

Submission by the United Nations High Commissioner for Refugees
For the Office of the High Commissioner for Human Rights' Compilation Report
Universal Periodic Review: 3rd Cycle, 38th Session

MOZAMBIQUE

I. BACKGROUND INFORMATION

The Republic of Mozambique acceded to the *1951 Convention relating to the Status of Refugees* in 1983 and ratified its *1967 Protocol* in 1989 (hereinafter jointly the *1951 Convention*). Mozambique further ratified the *1969 Organization of African Unity Convention governing the specific refugee problems in Africa* (the *1969 OAU Convention*) in 1989 and has signed and ratified a number of other key international and regional instruments which provide for the rights of refugees and asylum-seekers, either directly or indirectly¹.

The national legal framework for refugee protection is established by *Act No. 21/1991 of 31 December 1991*², known as the *Refugee Act*, and the ensuing *Decree 33/2007*, the regulation on the determination of refugee status. The former provides for a refugee definition in line with the provisions of the *1951 Convention* and the *1969 OAU Convention*. However, under article 42 Mozambique has made reservation to a number of articles under the *1951 Convention*, including articles 13 and 22, 17 and 19, 15, 26 and 34. Despite the reservations registered, UNHCR is pleased to note that Mozambique generally maintains a generous asylum policy through the adoption of practical arrangements which grant asylum-seekers and refugees rights similar to those of its nationals. Reservations to the *1951 Convention* have had limited impact on the actual treatment of refugees and asylum-seekers, who enjoy most of the relevant rights in practice. Nonetheless, lifting of the reservations remains an important priority in order to establish an enabling and durable protection environment for the local integration of refugees.

As of February 2020, there were 4,705 refugees and 21,011 asylum-seekers in Mozambique. The Maratane Refugee settlement hosts a total of 9,338 persons of concern, with the remaining 16,378 living in urban areas across different provinces of the country. The urban refugees are generally self-reliant, benefiting from Mozambique's favourable protection environment. The majority of refugees originate from the Democratic Republic of Congo (2,932 refugees; 6,787 asylum-seekers), followed by Burundi (906 refugees; 7,497 asylum-seekers), then Rwanda (686 refugees; 2,971), and Somalia (148 refugees; 3,247 asylum-seekers), with other nationalities amounting to a total of 534 persons of concern.

¹ The Republic of Mozambique ratified other conventions, including the International Covenant on Civil and Political Rights and its second Optional Protocol. Most recently in March 2007, Mozambique signed the 2006 United Nations Convention on the Rights of Persons with Disabilities. In the regional context, it has also ratified several African Union Conventions and Protocols, including the 1981 African Charter on Human and Peoples' Rights with protocols on the establishment of the African Court on Human and Peoples' Rights and on the Rights of Women in Africa. Mozambique is a signatory of the 1990 African Charter on the Rights and Welfare of the Child and most recently the 2007 African Charter on Democracy, Elections and Governance. The country is also a party to the 2002 Southern African Development Community Protocol on Extradition.

² *Mozambique: Act No. 21/91 of 31 December 1991 (Refugee Act)* [Mozambique], 13 December 1991, available at: <http://www.refworld.org/docid/3ae6b4f62c.html>.

Around 45 per cent of the refugee and asylum-seeker population in Mozambique are females and over half of the population is below 18 years old.

Registration for new arrivals officially takes place only in Maratane refugee settlement and Nampula town (Northern Mozambique), all in Nampula Province. In certain cases, registration is also carried out on an exceptional basis in Maputo. In principle, a request for asylum is initiated by a written or oral application to the Ministry of Interior. In practice, applications for refugee status are facilitated by INAR – (*Instituto Nacional de Apoio aos Refugiados in Portuguese*) - upon reception and registration of asylum-seekers in Maratane camp. Consequently, asylum-seekers who arrive at the borders have to declare themselves as such, after which the immigration authorities issue them referral documents, which authorize their travel to Nampula. In Maratane camp, asylum-seekers are subsequently accommodated in the temporary reception centre. Once in the camp, they are interviewed and registered in the refugee database (ProGres), jointly run by the Government and UNHCR.

Lifting of the reservations and, even more importantly, resuming the issuance of refugee status determination (RSD) decisions and the revision of national legislation, are a priority for UNHCR in Mozambique, with the objective of further improving the rights-based legal framework enabling the local integration of refugees and streamlining the process of refugee status determination. UNHCR continues to advocate for the adoption of the Comprehensive Refugee Response Framework (CRRF) in Mozambique, in line with the Global Compact for Refugees (GCR), applying a whole of the society approach which benefits host communities while allowing for the local integration for refugees.

The internal conflict ravaging Cabo Delgado Province in north-eastern Mozambique is seriously impacting the lives of people. The violent insurgency, which began in October 2017, has impacted more than 700,000 civilians, led to at least 1,100 civilian deaths, and displaced more than 300,000 people. Most have fled to more stable areas of Cabo Delgado, however increasing numbers are seeking safety in neighbouring Nampula, Niassa and Zambezia Provinces. An estimated 90 percent of displaced people are hosted by relatives or friends in communities still recovering from Cyclone Kenneth in 2019. The capacity of local authorities to receive and host displaced people is stretched. In December 2019, Mozambique ratified the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) and deposited the instruments in January 2020.

Information related to persons at risk of statelessness in Mozambique is very limited. Action Ten of UNHCR's Action Plan to end Statelessness (2014 – 2024) requires better quantitative and qualitative data. On the occasion of the High-Level Segment on Statelessness organized by UNHCR in Geneva in October 2019, the Government of Mozambique pledged to conduct a study on statelessness by 2022. Accordingly, UNHCR, in coordination with the National Institute for Assistance to Refugees (INAR), intends to launch a Qualitative Study on Statelessness in Mozambique and is presently discussing terms of reference for the study with INAR.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Positive developments linked to 2nd cycle UPR recommendations

Linked to 2nd cycle UPR recommendation no. 129.38 “Strengthen the framework for the protection of refugees and facilitate their integration at the local level (Togo)”

The Government of Mozambique should be commended for its effort to supporting self-reliance and local integration of refugees. Despite challenges in acquiring employment,

refugees and asylum seekers with the necessary expertise are integrated in sectors such as health and education which are crucial to the countries development. At the same time, economic inclusion programmes implemented in Maratane settlement, most particularly the Livelihoods and Graduation approach, funded by the US Bureau of Population, Refugees and Migration, allows asylum-seekers and refugees to develop and implement business ideas and create self-reliance opportunities. Mozambique has also made progress on increasing freedom of movement for refugees. Refugees can settle in and search for livelihoods and self-reliance opportunities in all the provinces of the country, which allows them to more effectively contribute to Mozambique's economy and facilitates their local integration.

Linked to the 2nd cycle UPR recommendation no. 128.156 "Reinforce the protection of migrants, refugees and asylum seekers' rights by improving their living conditions and by ensuring the civil registration of their children (Holy See)" and no. 128.120 "Ensure the registration of all children after birth in all regions of the country (Turkey)"

The Government of Mozambique is to be commended for its efforts to enhance civil registration for children and to combat statelessness. The Government, in collaboration with partners such as Save the Children and UNICEF, is implementing a registration programme aiming at widening the scope of the registration of children and covering remote areas of the country where registration infrastructure is scarce. This campaign also includes the exemption of fees for the registration of children up to four months of age. Another good practice relates to the implementation of a civil registry point in all health centres providing maternity services, where new-born can be registered before leaving the hospital. This is significant improvement as it allows asylum-seekers and refugees to register their children at the hospital, reducing the risk of statelessness.

Linked to the UPR 2nd cycle recommendation no. 128.92 "Strengthen its efforts in combatting the early marriage of girls (Algeria)"

UNHCR welcomes the adoption of the Law on the Preventing and Combating Premature Unions, *Act 19/2019 of 22 October 2019*, through which the Government of Mozambique has criminalised early marriages.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to 2nd cycle UPR outstanding recommendations

Issue 1: Withdrawal of reservations to the 1951 Convention and promotion of self-reliance and local integration

Linked to 2nd cycle UPR recommendations no. 129.4 "Withdraw reservations to the 1951 Convention relating to the Status of Refugees in order to strengthen protection and local integration of refugees (Panama)" and no. 129.38 "Strengthen the framework for the protection of refugees and facilitate their integration at the local level (Togo)"

Mozambique still maintains reservations to the *1951 Convention*. The reservations specifically relate to Art. 13 ("Movable and Immovable Property"), 15 ("Right of Association"), 17 ("Wage-earning Employment"), 19 ("Liberal Professions"), 22 ("Public Education"), 26 ("Freedom of Movement") and 34 ("Naturalization"). Although Mozambique has not individually implemented these reservations in legislation, they compromise the creation of a legal framework enabling further local integration of persons of concern. The *Refugee Act* refers to the reservations in general and grants a right to the Council of Ministers to determine the scope of the implementation of the *Refugee Act* by issuing regulations (Art. 16). As a result, refugees' enjoyment of the rights covered by the reservations is

unpredictable and could be restricted at any moment through a ministerial regulation or policy. Mozambique has generally maintained a generous approach, in practice allowing full access to education, health and other basic services for persons of concern and a flexible policy on freedom of movement as well as work and business permits. However, the reservations relating to procedures for, access to land, ownership of real state and acquisition of nationality through naturalization are strictly applied.

Recommendations:

UNHCR recommends that the Government of Mozambique:

- a) Withdraw the reservations made to the *1951 Convention relating to the Status of Refugees*, in order to strengthen the protection environment and facilitate the local integration of refugees; and,
- b) Review the *Refugee Act No.21/1991* and *Decree 33/2007* with the objective of establishing a rights-based legal framework, which reflects positive practical arrangements already put in place by the Government, in order to facilitate local integration and self-reliance of refugees and asylum-seekers.

Additional protection challenges

Issue 2: Refugee status determination

While the eligibly team continuously carries out their activities at the field level, collecting RSD interviews with asylum-seekers and making the assessment of the information and submitting to the National Eligibility Commission, the RSD process remains lengthy, with the majority of the asylum applications still pending after more 10 years. In fact, Mozambique has not issued any new RSD decisions since 2011. Currently, there are over 24,000 individuals awaiting decisions on their asylum application. Shortcomings exist in both legislation and in implementation of the RSD process. The delay in RSD decisions was expected to be overcome after INAR, which is responsible from the first instance eligibility determination, was transferred from the Ministry of Foreign Affairs to the Ministry of Interior in 2018, as the latter is the entity that gives and endorses the final decision on asylum applications. Despite this transfer, no RSD decisions have since been issued and a reduction in the delay for issuing RSD decisions has not yet been observed. There is also a significant delay in organizing Eligibility Committee sessions (due to high level membership and lack of availability), as well as the requirement for the final decision to be signed by the Minister of Interior, which has also contributed to the backlog of pending RSD decisions. Appeals made as far back as 2009 against rejections are still pending with the Administrative Tribunal.

Recommendations:

UNHCR recommends that the Government of Mozambique:

- a) Continue to work toward the reduction of the backlog of asylum applications by making the process time-bound and fully accessible to asylum-seekers; and,
- b) Streamline the asylum appeal process and reinforce the capacity of the Administrative Tribunal.

Issue 3: Protection-sensitive entry systems in the context of mixed movements

Since 2010, Mozambique and its neighbouring countries have faced growing challenges related to the identification of persons in need of international protection moving in mixed flows. Although exact data is not available, increasing numbers of persons from West, Central and Horn of Africa, mainly Nigerians, Malians, Ivoirians and Ethiopians, pass through Mozambique on their journey to South Africa in search of better economic opportunities. During the past years, a higher number of these people have not only been transiting

through Mozambique but have opted to settle in the country in view of the good economic opportunities existing.

In addition to those settling in or transiting through Mozambique for economic reasons, there are also people fleeing from conflict and persecution, especially from the Great Lakes region and Horn of Africa, who require international protection. Despite the significant decrease in the massive influxes from the Horn of Africa seen in 2012, flows have continued through different routes, driven mainly by the stringent border control measures taken by the Government at the most commonly used entry points. In such a context, preserving the institution of asylum is a challenge that cannot be responded to with the current limited human resources and financial capacity of the Government border and law enforcement officials. To address mixed flows in a protection-sensitive manner, proper referral mechanisms, as well as Standard Operating Procedures, need to be put in place and additional efforts need to be made to reinforce awareness and the capacity of the relevant Government stakeholders.

Recommendations:

UNHCR recommends that the Government of Mozambique:

- a) Further strengthen its national policies on managing mixed movements in a protection-sensitive manner, ensuring full respect of refugee and human rights law, as well as humanitarian principles;
- b) Enhance the awareness and capacity of border officials and law enforcement officials in order to ensure the systematic identification and referral of persons who may be in need of international protection to asylum procedures;
- c) Formulate national Standard Operating Procedures for the identification and referral of persons who may be in need of international protection and for other persons with specific needs, such as unaccompanied and separated children, victims of trafficking and other vulnerable migrants; and
- d) Further strengthen available data and statistics on migration and mixed movements in Mozambique.

Issue 4: Protection of internally displaced people

In the aftermath of the two cyclones Mozambique suffered from in 2019 (Cyclones IDAI and Kenneth) in the Provinces of Sofala, Manica, Zambézia and Cabo Delgado, an enormous number of people have been displaced due to environment factors. The country declared a state of emergency given the sensitive nature of the displacement and the level of destruction that the cyclones have created. The number of internally displaced persons in Mozambique has also increased as a result of the ongoing insurgent attacks in the province of Cabo Delgado, with over 300,000 currently displaced internally and in need of protection and assistance.

In light of the ongoing conflict and as Mozambique continues to be a cyclone prone country, as a result of the effects of climate change as well as its geographical location, it is important for the Government to develop national legislation for the protection of internally displaced persons. Furthermore, experience during the emergency operations in response to the 2019 cyclones, which merged international actors ranging from the UN agencies to international and local NGOs, states, and others, has made clear the need for a framework for the IDP situation in the country. Under the Kampala Convention, the responsibility for preventing and mitigating internal displacement, protecting and assisting IDPs and finding durable solutions, lies primarily with States. However, the Government is still to undertake legislative efforts required by the Convention to bring its national framework in line with the standards set out by the AU instrument. In accordance with its protection mandate, including as the Protection Cluster-lead in Mozambique, UNHCR is advocating for and will support the Government's efforts in the domestication of the Convention.

Recommendations

UNHCR recommends that the Government of Mozambique:

- a) Domesticating the Kampala Convention into its legal and policy framework to support and achieve solutions, ensuring that Mozambique does not become a protracted IDP situation.

UNHCR Mozambique
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