



Submission by the United Nations High Commissioner for Refugees

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

-Universal Periodic Review:

DJIBOUTI

I. BACKGROUND INFORMATION AND CURRENT CONDITIONS

A. Refugee protection framework

Djibouti is a State party to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* (hereafter jointly referred to as the *1951 Convention*). Djibouti has also ratified the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (hereafter 1969 OAU Convention) and various other main international human rights instruments.

However, Djibouti 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*.

Djibouti lacks a fully-fledged body of law governing refugee issues. In the absence of national refugee legislation, asylum matters are regulated by means of administrative decrees passed by the Government upon the country's independence in 1977.¹ These texts afford insufficient protection to refugees and asylum-seekers, as they fail to guarantee rights and procedural standards provided for in relevant international instruments.

¹ The following decrees regulate asylum matters:

- Décret No 78-020/PR portant création d'un Comité National d'Assistance aux réfugiés et aux sinistres, ainsi que d'un Office National chargé de l'exécution des mesures décidées en leur faveur (21/2/1978)
- Ordonnance No. 77053/PR/AE portant statut des réfugiés sur le sol de la République de Djibouti (09/11/1977)
- Décret No 77-054/PR/AE portant création de la Commission nationale d'éligibilité des réfugiés (09/11/1977)
- Décret No 2001-0101/PR/MI modifiant le décret No 77-054/PR/AE du 09 novembre 1977 portant création de la commission nationale d'éligibilité au statut des réfugiés (28/5/2001)

The National Eligibility Commission (NEC) has been created by the Ordinance no.77053 of 1977, modified by the presidential Decree No. 2001-0101/PR/MI, and is tasked with the adjudication of cases. However, the NEC has not functioned for many years and UNHCR is discussing with the relevant authorities at the Ministry of the Interior alternatives to deal with backlogs. UNHCR is also envisaging the recruitment of an expert consultant to work on national legislation which will foresee the establishment of a formal NEC.

The Ministry of the Interior (MOI) is the main Government institution in charge of refugee protection. The national refugee agency is the *Office National d'Assistance aux Réfugiés et Sinistrés* (ONARS)). However, the Presidency, which is mandated to deal with issues of national security in asylum cases, also has a role to play.

B. Population of concern to UNHCR

Djibouti is at a strategic crossroads linking Africa, Europe and the Middle East. Due to this distinct location, Djibouti has become a hub for mixed migratory movements across the Red Sea, mainly through Obock, a town known as a centre of human trafficking and smuggling activities. Every year, thousands of migrants, including persons in need of international protection, travel through Djibouti with the hope of making the crossing of the Bab-El-Mandeb straight to the Arabian Peninsula. Hundreds of them often get stranded in the town of Obock for months with no access to any kind of assistance, as Djibouti lacks the capacity to manage mixed migratory movements.

The Republic of Djibouti is surrounded by refugee producing countries (Ethiopia, Somalia and Eritrea) and has over the past three decades continuously received tens of thousands of refugees and asylum-seekers. Many have been repatriated, often after years of exile in harsh refugee camps, but many others settled permanently in the country with no clear status. Some cases with specific protection needs were resettled in third countries. So far, resettlement continues to be the sole durable solution for refugees. Djibouti is currently hosting a total of 20,556 refugees, mainly Somalis (over 17,000). Other nationalities include Ethiopians (around 2,500) and Eritreans (slightly over 1,000). More than 70% of refugees are women and children. Nearly 90% of the refugee population lives in refugee camps (Ali-Addeh and Holl-Holl).

A group of 297 Eritrean deserters is currently detained for security reasons² in Nagad, a site in the outskirts of the capital city, Djibouti. Most of the members of this group have been recognized as mandate refugees under the *1951 Convention* and their cases have been submitted for resettlement. Eritrean deserters/draft evaders continue to trickle into Djibouti.

In addition to serving as a safe haven for refugees fleeing persecution and conflicts in the region, the Republic of Djibouti has also been used both as a transit and destination country by thousands of impoverished migrants in search of better economic opportunities. These mix-migration flows have often proved a heavy burden on the country due to its limited capacity.

² Eritrea and Djibouti were opposed in a brief but violent border dispute in June 2008. Although military clashes ceased after two days, there has not been any formal peace agreement signed between the two countries and Djibouti views the arrivals of deserters on its soil from a national security perspective.

Due to its geostrategic location in the Horn of Africa, and as a host to several military bases, including the sole US military base in Africa and the largest overseas French army base, Djibouti also plays a pivotal role in the international community's efforts to restore peace and security in Somalia.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

UNHCR commends the Government and people of Djibouti for their hospitality to asylum-seekers and refugees for the past many years amid the country's challenging environment.

The following initiatives at the national level had a positive impact on UNHCR's population of concern:

2011 Expert Meeting on "Refugees and asylum-seekers in distress at sea" held in Djibouti

The Office of the United Nations High Commissioner for Refugees (UNHCR) convened an Expert Meeting on Refugees and Asylum-Seekers in Distress at Sea in Djibouti from 8 to 10 November 2011. This expert meeting was one in a series of events organized to mark the 60th anniversary of the 1951 Convention relating to the Status of Refugees. Participants included 40 experts drawn from governments, regional bodies, international organizations, NGOs and academia. The purpose of this expert meeting was to explore how responses to rescue at sea situations involving refugees and asylum-seekers could be improved and made more predictable through practical cooperation to share burdens and responsibilities. A *Model Framework for Cooperation in Rescue at Sea Operations involving Asylum-Seekers and Refugees* based on UNHCR's *10 Point Plan of Action on Refugee Protection and International Migration* and the comprehensive regional approach to address irregular mixed migration movements were discussed at the meeting.³

The adoption of a national strategic action plan for children

The initiative aims at strengthening the Government's commitments to honour its international obligations in regards to children. The national strategic action plan seeks to enhance children's welfare and development through the creation of legal and social frameworks promoting human and children's rights. A National Child Council was created, which is tasked with supervising the implementation of the national strategic action plan, assessing its effectiveness and advising on political and strategic matters.

Creation of a National Council for Gender and Development

The Council includes representatives of various ministries, local associations and NGOs, which carry out activities to promote and protect women's rights. Additionally, it will be tasked with designing the national gender policy. A Technical Committee will be in charge of the follow-up and impact assessment of the various projects promoting gender equality and women's development.

³ Please refer to the Summary Conclusions of the Expert Meeting in Djibouti, 8 to 10 November 2011, UN High Commissioner for Refugees, *Refugees and Asylum-Seekers in Distress at Sea - how best to respond?*, 5 December 2011, available at: <http://www.unhcr.org/refworld/docid/4ede0d392.html>

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Issue 1: Treatment of persons in need of international protection

Although the country has ratified the 1951 Refugee Convention, the 1969 OAU Convention, the national legal and administrative frameworks present a series of gaps in the areas of refugee protection.

While most of the refugees from Somalia are granted refugee status on a *prima facie* basis, those from Eritrea, Ethiopia and other neighbouring countries must undergo refugee status determination procedures. Many cases remain pending due to the fact that the National Eligibility Commission is not operational. This situation has left thousands of asylum-seekers without identity documents and at risk of *refoulement*. UNHCR has prepared and submitted to authorities from the *Bureau d'Eligibilité* (Eligibility Office) a draft decree on the powers and functioning of the National Eligibility Commission in order to expedite the treatment of cases pending the adoption of a full-fledged refugee law that remains under consideration by the authorities. In this context, UNHCR welcomes the comments made by the Committee against Torture following its review of Djibouti, observing that: “*The Committee is concerned about the fact that the National Asylum Eligibility Commission is not properly functional and that applicants for asylum or refugee status remain in an undefined legal situation for much too long, with a risk of expulsion. (...) The State party should ensure that the National Asylum Eligibility Commission functions properly and that persons subject to an expulsion order are able to appeal to the courts against the decision*” (...).⁴

On certain occasions, the Government ceased receiving and registering single male Somali new arrivals from South/Central Somalia for reasons of national security. The decision of the authorities to deny access to Djibouti to 18 – 40 year old Somali males from this region usually followed instances where Al-Shabbab threatened countries in the region including Djibouti. However, restrictions were often lifted two to three weeks after as threat levels were considered to be low by the country’s authorities.

Recommendations:

- Revive and reinforce the National Eligibility Commission and establish a fair and efficient refugee status determination process.
- Enact comprehensive refugee legislation guaranteeing human rights in accordance with relevant international instruments. The establishment of a national legal framework would provide a clearer basis for the Government to provide refugees with international protection.
- Establish an independent body to monitor the implementation of refugee protection standards.
- Provide refugee law training to officials dealing with the mixed migration phenomenon to ensure effective protection of persons of concern to UNHCR against *refoulement*.

⁴ See the Concluding observations of the Committee against Torture on Djibouti, 47th CAT session, paragraph 16, which is available at: http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.DJI.CO.1_en.pdf

Issue 2: Situation of refugees in the camps

The ongoing arrival of refugees throughout the past four years has led to overcrowding of the Ali Addeh camp and increased security concerns and assistance needs. Initially a number of SGBV cases have been reported without the victims having had access to adequate justice mechanisms. Currently the office has introduced mass information campaigns on prevention and response mechanisms to SGBV incidents, training of focal points (youth association, women community leaders and heads of section in the camp) on the various types of SGBV. Mobile courts have started to operate in collaboration with the Ministry of Justice to facilitate refugees' access to legal redress. Since 2010, efforts and resources have been invested in upgrading the services provided to refugees in the camp. Access to water and health services has been brought to a satisfactory level. Moreover, UNHCR, after obtaining the Government's authorization, has reopened the old Holl-Holl refugee camp, in order to decongest the Ali-Addeh refugee camp and further improve access to basic services.

Recommendations:

- Strengthen mechanisms to prevent sexual and gender-based violence and abuse of refugee women and girls and ensure access of victims to confidential reporting and to law enforcement mechanisms.
- Ensure the physical security of refugees by increasing the number of law enforcement personnel in the camp and by providing legal assistance to victims of SGBV.

Issue 3: Limited access of rights for refugees

While basic refugee rights are in principle recognized, the enjoyment of those rights is in practice denied. Whereas the Government does not maintain an encampment policy,⁵ refugees are often arrested in police round ups and detained for one or two days before they are released and ordered to return to the refugee camp.

Refugees do in practice not enjoy access to formal employment,⁶ or access to education in public primary and secondary schools, as many school officials have been reported to be unaware of the right of foreign children to access education under Djiboutian law.⁷ This situation leaves limited opportunities for refugees to achieve self-reliance.

Recommendations:

- Provide training to law enforcement officers and other relevant institutions to increase awareness of refugees' rights and ensure recognition of these rights based on the refugee/asylum-seekers' documents.
- Remove existing restrictions and limitations on legal employment and ensure free access of refugees and asylum-seekers to State social services in the same conditions as Djiboutian citizens, to facilitate their integration and self-reliance.

⁵ In Djibouti, refugees are allowed to leave the camps and move freely within the country's borders.

⁶ Authorities do not issue work permits to refugees indicating that nationals should be given priority for those jobs.

⁷ There have been cases of refugees attending public primary schools. However, these are exceptional. In this context also please refer to the Concluding observations of the Committee on the Rights of the Child, 49th CRC session, paragraphs 64 and 65 included in the Annex to this document. The CRC recommendations can also be accessed at the following

link:<http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.DJI.CO.2.pdf>

Issue 4: Access to birth registration and issuance of birth certificates

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. Refugees have poor access to birth registration outside the camps. Many refugee children grow up with no identification documents, putting them at risk of statelessness and denying them access to school and other services. Although there are no available reports on the issue, UNHCR is aware of the existence of particular populations in Djibouti who are at risk of statelessness. Nomads travelling across borders in the region continue to be among the populations at a heightened risk of statelessness, as they have poor or no access to birth registration offices in the areas where they keep their animals or dwell. This risk is exacerbated by arbitrary non-recognition of birth declarations by some authorities, and restrictive interpretation of the nationality law (while in principle the law provides that one parent can confer nationality, in practice however an individual will need to demonstrate that both parents are Djiboutians).

UNHCR supports the recommendation made by the CRC in its concluding observations on Djibouti at its 49th session: “(...) *the Committee notes with concern that around 10% of children in Djibouti do not have a birth certificate and that the non-provision of birth certificates particularly affects non-Djiboutian children. The Committee is also concerned that the State party’s efforts to improve birth registration are limited to school-going children, in a small number of schools in the capital city, therefore leaving out a significant portion of the population. The Committee recommends that the State party continue and strengthen its efforts to encourage birth registration of all children, including children living in remote areas, children living on the street, children of refugees and other non-Djiboutian children. The Committee encourages the State party to use mobile registration units to reach distant children and to provide for registration, including late registration, of births free of charge.*”⁸

Recommendations:

- Ensure the registration of all births in the country to prevent statelessness, in line with Article 7 of the Convention on the Rights of the Child.
- Increase its efforts to implement the National Strategic Action Plan for Children. This could be done, for instance, through the instruction to educational authorities at all levels on the rights of foreign children to have access to formal education.

Issue 5: Accession to the Statelessness Conventions

Although Djibouti’s nationality legislation generally demonstrates a high degree of compliance with international standards for the prevention and reduction of statelessness, there is a lack of a safeguard against statelessness for children born in Djibouti who would otherwise be stateless. Article 5 of the Nationality Code provides that only children born to a Djiboutian mother or father will acquire nationality. Children born in Djibouti to parents who are foreigners but unable

⁸ See the Concluding observations of the Committee on the Rights of the Child, 49th CRC session, paragraphs 33 and 34 included in the Annex to this document. The CRC recommendations can also be accessed at the following link: <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.DJI.CO.2.pdf>

to confer their nationality, or to parents who are themselves stateless, will also be rendered stateless.

Accession by Djibouti to the two international 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.

In this context UNHCR welcomes the recommendations made by CAT to the Government of Djibouti to consider acceding to the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*.⁹

Recommendations:

- Revise the Nationality Code to ensure that all children born in Djibouti, who would otherwise be stateless, acquire Djiboutian nationality.
- Accede to the *1954 Convention relating to the Status of Stateless Persons* and to the *1961 Convention on the Reduction of Statelessness*.

**Human Rights Liaison Unit
Division of International Protection
UNHCR
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⁹ See the CAT Concluding Observations and Recommendations on Djibouti, 47th CAT session, paragraph 16, which is available at: http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.DJI.CO.1_en.pdf

ANNEX

Excerpts of Concluding Observations and Recommendations from UN Treaty Bodies and Special Procedures' Reports

- Universal Periodic Review:

DJIBOUTI

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

1. Treaty Body Concluding Observations and Recommendations

Committee Against Torture
CAT/C/DJI/CO/1, 47th Session
22 December 2011

Principal areas of concern and recommendations

Refugees and asylum-seekers

16. The Committee is concerned about the fact that the National Asylum Eligibility Commission is not properly functional and that applicants for asylum or refugee status remain in an undefined legal situation for much too long, with a risk of expulsion. The Committee also notes with concern that the State party has not acceded to the Convention relating to the Status of Stateless Persons (1954) or to the Convention on the Reduction of Statelessness (1961) (arts. 3 and 16).

The State party should ensure that the National Asylum Eligibility Commission functions properly and that persons subject to an expulsion order are able to appeal to the courts against the decision.

The Committee recommends that the State party consider acceding to the Convention relating to the Status of Stateless Persons and to the Convention on the Reduction of Statelessness.

Human trafficking

22. The Committee notes the measures taken by the State party, such as the criminalization of human trafficking, training initiatives and the establishment of a Migration Response Centre in Obock, as well as the establishment of a coordinated national mechanism to combat human trafficking. However, the Committee remains concerned about the scale of the problem in the State party (arts. 2 and 16).

The State party should strengthen its efforts to prevent and combat human trafficking, provide protection and compensation to victims and ensure that they have access to rehabilitative as well as legal, medical, and psychological services. Accordingly, the Committee recommends that the State party should adopt a comprehensive strategy to combat human trafficking and its causes. The State party should also investigate all

allegations of trafficking and ensure that perpetrators are prosecuted and sentenced to appropriate penalties that take into account the serious nature of their crimes. The State party is requested to provide information on measures taken to assist victims of trafficking, as well as statistical data on the number of complaints, investigations, prosecutions and convictions involving trafficking.

**Committee on the Elimination of Discrimination Against Women
CEDAW/C/DJICO/1-3, 39th Session
28 July 2011**

Principal areas of concern and recommendations

Violence against women

20. The Committee notes that measures have been taken to address violence against women, such as the distribution by the State party of guides for judges and lawyers and for civil society on legal responses and victim assistance, and the establishment by the Union Nationale des Femmes Djiboutiennes (UNFD), the main women's rights organization in the State party, of information, guidance and counselling centres (cellules d'écoute, d'information et d'orientation), including in the Ali-Adeh refugee camp, providing assistance to victims of gender-based violence. It also takes note of the State party's intention to review its legislation on violence against women. However, it is concerned that women rarely report cases of gender-based violence, which are usually settled within the family, that marital rape is not criminalized, that abortion following rape is illegal. It is also concerned about reports of sexual violence in the Ali-Adeh camp without access to justice for victims.

Trafficking and exploitation of prostitution

22. The Committee acknowledges the difficulties faced by the State party in responding to the high numbers of refugees and migrants coming to and transiting through its territory. It notes the measures that the State party has taken to combat trafficking in human beings, in particular women and children, who are often abused by traffickers and subjected to forced labour and sexual exploitation in the countries of destination, by concluding cooperation agreements with other countries in the subregion, further cooperating with the International Organization for Migration, which recently opened a migration response centre in Obock, and criminalizing human trafficking. However, the Committee notes with concern the limited capacity of the State party to enforce the Human Trafficking Act and provide assistance to victims, the low number of prosecutions and convictions of traffickers, and the lack of protection of refugee or migrant women and children vulnerable to become victims of trafficking.

23. The Committee recommends that the State party:

- (a) Expedite the adoption of a national plan of action to combat trafficking in human beings, in particular women and girls, including refugees and migrants;**
- (b) Effectively enforce the Human Trafficking Act by prosecuting and adequately punishing traffickers and by providing assistance to victims of trafficking;**
- (c) Continue raising awareness and training law enforcement officials on the strict application of relevant criminal law provisions;**

- (d) Establish appropriate mechanisms aimed at early identification, referral and support of victims of trafficking, including refugee and migrant women and girls;
- (e) Provide refugee and migrant women with access to income-generating activities, through micro credits and self-employment opportunities, to reduce their risk of having to engage in survival sex and of becoming the victims of human trafficking;
- (f) Collect sex-disaggregated data on the number of prosecutions and convictions of traffickers and include such data in its next periodic report.

Disadvantaged groups of women

34. The Committee is concerned about the lack of disaggregated data on the situation of women who typically face multiple forms of discrimination, such as older women, orphaned and vulnerable girls, women with disabilities and refugee and migrant women.

35. The Committee recommends that the State party:

- (a) Collect disaggregated data on the situation of women facing multiple forms of discrimination, such as older women, orphaned and vulnerable girls, women with disabilities and refugee and migrant women, and include such data in its next periodic report;
- (b) Adopt measures, including temporary special measures in accordance with article 4, paragraph 1, of the Convention, to eliminate any such discrimination, including, as applicable, in political and public life and in the areas of education, employment and health, and to protect disadvantaged women from violence, abuse and exploitation, and include information on such measures in its next report.

Committee on the Rights of the Child

CRC/C/DJI/CO/2, 49th Session

7 October 2008

Principal areas of concern and recommendations

Birth registration

33. The Committee welcomes actions taken to improve the rate of birth registration, including through the provision of birth certificates to students in some of the schools in Djibouti-ville, the provision of better material means and the training of personnel. Nevertheless, the Committee notes with concern that around 10% of children in Djibouti do not have a birth certificate and that the non-provision of birth certificates particularly affects non-Djiboutian children. The Committee is also concerned that the State party's efforts to improve birth registration are limited to school-going children, in a small number of schools in the capital city, therefore leaving out a significant portion of the population.

34. The Committee recommends that the State party continue and strengthen its efforts to encourage birth registration of all children, including children living in remote areas, children living on the street, children of refugees and other non-Djiboutian children. The Committee encourages the State party to use mobile registration units to reach distant children and to provide for registration, including late registration, of births free of charge.

Adoption

43. The Committee, while taking into account that the Family Code advocates the strict prohibition of adoption in Djibouti, is concerned that in practice inter-country adoptions impact children, especially non-Djiboutian children, who are given over to the care of private institutions that send them out of the country to be adopted without ensuring that inter-country adoptions procedures are respected.

44. The Committee urges the State party to take appropriate measures to ensure that inter-country adoption is performed in full compliance with the best interests of the child and that it provides appropriate legal guarantees for children, including non-nationals, throughout the adoption process, in order to avoid possible cases of sale or trafficking of children for adoption or other aims. The Committee also encourages the State party to consider ratifying the 1993 Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption without delay.

Asylum-seeking and refugee children

64. The Committee notes that social and psychological rehabilitation of refugee children outside the camps is carried out mainly by NGOs and national associations. The Committee is concerned that no systematic measures are undertaken by the State party to ensure that refugee children have access to healthcare, education and other services.

65. The Committee recommends that the State party take all measures to ensure the protection of the rights of refugee children both inside and outside refugee camps and their access to social services, particularly health and education services. The Committee also recommends that the State party adopt a full –fledged refugee legislation that provides for the expedited treatment of asylum claims, integrates child-sensitive asylum procedures and recognizes child-specific forms of persecution.