

Submission by the United Nations High Commissioner for Refugees

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

Universal Periodic Review: *Third Cycle, 39th Session*

THE UNITED REPUBLIC OF TANZANIA

I. BACKGROUND INFORMATION

As of 31 December 2020, the United Republic of Tanzania (hereinafter Tanzania) hosted approximately 287,331 refugees and asylum-seekers, mainly from Burundi (208,784) and the Democratic Republic of Congo (78,075). The remaining individuals (472) are from other countries of origin. Of the 287,331 individuals registered, 50.4 per cent are females while 49.6 per cent are male. Women and children represent 78 per cent of the entire population, with children being 55 per cent of the entire population. A majority of refugees and asylum-seekers reside in three refugee camps in North Western Tanzania, namely Nyarugusu, Nduta and Mtendeli and in the three old settlements¹. The Government continues to work with UNHCR to provide international protection to refugees and asylum-seekers. Like many countries across the continent, statistics on stateless persons in Tanzania are not yet known, but initial statelessness studies have documented profiles of diverse communities at risk of statelessness in Tanzania including historical migrants, protracted refugees, and their descendants with undetermined nationality².

Tanzania is party to the *1951 Convention Relating to the Status of Refugees* and to its *1967 Protocol*. Whereas the country acceded the *1951 Convention* without any reservation, it has a reservation regarding Article IV of the *1967 Protocol*. Accordingly, Article IV of the Protocol shall not be applicable to the country except with the explicit consent of the Government of Tanzania. Tanzania is also a State Party to the *1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa*. Tanzania is, however, not yet a party to the *1954 Convention relating to the Status of Stateless Persons*, nor to the *1961 Convention on the Reduction of Statelessness*. In 2011, the Government pledged to accede to both treaties during the commemoration of the 60th anniversary of the Refugee Convention and 50th anniversary on the *1961 Convention on the Reduction of Statelessness*. In April 2019 in Nairobi during the Ministerial Conference on the eradication of statelessness in the Great Lakes³, Tanzania reiterated, among others, its commitment to accede to both statelessness conventions. Tanzania also indicated its intent to adopt a national action plan to end statelessness in preparation of the October 2019 High-Level Segment on Statelessness (HLS) whose pledges were, however, not formalized during the HLS in October 2019. Despite these

¹ The old settlements host refugees and former refugees and their descendants who fled Burundi in 1972 of whom about 160,000 have been naturalized as Tanzanian nationals. However, approximately 70,000 Burundian 1972 refugees are still waiting for a durable solution enabling them to continue to live in Tanzania, often with their family members being Tanzanians, with sustainable residence and work entitlements and adequate individual documentation

² UNHCR, *Statelessness and Citizenship in the East African Community*, September 2018, available at: <https://www.refworld.org/docid/5bee966d4.html> (See specific profiles affected in pages 60-65) and UNHCR, *Citizenship and Statelessness in the Member States of the Southern African Development Community*, December 2020, available at: <https://www.refworld.org/docid/6012a0d44.html>

³ Outcome document of the Ministerial Conference on the Eradication of Statelessness in the Great Lakes Region (16-18 April 2019, Nairobi) available at <https://data2.unhcr.org/en/documents/details/69687>

positive commitments, and other commitments signed in Brazzaville by Tanzania under the 2017 ICGLR Member States Declaration⁴, little progress has been observed towards their implementation.

The status and treatment of asylum-seekers and refugees in Tanzania is governed by the Refugees Act of 1998 and the 2003 Refugees Policy, implemented by the Ministry of Home Affairs (MoHA) through the Refugee Services Department. Significant inconsistencies exist between the two instruments, and the 2003 Policy, which is the most widely applied, contains restrictive measures, including limiting self-reliance opportunities for refugees, an enforced encampment policy and the requirement for refugee education in curriculum of the country of origin. Refugee Status Determination (RSD) is conducted by the National Eligibility Committee (NEC) established under the 1998 Refugees Act. The NEC makes recommendations to the Minister of Home Affairs for a final decision on the asylum application. Any person who receives a negative decision from the Minister may appeal and petition for a review before the same Minister. UNHCR continues to advocate for improvement of the national asylum process according to international standards on refugee protection including allowing access to legal remedies.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Linked to the 2nd cycle UPR recommendations no. 136.14⁵

In 2020, the country's under birth registration and certification program for children under 5, as implemented by the Registration, Insolvency and Trusteeship Agency (RITA) which began in 2013, was implemented in Nduta Refugee Camp to issue birth certificates to refugee children in the camps. The Government has indicated its willingness to extend this exercise to Mtendeli and Nyarugusu refugee camps. UNHCR welcomes the efforts of the Government in extending the birth registration exercise to refugees and asylum-seekers in the country. UNHCR encourages the Government to extend birth certification to all refugees born in Tanzania irrespective of their age, including those in the old settlements of Ulyankulu, Mishamo and Katumba as well as in the Kigoma villages, to prevent statelessness arising from their protracted refugees exile in Tanzania.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 2nd cycle UPR recommendations

Issue 1: Birth registration for all refugees and migrants born in the United Republic of Tanzania, including the Zanzibar archipelago

Linked to 2nd cycle UPR recommendations no. 136.14⁶ and 136.15⁷

The RITA has continued with its countrywide birth registration and certification programme for all the under five children born in the country. According to this programme handwritten birth certificates for the under five children are issued free of charge through a one stop and unified process. However, the said certificates have continued being issued in Mother and Child Health (MCH) facilities as well as the Ward Executive Officers under the local government authorities. Where a parent requires to be issued with a computer-generated birth certificate then one must apply for the same from the office of the District Executive Directors (DED). If

⁴ Declaration of International Conference on the Great Lakes Region (ICGLR) Member States on the Eradication of Statelessness, 16 October 2017, CIRGL/CIMR/DEC/15/10/2017, available at: <https://www.refworld.org/docid/59e9cb8c4.html>.

⁵ "136.14 Provide birth registration and issue birth certificates free of charge for all children under 5 years of age in order to reach universal coverage and increase public awareness of the importance of birth registration (Poland)"

⁶ Id.

⁷ "136.15: Accelerate efforts regarding birth registration, while ensuring the free issuance of birth certificates to all children (Turkey)"

the birth certificate is destroyed or lost, an application fee of five thousand shillings is charged for reissuance. Noting the fundamental importance of birth registration process in the protection of children and prevention of statelessness in line with Article 7 of the International Convention on the Rights of the Child and Article 6 of the ACRWC, UNHCR is ready to provide the necessary support to ensure that the birth registration programme for under five children is extended to all children and adult refugees born in Tanzania. This includes refugees living in any of the three old settlements or in the Kigoma villages which host approximately 70,000 refugees of Burundian origin who arrived in 1972.

UNHCR also encourages the Government to continue its efforts towards ensuring full coverage of birth registration programs in the Zanzibar archipelago. Facilitation of birth registration programs, in line with paralegal NGOs should particularly target children and descendants of historical migrants of Comorian, Mozambican or Arab descent born in the Zanzibar islands, but whose birth is still not registered because of challenges to establish citizenship due to ties with another country, and their pre-independence migration of their ancestors and therefore their nationality remains undetermined.⁸ Their facilitated access to (late) birth registration will guarantee their access to proof of legal identity, and help in establishing their right to a nationality. Further, facilitated birth registration should also target children born out of wedlock in the Zanzibar archipelago owing to the additional administrative barriers on single mothers to register the birth of their children⁹.

Recommendations:

UNHCR recommends that the Government of Tanzania to:

- (a) Facilitate birth registration for all children and adult refugees born in Tanzania and whose birth is not yet registered, particularly those living in the old settlements and Kigoma villages to guarantee their access to proof of legal identity.
- (b) Facilitate birth registration programs for children and adult descendants of Comorian, Mozambican or Arab descent born in one of the Zanzibar islands, but whose birth is not registered to ensure their access to proof of legal identity and contribute to the establishment of their right to a nationality.

Additional protection challenges

Issue 2: Access to the territory and risk of refoulement for those in need of international protection

The Government of Tanzania continues to reiterate its commitment to protect refugees and asylum-seekers as part of its obligations under national and international law. However, the protection space for refugees and asylum-seekers is becoming more complex and unpredictable with an overall shrinking of the asylum space. There is limited access to territory and cases of refoulement are regularly reported. Since June 2018, all key border entry/reception points remain extremely restricted for asylum-seekers and UNHCR is not able to undertake routine border monitoring. The national asylum system lacks fairness and transparency and those allowed access to the national asylum system face extremely high rejection rates, despite having fled from countries whose nationals are being widely recognised as refugees globally. The process of review of a rejected decision is not objective, as cases are not reviewed by an independent body and there is no judicial review available. Further, Tanzania strictly applies the 'first country of asylum'/'safe third country' principles, hence newly arrived asylum-seekers who transit through another country before entering Tanzanian territory are denied access to asylum.

⁸ See page 63, UNHCR, *Citizenship and Statelessness in the Member States of the Southern African Development Community*, December 2020, available at: <https://www.refworld.org/docid/6012a0d44.html>

⁹ See page 92, UNHCR, *Citizenship and Statelessness in the Member States of the Southern African Development Community*, December 2020, available at: <https://www.refworld.org/docid/6012a0d44.html>

Recommendations:

UNHCR recommends that the Government of the United Republic of Tanzania:

- a) Ensures access to territory and protection from refoulement to all persons within Tanzania's jurisdiction, as soon as they present themselves at the border claiming to be at risk or fearing return to their country of origin or any other country.
- b) Ensure that asylum seekers have access to a fair, efficient, adaptable national asylum system of integrity and that in the application of the 'first country of asylum'/ 'safe third country' principle an assessment is made whether international protection is available in practice and whether it is "fair and reasonable" for an asylum-seeker to seek protection in the country/ those countries he or she has passed through.
- c) Permit UNHCR and civil society actors to undertake regular border protection monitoring along the official border points, including with the border with Burundi and Mozambique.

Issue 3: Eradication of statelessness

The Tanzanian Citizenship Act¹⁰ contains gaps that may create situations of statelessness. The law does not afford sufficient protection against childhood statelessness due to the discrepancy between the words of the law and its application (with a strict *jus sanguinis* approach applied by authorities, though a *jus soli* approach is still reflected in the terms of the laws). Furthermore, Tanzania does not have a "foundling provision" to grant citizenship for children of unknown parentage found in its territory. While Tanzania is party to the African Charter on the Rights and Welfare of the Child (ACRWC), the Government of Tanzania has also not given effect to Article 6(4) of the Charter providing for a safeguard to grant citizenship to children born in their territory if at the time of the child's birth s/he is not granted nationality by any other State in accordance with its laws. The law does also not offer sufficient guarantees to prevent childhood statelessness for children born abroad to a Tanzanian citizen by descent¹¹. Tanzania is equally encouraged to accede to both statelessness conventions and reform its citizenship legislation to align it with the international standards on statelessness.

Whilst a Government Statelessness Focal Point was appointed in 2020, the national action plan to eradicate statelessness in Tanzania to address statelessness in-country has not been finalized and adopted and UNHCR will continue to offer technical support to that end. In addition, UNHCR has observed a causal link between accrued risks of statelessness and incomplete legal processes of local integration affecting protracted refugee groups who are offspring of former refugees who became Tanzanian nationals including descendants of refugees who fled Burundi in 1972 to Tanzania, descendants of Somali Bantu refugees and a few descendants of former refugees who fled Rwanda more than 50 years ago. UNHCR stands ready to offer support to the Government to find adequate legal solutions to these remaining groups to guarantee their access to legal identity documentation including birth certificates.

Recommendations:

UNHCR recommends that the Government of the United Republic of Tanzania:

- a) Adopt and implement a national action plan to comprehensively address statelessness and risks thereof for the remaining years of the *#Ibelong* Campaign including citizenship law reform, accession to statelessness conventions, roll-out of a mapping

¹⁰ *Tanzania Citizenship Act, 1995* [], 6, 10 October 1995, available at: <https://www.refworld.org/docid/3ae6b5734.html>

¹¹ A person already born abroad

exercise to swiftly obtain reliable estimates and profiles of stateless persons and at risk including those with undetermined nationality among protracted refugee groups and facilitate access to late birth registration for groups at risk of statelessness and use of universal birth registration for prevention of statelessness among groups at risk.

- b) Process the pending applications for naturalization of 6,660 children born in Tanzania to parents of naturalized Tanzanians and issue them with appropriate legal identity documentation to ascertain their civil status and Tanzanian citizenship.

Issue 4: Lack of livelihood opportunities for asylum-seekers and refugees impacting on food security

Emerging administrative instructions have limited access to livelihood activities leaving refugees dependent on humanitarian assistance. Lack of livelihoods not only deteriorates the food security of the persons of concerns, but also heightens the risk of exploitation and abuse including extortion, sexual violence, child labour, trafficking, and forced marriage. UNHCR stands ready to mobilize support to launch small-scale food security projects for refugees and host communities such as kitchen gardens and to guarantee that their food consumption needs are respectful of the environment.

Recommendations:

UNHCR recommends that the Government of the United Republic of Tanzania:

- a) Support the launch of small-scale food security and livelihoods projects for in-camp refugees and host communities respectful of the environment to guarantee their households food needs are satisfied.

Issue 5: Access to national education for asylum-seekers and refugee children

Tanzania has a solid education system which includes vocational education and training centers (VETA) that could provide refugees with life and livelihoods skills. On the other hand, the Government insists on instruction using the curriculum of country of origin for all camp-based refugees. This approach results in poor education that does not result in long-term gains and/or life skills that could allow refugees to effectively integrate upon return.

Recommendations:

UNHCR recommends that the Government of the United Republic of Tanzania:

- a) Review the policy to include refugees in the Tanzanian education curriculum to facilitate inclusion of refugees into the Tanzanian national education system through a phased approach on the transition of refugees from the Burundian and Congolese curriculum to the Tanzania national curriculum and facilitate access to the National Examination Council of Tanzania (NECTA), to enable refugees access accredited examinations and certificates.

**UNHCR
February 2021**