



LAWYERS FOR  
**HUMAN RIGHTS**

## **BOTSWANA**

JOINT SUBMISSION TO THE WORKING GROUP ON  
ARBITRARY DETENTION IN PREPARATION FOR ITS MISSION  
TO BOTSWANA FROM 4-15 JULY 2022

ISSUES RELATED TO IMMIGRATION DETENTION

Submitted in June 2022

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## **ABOUT THE GLOBAL DETENTION PROJECT**

The Global Detention Project (GDP) is a non-profit organisation based in Geneva that promotes the human rights of people who have been detained for reasons related to their non-citizen status. Our mission is:

- To promote the human rights of detained migrants, refugees, and asylum seekers;
- To ensure transparency in the treatment of immigration detainees;
- To reinforce advocacy aimed at reforming detention systems;
- To nurture policy-relevant scholarship on the causes and consequences of migration control policies.

## **ABOUT LAWYERS FOR HUMAN RIGHTS**

Lawyers for Human Rights (LHR) is an independent, non-profit human rights organization, started by a group of activist lawyers in 1979 and located in South Africa. LHR's programs undertake strategic work in six areas of human rights law, including a key focus on refugee and migrant rights, including immigration detention. LHR employs a holistic approach to social justice and human rights enforcement that includes strategic litigation, advocacy, law reform, human rights education, and community mobilization and support.

## Submission to the Working Group on Arbitrary Detention in Preparation For its Mission To Botswana on 4-15 July 2022

The Global Detention Project (GDP) and Lawyers for Human Rights (LHR) are pleased to provide the Working Group on Arbitrary Detention (WGAD) this joint submission in preparation for the WGAD's visit to Botswana on 4-15 July 2022. This submission concerns the detention of migrants and refugees. It addresses situations that mainly fall within the scope of the WGAD's Category IV of types of arbitrary detention: "when asylum seekers, refugees or migrants are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy."

To assist the WGAD in undertaking a comprehensive analysis of the situation concerning arbitrary deprivation of liberty in Botswana, this submission describes the migration context of Botswana and provides a summary of relevant migration-related legislation and the facilities where non-citizens are detained.

LHR wishes to acknowledge the invaluable input of Skillshare Botswana and Bosa Bosele Training College in providing information to compile this submission.

### I. Context and key concerns

In 1968, two years after achieving independence, Botswana established a legal framework for the protection of refugees and asylum-seekers through the Refugees Recognition and Control Act (Refugees Act) which came into effect on 5 April 1968.<sup>1</sup> Nevertheless, the number of refugees recognised under the Refugees Act has decreased over the years. In 2020, the population of refugees in Botswana was reportedly 637<sup>2</sup>; in 2016, Botswana hosted 2,114 recognised refugees and 731 asylum-seekers. Most refugees are from Namibia and Zimbabwe, with some originating from the Democratic Republic of the Congo (the DRC), Somalia, and other countries in Africa.<sup>3</sup>

Commentators have argued that the reasons for the decrease in the recognised refugee population is that Botswana lacks a comprehensive approach to migration and asylum that combines border management policies with a commitment to upholding international human rights and humanitarian standards.<sup>4</sup> Like many of its neighbours in southern Africa—including, notably, South Africa<sup>5</sup>—Botswana has emphasised security rationales in its treatment of undocumented non-citizens. This is partly driven by the misleading argument that migration and refugee challenges are destroying Botswana socio-economic stability. This narrative has spurred surging xenophobia, a phenomenon also seen in neighbouring South Africa.<sup>6</sup>

### II. Legal framework

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<sup>1</sup> Bonolo Ramadi Dinokopila, "Socio-economic rights of refugees in Botswana: Towards an enabling legal framework," *Protection Frameworks for Refugee and Migrants in Southern Africa*, February 2018, p 73,

<https://www.southernafricalitigationcentre.org/wp-content/uploads/2018/05/Protecting-Refugees-draft3.pdf>

<sup>2</sup> The World Bank, "Refugee population by country or territory of asylum – Botswana",

<https://data.worldbank.org/indicator/SM.POP.REFG?locations=BW> [accessed 12 June 2022].

<sup>3</sup> UN High Commissioner for Refugees (UNHCR), *UNHCR Submission on Botswana: 29th UPR session*, January 2018, available at: <https://www.refworld.org/docid/5b0813b44.html> [accessed 12 June 2022].

<sup>4</sup> Kate Lefko-Everett, 'Migration Policy Institute 'Botswana's Changing Migration Patterns' 2004 <https://www.migrationpolicy.org/article/botswanas-changing-migration-patterns> [accessed 10 June 2022].

<sup>5</sup> See, for example. Global Detention Project, "Immigration Detention in South Africa: Stricter Control of Administrative Detention, Increasing Criminal Enforcement of Migration," June 2021, <https://www.globaldetentionproject.org/immigration-detention-in-south-africa-stricter-control-of-administrative-detention-increasing-criminal-enforcement-of-migration>

<sup>6</sup> Id.

Botswana acceded to the 1951 Convention on the Status of Refugees and its 1967 Protocol Relating to the Status of Refugees in 1969. However, it adopted a number of reservations to both the Convention and the Protocol, including a reservation to article 7 on reciprocity. The effect on the reservation on reciprocity means that Botswana is not obliged to offer refugees the same treatment that is accorded generally to non-citizens that are in Botswana. This is the case despite the fact that refugees cannot avail themselves to their country of origin for protection. Furthermore, Botswana has made a reservation to article 31, which prohibits the imposition of penalties on refugees unlawfully in the country of refuge, as well as article 32, which prohibits the expulsion of refugees except on grounds of national security or public order.<sup>7</sup> Botswana also acceded to the OAU Convention Governing Specific Aspects of Refugee Problems in Africa in 1995.

Despite its adoption of these conventions, as a dualist country, Botswana must adopt implementing legislation before international treaties come into force.<sup>8</sup> However, no steps have since been taken nationally to incorporate these treaties into domestic law.

Botswana has also adopted many of the core human rights conventions, including the International Covenant on Civil and Political Rights (ICCPR). However, the country maintains a reservation on Article 7 of the treaty, which concerns the prohibition against torture. The Human Rights Committee has urged Botswana to withdraw the reservation because it is “incompatible with the objects and purposes of the Covenant.”<sup>9</sup>

Importantly, Botswana has yet to ratify the International Covenant on the Human Rights of Migrants Workers and Their Families (CMW), which provides important specific protections for migrant detainees as well as obligations on states. Also, although it has ratified the Convention against Torture (CAT), it has yet to ratify the Optional Protocol to CAT, which requires states to set up independent detention monitoring institution (National Preventative Mechanism).

Botswana’s domestic framework for the protection of refugees and migrants is well-established, with its policies codified under Botswana’s Refugees (Recognition and Control) Act of 1968.<sup>10</sup> In addition to the Refugees Act, the 1966 Constitution of Botswana, the Immigration Act 3 of 2011, the Geneva Conventions Act 28 of 1970, and other pieces of legislation affect the receipt and treatment of non-citizens in Botswana.<sup>11</sup> Botswana is in the process of adopting a new Refugee (Recognition and Control) Bill, which has proposed provisions that have raised concerns among human rights monitoring bodies (see below for more).

### III. Grounds for detention

Botswana law provides both administrative detention measures, including for the detention of refugees in certain circumstances, as well as criminal penalties that can include potentially lengthy imprisonment for non-citizens convicted of migration-related offenses like unauthorised entry. It is worth recalling in this respect the WGAD’s Revised Deliberation No. 5 on the deprivation of liberty of migrants (2018), which states that migration infractions must not be subject to criminal penalties

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<sup>7</sup> Dr Elizabeth Macharia-Mokobi & Jimcall Pfumrodze ‘Advancing refugee protection in Botswana through improved refugee status determination’ *African Human Rights Journal* (2013) [http://www.scielo.org.za/scielo.php?script=sci\\_arttext&pid=S1996-20962013000100008#:~:text=Botswana%20has%20also%20made%20a,by%20his%20country%20of%20residence](http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1996-20962013000100008#:~:text=Botswana%20has%20also%20made%20a,by%20his%20country%20of%20residence), accessed 22 June 2022.

<sup>8</sup> Dr Elizabeth Macharia-Mokobi ‘Uganda’s Refugee Act of 2006: *Lessons for Botswana*’ *Protection Frameworks for Refugees and Migrants in Southern Africa* South African Litigation Centre (2018).

<sup>9</sup> Human Rights Committee, “Concluding observations on the second periodic report of Botswana,” 24 November 2021, <https://uhri.ohchr.org/Document/File/1475e6c7-c190-47e8-af99-a170bac8f437/2F2D9D59-90DE-4822-9ABC-516010D63FCD>

<sup>10</sup> Botswana: Refugees (Recognition and Control) Act of 1968 [], Cap. 25:03, 5 April 1968, available at: <https://www.refworld.org/docid/3ae6b4d60.html> [accessed 12 June 2022] (the Refugees Act).

<sup>11</sup> Bonolo Ramadi Dinokopila ‘Socio-economic rights of refugees in Botswana’ *Towards an enabling legal framework*’ *Protection Frameworks for Refugees and Migrants in Southern Africa*, Southern African Litigation Centre (2018).

and calls for the prohibition of the detention of refugees, asylum seekers, and children, including unaccompanied or separated children.<sup>12</sup>

### a. The Constitution of Botswana

While the Constitution of Botswana does not make any specific reference to the rights of migrants, the Constitution and law prohibit arbitrary arrest and detention of every person in Botswana, including non-citizens.<sup>13</sup> Section 5(1) of the Constitution appears to provide a closed list that a person may be deprived of their personal liberty by law.<sup>14</sup> A person who is detained must be informed “as soon as reasonably practicable, in a language that he or she understands, of the reasons for his or her arrest or detention”.<sup>15</sup> Section 5(3) of the Constitution further provides that where someone is arrested or detained in execution of a court order or under reasonable suspicion of them having committed, or being about to commit a crime under Botswanan law and is not released, they must be brought as soon as is reasonably practicable before a court. If they are not tried within a reasonable time then they must be released either unconditionally or upon reasonable conditions.

Although not specifically related to detention, section 14(3)(b) of the Constitution does provide that restrictions on the freedom of movement can be placed upon anyone that is not a citizen of Botswana.

### a. The Refugees Act

The Refugees Act uses the terminology of "political refugee" which means “a person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a

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<sup>12</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/196/69/PDF/G1819669.pdf?OpenElement>

<sup>13</sup> Section 3 of the Constitution of Botswana provides that:

*“[E]very person in Botswana is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his or her race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest to each and all of the following, namely—*

- a. life, liberty, security of the person and the protection of the law;*
- b. freedom of conscience, of expression and of assembly and association; and*
- c. protection for the privacy of his or her home and other property and from deprivation of property without compensation,*

*the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.”*

<sup>14</sup> The list includes the following instances when a person may be deprived of their personal liberty as may be authorized by law including:

- a. in execution of the sentence or order of a court, whether established for Botswana or some other country, in respect of a criminal offence of which he or she has been convicted;
- b. in execution of the order of a court of record punishing him or her for contempt of that or another court;
- ...
- e. upon reasonable suspicion of his or her having committed, or being about to commit, a criminal offence under the law in force in Botswana;
- ...
- i. for the purpose of preventing the unlawful entry of that person into Botswana, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Botswana, or for the purpose of restricting that person while he or she is being conveyed through Botswana in the course of his or her extradition or removal as a convicted prisoner from one country to another;
- j. to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Botswana or prohibiting him or her from being within such an area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order, or to such extent as may be reasonably justifiable for restraining that person during any visit that he or she is permitted to make to any part of Botswana in which, in consequence of any such order, his or her presence would otherwise be unlawful.”

<sup>15</sup> Section 5(2) of the Constitution.

particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence is unable or, owing to such fear, is unwilling to return to it.”<sup>16</sup>

Section 6 of the Refugees Act provides that where the Minister is still considering a person’s status as a political refugee and such person is liable to being removed from Botswana under the provisions of the Immigration Act, that person may not be removed from Botswana pending this determination. Further, such person may be detained for a period not exceeding 28 days. However, notwithstanding this, such a person will be allowed to depart from Botswana for the purpose of entering another country, subject to the conditions set out in section 7 of the Refugees Act.

Section 9 of the Refugees Act provides for instances where a recognised refugee can be removed from Botswana. It also provides for instances where pending such removal:

- a recognised refugee might be detained; or
- where in the opinion of the Minister the removal of such person is likely to be delayed, the Minister may, in his sole and absolute discretion, direct that the refugee will not be detained, but while they remain in Botswana be subject to a number of conditions, including where they may reside.<sup>17</sup>

In the Second Periodic Report submitted by Botswana to the Human Rights Committee, it reported that the Attorney General’s Chambers was currently drafting an updated Refugee Recognition and Control Bill. The Human Rights Committee recommended that Botswana ensure that this Bill is fully compliant with all international standards, including the ICCPR; provides for adequate safeguards against arbitrary detention, deportation and refoulment; and that the Botswanan government continued to cooperate and engage with the Office of the UN High Commissioner for Refugees during all stages of the drafting process.

The Human Rights Committee raised concerns about: (a) reports of expulsions of migrants and asylum seekers, including those in need of international protection, without carrying out the necessary individual assessments; (b) reports of refusals to issue identification documents to asylum seekers, who risk being arrested and deported on account of lack of documentation; (c) reports that the majority of unsuccessful asylum applications have been rejected solely on the basis of the concepts of “first country of asylum” or “safe third country”; (d) reports of the mandatory and prolonged detention of asylum seekers at the Francistown Centre and the obligation for refugees to reside in the Dukwi camp, without access to the labour market outside the camp; and (e) the fact that current legislation governing citizenship does not provide adequate safeguards for the prevention of statelessness, including because it does not guarantee the acquisition of Botswana nationality for children born in Botswana or foundlings who would otherwise be stateless (arts. 2, 7, 9–10, 13 and 24).<sup>18</sup>

### **a. The Immigration Act**

The Immigration Act provides for two types of detention: imprisonment related to punishment for criminal offences and detention of suspected prohibited immigrants.

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<sup>16</sup> 1 of Schedule to the Refugees Act.

<sup>17</sup> Section 9(2) of the Refugees Act.

<sup>18</sup> Human Rights Committee , “Concluding observations on the second periodic report of Botswana,” 24 November 2021, <https://uhri.ohchr.org/Document/File/1475e6c7-c190-47e8-af99-a170bac8f437/2F2D9D59-90DE-4822-9ABC-516010D63FCD>

## ***Detention related to criminal offences under the Immigration Act***

The following sections of the Immigration Act provide for a number of offences under the Immigration Act which may result in imprisonment. The most pertinent ones include:

- In terms of section 4, a person who fails to enter through a port of entry or upon arrival present themselves immediately to an immigration officer is liable to a fine or imprisonment for a period not exceeding ten years;
- In terms of section 7(3), a person leaving Botswana who does not present themselves to an immigration officer for examination or does not do certain things that an immigration officer may require of them in terms of section 7(2), is liable to a fine or imprisonment for a period not exceeding ten years;
- In terms of section 56, a person who:
  - For purposes of entering or remaining in Botswana, in contravention of the Immigration Act, or any other law, or of assisting any other person so to enter or remain makes a false statement verbally or in writing, forges any certificate or document, other than any document mentioned in subsection (2), or who uses any such certificate or document knowing it to be forged, or utters or uses any certificate or document other than any document mentioned in subsection (2), which has not been issued by a lawful authority or which the person is not entitled to use; or (b) hinders or obstructs an authorised officer in the execution of his or her duties under this Act,
  - is in unlawful possession of or makes use of someone else's permit, passport or other travel document belonging to another; provides his or her permit, passport or other travel document to any other person for unlawful use by such other person; or forges or unlawfully alters any permit, passport or other travel,commits an offence and is liable to a fine or to imprisonment for a term not exceeding one year, or to both.

## ***Detention of suspected prohibited immigrants***

The Immigration Act provides for the concept of a prohibited immigrant and defines such a person as including an immigrant who has been sentenced to imprisonment without the option of a fine in Botswana and has not received a free pardon,<sup>19</sup> or has been sentenced to imprisonment without the option of a fine in any other country for an offence which, if committed in Botswana, would be punishable with imprisonment without the option of a fine.<sup>20</sup>

In terms of section 43 of the Immigration Act, a person suspected of being a prohibited immigrant may be detained by an immigration officer for a reasonable period not exceeding 14 days for purposes of identity verification.<sup>21</sup> An immigration officer who detains such a person must within a period of 7 days, report such detention to the Minister.<sup>22</sup> Where certain classes of persons suspected are detained and the Minister requires further time for the completion of the inquiries, the Minister may, by order, direct that the person be detained for a further period, not exceeding 14 days at a time.<sup>23</sup>

A person may be detained in the nearest convenient prison<sup>24</sup> and if they are not serving a sentence of imprisonment will be treated as a person awaiting trial.<sup>25</sup>

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<sup>19</sup> Section 41(1)(a) of the Immigration Act.

<sup>20</sup> Section 41(1)(b) of the Immigration Act.

<sup>21</sup> Section 43(1) of the Immigration Act.

<sup>22</sup> Section 43(2) of the Immigration Act.

<sup>23</sup> Section 43(3) of the Immigration Act.

<sup>24</sup> Section 43(4) of the Immigration Act.

<sup>25</sup> Section 43(7) of the Immigration Act.

The law requires authorities to inform suspects of their rights upon arrest, including the right to remain silent, and to file charges before a magistrate within 48 hours. Authorities generally respected these rights. There have been no reports of denial of a suspect's right to an attorney during the first 48 hours after arrest and arraignment before a magistrate. A magistrate may order a suspect held for 14 days through a writ of detention, which may be renewed every 14 days. The law provides for a prompt judicial determination of the legality of a person's detention. Heavy court caseloads occasionally delayed this determination. Authorities generally inform detainees of the reason for their detention, although there were some complaints this did not always occur. There is a functioning bail system, and detention without bail is unusual except in murder cases, where it is mandatory. Detainees have the right to contact a family member and hire attorneys of their choice, but most could not afford legal counsel<sup>26</sup>.

Existing domestic laws relating to immigration, such as the Refugees Act, are still considered to not be comprehensive enough as they are based on a control-orientated approach as opposed to being protection-oriented towards refugees and migrants. As a result, Botswana's Refugee Act is devoid of many refugee rights contained in international treaties and conventions.<sup>27</sup>

#### IV. Places of Detention and Conditions

There are two main sites of deprivation of liberty of migrants and refugees: The **Francistown Centre for Illegal Immigrants (FCII)** and the **Dukwi Refugee Camp**. Both facilities have been the subject of repeated criticism and concern from human rights monitoring bodies. During its 2021 review of Botswana, the Human Rights Committee noted "reports of the mandatory and prolonged detention of asylum seekers at the Francistown Centre and the obligation for refugees to reside in the Dukwi camp."<sup>28</sup>

The FCII is designated specifically for detaining and processing asylum and immigration claims by individuals who enter the country without authorisation. In addition, a country report compiled by the UNHCR in 2017 reported that children are also detained at the FCII.<sup>29</sup> The Committee on the Rights of the Child has called on Botswana to end migration-related detention of children. During its 2019 review of the country, the CRC stated:

61. Recalling joint general comments No. 3 and No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 22 and No. 23 (2017) of the Committee on the Rights of the Child on the human rights of children in the context of international migration, the Committee urges the State party to:

(a) Prohibit the detention of refugee and asylum-seeking children and adopt alternatives to detention in order to allow children to remain with family members and/or guardians in non-custodial, community-based contexts, consistent with their best interests and their rights to liberty and a family environment.<sup>30</sup>

Once refugee status is granted, Botswana also has a strict encampment policy in that all registered refugees must reside in the Dukwi Refugee Camp located in northern Botswana. Only in

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<sup>26</sup> United States Department of State 'Country Reports on Human Rights Practices- Botswana' 2017 <https://www.refworld.org/country/,,,BWA,456d621e2,58ec8a6713,0.html> [accessed 11 June 2022]

<sup>27</sup> Ibid.

<sup>28</sup> Human Rights Committee, "Concluding observations on the second periodic report of Botswana," 24 November 2021, <https://uhri.ohchr.org/Document/File/1475e6c7-c190-47e8-af99-a170bac8f437/2F2D9D59-90DE-4822-9ABC-516010D63FCD>

<sup>29</sup> UNHCR (note 3).

<sup>30</sup> Committee on the Rights of the Child, "Concluding observations on the combined second and third reports of Botswana," June 2019, <https://uhri.ohchr.org/Document/File/4dedbad5-e844-4983-a65f-7352cd69d3de/4A62E676-CA2C-448D-A0D5-9446DBD083DB>



exceptional cases are refugees provided with residence permits to remain outside of the camp,<sup>31</sup> specifically to allow them access to higher education and means of livelihood.<sup>32</sup>

There have been a number of reported allegations of serious abuse and poor conditions in Francistown:

- There have been reports of murder and rape, including that of children, lack of access to adequate healthcare, and violent suppressions of protests by operatives, including instigators being sent to Francistown maximum security prison;<sup>33</sup>
- In 2021, a fire damaged the Francistown Prison, resulting in some prisoners being held in FCII in separate areas from asylum seekers and migrants.<sup>34</sup> It was also reported that during 2021, the Francistown Prison was used as a COVID-19 quarantine centre for new inmates on remand before being transferred to FCII, with FCII holding both prisoners and asylum seekers and migrants.<sup>35</sup> The WGAD's Deliberation No. 11 on prevention of arbitrary deprivation of liberty in the context of public health emergencies (Deliberation 11) bears noting in this context, specifically the recommendation that states should seek to reduce prison populations and other detention populations wherever possible by implementing schemes of early, provisional or temporary release for those detainees for whom it is safe to do so.

Following from this, there have also been a number of cases heard in the Botswanan Courts relating to detention at the FCII, especially as they relate to arbitrary deprivation of liberty.

- In *Sefu and Others v The Attorney General of Botswana*,<sup>36</sup> the petitioners were moved from Dukwi Refugee Camp and detained at Francistown Centre for Illegal Immigrants on 30 March 2005. They alleged that their detention was occasioned by a suspicion that they had committed a criminal offence. They petitioned to the court to be admitted to bail and for a declaration that their detention for over 48 hours without a warrant was unlawful. However, owing to the undocumented status of the migrants, the court found their detention to be lawful in terms of section 14 of the Immigration Act of 1966 (the Immigration Act in effect at the time of the ruling) and therefore there was no basis on which it may declare that the petitioners' detention at the FCII was unlawful. This case is indicative of how highly bureaucratized "refugee recognition" in the country is and moreover, how administrative barriers to access documentation is likely to create obstacles for migrants seeking formal recognition and potentially result in their face detention.
- In 2017, South African newspapers reported on a case wherein 164 refugees detained at the FCII petitioned the Francistown High Court for release and their return to their countries of origin. They purportedly complained about the conditions at the FCII and argued that they had been unlawfully detained for a longer period than permitted under refugee law.

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<sup>31</sup> United States Department of State, 2021 Country Reports on Human Rights Practices: Botswana, *F. Protection of Refugees*, <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/botswana/>, Accessed at 13 June 2022.

<sup>32</sup> "Govt May Scrap Refugee Encampment Policy", *The Botswana Gazette*, <https://www.thegazette.news/news/govt-may-scrap-refugee-encampment-policy/> [accessed 12 June 2022].

It must however be noted that the Botswanan government is of the view that the Dukwi Refugee Camp is not considered to be enclosed, nor is it considered to be a place for indefinitely detaining arrested refugees and asylum-seekers. See Human Rights Committee, "Second periodic report submitted by Botswana under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2019", 17 November 2020,

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/311/36/PDF/G2031136.pdf?OpenElement>

<sup>33</sup> Ntibinyane Ntibinyane, 'Prisoners of injustice', *Mail and Guardian*, 5 January 2018, <https://mg.co.za/article/2018-01-05-prisoners-of-injustice/>, accessed at 12 June 2022.

<sup>34</sup> United States Department of State 'Country Reports on Human Rights Practices- Botswana' 2020 <https://www.state.gov/wp-content/uploads/2021/03/BOTSWANA-2020-HUMAN-RIGHTS-REPORT.pdf> [accessed 11 June 2022].

<sup>35</sup> Lebogang Mosikare, 'COVID-19 Hits F/Town Prison, Paralyzes Justice System', *The Monitor*, 2 August 2021, <https://www.pressreader.com/botswana/the-monitor-4753/20210802/281569473771837> , [accessed 13 June 2022].

<sup>36</sup> (Criminal Application No. F46 of 2005) [2005] BWHC 65 (10 June 2005).

Although the High Court ordered the transfer to the Dukwi Refugee Camp, this was later overturned on appeal as the appeal court found that the parties were illegal immigrants who were not entitled to protection under Botswanan law.<sup>37</sup>

- Also in 2017, the High Court ordered the release of two Somali asylum-seekers who arrived in Botswana in 2014 who had been detained in the FCII since being denied refugee status in October 2015. Following their release, they were taken into custody at the Tlokweng police station after attempting to enter the Dukwi Refugee Camp. They were thereafter declared to be prohibited immigrants and were allegedly subsequently detained at a prison in Gaborone, from where they were deported.<sup>38</sup>

It is worth noting that the Human Rights Committee expressed concern that there was no independent, effective, and accessible mechanism to receive and investigate complaints of torture and ill-treatment of persons deprived of their liberty.<sup>39</sup> Accordingly, this means that there is no independent oversight of places of detention and the conditions of these places of detention.

## V. Persons for the WGAD to contact

In preparing this submission, LHR contacted a number of partners in Botswana that the WGAD may benefit from speaking to on its visit to Botswana.<sup>40</sup> These include:

- Skillshare International Botswana (Tiny Healy- [tinyhealy@skillsharebots.org](mailto:tinyhealy@skillsharebots.org))
- Childline Botswana ([childlinebotswana@gmail.com](mailto:childlinebotswana@gmail.com))
- Bosa Bosele Training College (Aobakwe Malejane - [@amalejane1@gmail.com](mailto:@amalejane1@gmail.com))
- Ditshwanelo – the Botswana Centre for Human Rights

## VI. Recommendations

We encourage the WGAD to make the following recommendations to Botswana during its visit:

- Withdraw its reservations to Articles 7, 31, and 32 of the 1951 Convention on the Status of Refugees and its 1967 Protocol Relating to the Status of Refugees and incorporate these treaties into national law.
- Prioritise the finalising of its new Refugee Bill and ensure that it is compliant with its legal obligations under international human rights law, including the ICCPR; provide for adequate safeguards against arbitrary detention, deportation, and refoulement; and continue to cooperate and engage with the Office of the UN High Commissioner for Refugees during all stages of the drafting process.
- Implement the recommendations of the Human Rights Committee as they relate to establishing an independent institution mandated to visit and monitor places of deprivation of liberty and ensure that all such places are subject to independent, effective, and regular monitoring and inspection without prior notice and on an unsupervised basis.
- Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- Withdraw the reservation to Article 7 of the Convention against Torture concerning the prohibition against torture.
- Consider non-custodial “alternatives to detention” for all persons who are placed in an administrative detention procedure to ensure that their detention is non-arbitrary, as well as absolutely necessary and proportionate in all cases.
- Adopt regulations that prohibit the detention of all at-risk individuals, including children, families, victims of torture, refugees, pregnant women, persons with disabilities, among others.

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<sup>37</sup> Ntibinyane (note 26).

<sup>38</sup> Amnesty International, *Amnesty International Report 2017/18 - Botswana*, 22 February 2018, available at: <https://www.refworld.org/docid/5a99393da.html> [accessed 13 June 2022].

<sup>39</sup> Human Rights Committee (note 28).

<sup>40</sup> Where partners have consented to their contact details being shared, such details have been included.

- End the criminal prosecution of people for immigration-related infractions.
- Ensure that the conditions of detention meet the highest possible standards and that people in any form of migration detention—including at the Francistown Centre for Illegal Immigrants and the Dukwi Refugee Camp—receive equal access to healthcare as the rest of society.
- Ratify the UN Convention on the Rights of Migrant Workers and Their Families.