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Abbreviations

AAI  African American Institute
ANC  African National Congress
BCC  Botswana Christian Council
BCR  Botswana Council for Refugees
BDF  Botswana Defence Force
ECOSOC Economic and Social Council
EEC  European Economic Community
ERC  Educational Resource Center
ILIRA International Legal Instruments on Refugees in Africa
LWF/WS Lutheran World Federation, Department of World Service
NDP  National Development Plan
OAU  Organization of African Unity
PAC  Pan African Congress
SACU  Southern African Custom Union
SIDA  Swedish International Development Authority
SWAPO  South West Africa People's Organization
UNDP  United Nations Development Programme
UNEPTSA United Nations Educational and Training Programme for Southern Africa
UNHCR United Nations High Commissioner for Refugees
WCC  World Council of Churches
WFP  World Food Programme
WUS  World University Service
ZANU  Zimbabwe African National Union
ZAPU  Zimbabwe African People's Union
Botswana

Southern Africa

Preface

This paper is a slightly abridged version of a study presented at the Department of Law, University of Uppsala, in May 1988, in partial fulfilment of the Degree of Master of Laws.

An essential basis for this work has been data collected during a field study in Botswana June-July 1987. Significant changes in the refugee population since 1987 are pointed out in footnotes. These changes, however, do not alter the conclusions related to the legal aspects of the work.

I would like to thank Dr. Peter Nobel for carefully guiding me through this work, Stiftelsen Sykar for financing the valuable field study, the United Nations High Commissioner for Refugees and the Lutheran World Federation for all assistance in the realization of the field study, the Library of the Scandinavian Institute of African Studies in Uppsala and all others who have supported me throughout this work.

Uppsala, October 1989

Jenny Zetterqvist
1. Introduction

Botswana is one of the countries of Southern Africa, the region from where we receive daily reports of violence, brutality, killings and murders. The situation causes people to flee from their homes and villages, sometimes because they are involved in the conflict, sometimes because they are caught in the crossfire between rival forces, or are otherwise affected by the conflict. What is the future of people who flee to Botswana? To what extent is Botswana ready to admit asylum-seekers and to grant them asylum? What reality do people face who seek or enjoy asylum in a country whose own security is only one of its problems?

1.1 The purpose of the paper and a specification of the problem

The basic question of this work is to what extent international treaties concerning refugees are implemented nationally, in Botswana, with its specific economic and political reality. The treaties of special interest are; the 1951 Convention relating to the Status of Refugees, the 1967 Protocol relating to the Status of Refugees, the 1969 OAU Convention Governing the Specific Aspects of Refugees in Africa, and finally the 1981 African Charter on Human and Peoples' Rights. ¹

The purpose of the paper is, firstly, to give a general description of the refugee situation in Botswana in 1987, secondly, to give a more detailed account of certain legal problems in international refugee law related to national legislation and practice in Botswana, considering the general situation in the country. Concerning the first part, there will be an emphasis on practical aspects of the work with refugees executed by certain organizations in collaboration with the Government of Botswana. The legal problems of interest in the second part of the purpose are, the determination of refugee status, refugees' freedom of movement, their right to work, and their opportunity to acquire citizenship of Botswana. As regards the determination of refugee status, the main problem to be studied is the procedure involved. Regarding the other legal problems, the study is concentrated on the group of refugees who enjoy asylum in the country.

¹ These instruments will be referred to as the 1951 refugee convention, the 1967 Protocol, the 1969 OAU refugee convention and the African Charter respectively.
1.2 Material and method

This work is based on international legal instruments concerning refugees, national Acts of Botswana, literature, periodicals, newspapers and information either acquired through interviews or by printed matter from organizations involved in the refugee work in Botswana. A great part of the information became available through an eight weeks field study in Botswana.

Since the refugee problem is rather a sensitive matter in Southern Africa, the intention during the field study was to obtain the official view of the refugee situation. Accordingly, interviews were concentrated on organizations closely cooperating with the Government of Botswana. Interviews were made with the United Nations High Commissioner for Refugees (UNHCR), Botswana Council for Refugees (BCR), Botswana Christian Council (BCC) and Lutheran World Federation, Department of World Service (LWF/WS), amongst others.

During a visit to a refugee settlement interviews were also made with refugees. Nine refugees were interviewed either individually or in a group, according to their preferences. They represented some of the different nationalities of the settlement and when they were interviewed in groups, they were of the same nationality.

One problem of basing a paper on a field study, is the questionable reliability and validity of the unprinted collected information. Has the interviewed person given an objective description of the situation or does he have any reason to give a false or subjective view? One example of this is when a person selects certain types of information and leaves out other data which would also have been of importance to the answer. The person who was interviewed could also have been misinformed or not informed at all, but pretended to be fully acquainted with the matter. One last question is how many people have passed on the information before it reached the interviewer.

During the field study I tried to reduce these risks by interviewing different parties involved in refugee work, different people employed in the same organization, refugees, and organizations that did not belong to the group that is working together with the Government of Botswana. Most of the organizations interviewed are directly involved centrally in refugee work and should presumably be better informed on questions related to refugees than persons outside those organizations. In particular, as international and non-governmental organizations respectively one would expect that UNHCR and LWF/WS should be well-informed on the official refugee policy. Therefore, in the present work, the problems of reliability and validity have been considered and as far as possible reduced.
2. Botswana

2.1 Geography and climate

Botswana is one of the countries of Southern Africa on the Southern Central African Plateau, about 1 000 metres above sea-level. The country has no coastline but is completely surrounded by other countries (see map p 7).\(^1\)

The capital of Botswana is Gaborone, situated in the south less than 10 km from the South African border. About 450 km to the north-east near the Zimbabwean border is Francistown, the second largest town of Botswana.

Botswana has an area of 581 730 km\(^2\) and approximately 80% of the country is covered by the sand and scrub of the Kalahari desert.\(^2\) As a contrast the vast Okavango delta spreads out over an area of roughly 22 000 km\(^2\) (5% of the area of Sweden) in the northwestern part of Botswana. The delta produces 90% of Botswana's surface water, but about 95% of the water never passes through the delta, disappearing into the vegetation or evaporating. The rest flows straight into the sands of the Kalahari desert or adds to the subsoil water.\(^3\)

During periods of drought in Botswana the level of the subsoil water drops. This effect is particularly severe since about 75% of the population are more or less dependent on the subsoil water for their drinking water.\(^4\) Another far-reaching effect of drought periods is that the combination of rain shortage and a large cattle herd causes a serious overgrazing problem with soil erosion as a result.\(^5\)

2.2 Population

The citizens of Botswana are called Batswana in the plural and Motswana in the singular. Their national language is Setswana and the official language is English.

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\(^1\) Gould, 1985, pp 7,9.
\(^2\) Botswana Up To Date, 1985, p 1.
\(^3\) Johnson, 1982, p 6.
The last census was made in 1981. The population was at that time 941,027. According to a de facto projection, the population figure for 1986 should have been 1,126,764. 52% of the total population are women, and 48% of the population are under fifteen. The annual population growth is about 3.48%.7

Most people live in the south-eastern and southern parts of the country outside the Kalahari desert, along the main road from north to south and along the railway which runs in the same direction.8 Urbanization has increased rapidly. Gaborone has a growth rate of about 13% and the population is now estimated to be 96,000.9

The population consists of a number of ethnic groups. The eight main groups are the Tswana-tribes, Bangwato, Bakwena, Bakgtala, Bangwaketse, Balete, Batlokwa, Batawana and Barolong, who all have a similar social structure and normative system. There are also some minorities in Botswana, one of which is San, the original inhabitants of the area.10

The traditional tswana society is patrilineal. Descent and the inheritance of family property such as land, houses and cattle is on the male side. The organization and administration of a Tswana tribe is hierarchical. The Chief is the head of the central government with authority over the whole tribe, and the Chieftainship is hereditary on the male side. On a local level in the villages, the Headman has authority over the Ward, members of which are related to whom as descendants on the male side from a common ancestor. He also holds this office by right of birth. The administrative duties of the Chief and his Headmen include the distribution of land for settlement, cultivation and grazing. The smallest political unit is the Family-Group is the Elder, who also occupies his position by right of the birth.11

Common to these three institutions it that each of them has its own meeting place, the Kgotla, where the male members of the administrative unit discuss general matters concerning the administration of their particular group. Both the Headman and the Chief also have their own advisers, besides which the Chief has a formal council which he must consult before referring matters to the Kgotla of the whole tribe. Besides its administrative character, the Kgotla also functions as a place where customary law is applied and interpreted.12

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6 Botswana Up to Date, 1985, p 1.
12 Ibid., p 93, 77.
Today, these traditional authorities are in the service of the government and members receive a salary for their administration of governmental decisions. Their function has been reduced to dealing with matters in the customary courts.\(^\text{13}\)

2.3 Politics

Botswana received independence on the 30th of September 1966 without any preceding struggle for liberation, after having been a British Protectorate since 1885 under the name of Bechuanaland. On the same day the Constitution of Botswana entered into force. It constituted a new organization of the country as one unit with a central power, while still retaining the traditional tribal system.\(^\text{14}\)

Since 1965 Botswana is multiparty State with regular general elections every fourth or fifth year. Every citizen who is over twenty-one has the right to vote.\(^\text{15}\) The country is divided into constituencies and the party which wins the majority of the constituencies also wins the general election.\(^\text{16}\)

According to the Constitution, the President is Head of the State (sec. 30). Since 1980 when the first President, Sir Seretse Khama died, the office has been held by Dr. Quett Masire.\(^\text{17}\) The legislative power is held by the National Assembly together with the consultative and advisory House of Chiefs (sec. 77, 85(3), 86).\(^\text{18}\) The executive function is held by the President (sec. 47(1)). There should be a Cabinet which shall consist of the President, Vice-President and the Ministers (sec. 44). The judiciary is expected to explain and interpret the laws freely without government interference. The Courts consist of the Magistrates’ Courts, the High Court, the Court of Appeal and the Customary Courts.\(^\text{19}\)

Botswana has a dual legal system with both common law and customary law existing side by side. The customary law is subordinate to the common law if it is contrary to humanity, morality, natural justice and the written law.\(^\text{20}\) The background to this co-existence is that the British Administration of the Protectorate did not want to interfere with the traditional normative system. Instead they intro-

\^\text{13} Johnsson, 1982, p 47.
\^\text{14} Campbell and Tlou, 1984, p 227.
\^\text{15} Botswana Up to Date, 1985, p 2, Campbell and Tlou, 1984, p 237, Botswana Up To Date, 1985, p 2, Molokomne, 1985a, p 2, Constitution of Botswana sec. 91(3).
\^\text{16} Constitution of Botswana, sec. 63.
\^\text{17} Botswana Up To Date, 1985, p 2.
\^\text{18} Molokomne, 1985, p 23.
duced a system of law which was also made available to Batswana, allowing them the choice between two legal systems.\textsuperscript{21}

In the legislative process, a Bill passes through different institutions before it becomes an Act. After the Bill has been presented and discussed in Parliament it is referred to the President for assent. The President shall then cause it to be published in the \textit{Gazette}. The Gazette is published by the Botswana Government Printer in Gaborone. Once published, the Bill comes into operation.\textsuperscript{22}

When a Bill affects the traditional and customary law, i.e. the power of the chiefs, tribal property and the power or administration of African courts, the Bill must be referred to the advisory House of Chiefs.\textsuperscript{23}

The Police force and the Defence force (BDF) of Botswana, come under the Ministry, the Office of the President.\textsuperscript{24} The BDF was established at the end of the 1970s during Rhodesia’s fight for independence. It is a small professional army with about 3 000 men, formed to defend its border and to provide security for the many refugees who enjoyed asylum in Botswana. The Rhodesian Military made raids and conducted pursuit operations into Botswana territory.\textsuperscript{25} Since May 1986, a system of roadblocks has been set up by the BDF to improve security. All travellers in vehicles are subjected to baggage checks and inquiries as to their destination, and the purpose of their journey.\textsuperscript{26}

2.4 Economy

At the date of Independence in 1966, Botswana was amongst the twenty poorest countries in the world, but from 1967 the economic situation changed when diamonds and copper-nickel were found.\textsuperscript{27} Botswana is presently one of the largest producers of diamonds and one of the five richest sub-Saharan countries. The revenue from the diamond production fluctuates. In 1985 it was as high as 93\%, and in 1986–87 it was expected to be about 75\% of the total revenue.\textsuperscript{28}

According to figures from 1982, the industry of Botswana employs about 6\% of the population while the production accounts for as much as about 41\% of GNP. Industry is mostly directed towards export since the internal market is small, due to the limited population and purchasing power. In 1984 the diamonds accounted for as much as

\textsuperscript{21} Molokomne, 1985, p 4.
\textsuperscript{22} Constitution of Botswana, sec. 87.
\textsuperscript{23} \textit{Ibid}. sec. 85 and 88.
\textsuperscript{24} Johnsson, 1982, p 125.
\textsuperscript{26} Cronje, 1987, p 43.
\textsuperscript{27} Johnsson, 1982, p 21.
71.9% of the total export. Other products were copper-nickel, representing 7.2% of the export. The main market for export is Europe, which receives approximately 80%, and as a member of the Commonwealth, Botswana can export beef to EEC countries.29

Another source of income for Botswana is the Southern African Custom Union (SACU) between South Africa, Lesotho, Swaziland and Botswana. It was expected to provide about 16% of government revenue in 1986–87. Most of the goods imported to Botswana come from the common custom area.30 Approximately 75–80% of consumer goods and capital goods, and 75% of fruit and vegetable needs are imported from South Africa.31 In self-service stores in Gaborone, Francistown and Maun, different sorts of juice, biscuits, yoghurt, cheese, tea, coffee, toothpaste, shampoo, fruit, vegetables, and preserves are available and usually water pumps in Botswana are driven by diesel, imported either from or through South Africa.32 In their daily life Batswana are indeed dependent on an open frontier to South Africa. Without water there is no life in a country afflicted by long periods of drought.

As Botswana has no coastline and no ports, the country is dependent on South Africa for both export and import. The nearest port is Durban on the east coast of South Africa. The main export route for the beef is therefore through South Africa while diamonds have been exported by air since the opening of the international airport outside Gaborone in late 1984.33

About 80% of the population are involved in agricultural production.34 A long period of drought has affected both the cereal and beef production. According to Cronje, 90% of grain requirements therefore had to be imported in 1986 and it is estimated that the cattle herd has decreased by about 1 million head.35 The Government has introduced a relief programme to counteract the negative effects of the drought. It includes the provision of free seed and the purchase of cattle for slaughter to prevent wastage.36 Nearly 80% of the population received this assistance in 1986.37

Besides the drought problem, Botswana has a shortage of skilled persons, and therefore relies heavily on expatriates, especially in the

35 Cronje, 1987, p 45.
36 Ibid.
37 Turner, 1988, p 261.
fields of construction, agriculture, planning and teaching.\textsuperscript{38} According to figures from 1985 there were 1 434 students at the University of Botswana, 1 006 students in vocational training, 740 students in technical education and 32 172 students in secondary schools. At the primary school level there were 233 608 students, which means that a great majority of the primary school leavers do not go on to higher education and remain in the rural areas of Botswana with little opportunities of employment in the modern sector.\textsuperscript{39} According to Molokomne, the future of these children often consists of begging, piece-jobs or petty theft.\textsuperscript{40}

According to the National Development Plan for 1985–91 there is an expected increase in the absolute number of people without jobs or education opportunities from 303 600 in 1985/86 to 338 300 in 1990/91.\textsuperscript{41} This represents at least half of the labour force. The low level of agricultural production caused by drought combined with the problem of a growing labour force of 21 000 persons per annum against the projected increase of about 11 500 jobs per annum, creates a serious situation. It should also be taken into account that South African mines employ about 18 800 Batswana men, but this opportunity of work is expected to decrease.\textsuperscript{42}

\begin{thebibliography}{9}
\bibitem{40} Molokomne, 1985a, p 5.
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3. Refugee movements into Botswana—a short retrospect

Both before and after Independence in 1966, Botswana has served as a host country for refugees from neighbouring countries. Its function has differed depending on the wishes of the refugees and their backgrounds. It has served as a transit country, as temporary host territory and even as a settlement country.

3.1 South Africans and Namibians

During the 1960s there was an inflow to Botswana of a few hundred refugees as a result of the application of apartheid and the reactions of the South African authorities towards the growing manifestation of opposition to apartheid. It was not only South Africans who fled from the system of apartheid however, but also Namibians, as their country was under South African administration.¹

According to Omer-Cooper an economic revolution started in South Africa with the discovery of diamonds in the latter part of the 19th century. The possession of land as well as the need of labour became important. During the first half of the 20th century the opportunities of Africans to take part in the competition of land and to choose where to settle became legally restricted. Through the 1913 Natives Land Act they were denied the right to acquire land in what was called "white areas". In 1936 the principles in this Act were extended by reserving 87% of the area of the country for white inhabitants. Before this, in the 1920s, it had been declared that Africans only were permitted to live in urban areas in so far and as so long as their services were required.²

From 1948 the process of segregation sharpened through a legislative programme. The laws enacted dealt with such matters as restricting choice of social life, place of living, education and jobs. When the apartheid system was introduced, it was openly based on the assumption that the white race was inherently superior to others and the mixing of different races was the ultimate evil to be avoided at all costs.³

¹ Spray, 1987, p 726
In 1959 however, the approach to apartheid was changed to a principle of separate nationality rather than race as a basis for discrimination. The aim was to impose alien nationality on Africans by depriving them of South African citizenship. This was to be carried out by forcing people to reside in certain areas which would then become independent (nowadays these areas are called homelands). 13% of the area of South Africa was therefore divided into ten different regions which were to be allowed to develop to the point of complete political independence. During the first ten years, over 1.5 million people were forcibly removed from their homes to these areas. Another way of forcing people to live in homelands was to redraw borders so that townships became part of homelands instead of part of white South Africa.

The apartheid system gave birth to protests like demonstrations and strikes. The protests could for instance take the form of breaking segregation laws with arrest of participants as a result. Protests could also be met with more brutality, as was the case in Katatura in Namibia in 1959 and in Sharpeville in South Africa in 1960 when several people were shot dead by the police. This event resulted in several demonstrations throughout South Africa.

The South African Government not only tried to stop demonstrations and strikes, they also tried to stop political opposition by banning the African National Congress (ANC) and the Pan African Congress (PAC) in South Africa in 1960. Three years later, the meetings held by the Namibian opposition party South West Africa People’s Organization (SWAPO) were banned, but the organization as such was not banned.

Of these organizations ANC was the oldest as it was established in 1912, while the other two were formed at the end of the 1950s and in the beginning of the 1960s, respectively. PAC consisted of former supporters of ANC who disapproved of the policy of cooperation with other racial groups. One example of such cooperation was the Freedom Congress held in 1955, when the Freedom Charter was drawn up for a non-racial South Africa. The organizations involved, in addition to ANC, were the Indian National Congress of South Africa, the Colored Peoples’ Organization and the White Congress of Democrats.

The reaction of political organizations to these restrictions to expressing their opinions and working for a non-racial society was to establish guerilla groups. Throughout the 1960s Botswana served

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7 Omer-Cooper, 1987, p 900.
mostly as a transit route for South Africans on their way to bases in Tanzania and Zambia.\(^9\) According to Dale, Botswana was therefore regarded in the 1960s as a corridor by which African nationalists and their white sympathizers could reach Tanzania or Zambia.\(^{10}\)

In the mid-1970s there was a sudden new influx of refugees to Botswana. Over a thousand young people from South Africa fled from riots throughout the country.\(^{11}\) Everything started in June 1976, in the township Soweto outside Johannesburg, when the school children protested against the imposition of Afrikaans, the Boer language, as the official teaching language.\(^{12}\) During the height of the riots, Botswana received nearly fifteen refugees a day.\(^{13}\) According to Southall, only a small minority of these refugees went on to guerilla training in other countries. The majority were more interested in staying in Botswana to complete their education, and this led to accusations from South Africa that Botswana was harbouring ANC terror squads.\(^{14}\)

The problems caused by the influx were also a matter for the General Assembly of the United Nations, who was concerned about the heavy burden imposed on Botswana’s limited resources and employment opportunities. In December, 1977, the General Assembly also expressed its concern about the pressure on the educational system of Botswana. The General Assembly therefore requested the Secretary General to consult with the Government of Botswana and the liberation movements concerned with a view to taking steps to organize and provide financial and other forms of assistance for refugees. The General Assembly also called upon the United Nations High Commissioner for Refugees (UNHCR), the United Nations Development Programme (UNDP) and the United Nations Educational and Training Programme for Southern Africa (UNETPSA) to cooperate with the Secretary General in the implementation of the programme.\(^{15}\)

### 3.2 Zimbabweans

Soon after the influx from South Africa had decreased, a new and enormous influx started. The intensification of the liberation struggle in Rhodesia (Zimbabwe) forced thousands of people to flee to other

\(^{11}\) Polhemus, 1985, p 33.
\(^{12}\) Omer-Cooper, 1987, p 903.
\(^{13}\) Southall, 1984, p 156.
\(^{14}\) Ibid., p 162.
countries, including Botswana. Throughout a three-year period, from February, 1977, to December, 1979, when an agreement was reached between the parties at Lancaster House, the refugee statistics showed a dramatic raise in the total refugee population from a few hundred to over 30 000 refugees who were staying in the country at the end of 1979.16 However, during the same period even more, mainly Zimbabwean, refugees had passed through Botswana. These refugees were on their way to guerilla bases in Zambia (mainly ZAPU bases).17 The recruits stayed for a while in the two transit camps which were located in Francistown and Selebi-Pikwe.18 These two camps became overcrowded however and a rural settlement, Dukwe, was therefore established in 1978 for those refugees who were not interested in moving on to guerilla training.19 (See chapter 4.3.)

While harbouring all these refugees during this period of intense unrest in Rhodesia, Botswana became involuntary involved on its own side of the border. Rhodesian security forces were violating the Botswana borders in raids and kidnappings, and the ZAPU freedom movement was operating illegally in Botswana territory.20 This situation resulted in the establishment of the Botswana Defence Force in 1977.21 (See chapter 2.3.)

After the agreement in December, 1979, between the Patriotic Front (consisting of the two guerilla movements, ZANU and ZAPU) and the Salisbury administration a vast voluntary repatriation programme took place.22 Most of the 26 000 Zimbabwean refugees were voluntarily repatriated, but according to Polhemus more than a thousand Zimbabweans chose to remain in Botswana.23 Less than 200 of them were in Dukwe. The Dukwe refugees were students waiting for scholarships or families wishing to settle in Botswana.24

3.3 Angolans

The role of host to the 4 000 Angolans who fled into Botswana in the late 1960s was a completely different one. During a two year period (1967–69) refugees from rural background crossed the border near Shakawe in the north-western corner of Botswana. The majority (80%)

16 Polhemus, 1985, p 33.
of the refugees were Hambukushu and they came to an area which already had a large Hambukushu population. Their flight was caused by the liberation struggle in their home country. In 1967, the Portuguese had started an anti-guerilla campaign in the area where the Hambukushu lived. The people were forced to move to special settlements and the tribal leaders were punished if they were suspected of collaborating with the guerrillas. The Hambukushu were also subjected to reprisals from the guerrillas if they obeyed the Portuguese. Caught in this crossfire they were forced to flee.

As they were neither interested in education nor in joining any guerilla movement, they settled amongst the already existing Hambukushu communities in the remote area in the north. However the distribution of refugees between about 20 villages caused administration problems because of poor communications in the delta area. There had also been some incidents with the Namibian authorities, caused by refugees who had travelled back and forth to Angola, which necessitates crossing the Caprivi Strip (see map p 6). As local authorities anticipated an increase in the influx, a relief scheme was decided upon in 1968.

This relief scheme was financed both by the Government of Botswana and international organizations. It was, for example, the first time that UNHCR was involved in refugee assistance in Botswana. Other organizations involved were the World Food Programme, (WFP) which provided food, and the World Council of Churches, (WCC) which recruited a Resettlement Officer, Malcolm Thomas, who was in charge of developing an area of 260 km² on the western side of the Okavango delta. In this area, named Etsha, the refugees built thirteen villages. In the beginning the economy was based on farming and later a cooperative store and a handicraft industry were established on the initiative of the Resettlement Officer. Today he still runs the big store. Goods are transported by lorries along a shaky, bumpy and dusty road for about 280 km from Maun, the nearest bigger village. It is at least a 6–7 hour drive even if one does not get stuck in the sand.

Since 1975, Etsha has become an ordinary Botswana community and is no longer a refugee settlement, as the refugees acquired Botswana citizenship after Angola had been declared independent. (See chapter 6.3)

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26 Ibid., p 107.
28 Polhemus, 1985, p 33.
31 Potten, 1976, p 105.
Another example of rural refugees who have been integrated locally in Botswana are the Herero who fled in 1904–05 after an unsuccessful revolt against the German colonial administration of South West Africa (Namibia).32 Today the descendants of these refugees are chiefly settled in the western part of Botswana where they are economically independent through their cattle-business. Instead of being hired by Tswana people, the Hereros hire Tswana to work for them.33 According to Polhemus, however, the Herero still evince a desire to return to their own country even if they appear to have been successfully integrated in Botswana.34

32 Vivelo, 1976, p 39–40
34 Polhemus, 1985, p 31.
4. The refugee situation in 1987

4.1 The refugee population

There would seem to be three categories of refugees in Botswana. The first group consists of those who are recognized as refugees and who enjoy asylum. The second category consists of those who are recognized but who have not been granted asylum and therefore move on to another country. The third category consists of those refugees who are voluntarily in transit.

Concerning the number of refugees in each of these groups, it has only been possible to obtain figures concerning the first category. The number of refugees who are involuntarily in transit would have been possible to ascertain on the basis of figures showing the number of applications for asylum and recognition as a refugee, in comparison with the number of approved applications. However, as these figures are regarded as internal government information they have not been obtainable.\(^1\) The third category of refugees consists of refugees from South Africa and Namibia who are on their way to join their liberation movements in Zambia or Tanzania.\(^2\) As matters concerning this group are of a sensitive character for political reasons, it has not been possible to penetrate further into their situation. The number of refugees is therefore not ascertained, but it can be assumed that it is a considerable number, as the territory of Botswana is en route to Zambia and Tanzania.\(^3\)

Of those refugees who have been recognized and are enjoying asylum in Botswana, the majority live in the only existing refugee settlement, Dukwe (see chapter 4.3). In June, 1987, there were 4,559 refugees (children included) in this settlement, but there are also refugees, mainly South Africans and Namibians, living outside Dukwe in urban centers such as Francistown, Lobatse and Gaborone. According to UNHCR, the figure always given concerning this group of refugees is 1,000.\(^4\) Of the total refugee population in 1985/86, about 85% came from a rural background.\(^5\) The majority was from Zimbabwe

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1 Interview (the Office of the President) 31.7 1987. Interview (UNHCR) 24.6 1987.
5 A/AC. 96/677 (part II), 1986, p 10.
while those from an urban background were mostly young South Africans and Namibians.  

Supposing the total refugee population in June, 1987 to be 5 559, about 82% of the population live in the refugee settlement in the northern part of Botswana. Amongst these refugees, the main part comes from neighbouring countries. The Zimbabweans are in a great majority, representing as much as 91% of the population in Dukwe. The South Africans and Namibians together account for 5% and the Angolans 3%. Irrespective of nationality, there is a considerable preponderance of adult males, 70% of the total Dukwe population, while women account for 20% and children under sixteen account for 10%.  

In 1981, after the vast repatriation programme of Zimbabwean refugees was completed, there were only 94 Zimbabwean refugees in the settlement. In 1982, however, there were disturbances in the Ndebele region, Matabeleland, in the south-western part of Zimbabwe. According to Brown, banditry and political violence had increased during 1982 with robberies, killings and kidnappings. The Zimbabwean Government considered that the violence was executed by what they called "dissidents". The so-called Fifth Brigade of the Zimbabwean National Army retaliated with counter-activities. In early 1983, their activities led to allegations of indiscipline and atrocities against civilians. This situation resulted in a sudden influx of Zimbabwean refugees during a three-month period from December, 1982 to March, 1983. This was reflected in the dramatic increase from 601 refugees at the end of 1982, to 3 209 in 1983. Amongst these refugees was Mr. Joshua Nkomo, the political leader for the Ndebele-supported party, ZAPU. In 1982 he had been dismissed from his post in the Zimbabwean Cabinet.  

According to Halpern the Zimbabwean refugees caused tension between Botswana and Zimbabwe. In an issue of the Botswana Daily News in February, 1983, Zimbabwean government officials were reported to regard the refugees as criminals and disgruntled ex-

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6 Interview (BCR) 24.6 1987. According to figures presented by UNHCR in 1989, the total refugee population was at the end of 1988 reduced to 2 092 persons. This significant diminution is related to a voluntary repatriation of 3 151 Zimbabwean refugees during the year. During 1990 there is expected a voluntary repatriation of Namibians. (See A/AC.96/724 (part I) p 10.)  
7 Interview (UNHCR) 30.6 1987.  
9 Polhemus, 1985, p 34.  
guerrillas of the disbanded guerilla army ZIPRA (Zimbabwe People’s Revolution Army, which had been the military wing of ZAPU during the liberation struggle). It was even claimed that the refugees were pro-Nkómo guerrillas who were sent to South Africa for training.

Since this critical period, there have been nearly 4,000 Zimbabwean refugees in Dukwe. During 1986 a few hundred were voluntarily repatriated and this process continued during the first half of 1987. This tendency may have slowed down as a result of events reported by newspapers in the autumn of 1987. A state of emergency was declared in Zimbabwe, officials, missionaries, white farmers and some medical assistants were murdered in Matabeleland, and the local offices of the opposition party ZAPU were closed down. According to some of the organizations working with refugees in Botswana, a permanent solution for the Zimbabwean refugees seems to be dependent on some sort of reconciliation between the two political parties ZAPU and ZANU. It remains to be seen whether this assumption is correct, since the two parties in December, 1987, agreed upon forming one common party.

The number of South African refugees in the settlement is low in relation to the Zimbabweans. Of those 1,000 refugees living outside Dukwe, the actual number of South Africans is difficult to estimate from available information. The Government of Botswana and UNHCR expected an increase in the number of South African refugees after a state of emergency was declared in South Africa in July, 1985 (which was re-introduced in June, 1986 after a short break of a few months). However, so far the expected influx has not occurred. Instead, the general opinion is that the South Africans have chosen to remain and fight in their own country. However, the future is uncertain, things can change.

There are also people in Botswana who have fled from their country of origin, but instead of applying for asylum have been staying in Botswana as aliens. One example is Namibians belonging to the ethnic

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group Herero. They come from a rural background and have settled in the northern part of Botswana amongst the descendants of the Herero refugees mentioned in the preceding chapter. 19

4.2 The parties engaged

The main parties officially engaged in refugee work are the Government of Botswana, the United Nations High Commissioner for Refugees (UNHCR), the Botswana Council for Refugees (BCR) and the Lutheran World Federation, Department of World Service (LWF/WS).

The Government of Botswana, on the basis of Botswana's sovereignty as a State, is solely responsible for everything relating to the implementation of national legislation, such as the investigation of asylum-seekers applications, the recognition of asylum-seekers as refugees and the decision whether or not to grant asylum. It could also be matters concerning residence permits, work permits and citizenship. The authorities most often involved are the Office of the President, the Department of Immigration, the Department of Labour and the Police. Laws relevant to refugees are: the Refugee (Recognition and Control) Act of 1967, the Immigration Act of 1966, the Citizenship Act of 1982, the Citizenship (Amendment) Act of 1984, the Employment of Non-citizens Act of 1981 and the Trade and Liquor Act of 1986. There are also other types of regulations such as administrative rules and government policy, which are of internal character. According to UNHCR, government policy can consist of decisions outlining practice in specific cases with which the laws do not deal. 20

According to the President of Botswana, Dr. Quett Masire, the refugee policy of Botswana is derived from a national ethos of mutual accommodation, tolerance and forbearance. He also states that the policy is based on Botswana's commitment to uphold human rights and on the country's international obligations relating to the status of refugees. 21

The state of Botswana is a party to the 1951 Convention relating to the Status of Refugees. In 1960, the convention was extended by the United Kingdom to include Bechuanaland. When Botswana acceded to the convention as a State in its own right in 1969, reservations were made against the following articles: 7, 12 (1), 17, 26, 31, 32 and 34. These reservations are still valid. In 1969, Botswana also acceded to the 1967 Protocol relating to the Status of Refugees, which states that neither the

19 Interview (UNHCR) 29.6 1987.
21 Masire, 1984, p 144.
time limit (before 1 Jan. 1951) nor the geographic limitation (events occurring in Europe) in the 1951 refugee convention, Art. 1A (2) and Art. 1B (1) (a), should be applied by the state parties.\textsuperscript{22} Botswana was also one of the 41 African states which adopted and signed the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. Although Botswana still has not ratified this Convention, the extension of the concept \textit{refugee} in Art. I:2 is in fact applied by the Government of Botswana.\textsuperscript{23} (For definition see chapter 5.1.) To the question why the convention has not been ratified, the answer given was that the matter was under consideration.\textsuperscript{24}

The legal concept of the term \textit{refugee} in Botswana is \textit{political refugee}, and the definition is found in the Schedule to the Refugee (Recognition and Control) Act of 1967. The Schedule defines a political refugee as:

\ldots a person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a 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.\textsuperscript{25}

Concerning the commitment to uphold human rights, Botswana has not ratified the two international covenants of 1966, dealing with civil and political rights, and economic, social and cultural rights respectively. However, in July, 1986, Botswana ratified the African Charter on Human and Peoples' Rights, which entered into force on the 21st October the same year. Both this regional convention and the two conventions relating to the status of refugees mentioned above, refer to the Universal Declaration of Human Rights of 1948, where fundamental rights and freedoms are stated.\textsuperscript{26} On a national level, Botswana has in its Constitution a special chapter dealing with the "Protection of Fundamental Rights and Freedoms of the Individual". Some of the rights mentioned are the right to life, liberty, security of

\textsuperscript{24} Interview (the Office of the President) 31.7 1987.
\textsuperscript{25} Refugee (Recognition and Control) Act of 1967, the Schedule.
person and the freedom of movement and expression.\textsuperscript{27} Some of these rights will be discussed in chapter 6.

To describe the meaning of a national ethos of mutual accommodation, tolerance and forbearance is more difficult. It has probably grown out of the tradition in Batswana societies of admitting refugees or other non-members of the tribe who had left their own societies, perhaps because of drought or political conflicts. When a stranger arrived at the territory of another tribe, his presence was to be reported to the Chief at his kgotla and the stranger could ask for permission to settle in the area of the tribe. Persons who had left their communities because of political disputes usually only stayed temporarily and they were allowed to practice their own customs during that period.\textsuperscript{28} Another factor behind the national ethos could be the kgotla tradition in which the principle is to listen to other opinions and to promote reconciliation.

The policy of Botswana of admitting asylum-seekers whose reasons are in accordance with the definition in the Schedule or in the OAU refugee convention, has caused security problems for the country. In the 1970s, the Rhodesian army reacted by violating the territory of Botswana, while during the 1980s South Africa has demonstrated its dissatisfaction with Botswana’s refugee policy of giving shelter to people fleeing from persecution. During the last two years, Botswana has been subjected to South African attacks which have caused both deaths and material destruction. The largest attack, was launched in June 1985, when the South African Defence Force attacked ten widely dispersed sites in and around Gaborone. Bombs, grenades and hand-arms killed twelve and injured seven people including refugees, citizens, visitors and residents.\textsuperscript{29}

According to South Africa the purpose of these attacks was to defend themselves against terror activities by the ANC.\textsuperscript{30} When South African helicopters flew over Botswana territory on the 19th of May, 1986, two types of leaflets were scattered. One was addressed to the “SOLDIERS OF THE BOTSWANA DEFENCE FORCE” and the other was addressed “TO THE PEOPLE OF BOTSWANA”.\textsuperscript{31} The content was the same in both leaflets; that the reason for the attack was to eliminate “ANC gangsters who infiltrate into our country to murder innocent women and children”.\textsuperscript{32} The soldiers were requested not to interfere and the

\textsuperscript{27} Constitution of Botswana, Chapter II Sec, 3, 14.
\textsuperscript{28} Shapera, 1984, p 69, 118–120. Campbell & Tlou, 1984, p 62.
\textsuperscript{31} Interview appendix (SIDA) 1.7 1987.
\textsuperscript{32} Ibid.
people of Botswana were requested not to allow ANC members to live amongst them, all for their own safety. The allegation that ANC members use Botswana territory to launch attacks into South Africa has been rejected many times by the Government of Botswana. A few days after a bomb explosion in April 1987 in Gaborone, the Botswana Daily News printed a message from the Department of External Affairs of Botswana to South Africa. It stated that the well-known policy of Botswana is not to allow itself to be used either as a base for armed attacks on its neighbours or as a transit route for armed infiltration into neighbouring countries, including South Africa.\(^{33}\)

This policy was declared by the first President of Botswana, Sir Seretse Khama, only a few days after Independence. Botswana had by then already admitted South African refugees during the first half of the 1960s. Sir Seretse Khama declared that Botswana would continue to offer genuine political refugees a safe haven, but would not permit such people to plan or to attempt to achieve the violent overthrow of the government of any country from within the boundaries of Botswana.\(^{34}\) If refugees should be detected to have behaved in accordance with the description above, actions would be taken against them.\(^{35}\)

In an information paper for refugees in Botswana, published by BCR in 1985, refugees are advised to refrain from becoming involved in political or other activities against other countries, or using Botswana as a base for such activities. This type of activity could namely jeopardize their continued stay in Botswana.\(^{36}\) This opinion that refugees shall refrain from subversive activities can also be found in Art. III of the OAU refugee convention and in Art. 23 of the African Charter. In these treaties, the contracting states undertake to ensure that refugees who enjoy asylum shall not be engaged in such activities. However, the obligation only concerns activities against a contracting state. As South Africa is not a state party to either of these two treaties, there is no legal obligation on the basis of the treaties for the contracting states to prevent subversive activities against South Africa. However, Botswana holds the opinion that all refugees shall refrain from activities against their country of origin, including South Africa.\(^{37}\)

Although threatened by words and actions from South Africa, Botswana has continued to grant asylum to refugees from South

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\(^{33}\) Botswana Daily News, April 10, 1987, no. 70.  
\(^{34}\) From the Frontline: Speeches of Sir Seretse Khama, 1980, p 16.  
\(^{35}\) *Ibid.*  
\(^{36}\) BCR, 1985a, p 21.  
Africa. According to BCR’s annual report of 1985, the President of Botswana, shortly after the raid in June the same year, declared that Botswana would neither waiver nor compromise its principle of safeguarding innocent lives that are in jeopardy and of providing a sanctuary for refugees. According to the same report a Minister of the Government stated that South Africa’s act of aggression would not detract Botswana from complying with its international obligations, nor would it dissuade Botswana from its belief in the common humanity of mankind. Those who fled to Botswana in fear of their lives, would find a hospitable place and a charitable people. In an interview from the beginning of 1987, the President, Dr. Quett Masire, once again declared the willingness of Botswana to admit refugees. He said that Botswana is both morally and internationally obliged to do so, because it respects the sanctity of life.

Another aspect of the refugee policy of Botswana is to accommodate all refugees in the only existing refugee settlement, Dukwe. There are two reasons for this policy. The first is that it is easier to organize the catering for the refugees if they live at the same place, and the second one is for purposes of control. Botswana also has a policy of encouraging refugees to become self-sufficient. Refugees who can support themselves may be allowed to live outside the settlement.

The second party in the work with refugees in Botswana is the Office of the United Nations High Commissioner for Refugees (UNHCR), a representative of the international community. It is, in accordance with Art. 22 of the United Nation Charter, a subsidiary organ to the General Assembly. The headquarters are located in Geneva. In 1985 there were some 90 Representatives accredited to over 100 countries throughout the world.

The Office of UNHCR works under a time-limited mandate, which has been renewed continuously since its establishment on the 1st of January in 1951. The present mandate expires in December, 1988. The functions of UNHCR have been drawn up in the Statute of UNHCR, which also states to whom the functions should be applied. It was adopted by the General Assembly in December, 1950, as an annex to a resolution, calling upon governments to cooperate with the UNHCR. The work of UNHCR should be both humanitarian and social, of a non-political character, and policy directives given by the General Assembly or the Economic and Social Council (ECOSOC) should be followed.

40 Interview (the Office of the President) 31.7 1987. BCR, 1985, p 3.
The two main functions of UNHCR are the international protection of refugees and the seeking of durable solutions to their situation. The meaning of the first function is that UNHCR should seek to promote the adoption of international instruments relating to refugees and ensure their implementation at a national level, through legislation or administrative measures. As refugees are without protection from their country of origin, they are not ordinary aliens in the country of refuge. Instead, protection should be exercised by the international community through UNHCR.

The second function, to find durable solutions to refugee problems, consists of assisting in efforts to promote voluntary repatriation or assimilation within new national communities. The latter solution is divided into local integration in the asylum country or into resettlement in another country. Voluntary repatriation is of first priority and resettlement a last resort.

Until one of these three durable solutions is reached, the refugees need material assistance in their daily life in the host country. UNHCR therefore finances what is called "material assistance activities", such as emergency relief, counselling services and assistance to refugees to help them become self-supporting. The aim of this assistance is to help refugees reach a durable solution as soon as possible. This type of assistance function is a result of a development of the competence of UNHCR. This development was endorsed by, amongst others, the General Assembly. Usually, material assistance activities are administered by non-governmental organizations or local authorities.

The competence of UNHCR should be extended to include those persons who are defined as refugees under the Statute. According to paragraph 6, there are three groups of refugees. The definition of the third group is of universal application since no time-limit or geographical limitations apply. The wording is similar to Art. 1A(2) in the 1951 refugee convention as modified by Art. 1 of the 1967 Protocol (see chapter 5.1). The third group consists of:

Any person who is outside the country of his nationality, or if he has no nationality, the country of his former habitual residence, because he has or had well-founded fear of persecution by reasons of his race, religion, nationality or political opinion and is unable or, because of such fear, is unwilling to avail himself of the protection of the government of the country of his nationality, or, if he has no nationality, to return to the country of his former habitual residence.

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However, since this Statute was adopted in 1950, the group of persons who qualify for UNHCR's material assistance and protection has been extended to include persons who are also in a refugee-like situation but who do not qualify under the refugee definition of the Statute. These persons have instead been brought under the mandate of UNHCR by resolutions of the General Assembly or ECOSOC. The resolutions have then dealt with specific groups of persons of a particular origin or located in a particular area.\textsuperscript{47}

The functions of the UNHCR’s Branch Office in Gaborone, Botswana, are to provide both international protection and material assistance. Apart from the Representative, the office is staffed by a Protection Officer, a Programme Officer and finally a Regional Social Services Officer.\textsuperscript{48}

The Protection Officer is responsible for the protection function. The content of the work can be divided into three parts, a theoretical, a practical and an administrative part. As part of the theoretical work the Protection Officer should seek to promote the accession to international instruments relating to refugees and to ensure the implementation of those instruments through national legislation or administrative measures. This could be done through workshops, by involvement in education at the University, by discussions with faculty members at the Department of Law, by giving lectures or by assisting in updating existing laws. Practically, the work can for instance involve ascertaining whether asylum-seekers also fall under the Statute of UNHCR. The decision of UNHCR is independent of government decisions. UNHCR therefore conducts its own interviews and exercises its protection function even in cases where the government has denied refugee status. Another practical function is to visit refugees or asylum-seekers who are in detention, to give them legal help, such as finding out and informing them of the reasons for their imprisonment. The administrative part of the work can for instance consist of filling in the necessary forms for obtaining travel documents and work permits or for resettlement. The aspect of the work in Botswana which is most important differs however from time to time and from week to week.\textsuperscript{49}

One of the most important tasks for UNHCR in general is to uphold and defend the principle of non-refoulement (see chapter 5.1). When necessary, UNHCR should intervene and try to find another country of asylum for the refugee. This situation can arise in Botswana when a refugee who is enjoying asylum is declared a prohibited immigrant in accordance with section 7 of the Immigration Act. The basis for the


\textsuperscript{48} Interview (UNHCR) 10.6 1987.

\textsuperscript{49} Interview (UNHCR) 29.6 1987.
decision could be that the refugee has been sentenced for committing a crime. If the refugee falls under the Statute, UNHCR will act on his behalf. When the refugee is a criminal case, it will be difficult for UNHCR to find another country of asylum. During the waiting period the refugee is kept in detention.50

Another important task for UNHCR in general as well as for the Branch office in Botswana is to ensure that repatriation of refugees is voluntary and that the government of the country of origin accepts their return. According to Nobel, there are three conditions necessary for voluntary repatriation: Firstly, a socio-economic one, consisting of assistance to ensure proper resettlement to avoid internal displaced persons. Secondly, a political one, that the cause of the flight has been eliminated and that basic human rights of the returning refugees must be respected. Thirdly, a legal condition consisting of a valid amnesty which is clearly worded and properly observed.51

The Programme Officer is responsible for the material assistance function of UNHCR. In the budget for 1987, the total expenditure for Botswana was estimated to be 1 326 000 US$.52 The material assistance function is exercised through two implementing parties, the non-governmental organizations Botswana Council for Refugees (BCR) and Lutheran World Federation, Department of World Service (LWF/WS). The function of BCR is to implement certain projects concerning refugees who live both inside and outside Dukwe, while LWF/WS acts as an implementing party only in this refugee settlement.53

BCR was established in November, 1973, on the initiative of Botswana Christian Council (BCC) and the Government of Botswana. Until the establishment of BCR, BCC had handled the refugee service but found that there was not enough time for all the other issues related to its organization.54

The basic function of BCR is to deal with the social problems of refugees living both inside and outside the refugee settlement. Two other functions are to assist those refugees who have material needs outside Dukwe, and to administer educational programmes based on scholarships.55

The funding parties of BCR are LWF, UNHCR and BCC. These organizations, together with the Government of Botswana, the Red Cross and the Quakers, are members of the BCR executive committee. The Government, represented by two persons from the Office of the

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51 Nobel, 1987a, p 45.
52 A/AC. 96/677 (part II), 1986, p 12.
53 Interview (UNHCR) 10.6 1987.
55 Interview (BCR) 22.6 1987.
President, holds the post of chairman, while BCC, also represented by two persons, holds the post of vice chairman. UNHCR and LWF are represented by one person each, but UNHCR has no vote. However, as UNHCR is one of the contributors it has a great impact on the decisions. The two organizations—the Red Cross and the Quakers—are only observers.56

BCR has two offices, one in Gaborone and one in the refugee settlement, and the refugees can go to these offices to discuss their situation individually with any of the five counsellors. Three of them are in Dukwe and two in Gaborone. Counselling is one of seven projects which UNHCR finances. The counsellors deal with questions relating to family, health, employment possibilities and other means of occupation. The purpose is to find out the preferences of the refugee and his qualifications, and to help the person to find a relevant occupation either inside or outside the settlement on the basis of the information. It could be education, professional training or an income-generating activity.57 BCR is also responsible for briefing refugees about the government's policy, such as regulations concerning their life as refugees in Botswana and for reminding them that they have to obey the laws.58

The projects which BCR has to implement for UNHCR are supplementary aid, education, repatriation, resettlement, counselling and local settlement. Local settlement will be described in the following chapter 4.3, while counselling has already been described. The remaining projects are concentrated on material aid for those refugees who are living outside the refugee settlement because of their education, employment, job interviews, school interviews, medical needs or because they are waiting for resettlement or repatriation. For those who are at school, BCR pays the school fees and uniforms. Refugees who have recently become employed can be given a settlement allowance until they receive their first salary. BCR pays for the accommodation for those refugees who are in Gaborone for interviews or for medical reasons. Refugees who are to be resettled or repatriated are given help with expenses incurred for clothes and suitcases. In the case of repatriation, the refugees are supplied with a ticket while in the case of resettlement the resettlement country usually provides the ticket.59

According to BCR in Dukwe, the heaviest part of their work is dealing with education possibilities both in Botswana and abroad. For South Africans and Namibians there are several organizations which

56 Interview (UNHCR) 10.6 1987, Interview (BCC) 1987, Interview (BCR) 22.6 1987.
give scholarships for studies in African countries, Europe or USA, such as the World University Service (WUS), the African American Institute (AAI), the United Nations Educational Training Programme for Southern Africans (UNEP TSA) and the Otto Benecke Stiftung, based in West Germany. The scholarships are mainly for acquiring a Bachelors degree but some are for vocational training. BCR has to inform the refugees about available scholarships and to ensure that interested refugees will be present when representatives from the different scholarship agencies come to Botswana to interview and test the applicants.

The Zimbabwean refugees are not offered scholarships to the same extent. Instead their scholarships are mainly financed by UNHCR and LWF and their education mostly takes place in Botswana at secondary school level. However, some Zimbabwean refugees study at the University of Botswana.

4.3 Dukwe—the refugee settlement

Dukwe, the only existing refugee settlement in Botswana, is situated in the north-eastern part of the country, near the western road to Nata, 133 km from Francistown. As the road is made of bitumen, there is no problem reaching the settlement by vehicle. There are daily buses from Francistown to Nata, Kasane or Maun.

As already mentioned, the settlement was established in 1978. The area is approximately 264 km² and it is designed as an agricultural settlement, planned to accommodate about 20 000 refugees. The intention was, and still is, to produce enough food to make the refugees self-supporting. In 1980, after the repatriation of Zimbabwean refugees, the Government of Botswana decided that refugees who were not already occupied outside Dukwe should be accommodated in the settlement. In 1987 there were about 4 500 refugees in the settlement, not only occupied in agriculture but also in other activities such as education or income-generating projects.

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61 Interview (UNHCR) 18.6 1987.
64 Ibid., p 13.
As the policy is to accommodate all refugees in the settlement irrespective of their background, the settlement is a heterogeneous community consisting of people from both rural and urban backgrounds representing twelve different nationalities. Skilled refugees have opportunities of employment outside the settlement or of resettlement. Another group of refugees consists of people with rural backgrounds, who are used to basing their economy on a combination of agriculture and livestock breeding.\textsuperscript{66}

Since 1980, the running of the settlement has been based on a tripartite agreement between the Government of Botswana, UNHCR and LWF/WS (the Tripartite). The Government and LWF/WS administer and staff the settlement, while UNHCR's function is to be the main funding partner. The other two parties give additional contributions, as in 1986 when some hundred refugees were provided with spectacles, paid for by LWF/WS.\textsuperscript{67}

The Government is represented by the Settlement Commandant, who is responsible for security, the police, refugee statistics and legal matters such as handling applications for citizenship or for permission to leave the settlement. The LWF/WS, as an implementing agency for UNHCR has the operational responsibility for economy, transport, food distribution, water facilities, education in the settlement, daily administration, etc., in short, everything related to the daily life of the refugees.\textsuperscript{68}

LWF/WS headquarters are in Geneva and it has a Service Programme Office in Gaborone. The organization is not only engaged in refugee work, but also in assisting local Batswana communities in development schemes whose aim is to increase economic potential and self-reliance locally. Assistance is provided in such areas as agriculture and water programmes.\textsuperscript{69}

Another organization represented in the settlement is, as previously mentioned, BCR, which has its own office. Since April 1987 the settlement also has a pastor, employed by BCC to be a minister to the refugees. The work consists of listening and talking to refugees, either by visiting them or by admitting them to one of the rooms at the BCR office.\textsuperscript{70}

The refugees are organized in committees based on nationality or political affiliation. The committees have their leaders whose function is to be a link between the refugees and the administration of the

\textsuperscript{66} Interview Zachrisson, 28.3–29.3 1987.
\textsuperscript{70} Interview (BCC) 1987.
settlement. According to a former co-ordinator (employed by LWF to be the head of the settlement), he could, either on his own initiative or by invitation from a committee, discuss current problems, such as food supplies, housing or how to start up development projects.71

When refugees first arrive at Dukwe they are given tents, but they are expected to build their own dwellings within a short time. The World Food Programme (WFP) provides food supplies and clothes are sent from abroad. As there is no surface water in the settlement, the water facilities depend on bore holes and rainfall.72 To avoid jealousy amongst Batswana settled near Dukwe, the three parties involved have decided that water facilities, the health clinic and education should also be available to Batswana.73

The main aim of the work in the settlement is to encourage and to set up activities in order to train and teach refugees to become self-sufficient, thereby reducing their dependence on external assistance. The refugees are therefore assisted to start and develop different types of income-generating activities and agriculture-related activities. For this purpose, LWF/WS has employed a Projects Officer who is responsible for planning the projects that refugees wish to start. He finds out if the project is realistic, if there is enough knowledge and material and if there is a market for the products so that the loans given to the refugees can be paid back. Refugees who live outside the settlement also have the opportunity to start projects. The Projects Officer goes to Gaborone once a month to interview refugees who have ideas on projects they wish to start. Examples of income-generating projects in the settlement are a brick-moulding unit, knitting groups, a carpentry unit, a bakery, a restaurant, an art and craft group and several small shops throughout the settlement. Both the restaurant and the art and craft unit are situated near the Nata road, which means that tourists on their way up to the Okavango delta may stop to buy drinks and handicrafts. During 1986 the carpentry group became an autonomous cooperative unit. It consists of both a training and a productive sector. According to the Projects Officer, it is the most successful project due to continuous supervision by Danish volunteers.74 However, a general problem related to the projects is how to find a market for the products outside Dukwe as they have to compete with South African import.75

73 Interview (LWF) 17.6 1987.
Examples of successful agricultural activities are poultry projects with broilers and laying hens. There is also a dryland-farming project and a horticultural project. As the area of Dukwe is not exempt from the drought in Botswana, the agricultural potential is poor. In 1986 lack of rainfall resulted in a total loss of the sorghum crop (Sorghum vulgare, a cereal crop plant), planted in the 1985/86 season. The aim that Dukwe should produce enough basic food to be self-sufficient therefore seems hard to realize. Due to the periods of drought, the traditional Batswana communities base their economy on cattle with crops as a complement. However, refugees are not allowed to own cattle so their economy is heavily dependent on the production of crops.

Education at different levels fills much time. According to the Projects Officer, nearly 2,000 refugees of the Dukwe population were at school. For the pre-school children there is a day-care center, consisting of a class-room and a play-ground. There are also two primary schools of which one is under the administration of the local government. This school is for both refugee and Batswana children. The other primary school is the Zimbabwean community self-made school, which since 1986 has new premises. For the secondary school students, there is the Educational Resource Centre (ERC), to which a library and a laboratory are connected. The library offers a place to prepare homework and to read newspapers from the refugees' home countries. Apart from literature for adults, the library also has a corner for children. According to one of the librarians, it is well-visited in the afternoon when the primary school has finished. The settlement also has a night school which offers both primary and secondary education for refugees who, for different reasons, cannot attend school in the daytime. Their education may have been interrupted in their home countries and they are now too old for the ordinary schools, or they may never have had the chance to attend school at all. They may also be occupied in projects during the daytime.

In their spare time refugees can play soccer in one of the eleven teams of the settlement. Matches are played at week-ends with a lot of supporters around the sports grounds. During the week, films can be shown after sunset. There are also some music groups in the settlement which give performances throughout Botswana.

What will happen to Dukwe in the future? The answer to the question is dependent on what happens in the Southern African

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77 Interview, Zachrisson, 28.3–29.3 1987, p 23.
78 Interview (LWF) 13.7 1987.
80 Interview (Dukwe) 11.7 1987b and 12.7 1987.
region. If there should be an influx of refugees, the settlement can accommodate up to 20,000 refugees. Other problems which usually arise in case of an influx are related to the lack of food, health services and transport. UNHCR is aware of these problems and has an emergency preparedness plan in readiness in the case of an influx of South African refugees. The plan has been discussed with the Government of Botswana and with the organizations involved. The plan presupposes however that the border to South Africa remains open. 81

81 Interview (UNHCR) 2.7 1987.
5. The refugee determination procedure

When considering applications for asylum, governments usually carry out some kind of investigation in order to establish the causes of the asylum-seeker's flight. The findings then provide a basis for two separate decisions, namely, whether the asylum-seeker should be recognized as a refugee and whether the refugee should be granted asylum. For these two decisions, it is of importance how the concept of refugee is defined in the country where asylum is sought, and what kind of determination procedure is used to ascertain the reasons for flight.

5.1 International law

As already mentioned in chapter 4.2, Botswana is a party to the 1951 refugee convention and 1967 Protocol relating to the Status of Refugees. Botswana is therefore legally bound to a universal refugee concept without any limitations in time or place regarding events that cause people to flee. According to Art. 1A(2) of the 1951 refugee convention as modified by Art. I of the 1967 Protocol, the term refugee shall apply to any person who:

...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a 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.¹

The definition in the convention is similar to that of the UNHCR's Statute and the asylum-seeker qualifies for refugee status on an individual basis, because of the qualifications "well-founded fear of being persecuted".

The word *fear* is considered to have a subjective character as it refers to the feelings of the individual refugee, while the word *well-founded* is of an objective character. In this case all the circumstances of the case

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¹ ILIRA, 1979, p 26 and 28.
have to be considered in order to ascertain whether there are sufficient factors to justify the fear of persecution.\(^2\)

As the concept \textit{persecution} was not defined in the 1951 refugee convention, interpretation of the concept has been under discussion. According to one source, it was clear from the very beginning that persecution should be understood in terms of the denial of basic human rights.\(^3\) How basic human rights should be defined in their turn could in itself be a matter for discussion, but there seems to be a general agreement that measures directed against a person's life, limb or physical liberty constitute persecution. These measures could be torture, cruel, inhuman or degrading treatment or punishment, and certain issues of arbitrary arrest or detention.\(^4\) To constitute persecution, the acts must be committed by the government or by authorities subordinate to the government or by other groups in the country whose acts must be tolerated by the government voluntarily through lack of control, in such a way that the victims are offered no protection.\(^5\)

It is not only the manner of persecution but also the reasons for persecution (the person's race, religion, nationality, membership of a particular social group or political opinion) that should be discussed in relation to the denial of human rights.\(^6\) When the reason for persecution for instance is "political opinion", it is a denial of the right to freedom of opinion and expression laid down in Art. 19 of the Universal Declaration of Human Rights and the 1966 International Covenant on Civil and Political Rights. Another example is when the reason for persecution is "race". It is then a denial of the content in Art. 1 of the Universal Declaration of Human Rights, stating that all human beings are born free and equal in dignity and rights. Since 1966 there exists an International Convention on the Elimination of All Forms of Racial Discrimination within which the States Parties condemn apartheid (Art. 3).\(^7\)

Since the 1951 refugee convention was adopted, the definition of a refugee as laid down in Art. 1(A)2 has been extended. Firstly, in 1967, through the Protocol relating to the Status of Refugees, which deleted the limitations of time and place, and secondly, in a regional convention, through the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. In this convention the refugee concept not only includes the definition of the 1951 refugee

\(^3\) Nobel, 1985, p 11.
\(^7\) ILIRA, 1979, p 144, 174, 260.
convention, but also extends the term refugee to persons fleeing for other reasons than persecution. The wording of Art. I paragraph 2 is:

The term 'refugee' shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.8

This development of the refugee concept was caused by the refugee situation in Africa during the 1960s. Large groups of people fled from liberation struggles or explosive internal, social and political situations in already independent countries. This made the determination of refugee status on an individual basis impractical and their flight could also be for other reasons than persecution.9 The refugee concept as defined by the 1951 refugee convention did not fit the situation in the African continent very well, either before or after the 1967 Protocol. However, the 1969 OAU refugee convention was not regarded as a replacement of the 1951 refugee convention. Instead the OAU countries recognized the 1951 refugee convention as the basic, universal instrument relating to refugees, while the OAU convention was agreed to be an effective complement in Africa.10

The extended refugee definition is not dependent on any subjective or individual qualifications, such as "fear of persecution". The definition can therefore be used in group determination of refugee status. The refugee status is dependent on one of four objective criteria: external aggression, occupation, foreign domination or events seriously disturbing public order. According to Nobel the fourth criterion covers a variety of man-made conditions which make it unsafe to live in a region, such as internal strife in a country or natural disasters aggravated by violence or neglect, causing people to flee.11

Neither of the two refugee conventions which deal with the status of refugees mentions the establishment of a procedure to determine refugee status or the means of determination, either on an individual or on a group basis. However, in October, 1977, the Executive Committee of the High Commissioner's Programme12 recommended the state parties of the 1951 refugee convention and the 1967 Protocol that certain Basic Requirements should be fulfilled in the

8 Ibid., p 120.
10 The 1969 OAU refugee convention, the Preamble paragraph 9 (ILIRA, 1979, p 120).
12 The committee shall advise the High Commissioner in the exercise of his functions under the Statute and approve the material assistance programmes for each year. (UNHCR, General Information Paper, 1986.)
determination procedure. At the same session, the Committee requested that the Office of the High Commissioner should issue a handbook concerning the procedures and criteria for determining refugee status. This handbook was published in 1979 for the exclusive guidance of governments and it is not recommended for private persons to quote or reproduce any part of it.\(^{13}\)

In May, 1979, a Pan-African Conference was held in Arusha, Tanzania, on “the Situation of Refugees in Africa”. The conference was attended by representatives from African and non-African states and several other organizations involved in refugee work. The conference drew up sixteen recommendations, of which number 2 deals with the definition of the term refugee and the determination of refugee status. In this recommendation, the conference recognizes the definition of the term refugee as stated in Art. I, paragraphs 1–2 of the 1969 OAU refugee convention, and appeals to African states to apply the Basic Requirements specified by the Executive Committee of the High Commissioner’s Programme in 1977. In the same recommendation the conference also recognizes the importance of UNHCR’s responsibility to determine refugee status under its Statute, so as to ensure that asylum-seekers who are refused refugee status by a state receive adequate protection until a solution is found.\(^{14}\)

The recommendations of the Arusha Conference have since been “fully endorsed” by the OAU Council of Ministers and by the United Nations General Assembly in July, and November, 1979, respectively.\(^{15}\)

The Basic Requirements of 1977, which are only directed towards cases of individual determination, deal with four stages in the process of being recognised as a refugee. The first stage refers to when the asylum-seeker addresses himself to the authority at the border or within the territory of a state party of the 1951 refugee convention. The second, when the asylum-seeker is examined. The third, when the decision is taken whether or not to recognize him as a refugee, and the fourth, the chance of appeal.

*In the first case* the state parties are recommended to assign competent officials, such as immigration officers or border police officers, to whom the applicant can address himself. These officials should have clear instructions on how to deal with asylum-seekers. They should also be required to act in accordance with the principle of non-refoulement and to refer asylum-seekers to a higher authority. *Secondly*, there should be a clearly identified authority responsible for


the examination. The asylum-seeker should be advised as to the procedure to be followed. He should also be given an interpreter if needed and the opportunity of contacting a representative of UNHCR. Thirdly, the first instance to recognize an asylum-seeker as a refugee should be a clearly identified authority. If the asylum-seeker is recognized as a refugee, he should be informed of this fact and issued with documentation certifying refugee status. Finally, the asylum-seeker should be given reasonable time to appeal if he is denied refugee status. The Executive Committee also recommends that an asylum-seeker should be permitted to remain in the country until a decision has been reached.\textsuperscript{16}

As these requirements are only in the form of recommendations the state parties of the 1951 refugee convention are not legally bound to follow them. The Arusha Conference expressed some hesitation concerning the outlined procedure in cases of large-scale movements of asylum-seekers, as such situations would necessitate special arrangements to determine who is a refugee.\textsuperscript{17}

As the final intention of an asylum-seeker is to obtain permission to remain in the country where asylum is sought, it is necessary to deal shortly with the right of asylum.

The traditional meaning of the right of asylum in international law does not refer to the right of the individual, but to the right of the state in relation to other states. The meaning of the right of asylum is thus the right of a state to grant asylum to whosoever it wishes, without being accused of an unfriendly act.\textsuperscript{18} According to Rwelamira this principle rests on another principle, namely that a state has territorial sovereignty and therefore acts independently in its own territory.\textsuperscript{19}

This interpretation of the right of asylum is found in the General Assembly’s Declaration of Territorial Asylum of 1967 and in the 1969 OAU refugee convention. In Art. 1 of the Declaration, the sovereignty doctrine is stressed when it is stated that asylum granted by a state in the exercise of its sovereignty shall be respected by all other states. It is also stated that it shall rest on the state to evaluate the grounds for granting asylum.\textsuperscript{20} In the Preamble of the 1969 OAU refugee convention, the OAU member states say that they are aware that refugees can cause friction among them. They have therefore agreed that the granting of asylum is a peaceful and humanitarian act and should not be regarded as an unfriendly act by any member state.\textsuperscript{21}

\textsuperscript{17} The Recommendations from the Arusha Conference on the African Problem, 1981, p 10.
\textsuperscript{19} Rwelamira Medard RK, 1983, p 174–175.
\textsuperscript{20} Goodwin-Gill, 1983, p 105.
\textsuperscript{21} The 1969 OAU refugee convention, Art. II and the Preamble (ILIRA, 1979, p 118, 122).
So far the right of asylum has been treated as the right of a state to grant asylum. Another aspect of the right of asylum is the right of the individual. The right is then twofold: Firstly, with reference to the state where asylum is sought and secondly with reference to the persecuting state. In the first case it is a question of the right to be granted asylum, but as already mentioned, there is no international legal obligation for a state to grant asylum, so a refugee cannot claim a legal right to be granted asylum. (On the other hand if such a right could be found in national law, an asylum-seeker can claim a legal right to be granted asylum on the basis of national legislation.) In the second case, with reference to the persecuting state, the individual’s right consists of the right “to seek and enjoy” asylum in a foreign country.22 This right is found in the Universal Declaration of Human Rights, Art. 14 (1):

Everyone has the right to seek and enjoy in other countries asylum from persecution.23

Before the adoption of the Declaration, there were discussions whether to word this article as the right to be granted asylum, but the suggestion was not accepted.24

The meaning of the right to enjoy asylum, in the sense that it is a right for the individual in relation to the persecuting state, is not explained in the Declaration. It may be interpreted as a right not to be attacked by the persecuting state when enjoying asylum. It may also be interpreted as a right not to be discriminated against on the basis of his former refugee status after having been voluntarily repatriated.

The African Charter of Human and Peoples’ Rights, also deals with the question of asylum in Art. 12 paragraph 3. The state parties have agreed that:

Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the laws of those countries and international conventions.25

The wording differs from that of Art. 14(1) in the Declaration of Human Rights. Firstly, the word obtain is used instead of enjoy and secondly, there is an additional phrase that starts “in accordance with...”. The word obtain is more similar to the expression be granted than to the word enjoy, as the literal meaning of the latter word describes a condition where the person is already in the country of asylum, while to obtain means to get. On the other hand, the wording

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of the rest of the article: "in accordance with the laws of those countries..." seems to confirm the traditional interpretation of the right of asylum. It is the state which has the exclusive right to decide whether or not to grant asylum as each state makes its own laws.

However, the OAU countries have strengthened the institution of asylum in their refugee convention by the agreement to use their "best endeavours" to receive refugees and to secure the settlement of those refugees who are unable or unwilling to be repatriated.26

An issue closely related to the right of asylum is the principle of non-refoulement which is laid down in Art. 33 of the 1951 refugee convention. The article in the 1969 OAU refugee convention that corresponds to Art. 33, is Art. II paragraph 3. The content of the articles is that a contracting state may not send a refugee to a country in which he could be persecuted. However, the contracting states are not explicitly obliged by these articles to grant asylum. On the other hand, the effect of the articles could be that a contracting state has to grant or continue to grant asylum when there is no other state willing to admit the refugee.27

Both the 1967 Declaration on Territorial Asylum and the 1969 OAU refugee convention deal with the situation that arises when a state finds it difficult to continue granting asylum, but is bound by the principle of non-refoulement. If this situation arises, the other member states are called upon to lighten the burden of the first country of refuge through "appropriate measures" according to the principle of burden-sharing.28

5.2 National legislation and practice

Neither of the two refugee conventions focused on in this paper, refer to how the agreed definitions of refugees and their rights should come into effect in the territories of the contracting state. However, the state parties of the 1951 refugee convention have agreed to communicate to the Secretary-General of the United Nations such laws and regulations which they may adopt to ensure the application of the convention (Art. 36). When requested, this type of information should also be given to the Office of the High Commissioner together with information concerning the conditions for refugees (Art. 35). In the OAU refugee convention the state parties have agreed to provide the Secretariat of OAU with information concerning relevant laws,

28 Ga. Res 2312 (XXII), Art. 2 paragraph 2 and the 1969 OAU refugee convention, Art. II (ILIRA, 1979, p 284, 122 respectively.)
regulations and decrees which may come into force in the future (Art. VII). 29

Even if a state has ratified an international treaty, the obligations of the treaty do not automatically become a part of the state party's national legislation. It is therefore up to each state party to an international treaty if, when and how the content of the treaty will be implemented nationally. There is however a political and moral obligation for a state party to ensure that its national laws are in conformity with its international obligations. 30 This could be done by declaring in a constitutional provision that international treaties should be directly applicable in the territory of the contracting state. Another method is to transform the content of the treaty in question to national law or to enact an act declaring that the treaty in question should be directly applicable nationally. 31

As the state parties to the two refugee conventions have not agreed upon any particular procedure to determine refugee status, there are no specific obligations related to procedure to be implemented in Botswana. On the other hand, as already mentioned, there are international recommendations on the procedure to be followed. It is of importance to the asylum-seeker, the refugee administration and the state, that the authorities are aware of who the beneficiaries of refugee law are. As the authorities usually act directly under national regulations and administrative rules, it is necessary to have a national definition of who qualifies as a refugee and how refugee status should be determined. 32

As stated in chapter 4.2, Botswana has a Refugee Act from 1967. In this act there are provisions dealing with the definition of who qualifies as a refugee, and a description of the procedure for determining refugee status. For the wording of the definition see chapter 4.2. The definition is identical to the definition in Art. 1A(2) of the 1951 refugee convention as modified by the 1967 Protocol which eliminates limitations in time and place. There is however one difference: In the 1951 refugee convention the term for a person who qualify for refugee status is refugee, while in the Schedule to the Refugee Act the term political refugee is used. In practice, however, the term genuine refugee is sometimes used instead of political refugee. The meaning of the term seems to cover the requirement that the refugee should be "well-behaved" in the sense that he should respect the laws and

29 The 1951 refugee convention (ILIRA, 1979, p 50) and the 1969 OAU refugee convention (ILIRA, 1979, p 126).

As said before, in practice Botswana applies the broader refugee definition laid down in Art. I paragraph 2 of the 1969 OAU refugee convention (see chapter 5.1). Whether asylum-seekers are determined individually or as a group under this definition, depends on the number of arrivals.\footnote{Interview (UNHCR) 11.6 1987. Interview (UNHCR) 23.6 1987.}

However, the refugee determination procedure outlined in the Refugee (Recognition and Control) Act of 1967 is for individual determination (section 3–5 and 8). After a person claiming to be a refugee has presented himself to an Immigration Officer, a Refugee Advisory Committee shall hold an inquiry. Such a committee is appointed by the Minister and should not consist of more than four persons (section 3). After the inquiry, the committee shall report to the Minister who shall declare whether or not the person is recognized as a political refugee. The committee shall review the case within six months, to find out if the person still qualifies for refugee status. The proceedings of the committee shall be conducted in private according to rules drawn up by the committee itself. To collect information for the report, the committee has the power to summon the person who claims to be a refugee and any other person who can give additional information.

Since 1982, this procedure has been temporarily suspended and replaced by a different one. One of the reasons for this was the need for a careful security check on asylum-seekers. The content of the security check is secret, but with reference to the situation throughout Southern Africa, the purpose would be to find out if the person is in the country for subversive reasons to kidnap refugees or to plant bombs or grenades, etc.\footnote{S/17453, 1985, p 14. BCR, 1985, p 5. Interview (UNHCR) 23.6 1987. Interview (UNHCR) 24.6 1987.}

Prospective refugees enter Botswana in different ways. They can declare their intention to seek asylum directly to the Immigration authorities at a frontier post. They can also enter Botswana as visitors or cross the border at a point where no Immigration authorities are stationed. When entering the territory of Botswana in one of these two latter ways, the person is expected to report to the nearest police station as soon as possible to claim asylum. There is no strict time limit within which he has to report to the police, but one month is recommended.\footnote{BCR, 1985a, p 4.}

After an asylum-seeker has reported to the police or been escorted there by the Immigration authorities, he will be \textit{individually inter-}...
viewed by an interviewing officer of the Special Branch, a department of the police. The asylum-seeker will be questioned on personal details such as name, place and date of birth, family, affiliation to any organization and his reasons for seeking asylum. Sometimes the asylum-seeker is also interviewed by other officers and required to submit a written statement.37

The claims of asylum-seekers are usually investigated within one day, but it can take longer, depending on when the asylum-seeker arrives and from what background he comes. If the asylum-seeker arrives in the area of Gaborone immediately before a week-end, he may have to wait until after the week-end, or if he was a political leader in his own country, the investigation could take longer. When the investigation is not held in Gaborone, where BCR can arrange accommodation, the refugee may have to spend the night in prison. During the investigation period, the asylum-seeker is allowed assistance of a lawyer, if he can pay him, but the lawyer is not allowed to be present during the interviews.38

It is sometimes a problem for refugees to explain their reasons for flight owing to language problems, since the investigation is conducted in English, or because of psychological reasons. It is not easy to repeat horrifying experiences in front of a person who represents an authority corresponding to that of his country of origin, when that was the reason for his flight.39

UNHCR has no part in the investigation and is not allowed to be present at interviews. Often the organization is not even aware at this stage that the person is in the country. If an asylum-seeker should ask for assistance from UNHCR, he will be told that, according to practice, he will meet UNHCR after his case has been investigated.40 As mentioned previously, UNHCR will then conduct its own interview with the asylum-seeker to find out if he qualifies as a refugee under the Statute. The interview will either be carried out in Gaborone or in Dukwe, when UNHCR visits the settlement.41

After the investigation conducted by the Special Branch, two questions will be answered: whether the asylum-seeker should be recognized as a refugee and whether he should be granted asylum. 42

39 Interview (Dukwe) 10.7 1987e.
41 Interview (UNHCR) 24.7 1987.
42 Interview (UNHCR) 23.6 1987.
The decisions are made by the Government of Botswana, through the Office of the President. In difficult cases, the Government, before making a decision, may wish to hear the opinions of both UNHCR and BCR. If that is the case, the asylum-seeker will be interviewed by both UNHCR and BCR before a decision is reached by the Government.

Three different decisions are possible: 1. the person is recognized as a refugee and granted asylum, 2. the person is recognized as a refugee, but refused asylum, 3. the person is neither recognized as a refugee nor granted asylum.

The effect of the first decision is that the refugee is granted permanent asylum, defined as permission to reside in Botswana. This type of decision is no longer reviewed after a period of six months in accordance with the Refugee Act. The change of practice is a result of the increase in the amount of refugees in the country since the Act was adopted in 1967. The refugee is notified of this decision by word of mouth or by being issued with an identity card, but the refugee does not acquire a residence permit (see chapter 6.2). The effect of the second decision is that the refugee is granted temporary asylum for a certain period of time after which he must move on to another country of asylum, which UNHCR will try to find. The length of time before he has to move on and the place of residence during the waiting period depends on the individual case. The refugee may be kept in detention, he could stay in Dukwe or he could even have freedom of movement, in which case he has to report regularly to the police.

The effect of the third decision is that the person is in the country illegally, and will therefore be declared a prohibited immigrant by the Department of Immigration and thereafter kept in detention. If the Government should not inform UNHCR of the presence of such a person, UNHCR will receive information from other persons such as other refugees, friends or relatives of the asylum-seeker. If the person should qualify as a refugee under the Statute, the UNHCR intervenes and asks the Government for permission to find another country of asylum and it is usual for the Government to give such a permission.

In general, the opinion is that the cooperation between UNHCR and

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43 Interview (UNHCR) 29.6 1987 Interview (the Office of the President) 31.7 1987. Interview (Dukwe) 10.7 1987d. Interview (Dukwe) 10.7 1987a.
44 Interview (UNHCR) 29.6 1987.
46 Interview (UNHCR) 24.6 1987.
the Government of Botswana works well. They have for instance daily contacts as well as routine meetings once a fortnight.\textsuperscript{50}

Once the Government has reached a decision, the recognized refugee, who has also been granted permanent asylum, will meet BCR to be informed of government policy and to be interviewed, the latter being part of attempts to find a suitable occupation for him.

According to UNHCR, the majority of asylum-seekers qualify for recognition under the Schedule to the Refugee Act of Botswana as well as the Statute of UNHCR, but there are also cases when opinion differs between the Government and UNHCR.\textsuperscript{51} A person who has been denied refugee status or asylum can appeal to the \textit{Minister of State} at the Office of the President, or to the court. As all figures related to refugee matters are regarded as internal government sources it has not been possible to ascertain to what extent this opportunity is used. However, asylum-seekers do appeal and when they do so, they appeal to the Minister of State, not to the court.\textsuperscript{52}

### 5.3 Conclusions

The determination procedure in Botswana is based on the refugee definition found in the Schedule to the 1967 Refugee (Recognition and Control) Act. This definition complies with the universal definition found in the 1951 refugee convention as modified by the 1967 Protocol. However, in practice Botswana also applies the extended refugee definition as laid down in Art. II paragraph 2 of the 1969 OAU refugee convention. The procedure as such is no longer based on any of the rules outlined in the Refugee Act. With the information available the procedure in practice appears however to be close to the Basic Requirements.

The Basic Requirements recommend that an asylum-seeker can address himself to competent officials who should have clear instructions how to act, and they should refer the asylum-seeker to a higher authority for investigation. In Botswana the competent officials consist of the Botswana police and the immigration authorities at the frontier posts. They appear to have clear instructions since the asylum-seekers are referred to the Special Branch for investigation. As this authority is a department of the Police, it is not really a higher authority, but it is a clearly identified authority with the sole responsibility to examine cases.

\textsuperscript{50} Interview (UNHCR) 11.6 1987
\textsuperscript{51} Interview (UNHCR) 29.6 1987.
\textsuperscript{52} \textit{Ibid.}
During the individual investigation, the asylum-seeker is alone with the interviewing officer and is not allowed to have a lawyer or even UNHCR by his side. On the other hand, the asylum-seeker is given the chance to meet UNHCR afterwards and UNHCR then has the opportunity to execute its protection function if necessary.

The decision whether to recognize an asylum-seeker as a refugee and whether to grant asylum is taken by the Government through the Office of the President, which is a clearly identified authority. If the asylum-seeker is granted asylum he will be notified by word of mouth or by the issuing of an identity card. If the asylum-seeker is instead denied refugee status or asylum he can appeal to an administrative authority, the Ministry of State or to a judicial authority, the court. As the Minister of State is at the Office of the President, the appeal seems to be directed to the same authority as the first request, whereas if the person makes an appeal to the court a different and independent authority reviews the case. A person who has been denied asylum but has been recognized as refugee, would probably be allowed to remain in Botswana pending an appeal, as long as another country of asylum has not been found.

In answer to a question on the opinion of UNHCR about the existing procedure, UNHCR considers that the procedure is satisfactory since a majority of the decisions made by the Government were in accordance with UNHCR's view of the case.\textsuperscript{53}

\textsuperscript{53} \textit{Ibid.}
6. Some of the rights in the 1951 Convention relating to the Status of Refugees

After being recognized as a refugee and being granted asylum, the refugee has to start a new life in refuge in the country of asylum. The refugee is then under the jurisdiction of the asylum country which has the power of legislation over persons within its territory. Refugees, like other aliens and citizens, have to conform to the laws and regulations of the country. This principle is laid down in Art. 2 of the 1951 refugee convention. According to the same article, refugees shall also conform to measures taken for the maintenance of public order.

After stating the obligations of refugees, the 1951 refugee convention goes on to state their legal rights in comparison with other aliens or nationals. In the following chapter, two of these rights will be dealt with. The first, freedom of movement, is one of the group of civil and political human rights while the second, the right to work, is one of the group of economic, social and cultural human rights. Another article in the convention concerns the question of naturalization. At the Arusha Conference in 1979, recommendations were made on each of these issues. In the first two cases, the object of the recommendations was to facilitate implementation, while in the latter case the importance of naturalization was underlined as a solution when voluntary repatriation could no longer be envisaged.

6.1 Freedom of movement

6.1.1 International law

Art. 26 of the 1951 refugee convention concerns Freedom of Movement. The wording of the article is as follows:

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1 Akehurst, 1984, p 102.
2 ILIRA, 1979, p 32.
4 Rec. 6. (The Recommendations from the Arusha Conference on the African Problem p 14–16.)
Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.  

The two rights stated are, firstly, the right to choose where to live in the country of refuge and secondly, the right to move freely within its territory. According to Grahl-Madsen, these rights can only be claimed by those refugees who are in the country lawfully, such as those who have been officially recognized as refugees and who have permission to stay in the territory of the contracting state.  

The meaning of the latter part of the article is that refugees are subject to the same conditions as other aliens, and may not in any way be discriminated against because of their refugee status.

Freedom of Movement, as laid down in Art. 26, does not include the right to leave and re-enter the country of refuge. For this purpose, a refugee needs a travel document which functions in lieu of a national passport. The travel document should be issued by the contracting state in accordance with Art. 28 and the Schedule to the 1951 refugee convention. The Schedule prescribes the form of the document and makes provisions, amongst others, for recognition and renewal of the document, and the opportunity of the refugee to return to the state of issue (paragraphs 6, 7 and 13). In paragraph 13, the contracting states undertake to readmit the holder of a travel document to its territory as long as the document is valid. However, this agreement between states is not a guarantee that the individual refugee will be readmitted. It is therefore important that a return clause is included in the travel document, stating that the holder is authorized to return to the state of issue. Such a return clause is found in the annex to the Schedule, which consists of a specimen travel document.

The right to move freely and to choose a place of residence has also been regulated in other international instruments concerning human rights, such as the Universal Declaration of Human Rights of 1948, the International Covenant on Civil and Political Rights of 1966 and the African Charter on Human and Peoples’ Rights, in Art. 13(1), Art. 12(1) and Art. 12(1) respectively. Each of these international instruments deals with Freedom of Movement within the territory of a state.

As Botswana has ratified the African Charter but not the International Covenant on Civil and Political Rights, the former will be quoted. The wording of Art. 12(1) is as follows:

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5 ILIRA, 1979, p 44.
7 Ibid., p 427.
8 ILIRA, 1979, p 46, 58-60, 62.
Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.\textsuperscript{10} With the expression \textit{every individual}, the contracting states agree to the right of every person within their territory without discrimination. This means that no distinction is made between citizens, refugees or other aliens. There is, however, one condition which affects them all: the individual’s right only applies if he “abides by the law” of the state. Besides this there is a general restriction found in Art. 27(2) of the African Charter which is applicable to all rights outlined in the Charter; the right and freedom of each individual shall be exercised with due regard to the rights of others, to collective security, to morality and to common interest.\textsuperscript{11}

According to Grahl-Madsen, restrictions authorized by human rights instruments are also applicable to refugees, provided that there is no discrimination against refugees as such.\textsuperscript{12} Art. 12(1) of the African Charter does not limit the application of the condition, that a person must abide by the law, to any special group of persons. Instead, it states that \textit{every individual} is subject to the laws of the country. If a person is found guilty of a criminal act, for instance, he has not abided by the law of the country and his freedom of movement could then be limited. Art. 27(2) does not limit the application of the condition to any particular group of persons either, but takes into account the interests of others. Art. 12(1) and 27(2) are therefore in accordance with Art. 26 of the 1951 refugee convention.

In the case of Botswana, the state has made a reservation against Art. 26 of the 1951 refugee convention in 1969, but has on the other hand, ratified the African Charter, without reservations, in July 1986. As a state party to the African Charter, Botswana is therefore internationally obliged to accord to every individual within its territory the right to freedom of movement and residence. In the following chapter, the application of these rights in Botswana will be discussed.

6.1.2 National legislation and practice

The right to Freedom of Movement is regulated in section 14 of the Constitution of Botswana as a fundamental right and freedom. The section defines freedom of movement as well as regulating restrictions. The first part of the section states that \textit{no person} shall be deprived of his freedom of movement. The right is defined as “the right to move freely throughout Botswana, the right to reside in any part of

\begin{thebibliography}{9}
\bibitem{10} CAB/LEG/67/3/Rev. 5.
\bibitem{11} \textit{Ibid.}
\bibitem{12} Grahl-Madsen, 1972, Vol. II, p 428
\end{thebibliography}
Botswana, the right to enter Botswana, and the right to immunity from expulsion from Botswana.\textsuperscript{13}

With the expressions "no person", "the right to move freely throughout" and "the right to reside in any part", the rights stated in Art. 26 of the 1951 refugee convention are also accorded to refugees without discrimination. For the imposition of restrictions on freedom of movement there is however one difference between citizens and non-citizens. In the case of non-citizens, it is stated concisely in sec. 14 that the imposition of restrictions should be based on provisions in law, while in the case of citizens, restrictions must be reasonably required in the interest of defence, public safety, public order, public morality or public health.\textsuperscript{14}

As the Refugee Act of Botswana makes no mention of restrictions on the freedom of movement of a recognized refugee who has been granted asylum, and sec. 8(3) states that a recognized refugee shall be subjected to the provisions of the Immigration Act if the Refugee Act does not provides otherwise, the Immigration Act must be studied instead.

According to the Immigration Act, sec. 21, the President of Botswana may impose restrictions on residence for one specified alien or aliens of a specified class. The reasons for the restriction could be that the President considers it to be in the public interest. As described in chapter 4.3, the policy of Botswana since 1980 has been to accommodate all refugees in a refugee settlement, not permitting them to reside elsewhere, unless they are self-supporting. This policy seems to be based on section 21 of the Immigration Act and therefore based on law, but the restrictions only concern refugees and not other aliens. In this respect there is a discrimination of refugees in relation to other aliens within the country.\textsuperscript{15}

It is not only freedom of residence which is restricted for refugees in Botswana, but also the right to move freely throughout the country. This right is restricted for those refugees who live in Dukwe.\textsuperscript{16} They are not allowed to leave the settlement without a leave permit. This restriction has been in practice since February, 1983, on the orders of the Government of Botswana for purposes of control. It was one of a number of measures to protect "genuine refugees" and the people of Botswana from what was called undesirable activities. It was even stated that refugees who were found outside Dukwe without permits

\textsuperscript{13} Constitution of Botswana, Sec. 14 (1).
\textsuperscript{14} Ibid., sec 14(3)a-b
\textsuperscript{15} Interview (UNHCR) 24.7 1987.
\textsuperscript{16} BCR, 1985a, p 3.
would be presumed not to be “genuine refugees” and would be deported back to their home countries.\textsuperscript{17}

The refugee has to apply for a new permit every time he wishes to leave the settlement. According to the Projects Officer of the settlement, there is no problem obtaining these leave permits and this opinion was confirmed by a Zimbabwean refugee.\textsuperscript{18} The permit is issued by the Settlement Commandant and countersigned by the Station Commandant at the Dukwe police station. If the refugee is involved in a project in the settlement and needs to leave Dukwe on account of such a project, the Projects Officer writes a brief note which is added to the application for a leave permit. The note should contain information about the refugee, his name, identity card number, where he is going, why and for how long. Such a note can also be written by the Cultural Officer of the settlement if the refugee is involved in an agricultural project. If the refugee is not involved in any project, the refugee representative will write a note for him.\textsuperscript{19}

Other reasons for leaving Dukwe temporarily could be job interviews, visits to hospital or applications to educational institutions. In these cases BCR will assist the refugee with the application for a leave permit, and help him with transport and travel allowances provided, the reasons for the application are verified.\textsuperscript{20}

From the information available, it is not clear whether the practice of leave permits is based on provisions in law or on an administrative rule. However, as the restriction to move freely within Botswana applies to a specific group of aliens, namely refugees living in Dukwe, and since it was imposed just because they were refugees, it counts as a discrimination against refugees in relation to other aliens.

Another fact relating to freedom of movement is that refugees in Dukwe are exempt from the requirement imposed on aliens of needing a residence permit to reside legally in Botswana. According to one source there are practical reasons for this exemption. Due to scholarships, resettlement and repatriation, refugees are often on the move and the administration involved in issuing permits and in cancelling them when a person leaves the country would be very complicated.\textsuperscript{21} Another reason could be that one of the qualifications for acquiring a residence permit is that the applicant should be in a position to support himself, which is not the case with refugees who have recently arrived.\textsuperscript{22} Those refugees who for different reasons have

\textsuperscript{18} Interview (LWF) 17.6 1987. Interview (Dukwe) 13.7 1987.
\textsuperscript{19} Interview (LWF) 17.6 1987.
\textsuperscript{20} BCR, 1985a, p 8.
\textsuperscript{21} Interview (LWF) 17.6 1987. Interview (UNHCR) 29.6 1987.
\textsuperscript{22} Immigration Act of 1966, sec. 19(4) (b).
special residence permits, do not need a leave permit to leave Dukwe (see chapter 6.2).\textsuperscript{23}

If refugees in Botswana wish to go abroad, they must apply for a travel document. If they have \textit{valid reasons}, such as visiting friends or relatives, taking part in wedding feasts, studying or receiving medical treatment, there should be no problem obtaining a travel document with a return clause.\textsuperscript{24}

\section*{6.1.3 Conclusions}

According to Art. 26 of the 1951 Convention relating to the Status of Refugees, Freedom of Movement consists of two rights, the right for a refugee to choose where to live in the country of asylum and the right to move freely within the territory of a contracting state. As a party to this convention, Botswana has made a reservation against this article, and is therefore not legally bound internationally by its content. On the other hand, by ratifying the African Charter of Human and Peoples' Rights in 1986, without making any reservation against Art. 12(1), Botswana is internationally obliged to allow every individual, including refugees, the freedom of movement and residence. In consequence, Botswana should withdraw the reservation against Art. 26 of the 1951 refugee convention.

As mentioned before, refugees in Botswana who are not self-supporting are restricted to a specific area, Dukwe. They also need a permit to leave the settlement. These two facts mean that refugees living in Dukwe are denied both the freedom of choosing where to reside and the freedom to move freely throughout the country. They are however not prevented from travelling in the country, only from moving freely. They have to declare to the government representative where they are going, for how long, and for what reasons. The decision whether or not to permit them to leave lies with the Government, even if the general view is that it is easy to obtain a leave permit. With reference to available national legislation and to the international law, the same conclusion can be drawn. The restrictions imposed on freedom of movement and residence only apply to a specific group of persons, namely refugees. Accordingly there is a discrimination against this group in relation to other aliens and citizens.

According to the Government of Botswana the reasons for this practice are to facilitate catering and for purposes of control, and according to UNHCR the motive for the reservation against Art. 26 of the 1951 refugee convention is to safeguard the security of refugees and

\textsuperscript{23} Interview (LWF) 17.6 1987.
\textsuperscript{24} Interview (UNHCR) 11.6 1987.
the country itself. The border between Botswana and South Africa is vast, the country has been subject to raids, and there have been allegations from both South Africa and Zimbabwe that refugees are dissidents or terrorists. Botswana is therefore in need of some sort of control over persons within its territory. This practice may be looked upon as an exemplification of Art. 27(2) in the African Charter, which declares that the right and freedom of an individual shall be exercised with due regard to collective security.

As Botswana is situated in the middle of a disturbed part of Africa, this policy will probably continue, despite the ratification of the African Charter in 1986 which recognized the rights that refugees were denied through the reservation against Art. 26 of the 1951 refugee convention.

On the other hand, according to a BCR counsellor, it is never a good policy to restrict peoples' freedom of movement for a long period of time, as it is a part of human nature to try to find solutions to one's own problems. While being restricted to living in a specific area, the question always remains: Would life be better elsewhere?

6.2 The right to work

6.2.1 International law

In the 1951 Convention relating to the Status of Refugees, the right to work is regulated in articles 17–19 which deal with wage-earning employment, self-employment and liberal professions respectively. Article 19 deals with the treatment of refugees lawfully in the country, who hold diplomas that are recognized by a contracting state, while Art. 18 deals with the treatment of refugees who wish to be self-employed in different business-related activities on their own account. In both cases, the contracting states have agreed not to discriminate between refugees and other aliens but the refugees are not declared a right to have a work.

In Art. 17, paragraph 2, on the other hand, the contracting states have agreed to exempt refugees from restrictions imposed on aliens or the employment of aliens, for instance, when a refugee has been a resident of the contracting state for at least three years. It therefore means a more favourable treatment of refugees in relation to other aliens. Besides this, in paragraph 1 of the article, the contracting states

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25 Interview (UNHCR) 11.6 1987.
26 Interview (BCR) 14.7 1987.
28 ILIRA, 1979, p 38-40.
29 Ibid.
have reached a general agreement to treat refugees as favourably as other aliens as regards the right to engage in wage-earning employment.

The right to work is also laid down in other international instruments concerning human rights. Both the Universal Declaration of 1948, Art. 23, and the International Covenant on Economic, Social and Cultural Rights of 1966, Art. 6–8 deal with the right to work. In the Covenant, the state parties do not only declare but also recognize each person’s right to work. The meaning of the term, the right to work, is extensive. It not only involves the right of anyone who needs and seeks employment to find it, but also several other rights, such as the right to free choice of work, to a living wage, to decent working conditions and to the right of freedom from discrimination at work.30

In the African Charter on Human and Peoples’ Rights, Art. 15 deals with the right to work, and the wording is as follows:

Every individual shall have the right to work under equitable and satisfactory conditions and shall receive equal pay for equal work.31

With the expression “the right to work under...” the state parties do not declare a right to be employed. Instead they declare which rights apply if the person is already employed. The individual then has the right to equitable and satisfactory conditions and to the same pay as those who have the same employment. The meaning of equitable and satisfactory conditions is not defined, but as the contracting states in the Preamble reaffirm their adherence to human rights instruments adopted by the United Nations, it is possible that for example Art. 6–8 of the International Covenant of 1966 would influence the interpretation.32 In Art. 7, for instance, the expression “just and favourable conditions for work” is used and examples such as decent living, safe leisure and reasonable limitation of working hours are given.33 Therefore, it cannot be said that Botswana through its ratification of the African Charter has extended the right of refugees as laid down in Art. 17 of the 1951 refugee convention. However, through Art. 15 of the African Charter, refugees are declared to have the same rights as other aliens or nationals if the refugee is already employed.

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31 CAB/LEG/67/3/Rev. 5.
32 Ibid.
33 ILIRA, 1979, p 152–154.
6.2.2 National legislation and practice

According to section 4 of the Employment of Non-citizens Act of 1981, both refugees and other aliens need a work permit to be employed or otherwise engaged in any occupation.

In the case of employment, it is difficult for a non-citizen to get a work permit, as the policy of Botswana is to give priority to citizens on the labour-market. A non-citizen will only be granted a work-permit if he has the special qualifications needed for a job and Batswana applicants do not have these qualifications. As Botswana has a shortage of skilled citizens, a non-citizen will have little problem in getting a job if he is a qualified teacher or accountant, or if he has technical or professional skills. This policy is not explicitly expressed in the law, but according to sec.5(6)(a) in the Employment of Non-citizens Act of 1981, it is stated generally that, when issuing work permits to aliens, the effect on Batswana citizens employment opportunities should be taken into account.

Besides the work permit, a non-citizen who wishes to be self-employed also requires a licence for the business or trade he wishes to establish. Licenses are required from both citizens and non-citizens, but by regulations the Minister of Commerce and Industry has excluded non-citizens from the possibility of acquiring licenses for certain businesses or trades.

These regulations are imposed in accordance with sec.16 and 68 of the Trade and Liquor Act of 1986, which empowers the Minister to act in such a way. Non-citizens are for instance excluded from acquiring licenses for the butchery trade, the hawker business, and the running of petrol-filling stations and bottle stores. These and certain other trades are reserved for citizens of Botswana and for companies owned exclusively by citizens. According to the Botswana Daily News, the purpose of the Trade and Liquor Act is to obtain control of the business environment which has become more complex, and to encourage Batswana citizens' participation.

According to BCR, refugees living in Dukwe who are engaged in an established project, are exempt from the work permit requirement, but it is not ascertained whether they are also exempt from the licence requirement.

On the other hand, refugees who wish to be employed or to establish their own business outside the refugee settlement require several

37 BCR, 1985a, p 12.
permits. Written permission must be obtained from the Office of the President to reside outside Dukwe, a Special Residence Permit must be issued by the Immigration authorities, moreover a Work Permit is required and a licence for the business if self-employed.\(^{38}\)

The application for permission to live outside Dukwe should be addressed to the Permanent Secretary at the Office of the President. If the refugee needs to leave the settlement to take up employment, documentary evidence that he has been given a firm offer of a job must be added to the application.\(^{39}\) Such evidence could be a letter from the employer stating that the refugee is employable.\(^{40}\) When given written permission to reside outside Dukwe, the refugee must take the permit to the Police Headquarters in Gaborone in person. The police will then issue the refugee with a special form which should in turn be taken to the Immigration Department Head Office, where the refugee will automatically be granted a Special Residence Permit. This is normally valid for a period of two years and thereafter renewable.\(^{41}\)

The Special Residence Permit gives the refugee the right to move freely throughout Botswana as well as the right to reside wherever he wishes.\(^{42}\) The reason for using the expression “special”, is that according to section 13 of the Refugee Act, refugees are not ordinary residents in the country and therefore are not eligible for an ordinary residence permit.\(^{43}\)

The work permit must also be applied for by the refugee in person. He must therefore go to the Department of Labour in Gaborone with the application and a photo of himself. Concerning employment, the application must be signed by the employer to document his willingness to employ the refugee.\(^{44}\) The work permit will usually be issued for the same period of time as the Special Residence Permit.\(^{45}\)

Travel costs, accommodation costs, application fees and other expenses incurred when applying for permits are paid by BCR.\(^{46}\) As the distance between Dukwe and Gaborone is about 460 km, the journey for necessary applications is rather long.

An additional difficulty has arisen for non-citizens on the labour market, as a result of the ID campaign which was started during the autumn of 1987. The purpose, in accordance with the National Registration Act of 1986, is to introduce a system of national identity

\(^{38}\) Ibid.
\(^{39}\) BCR, 1985a, p 9.
\(^{40}\) Interview (BCR) 9.7 1987.
\(^{41}\) BCR, 1985a, p 9.
\(^{42}\) Ibid.
\(^{43}\) Interview (the Office of the President) 31.7 1987.
\(^{44}\) Interview (BCR) 9.7 1987.
\(^{45}\) BCR, 1985a, p 12.
\(^{46}\) BCR, 1985a, p 8, 12. Interview (BCR) 9.7 1987.
cards. All citizens and non-citizens over sixteen, must be registered and issued with an identity card. The information to be registered is of a personal character, such as name, place of residence in Botswana, sex and nationality. However, the Minister of Home Affairs is empowered to prescribe that "other particulars" be registered. According to sec.23 of the Act, the Minister is also given general authority to prescribe any additional particulars required as well as any other matters necessary for carrying out the provisions of the Act.

The benefit which is expected to be derived from the introduction of the identity card system is an increase in control. The Botswana Daily News claims that both the Government and the people of Botswana are concerned about the growing problem of employment of non-citizens, who are mistaken for citizens, in jobs which do not require any special skills. This problem is expected to decrease with the identity card system. Another benefit mentioned in the same article, is that the system will provide a valuable security instrument for both the police and for defence forces in countering both external and internal threats to national security and peace.

As the Act states that "every person" over sixteen must be registered and issued with an identity card, and since the aspect of control is so important, it is unlikely that refugees would be exempted from registration requirements.

6.2.3 Conclusions

The effect of Botswana's reservation against the right of refugees to engage in wage-earning employment, as laid down in Art. 17 of the 1951 refugee convention, is not eliminated by Botswana's ratification of the African Charter on Human and Peoples' Rights. Art. 15 of the African Charter does not deal with the right to be employed. Instead, the article only deals with the right to equitable and satisfactory conditions of work and to equal pay for equal work, if the person is already employed. Botswana is therefore not legally bound internationally to treat refugees in a more favourable way than other aliens, as regards the right to be engaged in wage-earning employment. Concerning the right to be self-employed and the opportunity of practicing liberal professions, Botswana has agreed, through the articles 18–19 in the 1951 refugee convention, not to discriminate against refugees in relation to other aliens.

As seen in the description of national legislation and practice, Botswana abides by the obligations in articles 18–19 and also acts in

accordance with its reservation against Art. 17. Refugees are not discriminated against in relation to other aliens and citizens are given priority on the labour market. Both refugees and other aliens are excluded by regulations from possessing certain types of licenses for businesses and trades. However, the refugees could be said to be in a better position than other aliens, as they do not need work permits for their occupations in the refugee settlement. From available information, it is not certain whether they require licenses.

The practice that refugees who wish to work outside Dukwe must have a Special Residence Permit, would not be looked upon as a discrimination against refugees, as other aliens also need a residence permit to reside in the country legally. It would instead be looked upon as a consequence of the policy of restricting refugees who are not self-supporting to the Dukwe area where residence permits are not needed.

As one of the conditions for obtaining a residence permit is that the refugee can support himself, there is a connection between employment and the acquisition of a Special Residence Permit. Since refugees also need special permission from the Office of the President to live outside Dukwe, other qualifications than being self-supporting determine the refugee's possibility of living outside the settlement. This factor makes an important difference between refugees' and other aliens' opportunities of employment.

One of the motives for the reservation against Art. 17 may have been the wish to protect the people of Botswana from competition on the labour market.49 This reservation was made in 1969 when minerals had recently been found which would provide an economic development so that Botswana would no longer be one of the twenty poorest countries in the world. Twenty years later, there are reports of a growing unemployment (see chapter 2.4). The system of work permits, licenses and identity cards is in accordance with the purpose of protecting Batswana from competition on an already overcrowded labour market. It is however important to make use of the knowledge and skills of aliens in the development of the country. Since work permits are only valid for a limited period, renewal could be denied if citizens of Botswana with the necessary skills had since become available. Without accessible figures, it is not possible to ascertain whether other aliens are given priority before refugees in obtaining work permit for jobs which demand skills.

49 Interview (UNHCR) 11.6 1987.
6.3 Naturalization

6.3.1 International law

In Art. 34 of the 1951 refugee convention, the contracting states undertake to facilitate the naturalization of refugees as far as is possible through measures which expedite the process. However the contracting states do not declare the explicit right of a refugee to be naturalized, but instead declare their willingness to facilitate the process of naturalization. This could be a consequence of a general rule in international law that leaves each state to define who is a national. The two most common ways to become a citizen of a state are by birth or by naturalization.

The primary solution to the refugee situation is for refugees to return to their home country, but if this is impossible for some reason, they may wish to settle permanently in the country of asylum. One way to do this is to acquire citizenship which would give former refugees the same legal rights as citizens of the country.

Botswana has made a reservation against Art. 34, so the country is not legally bound to facilitate the assimilation and naturalization of refugees. On the other hand the reservation does not mean that refugees are denied the possibility of applying for citizenship.

6.3.2 National legislation and practice

The question of Botswana citizenship is regulated in the Citizenship Act of 1982 and the Citizenship (Amendment) Act of 1984. Sections of interest for refugees, are those dealing with citizenship by birth and by naturalization.

The definition of citizenship by birth is given in section 2 of the Citizenship (Amendment) Act of 1984 which is substituted for section 4(1) in the Citizenship Act of 1982. The wording of the definition is as follows:

(1) A person born in Botswana shall be a citizen of Botswana by birth and descent if, at the time of his birth
(a) his father was a citizen of Botswana; or
(b) in the case of a person born out of wedlock, his mother was a citizen of Botswana.

The effect of the definition is: firstly, that a child, born to refugee parents will not acquire citizenship, secondly, that a child, born to

50 ILIRA, 1979, p 48.
51 Akehurst, 1984, p 82.
52 Ibid.
parents of whom the father is a citizen of Botswana and the mother is a refugee, acquires citizenship of Botswana, \textit{thirdly}, that a child, born to unmarried parents of whom the father is a refugee and the mother is a citizen of Botswana, acquires citizenship and \textit{fourthly}, that a child, born to married parents of whom the father is a refugee and the mother is a citizen of Botswana, will not acquire citizenship of Botswana.

One example of a permanent solution to refugee problems is local integration in the country of asylum through inter-marriage between refugees and citizens.\textsuperscript{53} As the majority of refugees in Botswana are men, the most common inter-marriage is between a male refugee and a female Batswana.\textsuperscript{54} As long as the man has not acquired citizenship through naturalization, children born to him and his Batswana wife will not acquire citizenship of Botswana by birth and descent. The children therefore come under the fourth category mentioned above.

The question is whether these children have acquired any citizenship at all or if they are stateless. The answer depends on the laws of the father’s country of origin but even if they should acquire citizenship of their father’s country of origin, they will in fact lack that country’s protection as their father has fled from it. The situation is not unique for this group of children, since children born to refugee parents have the same problem.

The difference between the two groups is however that children born to parents of an inter-marriage would grow up outside the refugee settlement and the question is whether they would be discriminated against in the education system. As already mentioned in the previous chapter, the person is required to have an identity card from the age of sixteen which will cause problems for him on the labour market and he will not have the right to vote in general elections when he reaches the age of twenty-one. The father’s local integration through inter-marriage does not therefore seem to be a satisfactory solution for children born in wedlock. What the real effects of this citizenship and identity card legislation will be, remains to be seen. Will there be a group of stateless adults in the country?\textsuperscript{55}

The question is if children who have not acquired citizenship by birth can acquire citizenship through naturalization. The answer seems to be no, as section 10 of the Citizenship Act of 1982 states that only persons of “full age” can be granted certificate of naturalization. According to section 11 of the Citizenship Act of 1982, other qualifications are a good character, a sufficient knowledge of Setswana and the intention to reside in Botswana. There are also various

\textsuperscript{53} Interview (UNHCR) 29.6 1987.
\textsuperscript{54} Interview (BCR) 9.7 1987.
\textsuperscript{55} Interview (UNHCR) 23.6 1987.
qualifications related to time: the applicant must have been resident in Botswana for not less than 10 years, he must have been resident in the country for a continuous period of 12 months immediately before the application and finally, the applicant must declare his intention of applying for citizenship at least 5 years in advance. The qualification that a person must have been resident in Botswana for 10 years is double the requirement before 1982, when 5 years of lawful residence was sufficient.

These qualifications apply equally to refugees and to other aliens but when the applicant is a refugee, his refugee status must first be waived. The naturalization procedure takes between three and four years, partly because the authorities that deal continually with refugee matters have to give their recommendations on each individual case. The Minister of Home Affairs then consults the Citizenship Committee after which a decision can be made whether or not to grant a certificate of naturalization. Another reason for the long period of time is that the application must be published in both the Gazette and a local newspaper. Following publication there is a period of thirty days during which time the Minister can be notified of any objections against the granting of a certificate. According to section 18 of the Citizenship Act of 1982, the decision of the Minister is final and can not be subject to appeal or review in any court.

When the applicant is a refugee, the requirement that he must declare his intent to apply for citizenship at least 5 years in advance, is not so strictly adhered to. The qualification, being of "good character", is a general one and can even mean that the applicant has no criminal record.

One example of an extensive naturalization process of refugees in Botswana was in 1975, when 2 500 Angolans, living in Etsha, acquired citizenship (see chapter 3.3). Immigration Officers came to Etsha and registered adults who wished to be citizens of Botswana. However, the children were not registered but could apply for citizenship when they reached twenty-one years of age. Often the persons concerned forget to apply for citizenship which causes problems when they apply for passports to travel abroad. As they have not acquired citizenship, they cannot be issued with a passport. Instead the Immigration authorities allow them a certain time in which to apply for citizenship, so they still have a chance to acquire citizenship of Botswana.

56 Citizenship Act of 1982, sec. 11.
57 Citizenship of Botswana (Supplementary Provisions) sec. 9.
58 Interview (the Office of the President) 31.7 1987.
60 Interview (the Office of the President) 31.7 1987. Interview (UNHCR) 11.6 1987.
61 Interview (Etsha) 28.7 1987b.
Another problem connected with passports application, is when former refugees, who acquired citizenship through registration in 1975, have lost the document showing their registrations. As the Immigration authorities have copies, it is possible to find the evidence, but it will take some time. The process will not be easier if the person has changed his name since the date of registration and does not remember his former name. This change of name seems to be a tradition amongst the people and is not connected with any special social event.62

6.3.3 Conclusions

Botswana has made a reservation against Art. 34 of the 1951 refugee convention, dealing with measures to facilitate the assimilation and naturalization of refugees who wish to be integrated locally in the country of asylum. From available information it does not appear easy to be integrated through naturalization in Botswana. With the present qualification of 10 years of residence and with a procedure extending over a three-year period, it will indeed take time to acquire citizenship. The extension of the residence qualification in 1982 from five to ten years therefore made it more difficult to acquire citizenship. It is not ascertained what the reasons were for this change, but they could have been economic, in that it is already difficult enough to find employment for Botswana citizens.

However, before these restrictions were introduced Botswana registered 2 500 adult Angolan refugees as citizens in 1975 and allowed the children the opportunity of applying for citizenship after the age of twenty-one. Children who were babies at the date of their parents' registration, will be the last group of the Etsha refugee community to acquire citizenship when they apply in 1996. Children over the age of sixteen who qualify for registration in accordance with the recently adopted National Registration Act of 1986, will perhaps be offered the possibility of registering as citizens. Otherwise their identity cards will show them to be either Angolan or even stateless.

Another way of acquiring citizenship is by birth and descent. Whether citizenship can be acquired or not depends on the parents' nationality and whether or not they are married. In the case of inter-marriage between a refugee and a citizen, the children will only acquire citizenship if the father is a citizen of Botswana. Thus the children do not acquire Botswana citizenship when it is the mother who is a citizen. In this case, the question is whether the children will be citizens of the father's country of origin or if they will be stateless. Whatever the result may be, this group of children will need protec-

62 Ibid.
tion by the international community, because even if the children should be citizens of the father's country of origin, it is questionable whether that country is interested in protecting them, since their father has fled from the protection of that country.

Although inter-marriage can mean local integration of the refugee in the country of asylum, the question is if the lack of citizenship of the children born to a father who is a refugee will in fact result in discrimination in comparison with Batswana children. Their legal status will in theory be the same as that of children born to refugee parents who have grown up in the refugee settlement.

According to available information, it is possible to find three groups of children in Botswana who could be stateless: firstly, children born to parents who are both refugees, secondly, those children in Etsha who were born either before or in 1975 and have not yet reached the age of twenty-one, and thirdly, children born to married parents of whom the father is a refugee and the mother is a citizen of Botswana.
7. Summarizing discussion

In 1987 Botswana had a refugee population, enjoying asylum, accounting for not more than 0.5% of the Batswana population. Of these refugees more than 80% were living in the refugee settlement, Dukwe, while the rest mostly lived in urban areas. In Dukwe, as much as 90% of the population were Zimbabweans while South Africans and Namibians together only accounted for 5%. On the other hand, these latter groups of nationalities were in the majority amongst those refugees living outside the settlement.

An asylum-seeker or a recognized refugee in Botswana is a person of concern to the international community, represented by the United Nations High Commissioner for Refugees (UNHCR), and the Government of Botswana. The two parties are however independent of each other and this is manifested in the respective refugee definitions and investigations of asylum-seekers' reasons for flight. The person could therefore fall within the mandate of UNHCR and under the national legislation of the asylum country, Botswana at the same time, or only come under one of them.

Although UNHCR is not a party to any of the international conventions concerning refugees, it has been authorized to ensure their implementation in the contracting states. UNHCR should therefore promote the interests of refugees by influencing the legislation in the country of asylum. For an effective implementation of this and other functions, UNHCR is dependent on a good cooperation with the government of the asylum country within which it works.

In the case of Botswana, a good cooperation seems to exist between the two parties generally, both concerning UNHCR's protection function and UNHCR's material assistance function. In the latter case, UNHCR is the financial party, while the execution has been delegated to a national council for refugees, the Botswana Council for Refugees (BCR), and to an international non-governmental organization, the Lutheran World Federation, Department of World Service (LWF/WS). UNHCR therefore has to cooperate not only with the Government, but also with these two organizations as well as the Botswana Christian Council (BCC), which, together with the other parties mentioned, is also involved in the executive committee of BCR. The parties meet regularly and are also in daily contact when required.

As material assistance consists of both economic and administrative measures, it is a valuable contribution to Botswana which carries the
burden of longstanding drought and increasing unemployment. The execution of the protection function has, however, another character as it is related to the question to what extent international conventions are implemented in the national legislation and practice. In other words, this function is related to the country’s sovereignty in legislation and decisions concerning asylum.

Concerning agriculture, water facilities, dependence on an open border to South Africa, competition with South African products on the market, and the security of the people, the problems are the same for the refugee community and the Batswana community as a whole.

Neither the Batswana population nor the refugee population in Dukwe can support themselves with agricultural products, because of the shortage of rainfall. In addition the two groups are heavily dependent on bore-holes for their drinking water. Due to these difficulties about 80% of the Batswana population received drought relief from the Government in 1986, while the World Food Programme (WFP) is responsible for issuing food rations to the Dukwe refugee population. To obtain their drinking water, both the Batswana population and the refugee settlement need diesel to operate the water pumps. Consequently, in addition to a great number of other products and goods needed in Botswana and the refugee settlement, diesel has to be imported, either from or through South Africa. In this context, it is worth noticing that the emergency preparedness plan of UNHCR for an influx of South African refugees to Botswana, is based on the presumption that the border to South Africa will remain open.

Although Botswana is rich in diamonds and other minerals the income from production and export can not raise the level of the subsoil water during long periods of drought. Nor will the meat export industry raise the level of the subsoil water since the industry itself is heavily dependent on the subsoil water for the drinking water of the cattle herd.

Sharing a border with South Africa has also meant that the territory of Botswana has been violated by South African Forces, who have murdered both citizens and refugees. Even if the number of South African refugees is small, it has been enough to irritate the South African Government, whose opinion is that every South African refugee is a terrorist. The answer from Botswana has been to declare that the country does not tolerate the use of Botswana as a base for attacks against neighbouring countries. In this context, two reasons may be seen for introducing the road-blocks operated by the Botswana Defence Force. Firstly, to eliminate any possibility to prepare attacks against neighbouring countries. Secondly, to protect the people of Botswana from South African attacks.

Concerning national implementation of international refugee conventions in Botswana, this work has dealt especially with questions
concerning determination of refugee status, the refugees' freedom of movement, their opportunity of employment, and their local integration by acquisition of Botswana citizenship.

When determining refugee status, the refugee term laid down in the Schedule to the national Refugee (Recognition and Control) Act of 1967, is political refugee. The definition is similar to that found in the 1951 refugee convention as modified by the 1967 Protocol relating to the Status of Refugees. In practice, Botswana also applies the extended refugee concept, as laid down in the 1969 OAU refugee convention which includes persons fleeing for other reasons than persecution.

Since 1982, the investigation of asylum-seekers' reasons for flight has been delegated to a department of the police, called the Special Branch. This is a deviation from the procedure outlined in the Refugee Act of 1967, but it is still the Government which makes the decision whether to recognize the person as a refugee and whether to grant him asylum. The procedure outlined in the Refugee Act as well as the actual procedure deals with individual determination. In practice the procedure seems to be close to the international recommendations (the Basic Requirements) as presented by the Executive Committee of the High Commissioner's Programme.

The reason for the deviation from the procedure outlined in the Refugee Act, seemed to have been more a result of the tense relations between Botswana and Zimbabwe in 1982/83, than by the threat from South Africa. However, as one purpose of the existing procedure is to provide a security check on asylum-seekers, it can be assumed that the South African attacks, raids and even infiltration amongst refugees have caused a continued use of the developed procedure. As asylum matters are of a very sensitive character in Botswana and since the police are generally responsible for security matters in the country, one can see why the Special Branch has been authorized to make the investigations instead of a committee consisting of civilians.

As figures on asylum applications and asylum decisions are not accessible, there is no basis for the assumption that the South African raids should have made it more difficult for South African asylum-seekers to obtain asylum. On the other hand, it is known that refugees can be in transit involuntarily or declared prohibited immigrants while already enjoying asylum. To what extent these decisions concern South African refugees is, however, impossible to say, as these figures are also inaccessible.

A few other legal problems relating to refugee status have been discussed in this work. In national legislation and practice, freedom of movement is restricted for refugees who are not occupied in employment or education outside Dukwe. The possibility of employment outside the refugee settlement is restricted to jobs where there is a shortage of skilled Batswana citizens. To acquire citizenship through
naturalization the refugee must be a 10-year resident of the country. Acquiring citizenship by birth is not possible for children from marriages where the father is a refugee.

These problems are dealt with by the 1951 refugee convention in Art. 26, 17 and 34, but through reservations Botswana is not internationally legally bound by any of these articles. This allows a more restrictive refugee policy which may partly be explained by the security situation, the problems with unemployment, the low agricultural potential and the effects of the water shortage.

On the other hand it is more difficult to see why Botswana has not acceded to the 1969 OAU refugee convention, especially as Botswana applies the extended refugee definition in Art. 1 paragraph 2.

Are the reservations to articles of the 1951 refugee convention and the hesitation to accede to the African refugee convention a result of a general wish to remain independent? Is it a wish to be free to act in accordance with the demands of the specific situation without risking legally based accusations of not following the content of the conventions?

In contrast to this hesitation to be legally bound by international instruments concerning refugees, there is Botswana’s ratification of the African Charter on Human and People’s rights in 1986. Of immediate interest for refugees is Art. 12(1) in which every individual is declared to have freedom of movement. On the other hand, the rights of the individual should, in accordance with Art. 27, be weighed against collective interests, generally described as collective security and morality. By the general wording of the article, the contracting states reserve their right to decide to whom, and when, rights will be given.

Botswana often refers to its international obligations concerning refugees. It seems however to be more an expression of its willingness to grant asylum than of how refugees should be treated during asylum. For the individual refugee it is of course of great importance to not be sent back to the country from which he has fled, but it is also important for him to take an active part in solving his problems in the country of asylum which however is limited by Botswana’s restrictive legislation and practice.

In the refugee settlement, Dukwe, primary and secondary level education is available. Refugees can also start self-employment projects and be engaged in different agricultural activities. As there is a low agricultural potential and a problem to find a market for the products of the different projects, a need is created amongst refugees to find other occupations.

As the policy is to restrict freedom of movement for refugees who are not self-supporting, it is however very difficult for them to do anything on their own. To support themselves outside Dukwe they need a job, but they have to go through BCR in the settlement to find
one. BCR in turn mostly searches for jobs in advertisements, but if refugees could leave Dukwe to search for jobs, they would probably be more successful. On the other hand it is not only the restricted freedom of movement which makes it difficult for refugees to take their own initiatives, but also the lack of money required for travel and for the acquisition of the necessary permits. BCR only pays the costs when contact has already been established between a presumptive employer and a refugee. Even if a refugee should find a job, he needs a work permit, permission to live outside Dukwe and a special residence permit, before he can live outside the settlement.

One of the purposes of UNHCR's material assistance is to make refugees self-supporting during their asylum period. This is difficult to fulfil as the national legislation and practice of Botswana contains several restrictions for refugees. As outlined in chapter 4.2, one of the functions of UNHCR is to promote the treatment of refugees to be in accordance with the international conventions concerning refugees. This is however a delicate task as it can be in conflict with the sovereignty of a state to make laws and outline practice. It is particularly sensitive if the state has made reservations against articles since UNHCR is dependent on good relations with the government.

Another part of the protection function of UNHCR, to ensure that refugees will not be sent back to the country of flight, can apparently be carried out without problems in Botswana. UNHCR is allowed to find another country of asylum when refugees are not allowed to stay in Botswana for one reason or other. This presupposes however that UNHCR is informed by the Government of Botswana of such cases. This appears to be the practice, but there could also be situations when UNHCR is informed by persons outside the government administration instead, such as friends or relatives of persons who are not allowed to stay in the country and who may be kept in detention. As the UNHCR has its Branch office in Gaborone, it may be easier for a refugee or asylum-seeker to contact UNHCR if he has friends or relatives in the Gaborone area rather than if he has friends in Dukwe. Due to the restrictions in refugees' freedom of movement, the sixteen hour journey to Gaborone and the difficulties of making phone calls from Dukwe without first contacting one of the authorities' offices in the settlement, it is difficult for refugees living in Dukwe to contact UNHCR on their own initiative. They are therefore dependent on UNHCR's visits to the settlement for contact with the organization which is responsible for their protection. They can however communicate with UNHCR by letter if they are prepared to trust the authorities and the postal system.

One problem which has become apparent during this work relates to the legal status of children who are born in an intermarriage between a refugee man and a Batswana woman, and who do not therefore
acquire Batswana citizenship by birth. Will this group of children obtain citizenship in their father's country or will they be stateless? Under what legal conditions are they brought up in their mother's home country and father's asylum country? Who is responsible for the protection of these children?

Another problem is the legal status of refugee children after their parents have been naturalized in Botswana. In the way the Citizenship Act is worded, a person cannot be naturalized until the age of 21 and until he has lived in Botswana for 10 years. One effect of this is that children born in the type of intermarriage mentioned, will not acquire citizenship at the same time as their father. This means that brothers and sisters born after the naturalization of the married refugee man will be citizens of Botswana in contrast to those children born before. It would therefore be better if it was possible for these children to acquire Botswana citizenship at the same time as their parents do.

As long as the family is living in the same area it does not make any practical difference locally if they are not all citizens of Botswana, but when the children wish to go and look for employment or move to another area of the country where they are unknown, it could be difficult to find jobs as the legislation gives priority to Batswana citizens. This could be the case for those Angolans who were refugee children in the mid-1970s and therefore were not registered as citizens, and who have forgotten to apply for citizenship when they reached the age of 21. Another group of non-citizens are those Angolans who were born before 1975 but have not yet reached the age of 21. Who is responsible for the protection of these children?

In conclusion, the legal problems discussed in this work that relate to the refugee policy of Botswana, seem to be influenced by security considerations and by a wish to protect the Batswana population from economic competition.
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Africa has more refugees than any other continent. Some have fled from war, some from natural disasters, and many from both. In southern Africa large numbers of people have become refugees in search of security to escape from the effects of South Africa's attempts to contain the forces of liberation. One of the countries of asylum has been Botswana, the case study in Jenny Zetterqvist's research report.

This study is based partly on a field study to Botswana, encompassing interviews with different institutions and persons involved in refugee work, and archive work in that country. It is an unusually detailed and painstaking effort to examine the legal framework, and the legal problems involved in the refugee movements.

Some of the problems discussed are the relationship between national law and international conventions concerning refugees, the determination of refugee status, the freedom of movement of the refugees, their right to work, and the question of refugees' right to acquire citizenship. Although all these issues are discussed here in relation to Botswana, they are of general interest in all refugee situations.

Jenny Zetterqvist has a Master of Laws Degree from Uppsala University and is at present involved in the process of determining refugee status in accordance with the Swedish alien and refugee legislation.