

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, 35th Session

KINGDOM OF LESOTHO

I. BACKGROUND INFORMATION

Lesotho is a State party to the *1951 Convention Relating to the Status of Refugees* and its *1967 Protocol* [hereinafter, the *1951 Convention*] having acceded to these instruments in May 1981. The country also ratified the *1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa* in November 1988. The Kingdom of Lesotho acceded to the *1954 Convention Relating to the Status of Stateless Persons* [hereinafter: the *1954 Convention*]. It also acceded to the *1961 Convention on the Reduction of Statelessness* [hereinafter: the *1961 Convention*] in 2004. The Kingdom of Lesotho made declarations and reservations in relation to Articles 8, 9, 25 and 31 of the *1954 Convention*, resulting in reducing stateless persons' access to administrative assistance, which can undermine their protection against expulsion and the fair treatment of their interest and property.

As of February 2019, there were 106 refugees and asylum-seekers in Lesotho. The majority of them come from Democratic Republic of Congo (approx. 80 per cent), followed by Ethiopia, Eritrea and Uganda. Close to 40 per cent of the refugees and asylum-seekers are children. With regard to stateless persons, Lesotho has not yet established a mechanism to identify and protect stateless persons.

The 1985 *Refugee Act* regulates refugee status and lays out the protection framework for asylum-seekers and refugees.¹ The Inter-ministerial Refugee Status Determination Committee is the institution responsible for refugee status determination (RSD) in Lesotho. The Inter-ministerial RSD Committee has limited capacity to process the current number of asylum applications. Refugees in Lesotho enjoy access to basic health care and receive assistance to access basic education. Refugees also have the right to work provided that they obtain work permits; unemployed refugees receive a grant from the government amounting to M400 per month (approximately US\$ 28). The Government has taken a number of measure to provide housing for refugees; water and electricity are ensured free of costs. Regarding integration opportunities, the Government has waived the naturalisation fee in favour of refugees. Nonetheless, access to education for refugee children and the provision of travel documentation to enable refugees to travel to neighbouring countries, such as South Africa, remain problematic. A number of refugees made allegations of suffering discriminatory treatment compared to Lesotho nationals when crossing the border into South Africa.

¹ *Lesotho: Refugee Act 1983* [], 15 January 1985, available at: <https://www.refworld.org/docid/3ae6b4f024.html>.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Positive developments linked to 2nd cycle UPR recommendations

Linked to 2nd cycle UPR recommendation no. 113.69: “Provide comprehensive protection for women exposed to violence.” (Turkey)

Lesotho has from the asylum regime point of view provided ample protection to refugee women and girls on its territory and has fully cooperated with UNHCR in a most affable manner asylum related matters. In fact Lesotho is one of the few countries in the region that has offered to locally integrate refugees uprooted in the region on account of xenophobic attacks or political reasons.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 2nd cycle UPR recommendations

Issue 1: Prevention of statelessness

Linked to 2nd cycle UPR recommendation no. 113.58: “Ensure that birth registration is effectively implemented and enforced by allocating sufficient human and financial resources to the National Identity and Civil Registry Department to promote the effectiveness of birth registration systems and processes” (Latvia)

It is difficult to have a concrete picture of the extent of the problem of statelessness in Lesotho in the absence of a mechanism to identify stateless persons and provide them with legal protection and favourable treatment. Stateless persons in the Kingdom of Lesotho not only lack definite legal status and protection, but they are also vulnerable to abuse and human rights violations. In addition to this, a number of practical gaps with regard to birth registration and nationality legislation further increase the risk of statelessness, particularly among children.

Birth registration rate in Lesotho is low. According to World Bank Data, 57 per cent of children are not registered or in possession of a birth certificate. Birth registration helps to prevent statelessness by establishing a legal record of where a child was born and who his or her parents are. As such, it serves as a proof of the link between the child and the country of nationality of the parents and/or the country of birth and therefore facilitates acquisition or proof of nationality for the child. In addition to the risk of statelessness, lack of birth certificate can affect the enjoyment of a range of human rights, including access to education and health care.

Lesotho’s *Nationality Act* grants nationality to foundlings only at the date of their birth. The *1961 Convention* does not define an age at which a child may be considered a foundling. UNHCR interprets that, at a minimum, “the safeguard for Contracting States to grant nationality to foundlings is to apply to all young children who are not yet able to communicate accurately information pertaining to the identity of their parents or their place of birth. This flows from the object and purpose of the 1961 Convention and also from the right of every child to acquire a nationality. A contrary interpretation would leave some children stateless.”²

² UNHCR, *Guidelines on Statelessness No. 4: Ensuring every child’s right to acquire a nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness*, HCR/GS/12/04, 21 December 2012, para 58, available here: <https://www.refworld.org/pdfid/50d460c72.pdf>

Moreover, the Nationality Act also limits the possibility for parents to pass on their nationality to their children born abroad, if the parents were also born abroad. The instrument contains provisions that may discriminate between women and men in their ability to pass on their nationality to their children. The Nationality Act authorizes only the father to pass on his nationality to his children born outside of Lesotho.

In addition to this, the protection of stateless persons in Lesotho is further limited as a result of the declarations and reservations introduced by the Government to the *1954 Convention*. First, Lesotho maintains a reservation to Article 25 of the *1954 Convention* to the effect of limiting the access of stateless persons to civil status documentation (birth, marriage, adoption, death or divorce) issued from the country of their former nationality or residence. Second, the declaration introduced in relation to Article 31 of the *1954 Convention* does not protect stateless persons against the risk of expulsion in line with this Convention. Lastly, Lesotho interprets Article 8 of the *1954 Convention* in a way that allows the adoption of measures that affect the property and interest of stateless persons on the ground of their former nationalities in the absence of safeguards, such as adopting such measures temporarily in exceptional circumstances.

Recommendations:

UNHCR recommends that the Government of the Kingdom of Lesotho to:

- (a) Ensure that birth registration is universal, free, accessible and made available immediately after the birth of a child, and that birth certificates are effectively issued;
- (b) Consider the establishment of late birth registration procedures;
- (c) Amend the Nationality Act so as to grant nationality to children born outside Lesotho to a national, regardless of the parent's gender or place of birth, as well as to all children found abandoned on its territory;
- (d) Consider withdrawing its reservations and declarations to the *1954 Convention* and take the necessary measures to determine statelessness status, and provide stateless persons with a treatment compliant with the *1954 Convention*; and
- (e) Establish a statelessness determination procedure and a domestic legal framework for protection of stateless persons in line with the standards set out in the *1954 Convention* in order to ensure that stateless persons are able to enjoy their human rights.

Issue 2: Access to education by refugee children

Linked to 2nd cycle UPR recommendation no. 113.109: “Ensure access to education of all children, including those in hard-to reach areas, by increasing investments in education infrastructure and training of educators and pursuing all possible avenues for international cooperation.” (Philippines)

Educational frameworks in Lesotho generally ensure access to education for refugee children. However, a number of recent reports indicate that refugee children have been unable to access education.

Recommendations:

UNHCR recommends that the Government of the Kingdom of Lesotho:

- (a) Consider the provision of universal primary education to all refugee children free of charge and where applicable, secondary and tertiary education be made possible for the benefit of refugee children and youth as well.

UNHCR

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