UNHCR
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Republic of Fiji

I. BACKGROUND INFORMATION

The Republic of Fiji (hereinafter Fiji) is one of few Pacific Island Countries (PICs) that is a State party to the *1951 Convention relating to the Status of Refugees* and the *1967 Protocol relating to the Status of Refugees* (together, the *1951 Refugee Convention*), as well as the *1954 Convention relating to the Status of Stateless Persons* (*1954 Statelessness Convention*). Fiji has not acceded to the *1961 Convention on the Reduction of Statelessness*.[1] It has made reservations—expressed in the same manner—with respect to both the *1951 Refugee Convention* and *1954 Statelessness Convention*.[2] Fiji is also State Party to all nine core international human rights treaties.[3]

Fiji's *Immigration Act 2003 (No. 17 of 2003)* (Immigration Act), which came into effect on 23 November 2005, establishes the legal framework for Refugee Status Determination (RSD). In addition, the *Immigration Regulations 2007 (LN 5 of 2008)*, which commenced on 4 January 2008, set out the permits to which asylum-seekers and refugees are entitled. Fiji continues to progress work on policy and processes pertaining to RSD procedures and the treatment of forcibly displaced persons in its territory. The Fiji Immigration Department (FID) is responsible for managing asylum and refugee protection matters.

Fiji continues to develop a generally positive refugee protection environment. The Government of Fiji undertakes RSD procedures jointly with UNHCR. Fiji collaborates with UNHCR to support forcibly displaced persons to become self-reliant and ultimately enhance their inclusion and prospects for local integration for recognised refugees. Although many of the core obligations set out under the 1951 Refugee Convention are reflected in national legislation, it has not yet been fully incorporated. In practice, Fiji respects obligations and principles including non-refoulement and non-penalization. The population of asylum-seekers and refugees in Fiji, while small, has increased in recent years.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Linked to 3rd cycle UPR recommendation no. 139.20[4] "Continue to strengthen its legal and institutional frameworks for the promotion and protection of human rights (Nigeria)"

The Government of Fiji has advanced since 2019 in developing and implementing relevant law, policy, and processes to protect and afford essential rights to asylum-seekers and refugees. Fiji has undertaken sustained efforts to develop its RSD procedures in close

[1] As the guardian of the UN Statelessness Conventions (as well as the Refugee Convention), UNHCR recommends that Fiji become a State Party to the 1961 Convention and is itself committed to advising and assisting with this process.
[2] Fiji has made reservations to articles 3, 8 and 9, and 25(1)-(2) of the Refugee Convention and the 1954 Statelessness Convention, respectively.
[3] For instance, and of relevance to UNHCR's mandate, Fiji succeeded to the *International Convention on the Elimination of All Forms of Racial Discrimination* (CERD) on 11 January 1973. Subsequently, it ratified the *Convention on the Rights of the Child* (CRC) on 2 July 1993 and acceded to the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) on 28 August 1995. Later, it ratified the *Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment* (CAT) on 14 March 2016, and acceded to the *International Covenant on Civil and Political Rights* (ICCPR) on 16 August 2018 and the *Convention for the Protection of All Persons from Enforced Disappearance* (CPPED) on 19 August 2019. Note, Fiji has made reservations in respect of Articles 14, 20, 21, 22 and 30(1) of the CAT, and Article 42(1) of the CPPED.
[4] UN Human Rights Council, Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review: Fiji*, A/HRC/43/8, 23 December 2019, p. 12, para 139.20.

collaboration with UNHCR and in line with appropriate procedural standards. This collaborative approach to RSD has entrenched good practices regarding key procedural standards into case processing modalities. For instance, the right to be informed about the purpose, nature, and steps of the RSD procedure; to be interviewed and heard; access to interpretation services; and avenues of appeal.[5] UNHCR and Fiji are collaborating to build the capacity of FID officials to assume full responsibility for RSD in the longer term.

Moreover, the Government of Fiji continues to develop the legislative and policy framework regarding the treatment of asylum-seekers and refugees. UNHCR welcomes Fiji's endeavours to enshrine in this framework the fundamental rights of asylum-seekers and refugees, the responsibilities owed by the Government and FID, and operational matters that ensure a consistent approach to refugee protection. In its current practice, Fiji's treatment of forcibly displaced people reflects much of the letter and spirit of the 1951 Refugee Convention and the Global Compact on Refugees. A leader among PICs, Fiji affords asylum-seekers and refugees the right to access health care, educational and employment opportunities.

In law, policy and practice, Fiji acknowledges the special status of asylum-seekers and refugees and affords them protection and fundamental human rights. UNHCR commends Fiji's substantial advances in this regard.

Linked to 3rd cycle UPR recommendation no. 139.36:[6] "Continue to engage positively with human rights organizations to protect all vulnerable groups (Guyana)"

Although the numbers are small, Fiji has seen an increase in the arrival of asylum-seekers and refugees in recent years. Fiji has sought to uphold humanitarian principles by working with human rights organisations and community actors to meet the right to an adequate standard of living for asylum-seekers and refugees, and their families, some of whom arrive in the country with scarce resources and lack the capacity for immediate self-reliance. This support is crucial due to the absence of tailored settlement services or a refugee sector, and in view of Fiji's status as a developing economy. Fiji's efforts to support forcibly displaced people to enjoy an adequate standard of living are vital. A whole-of-society and whole-of-government approach, in line with the Global Compact on Refugees, can further contribute to ensuring that refugees and asylum-seeker enjoy access to shelter, food, health and education.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 3rd cycle UPR recommendations

Issue 1: Developing a robust operational understanding of asylum-seeker and refugee protection

Linked to 3rd cycle UPR recommendation no. 139.33[7] "Continue efforts aimed at promoting education, raising awareness and training in the field of human rights (Jordan)"

Upholding Fiji's international and domestic protection obligations is a responsibility that extends to senior and working-level government officials across departments and policy areas which impact upon the treatment of, and response to, asylum-seekers and refugees. For instance, border and customs officials, immigration officials, law enforcement officers, eligibility officers, and so forth.

[5] See UNHCR, *Procedural Standards for Refugee Status Determination under UNHCR's Mandate*, August 2020.
[6] UN Human Rights Council, Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review: Fiji*, A/HRC/43/8, 23 December 2019, p. 13, para 139.36.
[7] UN Human Rights Council, Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review: Fiji*, A/HRC/43/8, 23 December 2019, p. 12, para 139.33.

UNHCR is aware of recent instances of immigration officials intending to remove asylum-seekers from the territory, both prior to and after their access to asylum procedures, sometimes with reference to vague national security concerns. This included cases where the individual was potentially a trafficked person, and where contact with a trafficker in this context led the survivor to be stigmatised, exacerbating their protection risks, and running counter to fundamental standards on the protection of trafficked persons. Consistent with Fiji's non-refoulement and other key human rights and procedural obligations, these removals did not proceed. UNHCR encourages the Government of Fiji to continue addressing gaps in the understanding of government and other actors about Fiji's international and domestic protection responsibilities.

UNHCR recognizes that sovereign States must safeguard national security and notes that this may be done in a way that remains consistent with international protection obligations. In particular, the suspension of human rights and protection principles should only occur in strict and justifiable circumstances, and with reference to, and in conformity with, international refugee and human rights law, and procedural standards. Vulnerable migrants may be victims of forced labour, slavery, or trafficking, and they may have international protection needs. Forcibly displaced people are at heightened risk of severe forms of exploitation. It is critical that officials, including immigration officials, have capacity to effectively identify persons who are potentially in need of international protection; accord them treatment in line with the 1951 Refugee Convention and international law and standards; and facilitate their access to relevant support and asylum procedures in Fiji.

Training and awareness-raising initiatives in the field of refugee protection across government is instrumental to embed a predictable and consistent rights-based response. In particular, training opportunities should be tailored to the role and duties of participating officials; detail the fundamental principles of Fiji's legal obligations; and engage these matters in practical and operational ways. Specific training is essential on identifying asylum-seekers, utilizing internal referral mechanisms to relevant FID focal points, and the role of, and intersection with, national security considerations within refugee protection contexts.

Recommendations:
UNHCR recommends that the Government of Fiji, in consultation with UNHCR:

(a) Strengthen and provide regular and tailored training for officials across government, particularly on identification and referral mechanisms for asylum-seekers and other persons in need of international protection.
(b) Develop inter-agency and intra-agency coordination mechanisms for the identification, referral and protection of asylum-seekers and refugees.

Issue 2: <u>Domestic legal framework compliance with international law obligations</u>

Linked to 3rd cycle UPR recommendation no. 139.19:[8] <u>"Intensify efforts towards the harmonization of domestic legislation with the international obligations undertaken (Georgia)"</u>

Fiji's planned review and revision of the Immigration Act will allow for its stronger alignment with relevant refugee protection principles. The principle of non-refoulement is established in Fiji's law, policy and practice, although its articulation in the Immigration Act is unduly restrictive, only applying to 'a person determined as a refugee in Fiji' who does not fall within the exceptions to that principle.[9] The principle of non-refoulement can only adequately protect against returns to circumstances of persecution and danger where it has a broad application, given that formal refugee status is declaratory in character. The principle must apply not only to recognised refugees, but also asylum-seekers, regardless of whether they

[8] UN Human Rights Council, Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review: Fiji*, A/HRC/43/8, 23 December 2019, p. 12, para 139.19.
[9] Immigration Act, s 47.

have managed to formally register their claim with the authorities, and including those whose claims for protection are yet to be finally determined.[10]

Fiji's policy and practice demonstrates respect for, and protection of, the principle of non-penalization, provides for derivative refugee status to be granted to dependents of recognized refugees, and a reflects a willingness to facilitate family reunification through existing visa pathways, despite the absence of special family reunification visa avenues. However, these positive practices are not yet incorporated into the Immigration Act or Immigration Regulations, as applicable.

The Permanent Secretary of the Ministry of Home Affairs and Immigration may refuse a claim where there are 'serious reasons for considering' that an individual is a threat to Fiji's 'national security or public safety.'[11] This and other grounds for exclusion articulated in the Immigration Act are impermissibly overbroad and lacking crucial procedural safeguards.[12] The 1951 Refugee Convention provides an exhaustive interpretation of exclusion.

Having ratified the *International Covenant on Civil and Political Rights* (ICCPR), the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT), other international human rights treaties and in line with customary international law, Fiji has international legal obligations to protect individuals from refoulement in circumstances where they may not satisfy the criteria for recognition as a refugee.[13] This includes instances where individuals may face threats to their right to life, torture, cruel or inhuman treatment or punishment in their country of origin. However, there are no provisions in the Immigration Act for complementary forms of protection. Moreover, the grounds for exclusion currently set out in the Immigration Act would also be contrary to Fiji's obligations under these instruments.

The revision of Fiji's Immigration Act would, in the aforementioned priority areas, better align its domestic laws with the 1951 Refugee Convention, other international human rights instruments, and internationals standards.

Recommendations:
UNHCR recommends that the Government of Fiji, in consultation with UNHCR:

(a) Undertake amendments to better align the Immigration Act with the Refugee Convention;
(b) Develop a legislative and policy framework for family reunification; and,
(c) Adopt provisions for complementary protection in the Immigration Act.

Additional protection challenges

Issue 3: Coordination and awareness raising on asylum-seeker and refugee rights

Fiji furnishes asylum-seekers and refugees holding, respectively, provisional protection permits and protection permits, access to key socioeconomic rights, including rights to health, education and employment. Notwithstanding, this entitlement to legal rights can only be practically realized by forcibly displaced people with the cooperation and assistance of other relevant government and non-government entities. Effective communication, information-sharing and coordination among government agencies and departments, the private sector and community actors is integral to ensure that individuals can timely and meaningfully access the rights Fiji accords them.

[10] See UNHCR, *UNHCR Emergency Handbook,* 'Access to Territory and Non-Refoulement'.
[11] Immigration Act, s41 (2) (iv).
[12] See article 32(2) of the Refugee Convention on expulsion for reference to entrenching appropriate legal safeguards when seeking to exclude individuals from refugee status on the basis of nationality security or public safety.
[13] Under international human rights law, there are no exceptions to the principle of non-refoulement.

For example, asylum-seekers and refugees have encountered barriers to their practical access to health care in Fiji, primarily due to medical staff and practitioners lacking a proper awareness of their rights. Refugee children have been denied medical attention, in the context of health practitioners requiring payment of fees. Despite the attachment of relevant rights to provisional and protection permits, there continues to be insufficient awareness among the health care sector, education, and employment sectors, of the rights afforded to asylum seekers and refugees.

Recommendations:
UNHCR recommends that the Government of Fiji:

(a) Establish coordination mechanisms within government, as well as with the private sector and community, to ensure the knowledge and awareness of all relevant actors around the rights afforded to asylum-seekers and refugees in Fiji; and,
(b) Enhance information-sharing to ensure asylum-seekers and refugees can meaningfully access and realize their rights, for example, by formalising a rights attestation letter that is annexed to relevant permits.

Issue 4: <u>Realizing the right to non-discrimination</u>

Fiji has demonstrated its commitment to guarantee the right to non-discrimination under the national asylum procedures. Nonetheless, forcibly displaced persons have been subject to less favourable treatment and attitudes of suspicion and mistrust owing to their country of origin and race. This has included discriminatory treatment by border and customs officials in the context of screening procedures, by health practitioners in timely access to medical care, as well as in the context of housing.

In addition to being an important human right unto itself, ensuring non-discrimination against asylum-seekers and refugees enhances their well-being and prospects of inclusion and self-reliance, enabling them to be independent, contributing, and thriving members of Fijian society.

Recommendations:
UNHCR recommends that the Government of Fiji:

(a) Implement existing national anti-discrimination laws for all persons including forcibly displaced persons;
(b) Undertake cultural diversity capacity building within government to ensure an appreciation of, and respect for, the right to non-discrimination;
(c) Ensure timely and appropriate disciplinary action for government officials who infringe upon the right of asylum seekers and refugees to be treated non-discriminatorily; and,
(d) Undertake government-run campaigns to reduce sentiments and instances of discrimination towards forcibly displaced persons at the community level.

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