of the DOI officials to fulfilling Fiji’s obligations under the *1951 Refugee Convention*. In this regard, Fiji has played a leadership role for other Pacific Island countries in the region, despite the relatively small number of asylum-seekers and refugees in Fiji and competing domestic priorities.

UNHCR welcomes action taken by Fiji to improve its capacity to undertake refugee status determination (RSD). In particular, the DOI has established an RSD unit comprising of three officers who are responsible for assisting asylum-seekers and refugees and for assessing their

¹ Part 6 of the *Immigration Act 2003* regulates the determination of refugee status.

individual cases under the *1951 Refugee Convention*, in close cooperation with UNHCR. The DOI is currently drafting an RSD Policy and RSD standard operating procedures relating to the receipt and registration of asylum-seekers, adjudication of refugee claims and appeal procedures, issuance of appropriate documentation, and timeframes for endorsement by the relevant authorities.

The Government of Fiji continues to respect the fundamental principle of *non-refoulement*, and works closely with UNHCR to fulfil its obligations under the *1951 Refugee Convention*.

b) Stateless persons

The *Citizenship of Fiji Decree 2009 (Decree No. 23)* (“Citizenship Decree”) contains a number of provisions which contribute to the enjoyment of the right of every child to acquire a nationality including:

- (i) Section 19 (c) which provides that a person born in Fiji in the period that began on 25 July 1990 and ended with the commencement date of the Citizenship Decree (10 April 2009);
- (ii) Sections 8 to 10 which provide that a child born outside of Fiji has an entitlement to register as a citizen of Fiji; and
- (iii) Sections 6 and 8 which comply with the obligation of non-discrimination in the acquisition and transmission of nationality.

Fiji is a member of the Brisbane Accord Group which aims to improve Civil Registration and Vital Statistics (“CRVS”) in the Pacific. In February 2012, CRVS stakeholders from Fiji attended a meeting with other Pacific Island countries to discuss issues confronted with their CRVS systems. A key outcome of that meeting was the establishment of a national CRVS Committee. The primary purposes of the CRVS Committee are to: (1) assess the status of Fiji’s CRVS system; (2) evaluate the efficiency and effectiveness of current CRVS procedures; and (3) evaluate the impact and effectiveness of the CRVS Committee’s outputs. This provides a framework to contribute to the improvement of levels of birth registration in Fiji.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Issue 1: Refugee Status Determination framework and capacity

To further strengthen Fiji’s RSD framework, UNHCR recommends that Fiji amends the *Immigration Act 2003* and takes further action to strengthen DOI officials’ capacity to undertake RSD effectively, and in a timely manner.

In this regard it is noted that Part 6 of the *Immigration Act 2003* is very brief and should provide more specific RSD statutory guidance. In particular, some of the provisions of the *1951 Refugee Convention* relating to the expulsion of refugees, and exclusion and cessation of refugee status (Articles 1C, 1F and 32), are not correctly reflected in the *Immigration Act 2003*.

Recommendations:

UNHCR recommends that Fiji:

- Review Part 6 of the *Immigration Act 2003* in consultation with UNHCR, to identify gaps and ensure Fiji's compliance with its obligations under the *1951 Refugee Convention*;
- Develop the expertise of eligibility officers in RSD, to enable them to effectively assess asylum claims pursuant to Fiji's obligations under the *1951 Refugee Convention*;
- Develop and implement clear protocols and instructions for border officials and law enforcement officials who may encounter people in need of international protection and may be required to assist them; and
- Finalize the RSD Policy and standard operating procedures.

Issue 2: Assistance to asylum-seekers and refugees

UNHCR acknowledges that refugees in Fiji have the right to work. However, it is important to ensure that asylum-seekers and refugees receive adequate material support to respect their dignity and enable them to become self-sufficient. In this regard it is noted that asylum-seekers and refugees in Fiji are not entitled to welfare assistance.

UNHCR also notes that persons recognized as refugees should be issued residence permits and travel documentation.

Recommendations:

UNHCR recommends that Fiji:

- Provide welfare assistance for asylum-seekers and refugees who are facing financial hardship; and
- Implement an administrative process whereby refugees may be issued residence permits and travel documentation.

Issue 3: Accession to the 1961 Convention on the Reduction of Statelessness

UNHCR acknowledges that as set out above the nationality laws of Fiji contain provisions that seek to prevent and reduce statelessness in Fiji.

However, the nationality law does not contain a provision to ensure that a child born on the territory of Fiji who is otherwise stateless acquires Fijian nationality either automatically or by registration.

Fiji has not yet acceded to the *1961 Convention on the Reduction of Statelessness*. This instrument 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. It is therefore complementary to standards contained in other human rights instruments that address the right to a nationality. An increase in the number of State parties to the two Statelessness Conventions is essential to strengthening international efforts to prevent and reduce statelessness and ensuring full enjoyment of a number of these rights.

Recommendations:

UNHCR recommends that Fiji:

- Accede to the *1961 Convention on the Reduction of Statelessness*; and

- Amend its nationality laws in close consultation with UNHCR, to ensure that a child born on the territory of Fiji who is otherwise stateless acquires Fijian nationality either automatically or by registration.

Issue 4: Birth Registration

Fiji has a well-established birth registration system. However, there are reports that people who live in rural and peri-urban centres or on remote islands have found it difficult to find a suitable place to register births, as registration offices are mainly located in urban areas. This can restrict or prevent parents from registering births due to prohibitive costs of travelling to undertake registrations. UNHCR therefore recommends that action is taken to increase accessibility to recognized registration offices and disseminate information about the importance of birth registration. In particular, it is recommended that section 12(2) of the *Births, Deaths and Marriages Registration Act [Cap 49]* (“BDM Act”) is amended, so that any person may be registered after the expiration of twelve months from the date of the birth of his or her birth, without incurring any penalty or the requirement to pay a prescribed fee.

Birth registration can contribute to the realization of the right of every child to a nationality and to the protection of all children. Birth registration helps to prevent statelessness by establishing a legal record of where a child was born and who his or her parents are. As such it serves as a key form of proof of whether a person has acquired nationality by birth or by descent.

Recommendations:

UNHCR recommends that Fiji:

- Increase access to registration facilities for people living in rural and peri-urban areas; and
- Amend the BDM Act to allow for the registration of the births of children after the expiration of 12 months of the child’s birth, without incurring any penalty or the requirement to pay a prescribed fee.

Issue 5: Capacity-Building and Technical Assistance

In accordance with UNHCR’s Strategy to strengthen refugee protection in the Pacific region of November 2011², and taking into account the challenges and constraints identified above, the Office stands ready to provide the Government of Fiji with timely and relevant technical advice, practical guidance and operational support should any person in need of international protection arrive in Fiji.

UNHCR is able to provide awareness/education programmes on asylum-seekers and refugees, technical support in drafting national refugee legislation and capacity-building for officials in relation to the treatment of persons in need of international protection and the processing of asylum claims. The DOI officers, border officers and law enforcement officers would benefit from further capacity building and training in principles of international refugee and human rights law.

² UNHCR’s strategy to strengthen refugee protection in the Pacific region is included as Annex II to this document.

UNHCR is also able to provide practical advice and training to relevant officials to integrate ‘good practices’ and international standards into operational guidelines and procedures on asylum and refugee protection.

While people displaced by climatic (natural) factors are not ‘refugees’ under the *1951 Refugee Convention*, there are nonetheless clear links between environmental degradation or climate change on the one hand and social tensions and conflict on the other. 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). UNHCR welcomes the UNDP-Pacific Centre’s initiative to look at the links between climate change, disasters and conflict.

In a worst case scenario of rising sea waters in the Pacific, populations may face a de facto or de jure loss of the sovereign State itself and be forced across an international border. Here, UNHCR’s mandate and experience on statelessness may also be relevant.

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

Recommendations:

UNHCR recommends that Fiji:

- Seek and use UNHCR’s expertise on issues falling within its mandate.

Human Rights Liaison Unit
Division of International Protection
UNHCR
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ANNEX

Excerpts of Concluding Observations and Recommendations from UN Treaty Bodies

- Universal Periodic Review:

FIJI

We would like to bring your attention to the following excerpts from UN Treaty Monitoring Bodies' Concluding Observations and Recommendations relating to issues of interest and persons of concern to UNHCR with regards to Fiji.

Committee on the Elimination of Racial Discrimination

CERD/C/FJI/CO/18-20, 81st Session

30 October 2012

Disaggregated data

8. The Committee notes the comment made by the State party that the prohibition of collecting data based on ethnicity (CERD/C/FJI/18-20, para. 6) was established in pursuance of the Committee's previous recommendation (CERD/C/FJI/CO/17, para. 16), and was aimed at eliminating racial profiling, for example in immigration forms. However, the Committee regrets the lack of disaggregated data on the socioeconomic situation of members of ethnic groups as well as the lack of gender analysis of data provided (arts. 1 and 5).

Recalling its revised reporting guidelines (CERD/C/2007/1, para. 11), the Committee reaffirms that if progress in eliminating discrimination based on race, colour, descent, or national or ethnic origin is to be monitored, some indication of the number of persons who might be treated less favourably on the basis of these characteristics is needed. Also, the Committee recommends that in preparing data in accordance with the Committee's general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the State party also take into account gender issues which may intersect with racial discrimination, and provide data disaggregated by gender.

In line with its general recommendation No. 8 (1990) on the interpretation and application of article 1 of the Convention, the Committee recommends that the State party ensure that data on the socioeconomic situation of the population by ethnicity is collected on a voluntary and self-identification basis. It requests that the State party include such disaggregated data in its next periodic report.

Economic, social and cultural rights of minorities

13. The Committee regrets the paucity of information on economic, social and cultural rights of persons belonging to less numerous minority groups. The Committee notes with concern that further efforts have yet to be taken to promote languages other than English, iTaukei and Hindi (arts. 5 and 7).

The Committee notes the commitment by the State party to assess the situation of the most vulnerable groups in need of specific assistance in order to take measures in allocating

resources and designing appropriate programmes for their benefit. The Committee recommends that the State party promote minority culture and languages and include information on the economic, social and cultural rights of minorities in the next periodic report.

Ethnicity and freedom of religion

15. The Committee regrets the absence of information on measures taken to address discrimination based on ethnicity and religion in the light of reports of religious intolerance, often linked with ethnicity. It is concerned by the information that some newspapers publish advertisements seeking tenants or house maids of a particular ethnicity or religion (art. 5).

Taking into account the intersectionality between ethnicity and religion, the Committee recommends that the State party assess possible double discrimination that members of ethnic minorities belonging to specific religious groups may face. It also encourages the State party to prohibit discriminatory advertisements and ensure equal enjoyment of fundamental rights and freedoms to all.

Fighting racial discrimination in schools

16. The Committee notes the absence of information on the concrete results of a number of policies on the elimination of racial discrimination in schools, including the change of school names that bore an ethnic connotation, and the school zoning policy (art. 5).

The Committee encourages the State party to evaluate its policies aimed at eliminating racial discrimination in access to education and include this information in its next periodic report. It encourages the State party to further promote training on ethnic, cultural and religious diversity in the country and to integrate these into the school curriculum in order to promote interethnic friendship and solidarity.

Committee on the Elimination of Discrimination against Women

CEDAW/C/FJI/CO/4, 46th Session

30 July 2010

Stereotypes and cultural practices

20. The Committee once again expresses its concern at the persistence of practices and traditions, as well as strong patriarchal attitudes and deep-rooted stereotypes, regarding the roles, responsibilities and identities of women and men in all spheres of life. The Committee is concerned that such customs and practices perpetuate discrimination against women and girls and that they are reflected in the disadvantageous and unequal status of those groups in many areas, including public life, decision-making, marriage and family relations, as well as in the persistence of violence against women. The Committee is also concerned about the cultural practice of reconciliation and forgiveness ceremonies such as *bulubulu*, forced on victims of violence so that they remain in abusive and violent relationships. In addition, the Committee is concerned that, thus far, the State party has not taken effective and systematic action to modify or eliminate stereotypes and cultural practices harmful and/or demeaning to women.

21. The Committee urges the State party to put in place without delay a comprehensive strategy, including the review and formulation of legislation and the establishment of goals and timetables, to modify or eliminate stereotypes, patriarchal attitudes and cultural

practices that discriminate against women, in conformity with articles 2 (f) and 5 (a) of the Convention. Such measures should include efforts to raise awareness about this subject, targeting women and men at all levels of society, in collaboration with civil society. The Committee calls upon the State party to take innovative and effective measures to strengthen understanding about the equality of women and men and to work with the media to promote a positive, non-stereotypical and non-discriminatory portrayal of women, and in particular to develop outreach programmes to connect with women in rural areas and the outer islands. It further calls on the State party to periodically review the measures taken in order to assess their impact, to take appropriate action and to report thereon to the Committee in its next report.

Violence against women

22. The Committee is seriously concerned that the level of violence against women in all its forms is persistently high in both the private and public spheres. While welcoming the Domestic Violence Decree (2009), the Committee remains concerned at the absence of a holistic approach to the prevention and elimination of all forms of violence against women, including the introduction and enforcement of comprehensive integrated legislation prohibiting all forms of gender-based violence as well as other effective measures to prevent, investigate and prosecute gender-based violence, including against women sex workers. The Committee regrets the lack of data and information regarding the incidence of various forms of violence against women and girls, as well as studies and/or surveys on the extent of violence and its root causes. The Committee is also concerned that social support services suffer from inadequacy, insufficiency and a lack of coordination.

23. **The Committee urges the State party to give priority attention to combating violence against women and girls and to adopting comprehensive measures to address such violence, in accordance with its general recommendation No. 19. Such measures should include the expeditious adoption of a comprehensive law criminalizing all forms of violence against women, including domestic violence with regard to de facto relationships, marital rape, sexual violence, sexual harassment and institutional violence, as well as the development of a coherent and multisectoral action plan to combat violence against women. The State party should investigate and prosecute all cases of violence against women, including those involving women sex workers. The Committee also urges the State party to publish and widely disseminate the Domestic Violence Decree and all relevant laws and policies established and/or envisaged to address violence against women in all its forms. The Committee calls upon the State party to increase the number of shelters and to ensure adequate geographical distribution, with particular focus on remote and outer islands. The Committee requests the State party to provide data on trends concerning the prevalence of various forms of violence against women, disaggregated by age and area (urban and rural).**

Trafficking and exploitation of prostitution

24. The Committee notes the State party's adoption of the Crimes Decree (2009), which punishes persons who sexually exploit women. The Committee also notes that prostitution as a criminal offence continues to be the focus, but that recent initiatives have broadened this criminal offence, which now addresses demand and supply to include clients as well as the owners of premises on which prostitution is carried out. The Committee is concerned that sex work continues to be criminalized and that, as a result, sex workers are often victims of violence

and are particularly vulnerable to torture and ill-treatment by the police. The Committee is also concerned about the exploitation of underage girls in commercial sex work. While the Committee notes that the State party has set up the Transnational Crimes Unit of the Fiji Police Force to investigate the trafficking in persons, which complements the Crimes Decree, it regrets the lack of disaggregated data and information about the prevalence and root causes of trafficking, as well as about training for law enforcement personnel in this regard.

25. The Committee strongly urges the State party to take concrete steps aimed at effectively implementing the Crimes Decree as well as decriminalizing sex work and strengthening programmes, in cooperation with relevant partners, to provide support, exit programmes and alternative livelihoods for women who wish to leave prostitution. The State party should take effective steps to ensure that sex workers who are victims of violence, torture or ill-treatment are provided an opportunity for a fair trial and, as appropriate, receive medical and psychosocial services as well as compensation, including reparations and guarantees of non-repetition. The Committee urges the State party to fully implement article 6 of the Convention, including by speedily enacting specific and comprehensive national legislation and programmes on the emerging phenomenon of trafficking, ensuring that offenders are punished and victims adequately protected and assisted. The Committee calls upon the State party to increase its efforts to engage in international, regional and bilateral cooperation with countries of origin, transit and destination to prevent trafficking through information exchange and to facilitate the recovery and social integration of trafficked persons. It also recommends anti-trafficking training for the judiciary, law enforcement officials, border guards and social workers in all parts of the country. In addition, the Committee recommends that the State party conduct comparative studies on trafficking and prostitution and address their root causes in order to eliminate the vulnerability of girls and women to those phenomena.

Education

28. The Committee welcomes the high rate of enrolment of girls and appreciates the State party's efforts to ensure access and equal opportunities for boys and girls at all levels of education, to establish re-entry policies enabling young women to return to school after pregnancy, and to set up the "Matua" programme (2004), which encourages interested school leavers and adults to continue their education. However, the Committee is concerned that traditional attitudes, perceived gender roles and poverty — particularly the lack of ability to pay the costs associated with uniforms, shoes, books and transportation — continue to limit girls' education and contribute to the increase in girls' dropout rate, particularly in rural areas and the outer islands. The Committee is also concerned about the inadequacy of the reproductive and sexual health education included in the school curriculum. In addition, the Committee is concerned at the gender segregation reflected in students' choice of the field of education and regrets the insufficient training programmes and educational opportunities for women and girls with disabilities.

29. The Committee urges the State party to take steps to overcome traditional attitudes that, in some rural areas and outer islands, may constitute obstacles to girls' and women's education and to the retention of girls in school. The Committee also calls on the State party to actively encourage the diversification of educational and professional choices for women and men and to provide incentives for young women to enter traditionally male-dominated fields of study. The Committee urges the State party to ensure the budgetary

allocation necessary for the continued implementation of programmes to facilitate the education of children, especially girls, from poor families and to strengthen reproductive and sexual health programmes, including sex education targeting adolescent girls and boys, with special attention accorded to the prevention of early pregnancy and the control of sexually transmitted infections, including HIV/AIDS. The Committee requests the State party to include in its next report information about the measures taken and their gender impact, as well as information about access to education for women and girls with disabilities.

Employment

30. The Committee notes that the Employment Relations Promulgation (2007) is aimed at creating labour standards that are fair to both workers and employers and ensuring equal rates of remuneration for work of equal value for all workers. However, it is concerned that in practice, women earn significantly less than men, especially in occupations and industries not requiring high qualifications, such as the garment industry, agriculture, the fisheries industry and craftwork. The Committee remains concerned about the high number of women in the informal sector with no social security or other benefits, who are particularly vulnerable. While noting the National Policy on Sexual Harassment in the Workplace, the Committee is concerned about the absence of specific legal provisions and concrete measures to address sexual harassment in the workplace, which has become an increasing source of concern. The Committee notes with concern the Government's efforts to downsize the civil service by reducing the retirement age from 60 to 55, forcing a number of persons into early retirement. The Committee also notes with concern that a number of women with disabilities are unemployed owing to lack of education and training opportunities and to cultural attitudes that limit their employment. The Committee is concerned that the Public Emergency Regulation is restricting the freedoms of association and expression in the State party, thereby hampering the advancement of human rights in trade unions and women's organizations.

31. The Committee requests the State party to ensure equal opportunities for women in the labour market, in accordance with article 11 of the Convention. To this end, the Committee urges the State party to adopt effective measures in the formal labour market to eliminate both horizontal and vertical occupational segregation, narrow and close the wage gap between women and men, and apply the principle of equal remuneration and equal opportunities at work. It encourages the State party to regulate the informal sector to ensure that women in the sector are not exploited and are provided social security and other benefits. The State party is also encouraged to enact specific legal provisions to prohibit sexual harassment in the workplace, to introduce special protection measures for women with disabilities in the workplace, and to ensure proper and fair compensation for civil servants who have been forced into early retirement. The Committee urges the State party to fully implement the principle of freedom of association in accordance with International Labour Organization Conventions Nos. 87 and 98, which Fiji has ratified.

Disadvantaged groups of women

36. The Committee is concerned at the very limited amount of information and statistics provided about vulnerable groups of women, including elderly women, women with disabilities and women living with HIV/AIDS. The Committee is also concerned that such women often

suffer from multiple forms of discrimination, especially with regard to access to justice, education, employment, housing and health care.

37. The Committee requests the State party to provide in its next report a comprehensive picture of the de facto situation of vulnerable groups of women in all areas covered by the Convention, as well as information about specific programmes and achievements.

Marriage and family relations

38. While commending the State party for its recent adoption of the Family Law Act (2003), the Family Law (Amendment) Act (2005) and the Domestic Violence Decree (2009), as well as the opening of the new Family Divisions within the court system, the Committee is concerned about the unequal status of women in marriage and family relations owing to traditional practices and attitudes. The Committee notes with concern that insufficient measures have been taken to promote the provisions of those laws; to provide training in this regard, including gender-sensitivity training; and to raise awareness about the underlying philosophy of gender equality in marriage and family relations, including de facto relationships.

39. The Committee calls upon the State party to monitor and assess the implementation of the Family Law Act and amendments, as well as the Domestic Violence Decree; to raise awareness about the provisions of those laws; and to ensure adequate training, including gender-sensitive training, for relevant personnel, including the police and officers of the Family Divisions of the Courts. The Committee also calls upon the State party to take additional measures to promote equality in marriage and family relations, taking into account the Committee's general recommendation No. 21.

Data collection and analysis

40. The Committee is concerned that the report did not provide sufficient statistical data regarding the situation of women in all areas covered by the Convention, particularly in the areas of prostitution and trafficking, violence against women, and the situation of vulnerable groups of women. The Committee is also concerned at the lack of information about the impact of measures taken, including the implementation of laws, programmes and policies, as well as obstacles encountered and results achieved in various areas covered by the Convention.

41. The Committee calls upon the State party to strengthen its system of data collection, including the use of measurable indicators; to assess trends regarding the situation of women, particularly in the areas of prostitution and trafficking in human beings, female victims of violence and vulnerable groups of women; to assess progress made towards women's de facto equality; and to allocate sufficient budgetary resources for data collection. The Committee also requests the State party to include in its next report statistical data and analysis, disaggregated by sex and area (rural and urban), indicating the impact of policy and programmatic measures, the obstacles encountered and the results achieved.