

Submission by the United Nations High Commissioner for Refugees
For the Office of the High Commissioner for Human Rights' Compilation Report
Universal Periodic Review: Fourth Cycle, 43rd Session

BOTSWANA

I. BACKGROUND INFORMATION

Botswana acceded to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* (hereinafter jointly referred to as the *1951 Convention*) in 1969.¹ Botswana ratified the *1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa* (the *1969 OAU Convention*) in 1995. Botswana acceded to the *1954 Convention relating to the Status of Stateless Persons* (the *1954 Convention*) in 1969 subject to certain reservations.² However, Botswana is not party to the *1961 Convention on the Reduction of Statelessness* (the *1961 Convention*).

The *Refugee (Recognition and Control) Act of 1968* (the *Refugee Act*) is the main domestic legislation regulating asylum and refugee protection matters in Botswana. In mid-2015, the Government announced its intention to revise the *Refugee Act*. Amendments to the *Refugee Act* initially planned for finalisation in 2017 are now expected to be enacted before the end of 2022. The Refugee Management and Welfare Unit (RMWU) under the Ministry of Justice is responsible to ensure effective operationalisation of the *Refugee Act*. As such, the Unit oversees and safeguards the welfare of recognised refugees in Botswana. The RMWU is also responsible for facilitating the work of the Refugee Advisory Committee (RAC) which is in turn mandated with making determinations pertaining to asylum applications.

As of 9 August 2022, Botswana is host to 742 registered refugees, 19 asylum-seekers, and 72 others of concern³. In Dukwi Refugee Camp, there are currently 213⁴ unregistered asylum-seekers. The main countries of origin for registered refugees and asylum-seekers in Dukwi Refugee Camp are Somalia (329), the Democratic Republic of Congo (DRC) (303), Burundi (61), Zimbabwe (50), Rwanda (18) and Namibia (1). Currently there are approximately⁵ 494 rejected asylum-seekers detained at the Francistown Centre for Illegal Immigrants (FCII), including children.

UNHCR commends the Government of Botswana for maintaining its strong commitment to reduce and prevent statelessness and to grant protection to stateless persons. Botswana registered four pledges in April 2021 at the Global Refugee Forum: to accede to the *1961 Convention on the Reduction of Statelessness*; to document all citizens and non-citizens/stateless in Botswana; to undertake law reform on the Immigration Act and Citizenship Acts; and to undertake a qualitative study on statelessness in Botswana. It has followed these commitments with concrete steps including holding a Statelessness Committee inauguration workshop in November 2021, culminating with the National Action

¹ Botswana has reservations to the following *1951 Convention* Articles: 7, 17, 26, 31, 32 and 34 and paragraph 1 of Article 12. Botswana also has a reservation to Article IV of the *1967 Protocol*.

² The text of Botswana's reservation reads: "(a) Article 31 of the said Convention shall not oblige Botswana to grant to a stateless person a status more favourable than that accorded to aliens in general; (b) Articles 12, paragraph 1, and 7, paragraph 2 of the Convention shall be recognized as recommendations only".

³ Individuals under the local integration pipeline (Zimbabwean and Angolan nationals), Botswana nationals married to refugees, children of nationals with refugees and foreign nationals married to refugees

⁴ At the time of the preparation of this submission, these individuals had gone through the RAC and had been issued with the government decision letters on the outcome of their cases. Out of these 213 individuals, 70 are from Tongogara Camp in Zimbabwe, while 143 are from other countries such as Somalia, DRC, and South Africa. The government has confirmed that all 70 individuals from Tongogara Camp who are currently residing in Dukwi camp have been issued with negative decision letters.

⁵ This number is an approximate as UNHCR has not verified the numbers received from the government with a visit to the detention facility.

Plan to end Statelessness, and is now in advanced discussions with UNHCR to sign a Memorandum of Understanding on statelessness.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Linked to 3rd cycle UPR recommendation no. 116.41: “Continue its engagement with improving the rights of refugees (Uganda)”

UNHCR commends the Government of Botswana for the progressive proposed amendments to the Refugees (Recognition and Control) Act (Cap. 25:01) in the Refugees (Recognition and Management) Bill, 2021 (“the Bill”). UNHCR welcomes the measures set out in the Bill aimed at improving asylum management and effectuating the provisions of the 1951 Convention, the 1967 Protocol and the 1969 OAU Convention into the domestic laws of Botswana and urges Botswana to pass the Bill, taking cognisance of the comments from UNHCR and other stakeholders.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 3rd cycle UPR recommendations

Issue 1: Fair and efficient asylum procedures

Linked to 3rd cycle UPR recommendation no. 115.38: “Seek support and assistance from international institutions in dealing with the challenges that constrain the effective realization of certain rights, particularly the right to education and the protection of refugees (Burkina Faso)”

Refugee status determination (RSD) in Botswana is undertaken by the Refugee Advisory Committee (RAC) which prepares recommendations for approval by the Minister of Justice. This decision-making model remains a concern as expressed in the 3rd cycle UPR. The RAC normally comprises eight members, mainly officials from various Ministries, with UNHCR sitting as an observer and providing technical support when required. UNHCR has observed limitations in the RAC members’ knowledge of refugee law, noting that many of the RAC members represent their Ministries’ or security agencies’ views and thus tend to adjudicate refugee claims taking into account factors that do not support neutral and impartial RSD decisions that are based on the facts of the case. In November 2021, UNHCR conducted a successful two-day RSD capacity-building workshop with the RAC, enhancing the RAC members’ expertise on refugee law. However, there is still significant scope for improvement. In 2021, UNHCR provided final comments to Botswana on the Bill in which it explained the limitations of the Committee’s decision-making model and encouraged the adoption of a model that allows for individual, qualified and impartial decision-makers; an objective and evidence-based credibility assessment; the right to be heard at a personalized interview, and the provision of reasoned decisions to the asylum applicant.

The asylum system and refugee legislation in Botswana still lack an RSD appeal mechanism to an independent authority, court or tribunal.⁶ Additionally, although the Minister of Justice can exercise a discretionary review of first instance decisions,⁷ there are no procedural rules or timeframes governing this review process. Furthermore, the refugee legislation makes no provision for gender- or child-sensitive procedures. There is neither access to professional interpreters nor access to legal representation during the asylum procedure.

⁶ UN High Commissioner for Refugees, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, para. 192 (vi), January 1992, available at: <http://www.refworld.org/docid/4f33c8d92.html>.

⁷ Section 8 of the *Refugees Act* provides that the Minister may direct RAC to “reopen the inquiry or to make further report in the matter”.

The continued stringent application of the “first country of asylum” and “safe third country” concepts by the Government of Botswana affects all asylum-seekers who transit through another country before seeking asylum in Botswana. While such claims are still examined, they are routinely rejected in groups on this basis, giving rise to a high rejection rate. The fact that a refugee or an asylum-seeker has moved onward should not affect his/her right to be treated in conformity with international human rights law, or his/her potential need for international protection and associated rights under international refugee and human rights law.

Recommendations:

UNHCR recommends that the Government of Botswana:

- a) Ensure the asylum decision-making model employed is fair and efficient and includes minimal procedural guarantees that assess the well-founded fear of the individual applicant in the country of origin;⁸
- b) Considers introducing mechanisms to make decision-making efficient while fair, for example, by using differentiated case processing modalities such as ‘simplified’ or ‘accelerated’ RSD;
- c) Provide legal and procedural safeguards for asylum-seekers during RSD procedures, including access to legal representation and to professional interpreters, and introduce child- and gender-sensitive asylum procedures; and,
- d) Amend the Refugee Act to ensure a right to appeal, to shift the responsibility for examining appeals concerning asylum cases to a judicial or quasi-judicial adjudication body that is fully independent and impartial of the Executive arm of Government, and to provide for oral hearings at the appeals level.

Issue 2: Detention of rejected asylum-seekers and protection against refoulement

Linked to 3rd cycle UPR Recommendation no. 116.42: “Improve the reception conditions, health care, access to water and sanitation, adequate housing and food, for refugees; Make sure that refugees are not repatriated in case that their lives are in danger in their country of origin, and promote, through public policies, their total integration into the society out of the refugees camps (Ecuador)”

According to figures from the Botswana authorities, between April 2021 and June 2022, there were just over 700 asylum-seekers in Botswana, mainly originating from the Democratic Republic of Congo (DRC). Of these, 521 were onward movers from Tongogara Refugee Camp in Zimbabwe. Out of the 494 rejected asylum-seekers in the detention centre, 451 were part of this group of onward movers. Their asylum claims were rejected on the basis of the “first country of asylum” or the “safe third country” concepts without an individual assessment of each claim, and without assessing whether the concerned individuals could be readmitted to, and effectively receive protection from, a third country.

UNHCR remains concerned about the potential return of persons to eastern DRC, contrary to the *UNHCR position on returns to North Kivu, South Kivu and adjacent areas in the Democratic Republic of Congo affected by on-going conflict and violence in the region*, which was published in September 2019 and remains valid.⁹ UNHCR maintains that Congolese nationals who have fled the conflict in eastern DRC are in continued need of international protection in accordance with the broader refugee definition contained in the 1969 OAU Convention. In addition, many persons fleeing the DRC are likely to meet the 1951 Convention criteria for refugee status.¹⁰ Under the present circumstances, “UNHCR urges

⁸ (UNHCR), A guide to international refugee protection and building state asylum systems, 2017, Handbook for Parliamentarians N° 27, Chapter 7, available at:

<https://www.refworld.org/docid/5a9d57554.html><https://www.refworld.org/docid/5a9d57554.html>.

⁹ UN High Commissioner for Refugees (UNHCR), Position on Returns to North Kivu, South Kivu, Ituri and Adjacent Areas in the Democratic Republic of the Congo Affected by Ongoing Conflict and Violence – Update II, September 2019, available at: <https://www.refworld.org/docid/5d6d794a4.html>.

¹⁰ Ibid.

States not to forcibly return to DRC persons originating from these areas until the security and human rights situation has improved considerably.”¹¹ This standard is applicable to rejected asylum-seekers as well, since “[t]he bar on forcible return serves as a minimum standard and needs to remain in place until such time as the security and human rights situation in the affected areas has improved sufficiently to permit a safe and dignified return of those determined not to be in need of international protection.”¹²

Additionally, after its July 2022 mission to Botswana, the Working Group on Arbitrary Detention’s (WGAD) end of mission statement raised concerns about the current policy on immigration detention in Botswana. It noted that more than half of those detained were children. The WGAD also observed that the majority of asylum-seekers whose applications for refugee status have been rejected are still held in the FCII, and that several individuals have spent many years in the FCII. While the *Botswana Children’s Act (2009)* acknowledges the primacy of the best interests of the child and children’s right to education, these children have been in immigration detention for over one year and have not attended school during this time.

While implementing measures to reduce the spread of the Coronavirus in detention, Botswana introduced a system whereby upon arrival, asylum-seekers completed their mandatory 10-14 day quarantine period in Dukwi Refugee Camp instead of the detention facility. After completing the mandatory quarantine period, asylum-seekers were subsequently allowed to remain in the camp awaiting interview by the RAC. This was a positive effort by Botswana, which can serve as a model for alternatives to detention.

Recommendations:

UNHCR recommends that the Government of Botswana:

- a) Engage UNHCR’s support to introduce alternatives to detention (ATDs) for asylum-seekers.
- b) Release all rejected asylum-seeking children from Francistown Centre for Illegal Immigrants and ensure durable solutions in the best interests of the child;
- c) Provide all rejected asylum-seeking children with access to primary and secondary education while they reside in Botswana irrespective of their immigration status;
- d) Release all rejected onward movers from the FCII and allow them to stay in Dukwi Refugee Camp until the situation in DRC is conducive for return and allow registration of all onward movers residing in Dukwi camp to grant them access to available services.

Issue 3: Freedom of movement and the right to work

Linked to 3rd cycle UPR Recommendation no. 116.42: “Improve the reception conditions, health care, access to water and sanitation, adequate housing and food, for refugees; Make sure that refugees are not repatriated in case that their lives are in danger in their country of origin, and promote, through public policies, their total integration into the society out of the refugees’ camps (Ecuador)”

Botswana’s reservations to the *1969 OAU Convention* and the *1951 Convention* include reservations on the right to work and the freedom of movement of refugees and asylum-seekers. Additionally, Botswana maintains a strict, although unwritten, encampment policy in the Dukwi Refugee Camp, requiring refugees and asylum-seekers wishing to temporarily leave the camp for a specified period, to obtain an exit permit from the Camp Manager. The onus falls on the individual to renew the exit permit once it expires. Despite the official requirement to reside in the camp, some refugees and asylum-seekers often leave the camp and reside in urban areas without the required permits. Refugees and asylum-seekers who choose to reside in urban areas without official permission are at risk of arrest and detention

¹¹ Ibid

¹² Ibid.

in prisons or FCII, despite there being no lawful provision for such detention and no lawful sanction for breaching the encampment policy. Additionally, refugees living or visiting urban areas without permission risk withdrawal or revocation of their refugee status for violating the encampment policy.

Botswana's reservation to Article 17 of the *1951 Convention* bars refugees and asylum-seekers from accessing to work permits and they are consequently unable to become self-sufficient. Restrictions on the right to work have led to many refugees resorting to informal work, often leaving the camp in search of odd jobs without the requisite permits. Both the encampment policy and restrictions on the right to work have had a significant effect on refugees' self-sufficiency, particularly women and those who are differently-abled. Refugees and asylum-seekers have reported having to resort to the sale and exchange of sex to cope, which has also subjected them to exploitation as they may not be protected by relevant national laws from such exploitation. Additionally, they risk contracting sexually transmitted infections (STIs). These restrictions also perpetuate the need for the continued distribution of core relief items.

It remains UNHCR's position that allowing refugees and asylum-seekers access to employment opportunities works in the interest of both the host country and the beneficiaries of international protection. It promotes local integration for refugees in the host community, creating opportunities for both sides to develop and share their skills and experience and removes the incentives of unofficial employment. Refugees and asylum-seekers bring with them expertise and knowledge that can benefit their host community and stimulate economic growth and employment opportunities for the country at large. Access to employment opportunities not only provides the individual with a source of income, but enhances their independence, dignity, social status and recognition. In addition, providing access to the labour market can discourage informal employment and can facilitate eventual reintegration into the country of origin, if voluntary repatriation becomes feasible, by allowing refugees who return home to do so with a degree of financial independence or acquired work skills.¹³

The current limitations on employment and freedom of movement leave asylum-seekers and refugees in Botswana dependent entirely on UNHCR and the Government for food aid and other necessities. UNHCR encourages the Government of Botswana to create opportunities and incentives for asylum-seekers and refugees to engage in livelihood activities to sustain themselves and their families.

Recommendation:

UNHCR recommends that the Government of Botswana:

- a) Withdraw its reservation to the *1951 Convention and the 1969 OAU Convention* that affect the right to work and the freedom of movement of refugees and asylum-seekers;
- b) Amend its encampment policy to ensure freedom of movement for refugees and asylum-seekers; and
- c) Provide work permits to enable refugees and asylum-seekers to engage in decent work opportunities.

Issue 6: Naturalisation

Botswana applies its nationality law to recognized refugees in a restrictive manner. Under Botswana's Citizenship Act (Act No. 8 of 1998), foreigners who are married to citizens of Botswana and have resided in Botswana for a period of at least five years are eligible to apply for naturalization. For those who are not married to Botswana, the Act also contains provisions for applying for naturalization under certain conditions, including having been "resident in Botswana for a period of at least 10 years." However, Botswana has also

¹³ UN High Commissioner for Refugees (UNHCR), *Global Consultations on International Protection/Third Track: Reception of Asylum-Seekers, Including Standards of Treatment, in the Context of Individual Asylum Systems*, 4 September 2001, EC/GC/01/17, para. 13, <http://www.refworld.org/docid/3bfa81864.html>

entered reservations to Article 34 of the *1951 Convention* on the naturalization of refugees. Section 13 of the Refugee Act states that “any period during which an immigrant has resided in Botswana as a recognized refugee shall not, unless a Minister in writing otherwise directs, be regarded as a period during which he has been ordinarily resident in Botswana.” This therefore makes it difficult for refugees to accumulate the number of years of residency required, particularly as the issuance of residence permits is rare and occurs on a case-by-case basis.

Section 13 of the Refugee Act also applies to applications for permanent residency, which are governed by the Immigration Act (No. 3 of 2011). The current legal framework makes it challenging for refugees in Botswana to attain local integration. Despite the challenging legal framework, Botswana has been making some efforts towards the naturalization of refugees, but these efforts need to be reflected in relevant legislation. Currently, there are 32 individuals in the local integration pipeline, comprised of 26 Zimbabweans with family links to Botswana and six Angolans.

UNHCR considers local integration not only as a legal and socio-economic process, but also a social and cultural process of acclimatisation by refugees to local communities. It should enable refugees to live with the host population without discrimination or exploitation and contribute actively to the social life of their country of asylum. The timely grant of secure legal status and residency rights are essential factors in the integration process. UNHCR strongly believes that refugees should receive long-term residence rights at an early stage, as short-term residency can have a negative impact on a person’s sense of belonging and motivation to integrate.

Recommendation:

UNHCR recommends that the Government of Botswana:

- a) Withdraw its reservation to Article 34 of the *1951 Convention relating to the Status of Refugees*; and
- b) Allow refugees, particularly those with ties (business and family ties) to Botswana, to be naturalised.

Issue 7: Prevention and reduction of statelessness

The nationality legislation of Botswana, the Citizenship Act Cap 01:01 (Act 8 of 1998, as amended in 2004)) does not provide for legal safeguards against childhood statelessness. The Act only provides for purely *jus sanguinis* situations and consequently, children born in Botswana are not automatically granted the nationality of Botswana, even in situations where their foreign parents are unable to pass on their nationality to them. UNHCR considers this to be contrary to the obligations of Botswana under the *Convention on the Rights of the Child* and the *African Charter on the Welfare and the Rights of the Child*. Furthermore, there is no provision to grant nationality to children found abandoned on the territory (foundlings). Although Botswana is party to the *1954 Convention on the Status of Stateless Person*, it has not established any mechanism to determine the status of stateless person.

As highlighted in Issue 1 above, the Government of Botswana has made a number of commitments to the prevention and reduction of statelessness and should be encouraged to build on this momentum by fully implementing the *1951 Convention*, establishing a statelessness determination procedure, acceding to the *1961 Convention*, and making other necessary legal reforms to prevent child statelessness.

Recommendation:

UNHCR recommends that the Government of Botswana:



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

- a) Domesticate the *1954 Convention on the Status of Stateless Persons*;
- b) Accede to the *1961 Convention on the Reduction of Statelessness*; and,
- c) Reform its Nationality Law with a view to introducing legal safeguards against childhood statelessness, in compliance with the *African Charter on the Rights and Welfare of the Child* and the *Convention on the Rights of the Child*;

**UNHCR South Africa Multi Country Office, Pretoria
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