

Submission by the United Nations High Commissioner for Refugees
For the Office of the High Commissioner for Human Rights' Compilation Report
Universal Periodic Review: 3rd Cycle, 32nd Session

UNION OF COMOROS

I. BACKGROUND INFORMATION

Comoros has not acceded to the *1951 Convention Relating to the Status of Refugees* and its *1967 Protocol* (hereinafter jointly referred to as the *1951 Convention*). Comoros has also not acceded to the *1954 Convention relating to the Status of Stateless Persons* (hereinafter referred to as the *1954 Convention*) and the *1961 Convention on the Reduction of Statelessness* (hereinafter referred to the *1961 Convention*). In 2004, Comoros ratified and deposited the *1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa* commonly referred to as the the OAU Convention.

Comoros has neither a national legislative framework on asylum, nor any laws or procedures which clearly establish the rights and safeguards to which asylum-seekers and refugees are entitled. In addition, there are no laws which establish procedures for statelessness status determination or provide a framework for the protection of stateless persons in the country. Additionally, the Comorian nationality law provides no legal safeguard that children born in the country who would otherwise be stateless acquire nationality by operation of the law. Only men have the right to transmit their Comorian nationality to their foreign spouses. Since UNHCR has no presence in The Union of Comoros, the country is covered by UNHCR's Regional Representation for Southern Africa (ROSA), located in Pretoria, South Africa, which has had heretofore limited contact with Comorian Government. To UNHCR's knowledge, there are currently no asylum-seekers, refugees or stateless persons in the Union of Comoros. Due to undocumented and irregular migration, persons of Comorian descent are at a heightened risk of statelessness abroad, e.g. in Madagascar.

II. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 2nd cycle UPR recommendations

Issue 1: *Accession to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*

Linked to 2nd cycle UPR recommendation no. 110.15: "Ratify the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, which the Comoros signed in 2000". (Ghana)

Article 29 of this *Convention* stipulates the right of children of migrant workers to a nationality. The Comorian legal framework provides no safeguard for children born in the country who would otherwise be stateless to acquire nationality. The *Convention*, if domestically implemented, thereby removes a risk factor for statelessness.

Recommendations:

UNHCR recommends that the Government of Comoros:

- (a) Accede to the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, signed by Comoros in 2000.

Issue 2: Ratification of the *International Covenant on Civil and Political Rights (ICCPR)*, the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, the *Convention against Torture (CAT)* and its *Optional Protocol (OPCAT)*

Linked to 2nd cycle UPR recommendation no. 111.2: “Accelerate the ratification of both the *International Covenant on Civil and Political Rights (ICCPR)* and the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, the *Convention against Torture (CAT)* and its *Optional Protocol (OPCAT)*”. (Tunisia)

The Union of Comoros has signed, but is yet to ratify, the ICCPR, ICESCR and the CAT; it has not signed the OPCAT. In the absence of a national asylum and refugee legislative framework, refugees and asylum-seekers are not necessarily recognized as persons deserving international protection nor have established rights or safeguards. As a result, persons in need of international protection would be subjected to Comorian general *Immigration Law*¹, which does not provide any safeguards against *refoulement*. Furthermore, said Law establishes that foreigners may be denied entry to the country if they are found to pose a threat to public order, public health, state security, or national economy. The Law nevertheless does not clarify how such provisions shall be applied, suggesting that there is room for discretionary interpretation by Immigration officers. In addition, the *Immigration Law* also establishes that foreigners who are refused entry may be detained for as much time as it is necessary to arrange for their departure. Such a provision may lead to indefinite detention periods if, for any reason, deportation or repatriation cannot be arranged.

In the absence of a national asylum and refugee legal protection framework, the ICCPR, ICESCR and CAT would guarantee minimum rights and establish general safeguards for refugees and asylum-seekers. In particular:

- (b) The *ICCPR* in its Article 7 prohibits torture and cruel, inhuman or degrading treatment or punishment, and protects asylum-seekers and refugees against *refoulement*. The Covenant also proscribes discrimination on the basis of nationality in the exercise of the rights therein enshrined, and, among others, protects individual’s rights to liberty and to freedom of thought and religion;
- (c) The *ICESCR*, in its Article 2(2), requires states to guarantee non-discrimination in the exercise of each of the economic, social and cultural rights enshrined in the *Covenant*, which should be extended to asylum seekers and refugees particularly in relation to, inter alia, the right to documentation and identification, access to social services and education, right to work and to an adequate standard of living;
- (d) The *CAT* establishes a non-derogable prohibition against torture and cruel, inhuman or degrading treatment or punishment. It also prohibits *refoulement* in absolute terms to countries where there are substantial grounds for believing asylum-seekers or refugees would be at risk of torture;
- (e) The *OPCAT* requires States to establish a system of regular visits undertaken by independent international and national bodies to all places where people, including asylum-seekers and refugees are deprived of liberty in order to prevent torture and ill-treatment.

Recommendations:

¹ Law N ° 88-025 of 29 December 1988 Amending the Law N ° 82-026 on the *Conditions of Entry and Residence of Foreigner in Comoros*.

UNHCR recommends that the Government of Comoros:

- (a) Ratify the *International Covenant on Civil and Political Rights* (ICCPR), the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), the *Convention against Torture* (CAT), and its *Optional Protocol* (OPCAT).

Additional protection challenges

Issue 3: Accession to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol

Currently, refugees and persons seeking asylum in Comoros do not have legal rights beyond what is stipulated under international customary law (e.g. the principle of *non-refoulement*).

Recommendations:

UNHCR recommends that the Government of Comoros:

- (a) Accede to the *1951 Convention Relating to the Status of Refugees* and its *1967 Protocol*; and
- (b) Seek the technical assistance of UNHCR in developing national asylum legislations and refugee status procedure consistent with relevant international standards.

Issue 4: Establish fair and efficient asylum procedures and guarantee full respect of the principle of non-refoulement

UNHCR notes that Comoros is in need of national asylum legislation and a national framework on asylum that is consistent with relevant international standards, ensures prompt access to fair and efficient refugee status determination (RSD) procedures, and provides necessary safeguards, including the right to receive justification on negative RSD decisions in writing and the right to appeal such decisions. Without an effective asylum system, including a referral mechanism that ensures access to asylum procedures, there is a high risk that persons may be subject to *refoulement* in violation of the *1951 Convention*, the *International Covenant on Civil and Political Rights* (“ICCPR”) and the *International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.

Recommendations:

UNHCR recommends that the Government of Comoros:

- (a) Uphold and respect the international principle of *non-refoulement*, as enshrined in international instruments and recognized as customary international law, and incorporate this principle in full in its national legislation;
- (b) Enact national asylum legislation and establish a functioning national asylum framework for ensuring international protection, which includes procedures for refugee status determination in line with international standards; and
- (c) Establish a government agency responsible for receiving and screening asylum-seekers, victims of trafficking and other individuals, who may arrive in Comoros and who may be in need of international protection, to ensure that they are referred to the correct procedures and receive necessary protection and assistance.

Issue 5: Accession to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness

The accession to these conventions, and their ensuing domestic implementation, would improve the protection of stateless persons present in Comoros, and prevent statelessness among persons born in the territory of Comoros.

UNHCR would like to note that States are responsible for conferring nationality and ensuring the right of every child to acquire a nationality. Discharging this responsibility requires creating safeguards against statelessness in nationality laws. The acquisition of Comorian nationality is primarily based upon descent. There is no guarantee in the domestic law that every child born in the country who would otherwise be stateless acquires nationality by operation of the law. The *1961 Convention* establishes a range of standards to prevent and reduce statelessness at birth and later in life, in particular that States shall grant their nationality to children who have ties with these States through birth on the territory or descent and who would otherwise be stateless. Thus, the *1961 Convention* is of central importance to the full enjoyment of every child's right to acquire a nationality. This is also stipulated by the Human Rights Committee (CCPR) in its *General Comment No. 17*.

In many instances, stateless persons have no lawful residence status anywhere; this also occurs to stateless persons who are in the country of their birth and residence and who are denied the right to nationality in their own countries. Without any legal status, stateless persons are often subject to a range of human rights violations and discrimination, and can often fall into a vicious cycle involving failed expulsion and prolonged or repeated detention and release into situations of destitution. Accession to the *1954 Convention* would establish a framework to protect stateless persons or persons at risk of statelessness. The *1954 Convention* establishes an internationally recognised status for stateless persons. It also recognises a number of fundamental rights such as freedom of religion; freedom of association; access to courts; freedom of movement; and identity documentation. Therefore, the *1954 Convention* complements the *ICCPR* with regard to the human rights of stateless persons.²

Recommendations:

UNHCR recommends that the Government of Comoros:

- (a) Accede to the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*; and
- (b) Establish procedures for statelessness determination.

Issue 6: Revision of the Comorian nationality legislation

The “Loi No. 79-12 du 12 Decembre 1979 portant Code de la nationalité Comorienne” provides no legal safeguard that children born in the country who would otherwise be stateless acquire nationality by operation of the law.

Moreover, only men have the right to transmit their Comorian nationality to their foreign spouses, which constitutes an element of discrimination based on sex in the nationality law and can create a risk factor for statelessness for stateless male spouses of Comorian female citizens.

Recommendations:

UNHCR recommends that the Government of Comoros:

- (a) Amend the “Loi No. 79-12 du 12 Decembre 1979 portant Code de la nationalité Comorienne” to the effect that: (a) children born in the country who would otherwise be stateless acquire Comorian nationality by operation of the law; and (b) that Comorian men and women enjoy equal rights to pass on their Comorian nationality to non-Comorian spouses.

**UNHCR
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² *CCPR General Comment No. 31*, para. 10: “The enjoyment of Covenant rights is not limited to citizens of States Parties but must also be available to all individuals, regardless of nationality or statelessness.”

ANNEX

Excerpts of relevant Recommendations from the 2nd cycle Universal Periodic Review

COMOROS

We would like to bring your attention to the following excerpts from the 2nd cycle UPR recommendations relating to issues of interest and persons of concern to UNHCR with regards to COMOROS.

I. Universal Periodic Review (Second Cycle – 2014)

Recommendation ³	Recommending State/s	Position ⁴
Accession to international instruments		
110.15. Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which the Comoros signed in 2000.	Ghana	Supported
111.2. Accelerate the ratification of both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention against Torture (CAT) and its Optional Protocol (OP-CAT)	Tunisia	Supported
Birth registration		
112.6 Continue with measures aimed at ensuring that all births of children are registered, particularly by reviewing the legislation to ensure that all children born in the territory can acquire the nationality, and avoid cases of statelessness.	Argentina	Supported
Trafficking in persons		
110.53 Take adequate measures to combat human trafficking.	South Sudan	Supported
112.7 Undertake a thorough assessment of the issue of trafficking in persons and take adequate measures, including enactment of adequate legislation to combat the practice as recommended by the UNHCR.	Botswana	Noted ⁵
Protection from SGBV		
110.36 Adopt a comprehensive law on violence against women, with a particular emphasis on the protection of victims, accountability of perpetrators as well as on awareness-raising to encourage reporting of domestic and sexual violence.	Portugal	Supported
110.38 Establish shelters and other facilities for victims of violence, including domestic and sexual violence, and ensure their adequate medical, psychological, legal and financial support, and combat domestic and sexual violence through, inter alia, public awareness campaigns, education, and the promotion of equal and non-discriminatory access to employment opportunities, health infrastructure, water and sanitation facilities, and justice.	Germany	Supported

³ All recommendations made to Comoro during its 2nd cycle UPR can be found in: "Report of the Working Group on the Universal Periodic Review of Comoros" (07 April 2014), A/HRC/26/11, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/KMindex.aspx>.

⁴ Comoros's views and replies, in English, can be found in: *Addendum* (15 April 2014), A/HRC/26/11/Add.1, available at: <https://daccess-ods.un.org/TMP/6931850.91018677.html>.

⁵ **Addendum:** Recommendation was Supported at the date the addendum was published.

110.39 Increase its efforts to combat sexual and domestic violence against women.	Netherlands	Supported
110.40 Strengthen the protection of women from violence, fight against impunity for perpetrators of violence against women and take specific measures for victims.	France	Supported
Detention conditions		
110.59 Improve conditions of detention consistent with international obligations and afford greater flexibility in granting human rights and humanitarian organizations access to detention centres.	United States of America	Supported
110.60 Review the rights of detainees and conditions in local prisons and detention facilities so that they meet international standards, in particular where juvenile offenders are concerned.	Australia	Supported
Discrimination against women		
110.41 Continue its efforts to eliminate all forms of violence and discrimination against women.	Tunisia	Supported
110.42 Intensify the implementation of measures that allow the elimination of all forms of discrimination against women.	Uruguay	Supported
110.43 Continue more efforts to combat discrimination against women.	South Sudan	Supported
SOGI		
113.4. Repeal all provisions giving rise to discrimination based on sexual orientation or gender identity and ensure respect for fundamental freedoms for all citizens	France	Noted
Access to healthcare		
110.74 Improve access to health care for vulnerable groups, including pregnant women, as well as take measures to reduce child mortality.	Slovenia	Supported
110.92 Improve the condition of access of vulnerable persons, particularly those with disabilities, pregnant women, children and the elderly, to healthcare.	Togo	Supported
Climate change		
110.98 Continue its efforts to promote international cooperation in the fight against severe consequences of climate change in order to reduce the environmental vulnerability that is crucial for the enjoyment of vital human rights and call upon the international community to provide material and financial assistance to the Comoros.	Somalia	Supported