

Summary

From 2010-2015, migration and refugee rates into Djibouti increased 41%.¹ Since March of 2015, over 35,000 refugees have fled Yemen to Djibouti, fleeing conflict and political uncertainties.² The vast majority of refugees are from Somalia, Ethiopia and Yemen. In 2013, over 100,000 Somalian, 14, 000 Ethiopians, and 300 Yemeni's crossed their borders to Djibouti³ mainly using this country as a transit route towards Europe.

Yemen Civil War – 2015 to present.

Due to the conflict in Yemen, there has been an influx in refugees taking refuge in Djibouti, or in transit to a new location. The Yemenis are allowed visa free entry into Djibouti for the first 30 days after which they are required to renew, apply for refugee status or leave the country. Secondly, many Yemenis, especially those from Aden, Taiz or Bab el Mandeb were able to easily cross the Red Sea to Djibouti because it was the nearest country. Furthermore the two countries have close historical ties and there is a significant Yemeni community in Djibouti. Thirdly, there was a feeling that other Arab countries such as Oman, closed their doors to Yemeni refugees, unlike the hospitality offered to them by Djibouti.

The majority of Yemeni refugees in Djibouti do not register as refugees even after expiry of their visa and while the government urges refugees to reside in refugee camps (Markazi camp near Obock in the case of Yemeni refugees) to receive government assistance, the RMMS study noted that most of non-registered Yemeni refugees preferred to live in Djibouti City, citing harsh conditions and limited livelihood opportunities in the refugee camp.⁴

Key Issues

The UNHCR has reported issues with the poor functioning of the National Asylum Eligibility Commission, which determines refugee status of applicants for asylum. The issue being that “applicants for asylum or refugee status remain in an undefined legal situation for much too long, with a risk of expulsion.”⁵ Essentially stating the flawed and inefficient timeline in which these commissions operate under.

Another issue cited by the UNHCR is that of overcrowding in refugee camps, which increases security concerns and assistance needs for vulnerable populations, such as women and children.

¹ <https://www.un.org/press/en/2016/ga11820.doc.htm>

² <https://www.theguardian.com/global-development/2016/may/23/all-roads-djibouti-refugees-flee-yemen-civil-war-migrants-head-there>

³ Migration Profiles – UNICEF - <https://esa.un.org/migmgprofiles/indicators/files/Djibouti.pdf>

⁴ Regional Mixed Migration Secretariat – 2016 - <http://www.regionalmms.org/index.php/country-profiles/djibouti>

⁵ UNHCR Submission on Djibouti 16th UPR Session - <http://www.refworld.org/pdfid/5072836f2.pdf>

Access to basic rights are in principle recognized, however the enjoyment of those rights in practice are denied, according to UNHCR.⁶ Denying refugees work permits limits the opportunities in which these displaced peoples can achieve self-reliance.

Denying access to public education in primary and secondary schools, as many school officials do not recognize or are not aware of the rights of foreign children access to education under Djiboutian law.

1. Application of international law in domestic law of the host/transit country

1.1. Status of international treaties in domestic law: What is the status of international treaties in the host/transit country (to what extent do courts apply the international law in their rulings, in case of conflict between domestic law and international treaties)?

National strategic action plan for children

Adopted in ___ the Djibouti national strategic action plan for children seeks to enhance the welfare and development of children in Djibouti. A National Child Council was created – effectiveness?

According to the Constitution of Djibouti, international treaties which have been regularly ratified take precedence over national law on their publication. ⁶ However, it is not entirely clear whether they would also prevail over a conflicting provision of the Constitution. In theory, it is not possible to have a treaty provision which contradicts the Constitution, because if there are contradicting dispositions, the Constitution will be amended prior to the ratification of the treaty⁷

1.2. Ratified international treaties: What international treaties, relevant to children in migration, has the country ratified? What reservations have been introduced that affect migrant children?

Djibouti has acceded to the 1951 Refugee Convention and its 1967 Protocol, and the 1969 OAU Convention, and the 1989 Convention on the Rights of the Child, and in 2005 ratified the 2000 Human Trafficking and Migrant Smuggling Protocol. However, Djibouti is not a State party to

⁶ Ibid. pg. 5

⁷ Access to Justice for Children: Djibouti PDF – Pg. 2

the 1954 Convention relating the Status of Stateless Persons, or to the 1961 Convention on the Reduction of Statelessness.⁸

Lacking, according to a UNHCR Report⁹ is a governing legislative body over refugee issues within the country. In the case of an absence of legislation which addresses asylum issues, these are taken care of through administrative decrees. However, according to UNHCR, these methods are insufficient to guarantee the protection of refugee and asylum seekers as they fail to guarantee international rights and procedural standards.

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.

1951 Refugee Convention

Djibouti acceded to the 1951 Refugee Convention Relating to the Status of Refugees and to its 1967 Protocol, which was also ratified by 144 other State parties, it defines the term 'refugee' and outlines the rights of the displaced, as well as the legal obligations of States to protect them.

1969 Organization of African Unity (OAU) Convention

In June 2006, the Government of Djibouti also ratified the 1969 OAU Convention which governs specific aspects of refugee movements in Africa.

Convention on the Rights of the Child (CRC)

Signed on September 30th, 1990 – Djibouti also signed the Optional Protocols to the CRC in 2006 and ratified them in 2011, these protocols include: the involvement of children in armed conflict, sale of children, child prostitution, and child pornography.¹⁰

Reservations introduced by Djibouti in National Legislation

Djibouti has the following legislation nationally that deals specifically with refugee and migrant issues:

- ❖ Act No. 201/AN/07/5^{ème} entry and residence Djibouti
- ❖ Ordinance No.77-053/PR/AE primary law on refugees
- ❖ Act No. 210/AN/07/5^{ème} combating trafficking in human beings
- ❖ Act No. 133/AN/16/7^{ème} L combating trafficking in persons and illicit smuggling of migrants

⁸ <http://www.refworld.org/pdfid/5072836f2.pdf>

⁹ Ibid

¹⁰ Access to Justice for Children: Djibouti PDF – pg. 1

1.3. How is the principle of “best interest of the child” interpreted in domestic law?

CRC into National or Domestic Law

In May 2015, Djibouti passed an Act called the Child Protection Code which directly refers to the CRC and incorporates several children’s rights¹¹

Other legislation relevant to rights of children:
(list on pdf, find relevant ones and include)

The limitation periods to bring about criminal proceedings differ depending on the seriousness of the crime: 10 years from the date of the crime for major crimes, three years for lesser crimes, and one year for misdemeanors.¹²

1.4. Separated and unaccompanied children: Does the definition of “separated child” and “unaccompanied child” comply with the definition provided by the Committee on the Rights of the Child? If not explain.

¹¹ see PDF of legislation under “”

¹² Access to Justice for Children: Djibouti PDF – pg. 11