

# **The Extent to Which the 1969 Organization of African Unity Convention is Used Concerning the 1951 Geneva Convention in Determining the Status of Refugees in Burundi**

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## **Abstract**

Burundi is overflowing with refugees, mainly from the Democratic Republic of Congo. Most of them are fleeing insecurity in their country of origin. As required by the UNHCR Handbook on International Refugee Protection and the Strengthening of National Asylum Systems, these refugees are entitled to adequate reception conditions that meet their basic needs and provide them with a decent standard of living in terms of health and welfare, pending a final decision on their asylum claim. After the reception, they must file their asylum applications as soon as possible with the Burundian asylum authorities, namely the Consultative Commission for Foreigners and Refugees (CCER) and the Appeal Committee (CR). To determine refugee status, these two asylum bodies base themselves on legal instruments, international, regional and national ones. One wonders then which of these legal instruments is used more in the determination of refugee status in Burundi. The analysis focused on the origin of the asylum seekers, on the legal basis of reference in the motivation of the decision as well as on the link between the place of reception of these asylum seekers and the decision taken. To select these files, we took into account the date of arrival of the asylum seekers (old and new) and their country of origin. We used Word, Excel, and SPSS to process the data.

**Keywords:** Refugees, 1951 Geneva Convention, 1969 Organization of African Unity Convention, Burundi, Democratic Republic of Congo

## 1. Introduction

Burundi, like other countries, is overflowing with refugees on its territory. These refugees come mainly from the Democratic Republic of Congo. Most of them are fleeing the insecurity that prevails in their country of origin.

At the international level, refugees are protected by an arsenal of legal texts, above which as the 1951 Geneva Convention relating to the Status of Refugees and its 1967 Protocol, which are the main sources of international refugee protection law. The 1951 Geneva Convention defines a refugee as an individual who has fled his or her country because of a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, and who is unable or, owing to such fear, unwilling to avail himself or herself of the protection of his or her country of origin.

In addition to the 1951 Geneva Convention and its 1967 Protocol, there are also regional instruments for the protection of refugees' rights. Indeed, faced with a growing number of refugees caused by the wars of independence, especially in African countries, the Organization of African Unity (OAU) established in 1963 set up in 1969 the Convention governing the specific aspects of refugee problems in Africa (the OAU Convention on Refugees). This Convention was put in place to alleviate the misery and suffering of refugees in Africa and to provide them with a better life and future [1]. However, it recognizes the 1951 Geneva Convention as "the fundamental and universal instrument relating to the status of refugees. Thus, this Convention provides for an expanded definition of the term refugee, incorporating the definition of a refugee set out in the 1951 Convention and also including a definition adapted to the context of refugees in Africa. According to this definition, a refugee is "any person who, as a result of aggression, external occupation, foreign domination or events seriously disturbing public order in part or all of his country of origin or nationality, is obliged to leave his habitual residence and seek refuge in another place outside his country of origin or nationality[1, Art. 1 §.2]. This means that persons fleeing civil strife, generalized violence, and war have the right to apply for refugee status in states that are parties to this Convention, whether or not they have a well-founded fear of persecution on any of the grounds set out in the 1951 Convention [2, p. 20]. The 1969 Organization of African Unity Convention provides that persons fleeing from events seriously disturbing public order in part or all of their country of origin or nationality may be recognized as refugees.

These various texts have been transposed into law n° 1/25 on November 5, 2021, which regulates migration in Burundi. In fact, in matters of asylum and refugees, it is the responsibility of the State to put in place national legislation based on international standards. The Burundian law on migration defines a refugee as any person in any of the situations provided for in the Convention of 28 July 1951 relating to the status of refugees, in the Protocol of 31 January 1967 relating to the status of refugees, and in the Organization of African Unity Convention of 10 September 1969 governing the specific aspects of refugee problems in Africa [3, Art. 4 §.26].

This law led to the establishment of two asylum bodies, namely the Advisory Commission for Foreigners and Refugees (CCER) and the Appeals Committee (CR). Thus, asylum seekers who arrive in Burundi are required to file their asylum application as soon as possible before these two Burundian asylum bodies. But as required by the UNHCR Handbook on International Refugee Protection and the Strengthening of National Asylum Systems, they are entitled to adequate reception conditions that meet their basic needs and provide them with a decent standard of living in terms of health and welfare, pending a final decision on their asylum claim. Providing a safe and dignified environment is a necessary component of fair and efficient asylum procedures [2], [4]. After filing their asylum applications, these asylum authorities rely on legal instruments including the 1951 Geneva Convention and its 1967 Protocol Relating to the Status of Refugees as well as the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa to determine whether these asylum seekers are refugees or not. This depends on the story and evidence submitted by these asylum seekers in their application.

## **2. Materials and Methods**

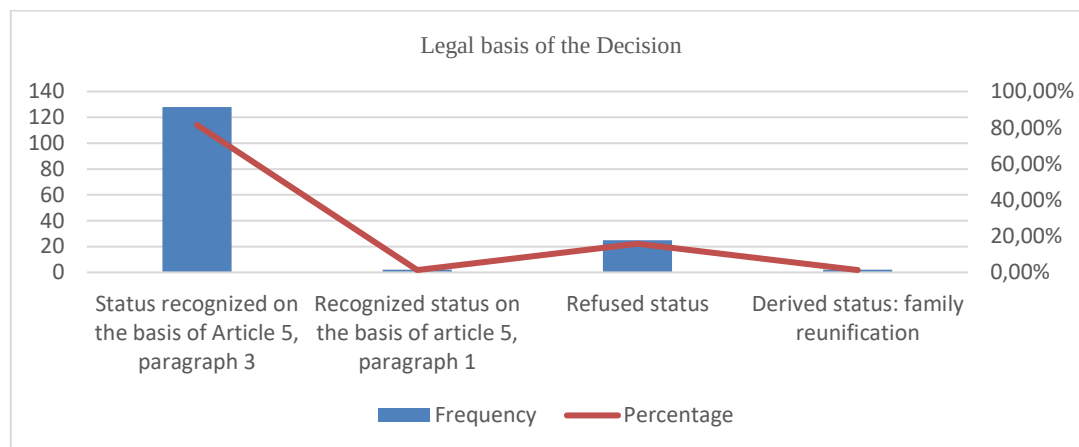
We consulted the files relating to asylum seekers. A total of 157 files were consulted. These were files handled either by the Advisory Commission for Foreigners and Refugees (CCER) or by the Appeal Committee (CR). The analysis focused on the origin of the asylum seekers, the legal basis of reference in the motivation of the decision as well as the link between the place of reception of the asylum seekers and the decision taken. To select these files, we took into account the date of arrival of the asylum seekers (old and new) and their country of origin. The request for access to these data was addressed to the Minister of the Interior. After submitting this letter to the secretariat of the Ministry, we were informed that we had to go and ask the National Office for the Protection of Refugees and Stateless Persons for a reply. The coordinator of this Office directed us to his deputy in charge of protection who gave us access to these files. We used Word, Excel, and SPSS to process the data.

## **3. Results of the study**

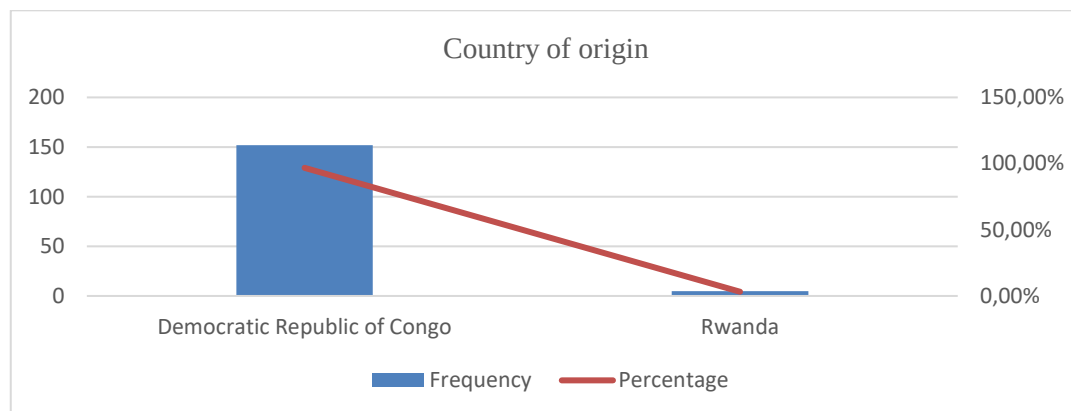
Of the 157 files consulted, 128 (or 81.5%) related to asylum seekers whose status was recognized based on article 5, paragraph 3, which reproduces word for word the provision set out in article 1, paragraph 2 of the 1969 Organization of African Unity Convention. Only 2 files (i.e. 1.3%) were related to asylum seekers whose files were recognized based on article 1 of the 1951 Geneva Convention. On the other hand, 2 files (i.e. 1.3%) were related to asylum seekers who were recognized as refugees based on the derived status (family reunification). It should be noted that 25 asylum applications (15.9%) were rejected. These files were mainly related to asylum seekers who could not establish a link between the reasons for their flight and the insecurity prevailing in their country of origin.

As for the country of origin of these asylum seekers, 152 of them (or 96.8%) are from the Democratic Republic of Congo while only 5 of them (or 3.2%) are from Rwanda. As for the link between the place of reception of these asylum seekers and the decision taken, 108 of the asylum seekers recognized as refugees lived in the Cishemere Transit Center while 22 lived in urban areas. As for the rejected asylum seekers, 21 lived in urban areas and 4 lived in the Cishemere Transit Center. The degree of use of the 1969 Organization of African Unity Convention versus the 1951 Geneva Convention in determining the status of refugees in Burundi.

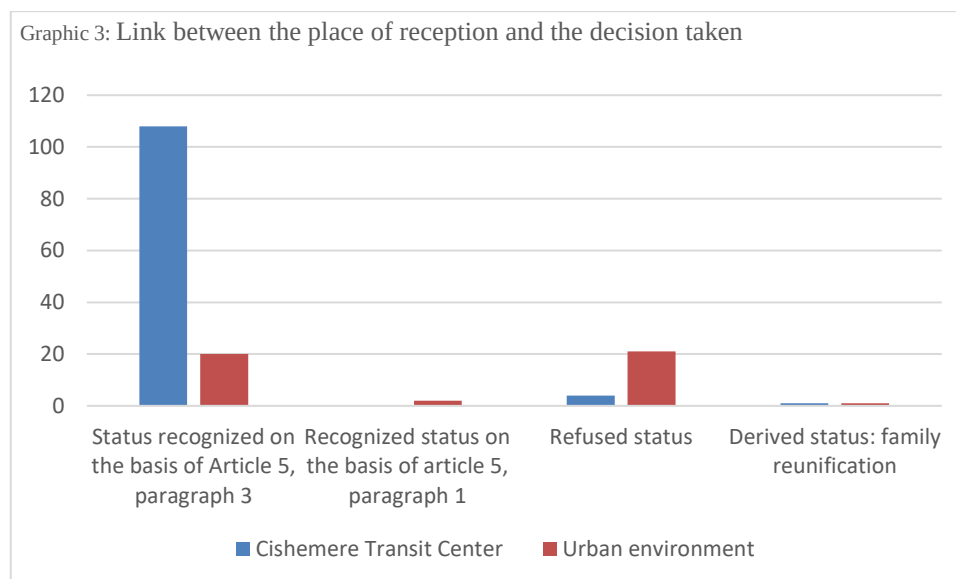
The analysis of the 157 asylum application files consulted leads to the conclusion that the recognition of refugee status in Burundi is based much more on the 1969 Organization of African Unity Convention than on the Geneva Convention. In fact, of the 157 files consulted, 128 (or 81.5%) related to asylum seekers whose status was recognized based on article 5, paragraph 3, which repeats word for word the provision of article 1, paragraph 2 of the 1969 Organization of African Unity Convention. Only two files (or 1.3%) related to asylum seekers whose files were recognized based on Article 1 of the 1951 Geneva Convention. The rejected cases were more related to asylum seekers who could not establish a link between the reasons for their flight and the insecurity in their country of origin.



This is understandable given that most of the asylum seekers received in Burundi come from the Democratic Republic of Congo and are fleeing the insecurity caused by the growing number of armed groups there. However, the 1951 Geneva Convention does not include any criteria related to security problems in the asylum seeker's country of origin as a condition for determining refugee status. The following table shows the origin of these asylum seekers.



Another point to make is that most of the asylum seekers who were recognized as refugees lived in the Cishemere transit center. Upon arrival, asylum seekers are free to live in the city at their own expense or in the transit center where they are assisted in everything. We believe that asylum seekers who choose to live their lives in the city are motivated much more by economic migration than by asylum-seeking.



## 4. Discussions

The results confirm the choice of the 1969 Organization of African Unity Convention which, as its name indicates, governs the specific aspects of refugee problems in Africa. A total of 81.5 percent of the files analyzed were related to asylum seekers whose refugee status was recognized based on the 1969 Organization of African Unity Convention. Only 1.3% of these asylum seekers were recognized as refugees based on the 1951 Geneva Convention. It should be noted that 15.9% of these asylum applications were rejected, while 1.3% of these asylum seekers were recognized as refugees based on derived status (family

reunification). Most asylum seekers live in cities as urban refugees resembling economic ones [5] but mostly their requests are rejected [6]. Some even choose better to live in different towns working for free rather than getting a home in a refugee camp [7]. After rejection, asylum seekers do not understand is easily[8].

## 5. Conclusion

Burundi is facing a growing number of refugees from the Democratic Republic of Congo. They are fleeing the insecurity that prevails in their country of origin. These refugees are protected by international and regional texts that have been integrated into the Burundian law on migration. These include the 1951 Geneva Convention relating to the Status of Refugees and its 1967 Protocol, as well as the Organization of African Unity Convention of September 10, 1969, governing the specific aspects of refugee problems in Africa. Since these asylum seekers must, upon arrival, apply for asylum, our research focused on the extent to which the 1969 Organization of African Unity Convention is used about the 1951 Geneva Convention in determining refugee status in Burundi. The analysis of the asylum seekers' files (a total of 157 files) leads to the conclusion that the recognition of refugee status in Burundi is based much more on the 1969 Organization of African Unity Convention than on the Geneva Convention. This is understandable since most of these refugees are fleeing war and the 1951 Geneva Convention does not include any criteria related to security problems in the asylum seeker's country of origin as a condition for determining refugee status.

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