

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, 38th Session

SOMALIA

I. BACKGROUND INFORMATION

Refugees and Asylum-Seekers

As of June 2020, Somalia hosts a total of 14,685 registered refugees. 69 per cent of them are Yemeni, 28 per cent are Ethiopian and the remaining individuals originate from more than a dozen countries. Somalia hosts 15,254 registered asylum-seekers, 98 per cent of whom are from Ethiopia. Approximately 55 per cent of the refugees and asylum seekers are male while 45 per cent are female. At 46 per cent, nearly half of all refugees and asylum-seekers in Somalia are children.

Somalia has been a State party, without reservations, to the *1951 Convention and the 1967 Protocol relating to the Status of Refugees* since 1978. Somalia has signed but not yet ratified or acceded to the *1969 Convention Governing the Specific Aspects of Refugee Problems in Africa*.

Internally Displaced Persons (IDPs)

Somalia has one of the largest IDP populations in the world with an estimated 2.6 million IDPs, among whom 2.2 million live in highly congested urban and semi-urban settlements across Somalia (mainly in Mogadishu, Baidoa, Galkayo, Bossaso, Kismayo and Burao). Internal displacement remains largely driven by conflict, worsened by floods, drought, periodic cyclones. Somalia deposited its instruments for ratification of the AU Convention for the Protection and Assistance of IDPs in Africa in March 2020 with the African Union (AU).

In addition to progress on legal framework on IDPs, Somalia developed an important Durable Solutions Initiative in support of its approach. In this respect, the Durable Solutions Unit of the Ministry of Planning, Investments and Economic Development in coordination with relevant line ministries and Office of the Prime Minister established a Durable Solutions Secretariat. It comprises 14 government institutions that provide technical expertise and high-level strategic guidance and oversight to ensure that durable solutions initiatives are prioritized and implemented in line with the National Development Plan, National Social Development Road Map and other relevant government frameworks and policies.

Stateless Persons

Given the lack of mapping to date, the number of stateless persons or persons at risk of statelessness in Somalia is unknown. Gaps in the national legislation, gender discriminatory nationality provisions, and administrative practices are increasing the risk of people becoming stateless. Somalia is not a party to the *1954 Convention on the Status of Stateless Persons* and to the *1961 Convention on the Reduction of Statelessness*.

As of June 2020, the Government has appointed a Focal Point on Statelessness, who has subsequently worked with UNHCR to develop Terms of Reference (TORs) and a work plan.

The Focal Point is currently working on information dissemination and awareness raising, including work toward preparations for a workshop designed for senior government officials and parliamentarians.

Mixed flows

It is also worth noting that Somalia is a country of origin, transit and return. Persons of concern to UNHCR Somalia, including unaccompanied children, move within mixed flows en route to Europe via Sudan/ Libya (Northern route), to and from the Gulf Countries (Eastern route), or towards South Africa (Southern route).

General Context

Application of devolution of power between the federal and member states on matters relevant to UNHCR's mandate is of importance. Despite clear consistency between provisions of the constitution of the Federal Government of Somalia and the constitutions of Member States (Jubaland, South West State, Galmudug, Puntland for example) recognizing the supremacy of federal institutions on matters relating to ratifications of treaties, refugees and asylum-seekers, citizenship, and immigration, the practice is that each regional state has its own institutional focal point in charge of refugees and IDPs and initiates the development of its own laws, while the National Commission for Refugees and IDPS (NCRI) is the federal institutional focal point with country-wide jurisdiction granted by the federal parliament. Each regional state has its own Commission/bureaux specifically for Refugees and IDPs with similar mandate like NCRI at regional level.

The specific posture of Somaliland vis-à-vis Somalia poses a particular challenge. While the Federal Government of Somalia's (FGS) constitution considers Somaliland part of the State, the constitution of Somaliland considers Somaliland as a country itself, without reference to Somalia. Therefore, Somaliland which is a self-declared state, does not recognize the authority of the Somalia Humanitarian Country Team system to support IDPs in Somaliland. This unique situation poses difficulties in terms of the Humanitarian Country Team's necessity to respect for national laws and has the potential to create diplomatic incidents if not handled well.

Climate shocks combined with almost three decades of protracted and newly arising armed conflicts and extreme poverty, have left over 5 million people in Somalia in need of humanitarian assistance. Attacks on civilians and forced evictions remain pervasive features of the crisis in Somalia. The political and security situation remains volatile and unpredictable, not only from the persistent reality of terrorism but also the weak rule of law and the fragile relations between the FGS and the Federal Member States (FMS). The conflict in Somalia is two-fold: armed conflict between government forces versus non-state armed groups on the one hand, and clan-based violence leading to localized/short-term displacement on the other hand. Al-Shabaab continues to be the main threat to peace across the country. The current security situation significantly hinders the delivery of aid, especially in hard-to-reach areas.

Despite some slow economic recovery, Somalia has also experienced major setbacks resulting from COVID-19 (including declining remittance flows) and remains one of the poorest countries in the world with more than half of the population living below the poverty line.

Somalia has shown commitment, albeit with little capacity and resources, to develop local and national institutions/laws/policies to address humanitarian challenges. The Government's efforts to sustain security and promote reconciliation have, however, met with many security, political and economic challenges which call for a continued focus on improving human rights and for continued humanitarian intervention and support from all stakeholders.

This report has been prepared by UNHCR Somalia. It is non-exhaustive and highlights only the main issues that the Office wishes to bring to the attention of the Universal Periodic Review process.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Positive developments linked to 2nd cycle UPR recommendations

Linked to 2nd cycle UPR recommendation no. 135.10: “Deposit ratification instruments of the Kampala Convention on the Protection and Assistance of IDPs with the African Union and initiate a profiling exercise of the IDPs in Mogadishu to assess protection needs and define “durable solutions” (Germany)”

The Government of Somalia has adopted on November 14, 2019, a new national policy on internally displaced persons, and refugee-returnees as well as National Eviction Guidelines and the Interim Protocol on Land Distribution for Housing to Eligible Refugee-Returnees and IDPs. The first of its kind, the policy seeks to provide rights-based solutions for the protection of all Somali citizens.

In March 2020 Somalia deposited its ratification instrument of the Kampala Convention (The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa) in Addis Ababa. UNHCR supported ongoing extensive consultations of the Domestication of Kampala Convention in Somalia are considered as a tremendous opportunity to engage federal institutions and members states to harmonize law and policy initiatives for the protection of IDPs in Somalia.

Somalia Draft Refugee Act 2019. This draft legislation which has also been translated in Somali, is awaiting adoption. It has essentially captured new developments at global level, including the Global Compact for Refugees (GCR), Comprehensive Refugee Response Framework (CRRF) and the Nairobi Declaration on Durable Solutions for Somali Refugees in IGAD region in its approach on RSD process across Somalia Regions.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 2nd cycle UPR recommendations

Issue 1: Adoption of a national refugee law and effective access to asylum

Linked to 2nd cycle UPR recommendation no. 135.99 “Expedite the finalization of the policy addressing the situation of refugees and IDPs (Bahrain)”; **no. 135.10** “Take measures to ensure access to basic services by internally displaced persons and refugees (Argentina)”

Somalia is a signatory to the 1951 Convention and its additional Protocol of 1967, as well as the 1969 OAU Convention, governing the specific aspect of refugees in Africa and has traditionally been tolerant to asylum-seekers. However, the status and treatment of refugees in Somalia is governed under different laws or structures depending on their location in the country.

Presidential Decree No. 25 of 2 June 1984 on Determination of Refugee Status established an Eligibility Committee for refugee status determination (RSD), but it has been inactive at the national level for many years. Somaliland agreed to be bound by international treaties entered by Somalia before 1991. The Somaliland National Displacement and Refugee Agency (NDRA) applies the 2011 National Asylum Policy, but it is restricted in its application.

The absence of a national refugee law and restricted application of the 2011 Asylum Policy leaves the normative framework weak. However, the 2019 (national) Refugees Act is in its final stages to be approved.

In Puntland, the Refugee Protection Act of 2017, which was developed through the support of UNHCR, continues to be the legal framework on recognizing refugee status and is exercised by the Humanitarian Protection Department under the Ministry of Interior. Moreover, both the Federal Government of Somalia (through NCRI) and the Somaliland Government (through NDRA) recognize refugee status accorded by UNHCR, which conducts first instance RSD and appeals. Refugees from Yemen, Syria and the State of Palestine are granted prima facie status, while refugees from Ethiopia and Eritrea must go through individual RSD procedures.

Recommendations:

UNHCR recommends that the Government of Somalia:

- a) Formally adopt the Refugee Act 2019, enhancing the protection of refugee rights; and,
- b) Ensure that, for all asylum-seekers entering the country, the established national procedures on asylum seeker registration, documentation and eligibility determination are followed.

Issue 2: Domestication of the Kampala Convention

Linked to 2nd cycle UPR recommendation no. 135.99 “Expedite the finalization of the policy addressing the situation of refugees and IDPs (Bahrain)”; **no. 135.10** “Take measures to ensure access to basic services by internally displaced persons and refugees (Argentina)”

As noted above, Somalia deposited its instruments for ratification of the AU Convention for the Protection and Assistance of IDPs in Africa in March 2020. Building on this positive development, further measures are now being taken by the Government to ensure its effective implementation and concrete improvements for the lives of IDPs in Somalia.

In addition to drafting a national policy and setting up dedicated bodies to work on durable solutions, Somalia has made visible efforts to mainstream IDP-related issues, notably by including IDPs in its National Development Plan and by adopting a focus on durable solutions in its National Road Maps¹

Recommendations:

UNHCR recommends that the Government of Somalia:

- a) Develop and adopt a national law domesticating the Kampala Convention; accelerate its efforts to implement the Kampala Convention, engaging federal institutions and local authorities of the regional states in collaboration with civil societies and international community to work in a harmonized way to improve the protection of IDPs in Somalia.

Issue 3: Child Protection

Linked to 2nd cycle UPR recommendations, inter alia, no. 135.29 “Develop a birth registration system (Turkey)”, **no. 135.55** “Prevent and thoroughly halt the use and recruitment of child soldiers and ensure reintegration and access to education for former child soldiers (Japan)”, **no. 135.81** “Take concrete measures to reduce child and maternal mortality rates (Maldives)”, **no. 135.75** “Step up collaboration with regional and international actors to improve food security by working towards achieving sustainable production and distribution of food (Malaysia)”

Child Protection: High numbers of grave violations committed against children by all parties to conflict in Somalia (3,709) are alarming, in particular the staggering numbers of child

¹ 4th GP20 Steering Group Meeting, Addressing Protracted Internal Displacement and Fostering Durable Solutions, GP20, Geneva, 2019

abductions and the recruitment and use of children by Al-Shabaab (see SG's report on children and armed conflict, June 2020). The legal framework for protection of children remains poor. Although several relevant policies and legislation have been developed, there have been challenges in enacting them.

Recommendations:

UNHCR recommends that the Government of Somalia:

- a) Strengthen measures to prevent recruitment of children in the armed forces.

Issue 4: Sexual and gender-based violence (SGBV) and access to justice

Linked to 2nd cycle UPR recommendations, inter alia, no. 136.59 "Intensify efforts in enacting and strengthening appropriate legal framework, which will address gender inequalities, sexual violence and protection of women's rights (Nigeria)", **no. 136.75** "Implement the action plan against sexual violence against women and adopt measures to further criminalize female genital mutilation (Spain)", **no. 136.79** "Speed up and finalize the process of criminalizing the practice of FGM and take practical steps to eradicate it (Norway)", **no. 136.90** "Make further efforts to strengthen the legal framework in the areas of security and law enforcement as well as ensure that the judiciary is guided by international human rights law with a particular focus on the importance of an impartial and independent judicial system (Republic of Korea)"

According to reported incidents, intimate partner violence and domestic violence, sexual abuse, child marriage, female genital mutilation (FGM) and rape feature among the most common forms of SGBV. Women, girls, older persons, child- and female-headed households, people with disabilities, marginalized clans and IDPs are the most affected. Lacking access to justice, with fear of retaliation, stigma and discrimination and with a culture of impunity, most SGBV cases go unreported.

Recommendations:

UNHCR recommends that the Government of Somalia:

- a) Ratify the Convention on all forms of Eliminations of Discrimination against Women and enhance awareness and enact specific legislation combating violence against women and allocate additional resources to the Ministry of Women and Human Rights Development to address this issue;
- b) Ensure adequate resources are available to investigate cases of sexual abuse and exploitation and prosecute and impose adequate sentences for such crimes;
- c) Strengthen security in refugee and IDP settlements to prevent sexual exploitation and provide safe places and assistance to victims;
- d) Develop "*The Sexual Intercourse Related Crimes Bill*" to be in line with regional and international standards and ensure that it protects children and women in Somalia.
- e) Strengthen efforts to overcome domestic violence by enacting laws to criminalise female genital mutilation, continue expanding efforts to educate communities on its consequences and alternative rights of passage; and,
- f) Better educate security and law enforcement authorities at all levels about SGBV.

According to reported incidents, there is high level of SGBV and Female Genital Mutilation (FGM) is a common cultural practice in Somalia.

Additional protection challenges

Issue 5: Accession to the Statelessness Conventions

UNHCR believes that many people are at risk of statelessness due to the nationality/citizenship legislation and challenges in terms of accessing documentation. Similarly, outdated Somalia nationality legislation does not provide for dual nationality and discriminates on grounds of gender – which, coupled with the lack of a proper and functioning civil registration system can lead to people becoming stateless. Those at risk of

statelessness are the most vulnerable, including children from mixed marriages with non-Somali fathers (including refugees and returnees), IDPs and other undocumented people

During the High-Level Segment on Statelessness in October 2019 Somalia made two pledges: 1). to accede to the 1954 Convention Relating to the Status of Stateless Persons and to the 1961 Convention Relating to the Reduction of Statelessness; and, 2) to conduct a study to better understand the situation of stateless groups and those at risk of statelessness, including an analysis of domestic laws.² The commitment envisaged the finalization of both pledges by 31 December 2020.

Recommendations:

UNHCR recommends that the Government of Somalia:

- a) Accelerate efforts, in line with its commitments, to accede to the *1954 Convention Relating to the Status of Stateless Persons* and to the *1961 Convention Relating to the Reduction of Statelessness*.

**UNHCR
October 2020**

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