

Submission by the United Nations High Commissioner for Refugees

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

Universal Periodic Review:

BURUNDI

I. BACKGROUND AND CURRENT CONDITIONS

Burundi is a State party to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol*, but has entered reservations with regard to the right to employment (art. 17), public education (art. 22) and freedom of movement (art. 26). Burundi is also a State party to the *1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa*. The country has signed the *2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa* (“Kampala Convention”), but has yet to ratify it.

Burundi is neither a State party to the *1954 Convention relating to the Status of Stateless Persons*, nor to the *1961 Convention on the Reduction of Statelessness*. However, at UNHCR’s ministerial meeting in December 2011 the Government of Burundi pledged to accede to the 1961 Statelessness Convention.

At the Ministerial meeting held in Geneva in December 2011, in commemoration of the 60th anniversary of the *1951 Convention* and the 50th anniversary of the *1961 Convention on the Reduction of Statelessness*, the Burundian Government pledged “to take all necessary measures to lift the reservations with regard to the *1951 Convention*; to accede to the *1961 Convention on Statelessness* and to ratify the “Kampala Convention.”

The national Law on Asylum and Protection of Refugees of 2008 and its regulations¹ uphold international standards and are consistent with international conventions. In fact, the law does not reflect the reservations made to the *1951 Convention*, as it allows for the right to work, freedom of movement and access to public education. The law provides for naturalization and assimilation of refugees,² although this provision has not been applied

¹ Law 1/32 of 13 November 2008 on Asylum and Protection of Refugees; the Order N° 530-443 of 04/07/2008 concerning implementing measures of the Law on asylum and Refugee Protection in Burundi and the Functioning of the Consultative Commission for Foreigners and Refugees and the Appeal Committee

² Law on Asylum, Chapter 1, General Dispositions, Art 58, Naturalization.

up to date. New arrivals are required to submit an asylum application within 30 days of entry into the country, though the Government of Burundi does not insist on the application of this clause.

The National Office for the Protection of Refugees and Stateless Persons (ONPRA),³ reporting to the Minister of the Interior, holds the primary responsibility for the administration of refugee affairs in Burundi. The Office receives asylum-seekers and registers them in the proGres database; it conducts refugee status determination and presents its recommendation to the sub-committees of the Consultative Commission for Foreigners and Refugees, which then reach a decision in first instance. The asylum-seeker has the right to appeal before the Committee of Appeal and he has the right to avail himself of legal representation free of choice according to the law (first instance and appeal). However access to free legal assistance is only provided for through an implementing partner of UNHCR at appeal level at current stage. UNHCR is an observer with an advisory role both at the first instance and at the appeal stage.

The Government awards refugee status according to the provisions set out in the national Law on Asylum. The majority of asylum-seekers originate from South Kivu in the Democratic Republic of Congo and are granted refugee status on grounds that fall within the scope of the *1969 OAU Convention* related to insecurity and generalized violence.⁴ All other asylum claims are assessed on the basis of the criteria set out in the *1951 Convention*.⁵ Burundi continues to receive a considerable number of new asylum-seekers, with about 250-300 persons arriving per month.

As of 30 May 2012, Burundi hosted 48,508 refugees and asylum-seekers, including 23,814 refugees living in three refugee camps (Bwagiriza, Muyinga and Musasa), out of which 23,094 are Congolese refugees (DRC). 258 Rwandans are living in Butare refugee settlement. Burundi has a considerable urban refugee population with 24,436 refugees and asylum-seekers living in urban areas, of which approximately 98% are Congolese (DRC). The Government does not impose restrictions on the ability of refugees to reside in urban areas, although those living outside the camps are expected to be self-sufficient.

In addition to refugees and asylum-seekers, Burundi also hosts some 2,000 persons whose nationalities are not yet confirmed and who may be at risk of statelessness. These persons have been registered by ONPRA.

Finally, the number of Burundians who are still in a situation of internal displacement amounts to 79,788 (19,948 households), according to a census and profiling exercise conducted at the end of 2011. Since 2002, some 514,976 Burundian persons have returned to their country of origin and benefited from a reintegration program under the Ministry of Solidarity. The program is still ongoing with the involvement of a number of actors, including UNHCR, FAO, UNDP, UNICEF, WFP amongst others.

³ Office National de Protections des Réfugiés et Apatrides.

⁴ Law on Asylum, Chapter 1, General disposition, Definition, Art 5, paragraph 3.

⁵ Law on Asylum, Chapter 1, General disposition, Definition, Art 5, paragraph 1.

II. ACHIEVEMENTS AND BEST PRACTICES

The asylum system in Burundi

The Government of Burundi has a long tradition of hosting refugees, starting with the influx of Rwandan refugees in the early 1960s. The Government has continued to keep its borders open and accommodate asylum-seekers upon arrival. The Government should be commended for having established national legislation on asylum that complies with international standards, as noted by the Committee against Torture in 2007.⁶

Documentation

The Government should be commended for issuing refugee identity cards to all refugees above 14 years of age since 2005. The immigration and border police under the Ministry of Public Safety, issues a *Temporary Residence Permit* (PST) to all new asylum-seekers, while ONPRA issues a refugee identity card to all recognized refugees over 14 years of age living in camps and urban areas. The initial document was issued by PAFE in an A4 format. However, with the establishment of ONPRA, an ID-card has systematically been issued by the Minister of the Interior. The Entry and Residence Law provides that recognized refugees can receive, upon request, international travel documents with the right of re-entry.

Statelessness

UNHCR welcomes pledges by the Minister of the Interior at the Ministerial Meeting in Geneva to accede to and ratify the *1961 Convention on the Reduction of Statelessness*, to undertake a study in the near future to profile those at risk of statelessness in Burundi and to develop a strategy to minimize this risk. We welcome in this regard the Government's efforts to register all Omani persons living in Burundi whose nationality is not regularized and to issue them with a Residence Permit (Permis de Séjour), with validity of one year, with a possibility of renewal.

Internally Displaced Persons (IDPs)

According to the Internal Displacement Monitoring Centre (IDMC), by the end of 2011 78,800 IDPs were living in some 120 settlements in the country. UNHCR welcomes the Burundian Government's commitment to implement the international and regional standards applicable in situations of internal displacement, both in terms of the legal framework and policy measures. The project of ratifying the Kampala Convention has been officially announced, although the Convention has not yet been presented before the legislative bodies (National Assembly and the Senate). Significant efforts to advocate for the ratification of the Convention have been undertaken under the auspices of the International Conference on Great Lakes Region (ICGLR). The Government has also engaged in a consultation and working process, which aims at defining a policy and an operational framework for durable solutions for IDPs. A significant preliminary step has been achieved recently with the comprehensive socio-demographic data collected during the 2011 IDP profiling exercise. The survey also provides key information and statistics on the current living conditions of the IDPs and their expectations and intentions in terms

⁶ CAT/C/BDI/CO/1, 37th Session: Committee against Torture, 15 February 2007.

of durable solutions, with a great majority expressing the wish to settle in their current place of displacement.

III. CHALLENGES AND RECOMMENDATIONS

Issue 1: The asylum system

The protection environment and operational context in Burundi is generally receptive and hospitable towards refugees and asylum-seekers. The law provides for registration of asylum-seekers at border entry points. However, the absence of a mechanism to ensure access to asylum procedures at borders and the limited understanding of asylum procedures among immigration authorities (PAFE) remains a weakness, despite training and capacity-building sessions carried out jointly by UNHCR, ONPRA and an implementing partner, *Avocats Sans Frontières*. The turn-over of staff (immigration officers, military and police) and lack of capacity to efficiently train all staff are main constraints.

Recommendations:

- Lift the reservations to the *1951 Convention* in line with the pledges made during the Ministerial Meeting in Geneva in December 2011.
- Strengthen the capacity of the immigration officials at border points to receive and register new arrivals of asylum-seekers and to notify ONPRA for further action.

Issue 2: Access to civil documents and birth registration

While most refugee children born in the camps are registered and have obtained an official birth certificate, certain vulnerable groups continue to face obstacles to birth registration, because they are required to undergo complex procedures and pay a fine for delayed registration. UNHCR welcomes the fact that the Minister of the Interior has officially announced a grace period until 24 September 2012 to register children and to obtain a birth certificate without paying a fine. However, UNHCR is concerned about the situation of children of Omani origin, whose parents may not have any valid identification documents and are thus unable to register their children. Others who often lack registration are Burundian children born in a county of asylum who do not have a birth certificate upon return to Burundi and children born of a refugee parent, especially in urban areas, who fail to meet the deadline of 15 days to register the child, because s/he is not familiar with the administrative and legislative framework in Burundi.

The Committee on the Rights of the Child recommended in 2010 that the Burundi:

- a) Continue to take all necessary measures, including retroactively, to ensure access of all children to free birth registration as early as possible (...);

- b) Create institutional structures that are accessible and free, for example, by introducing mobile units, especially in rural and remote areas and for internally displaced persons and refugee camps.”⁷

Recommendations:

- Establish measures to ensure free and accessible birth registration for all children residing in Burundi, including those of Omani origin, urban refugee children and returnee children.

Issue 3: Durable solutions for internally displaced persons

Burundi has made significant progress towards finding durable solutions for its internally displaced population. It is now important to put in place the necessary measures so as to address the remaining needs linked to their displacement. In particular, development activities and the mobilization of development actors will still be needed to achieve durable solutions for Burundi’s IDPs, in line with the international and regional principles and standards applicable.

Recommendations:

- To facilitate access by IDPs to relevant existing development programmes to maximize possibilities for durable solutions,
- To adequately take into account the needs and wishes expressed by IDPs in the profiling exercise when devising strategies, programmes and projects for durable solutions.

Issue 4: Access to justice and due process for victims of sexual and gender-based violence (SGBV) and trafficking

Burundi is undergoing a process of post-conflict rebuilding, including its judicial system. While UNHCR recognizes that access to justice and due process is also problematic for Burundian residents, it notes that refugee women, who are not familiar with the national legislation, often find themselves in a particularly vulnerable situation with little chance to avail themselves of justice. UNHCR is concerned about the lack of redress and law enforcement for survivors of sexual and gender-based violence and the low number of convictions for rape under the national Criminal Code. In addition, the Committee for the Elimination of Discrimination against Women raised concern about the situation of trafficked women in Burundi, including the risk that such women could be prosecuted for prostitution. The Committee therefore urged: “the State party to amend article 539 of the draft revised Penal Code to ensure that prostitutes under 18 years of age and those who are victims of trafficking are not punished but can benefit from protection measures.”⁷

Efforts by relevant ministries to strengthen the capacity of law enforcement bodies, including the police and the tribunals would be pivotal. Equally important is a joint effort

⁷ Committee on the Rights of the Child, CRC/C/BDI/2, 55th session, 20 October 2010.

⁷ Committee on the Elimination of Discrimination against Women, CEDAW/C/BDI/CO/4, 40th session, 8 April 2008.

undertaken by the Government of Burundi, the civil society and the international community within the framework of UN Development Assistance Framework (UNDAF) to increase the understanding and acceptance that sexual and gender-based violence constitute a crime according to the national law among the police and the judiciary as well as a shift in the public attitude. To this end, a stronger commitment from the Government of Burundi is necessary.

Recommendations:

- Enhance the capacity of the law enforcement authorities to address the level of impunity for SGBV perpetrators and to provide adequate protection for victims of trafficking.
- Increased understanding and awareness on the fact that acts of SGBV constitutes a crime and should be punished.

Issue 5: Local integration

As mentioned above, naturalization of refugees is provided for in the Law on Asylum, but refugees have not yet been able to acquire Burundian nationality under this provision. The Law on Burundian Nationality⁸ states that foreigners can apply for Burundian citizenship once they have lived in the country for at least 10 years, that they respect morality and that they have an attachment to the Burundian nation (i.e. speaking the native language, having their residence in the country, being employed or practicing a skilled profession, etc.). All non-national females can ask to be naturalized automatically after their marriage with a Burundian, while male spouses have to provide evidence of 5 years of residency in the country.

Burundi hosts some 403 Rwandan refugees and 592 Rwandan asylum-seekers. About 100 Rwandan refugees in Burundi are urban, while most of the remainder live in the Butare settlement and some in the refugee camps. Especially, the refugees living in the Butare settlement are relatively well integrated into the local society; they speak the same language and share the same social- and cultural standards as the local population. They have further expressed an interest in naturalization and local integration. The large majority of the population arrived in 2005-2006, thus the cessation clause would not apply.

Recommendation:

- Consider local integration as a solution for Rwandan refugees in the Butare settlement, since they are socially and economically well integrated.

⁸ Nationality Regulatory Law of 18 July 2000 and its regulations No 100/156 of 14th October 2003.

Issue 6: Preventing and Reducing Statelessness

Stateless persons who satisfy the refugee definition contained in article 1A(2) of the 1951 Convention are afforded the necessary international protection associated with that status. However, the international refugee protection regime does not specifically address the entitlement to rights of non-refugee stateless persons in need of international protection. Accession to the Statelessness Conventions would establish a framework to prevent and reduce statelessness, in order to avoid the detrimental effects that this can have on individuals and society, and ensure minimum standards of treatment of stateless persons, providing such persons with stability and security, and ensuring that certain basic rights and needs are met.

The *1954 Convention relating to the Status of Stateless Persons* ensures minimum standards of treatment of stateless persons in respect to a number of economic, social and cultural rights. These include, but are not limited to, the right to education, employment, housing, and public relief. Importantly, the 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. This treaty is therefore complementary to standards contained in other human rights treaties. An increase in the number of State parties 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 the Government of Burundi:

- Implement its pledge to accede to the *1961 Convention on the Reduction of Statelessness*.
- Accede also to the *1954 Convention on the Status of Stateless Persons*.

**Human Rights Liaison Unit
Division for International Protection
UNHCR
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ANNEX:

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

- Universal Periodic Review:

Burundi

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

1. Treaty Body Concluding Observations and Recommendations

Committee on the Rights of the Child

CRC/C/BDI/CO/2, 55th session

20 October 2010

The Committee's previous recommendations

7. The Committee welcomes efforts by the State party to implement the Committee's concluding observations on the State party's initial report in 2000 (CRC/C/15/Add.133). Nevertheless, the Committee notes with regret that many of these recommendations have not been significantly addressed.

8. The Committee urges the State party to take all necessary measures to address those recommendations from the concluding observations of the initial report that have not yet been implemented or not sufficiently implemented. These issues include those related to the monitoring mechanisms, birth registration, discrimination against the Batwa minority and juvenile justice.

Birth registration

37. The Committee notes the Presidential Decree of 2006 that guarantees free birth registration for all children up to the age of 5 years and the project to promote universal birth registration and conduct a campaign to register children under 5 in Bujumbura Mairie and Bujumbura Rural. However, the Committee is deeply concerned that a very large number of children are neither registered at birth nor at a later stage.

38. The Committee recommends that the State party:

(a) Continue to take all necessary measures, including retroactively, to ensure access of all children to free birth registration as early as possible and take steps to identify those children who have not been registered or obtained an identity document;

- (b) Create institutional structures that are accessible and free, for example, by introducing mobile units, especially in rural and remote areas and for internally displaced persons and refugee camps;**
- (c) Enhance families' awareness of the importance of registering the birth of their children, as a way to access fulfillment of their rights and**
- (d) Seek technical assistance from UNICEF, among others, for the implementation of these recommendations.**

Unaccompanied, internally displaced children and refugee children

66. The Committee remains concerned at the very large numbers of persons who have become refugees or internally displaced within the country and the situation of those displaced children who are unaccompanied. The Committee is particular concerned by the number of people who have been forcibly resettled and by inadequate, life-threatening conditions in resettlement camps, and the poor health and education services available to camp populations. The Committee is also concerned at the lack of information on the status and extent of unaccompanied, internally displaced, refugee and asylum-seeking children.

67. The Committee urges the State party to make every effort to protect the civilian population from displacement and to implement its plans to end forced resettlement, giving particular attention to the situation of unaccompanied children and the need for effective family tracing. The Committee further urges the State party to ensure that all displaced children and their families, including those who have been resettled, have access to essential health and education services and to consider the need for continued access to such services during the often slow process of return to communities of origin. The Committee also urges the State party to provide returning children and their families with assistance in re-establishing themselves in their homes. In addition, the Committee urges the State party to continue to work closely with UNHCR towards establishing conditions conducive to the return of refugees in safety and in the context of a durable solution. The Committee requests the State party to provide information in its next periodic report on the status and extent of unaccompanied, internally displaced, refugee and asylum-seeking children.

Children in armed conflict

68. The Committee notes that the State party has set 18 years as the minimum age for recruitment into the Armed Forces. However, the Committee is concerned about the possible gaps within the recruitment process due to a lack of adequate birth registration. The Committee welcomes the establishment of the National Commission for the Rehabilitation of Disaster Victims by Act No. 1/17 of 13/12/2002, which is in charge of rehabilitating children who were victims of the Burundian conflict. However, the Committee is concerned at the lack of physical and psychological recovery for all children affected by armed conflict, in particular those who were displaced and separated from their parents.

69. The Committee urges the State party to:

- (a) Take all possible measures to prevent the recruitment of children and enforce its legislation strictly; and**

(b) Provide physical and psychological recovery measures for all children affected by armed conflict, including those separated from their parents and landmine victims, while paying particular attention to children in female-headed households.

Committee on the Elimination of Discrimination against Women

CEDAW/C/BDI/CO/4, 40th session

8 April 2008

Principal areas of concern and recommendations

27. The Committee is concerned about the absence of effective measures to combat the phenomenon of trafficking in women for the purposes of prostitution, including its causes and extent, in particular from the State party's perspective as a country of origin, transit and destination. It further regrets the lack of information and statistical data on trafficking in women and girls. The Committee is also concerned that article 539 of the draft revised Penal Code establishes that prostitution of women is an offence punishable by imprisonment for a term of one to six months and a fine of 5,000 to 20,000 francs.

28. The Committee urges the State party to analyse the causes and extent of trafficking in women and girls, from its perspective as a country of origin, transit and destination. It further recommends that the State party strengthen measures to combat and prevent trafficking in women and girls and to improve the economic situation of women so as to eliminate their vulnerability to exploitation and traffickers. The Committee invites the State party to provide, in its next periodic report, detailed information on trafficking in women and girls, on the criminalization of the exploitation of prostitution of women, on the protection, recovery, as well as reintegration programmes for victims of exploitation and trafficking. The Committee urges the State party to amend article 539 of the draft revised Penal Code to ensure that prostitutes under 18 years of age and those who are victims of trafficking are not punished but can benefit from protection measures.

29. The Committee notes with concern that article 4 of the Nationality Code does not comply with article 9 of the Convention because it does not allow a Burundian woman married to a foreigner to transmit her nationality to her husband or children on the same basis as a Burundian man married to a foreigner.

30. The Committee urges the State party to amend the Nationality Code so as to bring it into line with article 9 of the Convention.