

Botswana Labour Migration Review

Jonathan Crush and Vincent Williams
November 2024

FOREWORD

The Southern Africa Migration Management (SAMM) project represents a collaborative effort embodying the ONE-UN approach, uniting the expertise and resources of four prominent UN development and/or humanitarian agencies: the International Labour Organization (ILO), the International Organization for Migration (IOM), the United Nations Office on Drugs and Crime (UNODC), and the United Nations High Commissioner for Refugees (UNHCR).

The SAMM project is dedicated to improve labour and mixed migration management in the Southern Africa and Indian Ocean region. By focusing on South-South migration flows, the project aims to uncover and enhance the positive spillover effects of international migration on regional integration and economic development (e.g. recognising the positive contribution of migrant workers to economic growth).

The SAMM project first produced a Labour Migration Stocktaking Report for the SADC region. Labour Migration Reviews (LMRs) are complementary tools aimed to enhance the capacity of Ministries of Labour, Employers' and Workers' Organizations to engage in tripartite dialogue and influence evidence-based policy formulation and implementation for fair labour migration governance. LMRs include information on at least, seven key labour migration thematic areas:

1. Gender-responsive labour migration policies and/or strategies;
2. International labour standards and national legislation on the protection of migrant workers, as well as advocacy on the contribution of migrant workers to development;
3. Bilateral labour migration agreements (BLMAs) across the region and with third countries;
4. Fair recruitment and decent employment for migrant workers including regulatory legislation on Private Employment Agencies (PEAs), and strengthening of Public Employment Services (PES);
5. Social Security Portability of Benefits for migrant workers through the SADC Guidelines on the Portability of Social Security Benefits;
6. Skills mobility (skills anticipation, skills profiling, skills matching, skills transfer and recognition of qualifications of migrant workers), as well as support to the SADC Qualifications Framework;
7. Labour migration statistics (indicators, module, inclusion in labour market information systems, etc).

The ILO believes that this publication will provide valuable insights and contribute significantly to the ongoing efforts to improve labour migration governance effectively in the SADC and IOC region. We extend our gratitude to all partners and stakeholders for their unwavering support and commitment to this crucial endeavour.

Ph.D Gloria Moreno-Fontes Chammartin

Chief Technical Advisor

Southern African Migration Management Project (SAMM)

International Labour Organisation (ILO)

ACKNOWLEDGEMENTS

The authors would like to thank colleagues at the ILO (International Labour Organization), particularly Ms. Gloria Moreno-Fontes, Mr. Theo Sparreboom, Mr. Jesse Mertens, and Ms. Hareeta Cunniah for their review and critical feedback during each stage of the research project.

We would also like to express our gratitude to Ms. Makungu Baloyi, SAMM Communications Officer for assisting with the production process and the dissemination of the report.

TABLE OF CONTENTS

FOREWORD	i
ACKNOWLEDGEMENTS	Error! Bookmark not defined.
1 INTRODUCTION	1
2 MIGRATION DATA SOURCES	1
3 LABOUR MIGRATION TREND AND DYNAMICS	2
3.1 Migrant Stock (Foreign Born)	2
3.2 Countries of Migrant Origin	3
3.3 Age and Sex Distribution of Migrant Population.....	6
3.4 Migrant Employment	8
3.5 Irregular Labour Migration.....	2
4 RATIFICATION OF MIGRATION-RELATED REGIONAL AND INTERNATIONAL INSTRUMENTS, PLANS AND FRAMEWORKS.....	2
4.1 International Instruments	2
5 Policy and Legislative Framework	4
5.1 Constitution of Botswana, 1966	4
5.2 Employment (Amendment) Act 2010	4
5.3 Trade Unions and Employers Organisations Act, 2003.....	5
5.4 Immigration Act 2011	5
5.5 Bilateral Labour Migration Agreements (BLMAs)	7
6 LABOUR MARKET INSTITUTIONS	7
6.1 Industrial Court.....	7
6.2 Minimum Wages Advisory Board	7
6.3 Labour Advisory Board.....	8
7 FAIR RECRUITMENT OF MIGRANT WORKERS	8
8 SKILLS RECOGNITION OF MIGRANT WORKERS.....	13
9 SOCIAL PROTECTION OF MIGRANT WORKERS.....	14
REFERENCES	15

1 INTRODUCTION

The history of labour migration to Botswana is described in the publication Botswana: Migration Perspectives and Prospects (Oucho et al., 2000). Contemporary labour migration to Botswana is driven by pull factors (including a robust and well-managed economy, consistent economic growth and skills shortages in certain sectors) and push factors (such as economic crisis and rising unemployment in neighbouring states). Since 2005, Botswana has been a major recipient of labour migrants from Zimbabwe but also hosts migrants from 12 other SADC countries. In addition, there are migrants in Botswana from many countries in East and West Africa, Europe and Asia (especially China and India). Between 2000 and 2010, there was a consistent increase in the number of work permits issued to migrants. Since 2010, high levels of poverty and unemployment have prompted the development and implementation of localization policies to reduce reliance on imported labour and to give job preference to citizens (Mhizha and Mojewa, 2020; Schmidt et al., 2010).

Localization has led to a major reduction in work permits issued and in the numbers of non-citizens and temporary residents in the labour force. At the same time, UN DESA suggests that the number of international migrants in the country has increased over the last decade. This may be because even as regular migration channels and formal sector employment of labour migrants have declined, the number of migrants in the informal sector and/or in irregular status has increased.

This overview of labour migration to Botswana first presents the statistical evidence for labour migration trends and then summarizes the legal and regulatory framework governing immigration to the country and the employment of labour migrants.

2 MIGRATION DATA SOURCES

The main open access data sources for migration to Angola include the following:

- UN DESA Migrant Stock Country Profile (UN DESA, 2019a)
- UN DESA Migrant Stock by Origin and Destination 2019 Update (UN DESA, 2019b).
- Statistics Botswana, Quarterly Multi-Topic Survey Q4 (Statistics Botswana, 2019a)
- Statistics Botswana Work Permits Quarterly Stats Briefs (Statistics Botswana, 2019b)

The Department of Labour and Social Security issues work-permits, and copies of issued work-permits are forwarded to Statistics Botswana. Although all work permit forms received by Statistics Botswana for a specific quarter are processed and entered into the database, others arrive after the publication of the quarterly Work Permits Stats Brief. Botswana is the only SADC country that publishes this data

regularly. Each Stats Brief presents aggregated data on (a) total work permit holders; (b) work permit holders by age group; (c) work permit holders by industry; (d) work permit holders by occupation; (e) work permit holders by training; and (f) trend of total work permit holders.

3 LABOUR MIGRATION TREND AND DYNAMICS

3.1 Migrant Stock (Foreign Born)

UN DESA migrant stock data estimates that the total number of international migrants in Botswana increased from an estimated 27,500 in 1990 to 74,900 in 2000 and to 110,600 in 2019 (Table 1). The proportion of migrants in the total population increased from 2.1% in 1990 to 4.8% in 2019. Refugees made up 2.2% of the total migrant population in 2019. Females constitute 43% of the migrant stock and males 57%. Over three-quarters of the migrants are of working age (20-64) with a median age of all migrants of 34 years of age. Over 80% of the migrant stock is from other Southern African countries.

Table 1 - Migrant Stock of Botswana, 1990-2019

	1990	1995	2000	2005	2010	2015	2019
International migrants	27,500	40,200	74,900	84,600	94,600	103,300	110,600
Share of total population (%)	2.1	2.7	4.6	4.7	4.8	4.9	4.8
Refugees	1,200	300	3,600	3,100	3,000	2,500	2,500
Refugees as share of international migrants (%)	4.4	0.7	4.7	3.7	3.2	2.4	2.2
Females %	40	42	42	42	43	43	43
Male %	60	58	58	58	57	57	57
Median Age	30	32	33	32	31	34	34
Age Group (%)							
0-19	32	25	22	19	17	17	17
20-64	65	70	72	76	80	79	79
65+	3	5	6	5	3	4	4
Migrants from Southern Africa (%)	66	78	84	84	82	82	82

Source: UN DESA (2019a)

3.2 Countries of Migrant Origin

The UN DESA Migrant Stock by Origin and Destination provides data on the country of origin (birth) of 47,653 migrants in 2019 (UN DESA, 2019b) (Table 2). Of these, 35,204 (74%) are from other Southern African countries. Zimbabwe is the primary source country (with 78% of SADC country migrants and 68% of all migrants), followed by South Africa (6%) and Zambia (4%) (Table 3). Globally, India is the third most important source country (at 5% of the total) and China the fifth (at 2%). In total, 32 countries have more than 100 migrants in Botswana (Table 4), of which half are in Africa, 11 are in Europe and North America, and 4 are in Asia.

Table 2 - Proportion of Migrants from Other Southern African Countries, 1990-2019

	Total Migrants	SADC Origin Migrants	% SADC Origin
1990	10,896	6,512	59.8
1995	16,651	10,949	65.8
2000	31,094	16,536	53.2
2005	35,482	25,465	71.8
2010	40,733	30,102	73.9
2015	44,499	32,497	73.0
2019	47,653	35,204	73.9

Source: Compiled from UN DESA (2019b)

Table 3 - SADC Origin Countries, 2019

	No of SADC Country Migrants	% of SADC	% of Total
Zimbabwe	27,479	78.1	57.7
South Africa	2,642	7.5	5.5
Zambia	1,965	5.6	4.1
Malawi	561	1.6	1.2
DRC	456	1.3	1.0
Angola	409	1.1	0.9
Tanzania	361	1.0	0.8
Namibia	304	0.9	0.6
Mozambique	257	0.7	0.5
Madagascar	236	0.7	0.5
Eswatini	220	0.6	0.5
Lesotho	198	0.6	0.5
Mauritius	116	0.3	0.2
Total	35,204	100.0	100.0

Source: Compiled from UN DESA (2019b)

Table 4 - Main Countries of Origin, 2019

	No of Migrants	% of Total
Zimbabwe	27,479	57.7
South Africa	2,642	5.5
India	2,362	5.0
Zambia	1,965	4.1
China	970	2.0
Nigeria	596	1.3
Malawi	561	1.2
USA	490	1.0
UK	478	1.0
Sri Lanka	478	1.0
DRC	456	1.0
Angola	409	0.9
Kenya	397	0.9
Tanzania	361	0.8
Namibia	304	0.6
Ireland	289	0.6
Netherlands	261	0.5
Mozambique	257	0.5
Madagascar	236	0.5
Pakistan	221	0.5
Eswatini	220	0.5
Australia	203	0.5
Lesotho	198	0.5
Italy	196	0.5
Germany	186	0.4
Portugal	183	0.4
Norway	172	0.4
Sweden	171	0.4
Denmark	167	0.4
Canada	128	0.3
Uganda	128	0.3
Mauritius	116	0.2

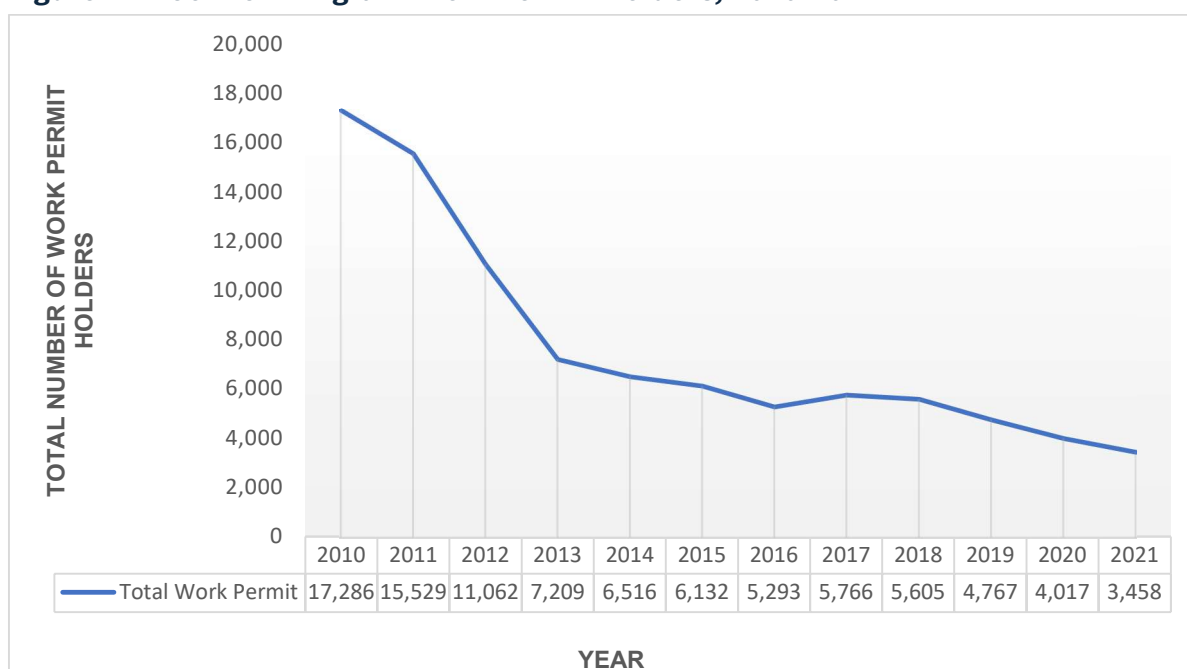
Source: Compiled from UN DESA (2019b)

Localization policies have led to a decline in the number of work permits issued to labour migrants over the last decade. The overall number of work permit holders sharply declined from 17,286 in 2010 to 3,458 in 2021 (Table 5, Figure 1).

Table 5 - Number of Work Permit Holders in Botswana, 2010-2021

Year	No.	Decline	% Decline
2010	17,286		
2011	15,529	1,757	10.2
2012	11,062	4,467	28.8
2013	7,209	3,853	34.8
2014	6,516	693	9.6
2015	6,132	384	5.9
2016	5,293	839	13.7
2017	5,766	+473	+8.9
2018	5,605	161	2.8
2019	4,767	838	15.0
2020	4,017	750	15.7
2021	3,458	559	13.9

Source: Statistics Botswana (2021)

Figure 1 - Decline in Migrant Work Permit Holders, 2010-2021

Note: Totals are as at end of December.

Source: Statistics Botswana (2020)

Comparing the countries of origin of work permit holders in 2010 with 2021, most come from only four countries: Zimbabwe, China, South Africa, India and China (Table 6). All countries and regions have seen a decline in the number of work permit holders since 2010, although the greatest proportional decline has been labour migrants from China and India. Despite the decline, the proportion of migrants from other African countries increased from 64% to 73% between 2010 and 2021.

Table 6 - Country of Origin of Work Permit Holders in Botswana, 2010 and 2021

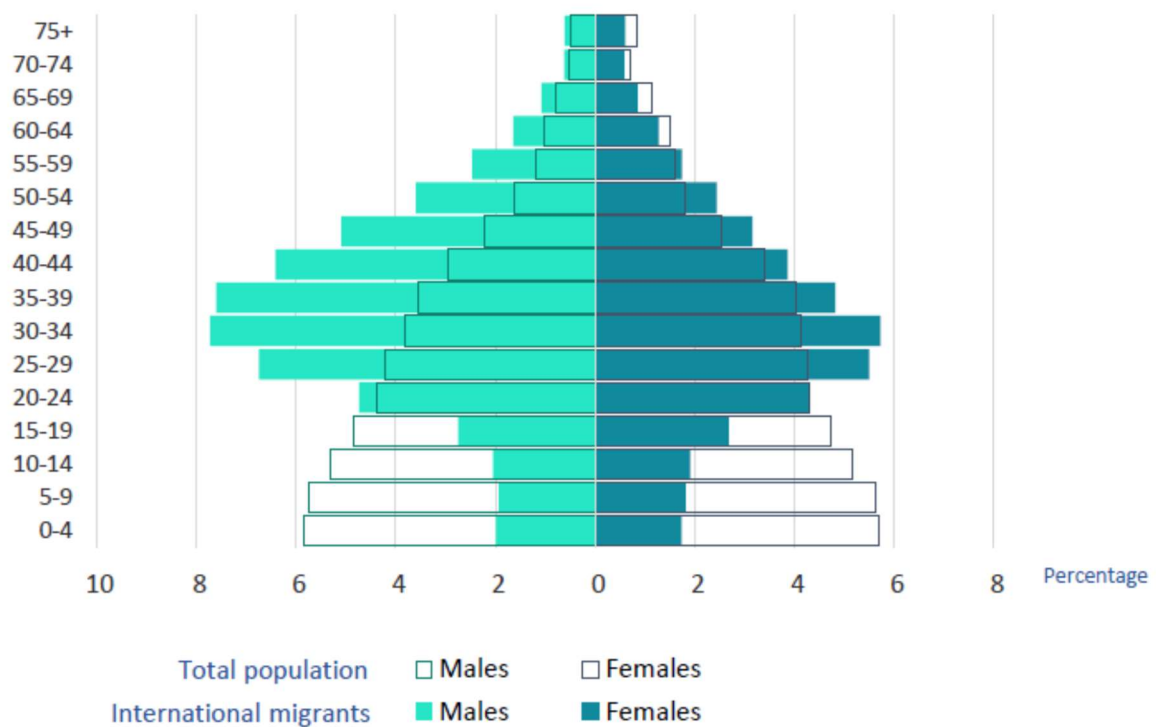
	2010	%	2021	%
Zimbabwe	7,506	43.4	1,550	44.8
China	3,280	19.0	229	6.6
South Africa	1,787	10.3	501	14.5
India	1,339	7.7	354	10.2
Zambia	452	2.6	94	2.7
UK	265	1.5	70	2.0
Kenya	276	1.6		
Malawi	206	1.2	63	1.8
Ghana			18	0.5
Other Africa	825	4.8	312	9.0
Other Asia	958	5.5	128	3.7
Other Europe	195	1.1	67	1.9
Other	197	1.1	72	2.1
Total	17,286	100.0	3,458	100.0

Source: Statistics Botswana (2011, 2021)

3.3 Age and Sex Distribution of Migrant Population

Figure 2 shows the UN DESA population pyramid for the 110,600 international migrants in Botswana in 2019 and compares the distribution by age group and sex with that of the total population. The figure shows that most male and female migrants fall into the 30-34 age group, followed by the 25-29 age group and the 40-44 age group. In each of these groups, males exceed females in number. The main difference with the total population is the much larger proportion of the total that is under the age of 20 (and on the female side, a slightly larger proportion over 60 years of age). If working age is a proxy for labour migration, the age distribution of the migrant population suggests that work is a major driver of migration.

Figure 2 - Age and Sex of International Migrants in Botswana, 2019



Source: UN DESA (2019a)

The sex profile of current work permit holders is heavily male dominated, with 75% being male and only 25% female (Table 7). In the case of South Africa, India, and China, as well as Malawi and Ghana less than 20% of work permit holders are female.

Table 7 - Sex of Work Permit Holders by Country of Origin, 2021

	No.	%	% Male	% Female
Zimbabwe	1,550	44.8	70.8	29.2
China	229	6.6	83.8	16.2
South Africa	501	14.5	80.8	19.2
India	354	10.2	82.8	17.2
Zambia	94	2.7	54.3	45.7
UK	70	2.0	58.6	41.4
Malawi	63	1.8	85.7	14.3
Ghana	18	0.5	83.3	16.7
Other Africa	312	9.0	76.6	23.4
Other Asia	128	3.7	84.4	15.6
Other Europe	67	1.9	71.6	28.4
Other	72	2.1	70.8	29.2
Total	3,458	100.0	75.0	25.0

Source: Statistics Botswana (2021)

3.4 Migrant Employment

The sectors most affected by the declining numbers of work permit holders include agriculture, manufacturing, construction and trade. Table 8 shows that the number of work permit holders declined in every occupation, both skilled and low skilled (elementary), between 2010 and 2021. Agriculture, for example, decreased from 3,800 employees to 864 between 2020 and 2021, and manufacturing from 1,590 to 308 over the same time period. With the exception of education and health the decline occurred year-over-year in every sector. However, the number of health and education workers was still lower in 2021 than 2010. The greatest overall declines were in agriculture, construction and trade.

Table 8 - Total Work Permit Holders by Industry, 2010-2021

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Agriculture	3,800	2,848	2,108	1,612	1,322	1,552	1,546	1,826	1,610	1,315	1,211	864
Mining & Quarrying	191	188	134	106	104	105	96	122	86	65	68	59
Manufacturing	1,590	1,282	903	491	526	522	475	498	516	410	406	308
Electricity & Water	99	113	81	48	50	52	48	72	114	104	83	67
Construction	3,776	3,997	2,771	1,245	1,185	1,062	804	748	649	575	576	480
Wholesale & Retail Trade	1,903	1,836	1,420	1,129	944	668	423	412	374	302	293	234
Hotels & Restaurants	350	340	272	200	216	201	176	178	154	132	133	109
Transport & Communications	732	692	502	391	369	337	274	258	176	138	120	96
Finance	247	178	126	72	82	73	84	97	86	66	55	35
Real Estate	2,754	2,129	1,460	916	693	523	468	429	376	331	321	231
Education	815	927	526	474	476	493	417	608	880	749	761	502
Health	377	391	297	225	227	239	210	217	284	301	323	253
Other Community	572	532	411	252	226	207	172	196	201	191	176	127
Private Households	53	51	34	10	21	21	24	25	26	27	30	20
Foreign Missions	27	16	12	14	75	34	25	22	18	14	7	13
Other		9	5	24		43	51	58	49	44	15	62
Total	17,286	15,529	11,062	7,209	6,516	6,132	5,293	5,766	5,605	4,767	4,640	3,458

Source: Statistics Botswana (2021)

Table 9- Total Work Permit Holders by Occupation, 2010-2021

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Managers & Administrators	1,417	1,214	839	639	794	887	841	844	746	583	555	432
Professionals	2,210	1,770	1,160	679	779	954	915	1,067	1,176	1,040	996	772
Technicians	1,739	1,755	1,170	760	552	593	597	707	862	758	751	487
Clerks	25	15	11	8	3	5	9	8	9	16	14	9
Service & Sales Workers	314	235	164	90	69	78	86	102	103	86	85	76
Skilled Agricultural	16	9	7	37	52	71	86	99	81	64	53	22

Craft Workers	1,792	1,784	1,150	456	469	521	417	395	371	350	344	273
Plant & Machine Operators	870	638	462	261	214	194	138	144	104	81	78	55
Elementary Occupations	3,581	2,632	1,932	1,410	1,122	1,368	1,373	1,643	1,449	1,177	1,089	769
Other	2	2	2	14	38	28	31	36	28	32	52	51
Total	11,966	10,054	6,897	4,354	4,092	4,699	4,493	5,045	4,929	4,187	4,017	2,946

Source: Statistics Botswana (2021)

Another source the *2019 Quarterly Multi-Topic Survey: Labour Force Module Report* recorded much higher numbers of migrants (non-citizens) in formal employment at 16,949 of whom 12,498 (74%) were male and 4,452 (26%) were female (Statistics Botswana, 2019a) (Table 10).

The discrepancies with UN DESA data are notable but could be the result of two main factors: (a) under-reporting of female labour migrants self-employed in the informal sector; and (b) irregular migrants without work permits who were counted in the survey. The survey indicated that male migrants are employed in 11 sectors compared to only 5 sectors for female migrants. The educational and health sectors employ 70% of female migrants and 34% of male migrants. Construction is the sector employing most male migrants are (29%) followed by education (18%), health (16%) and manufacturing (14%). According to this data, non-citizens make up only 3.5% of the total number of people in formal employment.

Table 10 - Migrant (Non-Citizen) Formal Employment by Sector and Sex, 2019

	Total Employed	Total Non-Migrants Employed	Total Non-Citizens Employed	Non-Citizens as % of Total	% of Non-Citizens Employed	No. of Male Non-Citizens Employed	% of Male Non-Citizens Employed	No. of Female Non-Citizens Employed	% of Female Non-Citizens Employed
Agriculture, Forestry & Fishing	9,114	8,769	345	3.8	2.0	187	1.5	157	3.5
Mining & Quarrying	8,141	8,141	0						
Manufacturing	31,124	29,405	1,719	5.5	10.1	1,719	13.8		
Electricity, Gas & Air Supply	2,164	2,164	0						
Water Supply and Waste Management	6,529	6,529	0						
Construction of Buildings	24,229	20,629	3,600	14.9	21.2	3,600	28.8		
Wholesale, Retail & Vehicle Repair	60,962	59,275	1,687	2.8	10.0	1,011	8.1	676	15.2
Transport & Storage	15,186	15,186	0						
Accommodation & Food Service	17,226	17,226	0						

Information & Communication	4,427	4,100	327	7.4	1.9	327	2.6		
Finance & Insurance	10,090	9,678	412	4.1	2.4	412	3.3		
Real Estate	1,433	1,433	0						
Professional, Scientific and Technical	9,413	9,055	358	3.8	2.1	358	2.9		
Administrative and Support Services	37,801	37,135	666	1.8	3.9	353	2.8	314	7.1
Public Administration	147,091	146,819	272	0.2	1.6	272	2.2		
Education	63,939	59,670	4,269	6.7	25.2	2,276	18.2	1,992	44.7
Human Health & Social Work	25,903	22,834	3,069	11.8	18.1	1,984	15.9	1,085	24.4
Arts and Entertainment	2,890	2,890	0						
Other Service Activities	7,620	7,393	227	3.0	1.3			227	5.1
Extraterritorial Organizations	244	244	0		0.0				
Total	485,524	468,575	16,949	3.5	100.0	12,498	100.0	4,452	100.0

Source: Statistics Botswana (2019a)

3.5 Irregular Labour Migration

Comprehensive data on the number and types of irregular labour migrants in Botswana is not available. Case studies of irregular migration suggest that Zimbabwe is the most prominent source country and that migrants mainly enter the country legally on visitor's permits and then work irregularly in the informal economy and in sectors such as commercial agriculture, construction and domestic service (Campbell and Crush, 2015; Galvin, 2015; 2017; Mutsindikwa and Gelderblom, 2014).

4 RATIFICATION OF MIGRATION-RELATED REGIONAL AND INTERNATIONAL INSTRUMENTS, PLANS AND FRAMEWORKS

4.1 International Instruments

Botswana has ratified 15 ILO Conventions, all of which are in force.¹ With regard to labour migration, the following Fundamental and Governance Conventions that have been ratified are of particular relevance:

¹ A full list of ILO conventions ratified by Botswana is available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103303

	Convention No	Title	Date of Ratification
Fundamental Conventions	C029	Forced Labour Convention, 1930 (No. 29)	05 Jun 1997
	C087	Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)	22 Dec 1997
	C098	Right to Organise and Collective Bargaining Convention, 1949 (No. 98)	22 Dec 1997
	C100	Equal Remuneration Convention, 1951 (No. 100)	5 Jun 1997
	C105	Abolition of Forced Labour Convention, 1957 (No. 105)	5 Jun 1997
	C111	Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	5 Jun 1997
	C138	Minimum Age Convention, 1973 (No. 138)	5 Jun 1997
	C182	Worst Forms of Child Labour Convention, 1999 (No. 182)	3 Jan 2000
Governance Conventions	C144	Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)	5 Jun 1997

The following ILO conventions that are specifically related to labour migration or of significance in relation to the recruitment and employment of migrant workers have not been ratified by Botswana:

- Migration for Employment Convention (revised), 1949 (No. 97)
- Migrant Workers (Supplementary Provisions) Convention, 1975 (No.143)
- Private Employment Agencies Convention, 1997 (No. 181)
- Domestic Workers Convention, 2011 (No. 189), and
- Violence and Harassment Convention, 2019 (No. 190)

Botswana has also not ratified the 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

5 Policy and Legislative Framework

5.1 Constitution of Botswana, 1966

Chapter Two of the Constitution of Botswana provides for the fundamental rights and freedoms of the individual and has specific articles that set out each of these rights. All rights apply to all persons in Botswana, but each of the articles makes provision for the limitation of these rights on specific grounds through the use of legislation, administrative and regulatory means.

- Article 3: Fundamental Rights and Freedoms of the individual
- Article 4: Protection of Right to Life
- Article 5: Protection of Personal liberty
- Article 6: Protection from Slavery and Forced Labour
- Article 7: Protection from Inhuman Treatment
- Article 8: Protection from Deprivation of Property
- Article 9: Protection for Privacy of home and other property
- Article 10: Provisions to secure protection of law
- Article 11: Protection of Freedom of Conscience
- Article 12: Protection of Freedom of Expression
- Article 13: Protection of Freedom of Assembly and Association
- Article 14: Protection of Freedom of Movement
- Article 15: Protection from Discrimination

5.2 Employment (Amendment) Act 2010

The Employment (Amendment) Act of 2010 is the principal legislation governing labour relations in Botswana and provides for minimum conditions of employment. Unless otherwise provided for, these minimum conditions are applicable to both citizens and migrant workers in either the public or private sector, on condition that migrant workers are in possession of a valid work permit. The following are provided for in the Act:

- Working Hours
- Overtime
- Leave
- Minimum Wages (in specific trades and industries)
- Employment Records
- Probation
- Notice, Suspension and Termination
- Repatriation
- Employment of Children (prohibits employment of children under the age of 15)

The original Employment Act came into force in 1982 and 2010 amendments were made to Section 23, which concerns restrictions of the grounds upon which an employer may terminate the employment contract by adding sexual orientation and health status

(including HIV/AIDS status) as prohibited grounds of discrimination. The amendments also introduced a new section 23(e), which provides more general protection against discrimination.

23(d) the employee's race, tribe, place of origin, social origin, marital status, gender, sexual orientation, colour, creed, health status or disability; or

23(e) any other reason which does not affect the employee's ability to perform that employee's duties under the contract of employment.

5.3 Trade Unions and Employers Organisations Act, 2003

The Trade Unions and Employers' Organisations Act of 1984 as amended makes provision for and sets out the rules for three categories of organisation: trade unions, federations of trade unions and employers' organisations. A trade union is defined as an organisation of employees with a minimum of 30 members, whose main aims are to regulate relations between employees and employers or employers' organisations, or between employees and employees. The Act requires that Trade Unions and Employers' Organisations are registered with the Registrar and no employer may make membership or non-membership of a trade union a condition of employment.

5.4 Immigration Act 2011

The Immigration Act makes various provisions for the employment of migrant workers (see Box).

22. (1) A non-citizen shall not engage in any occupation for reward or profit unless he or she is the holder of a

(a) work permit issued to him or her, permitting the non-citizen to be employed, and he or she is employed or engaged in accordance with the conditions, attached to the permit; or (b) certificate of exemption issued to him or her under section 32.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P4 000, or to imprisonment for a term not exceeding four years, or to both.

(3) A person shall not employ a non-citizen unless the non-citizen is the holder of a

(a) work permit issued to him or her under subsection (1) permitting him or her to be employed and he or she is employed in accordance with the conditions, attached to the permit; or

(b) a certificate of exemption issued to him or her under section 32.

(4) A person who contravenes subsection (3) commits an offence and is liable to a fine not exceeding P5 000, or to imprisonment for a term not exceeding five years, or to both.

(5) Where, in any proceedings for an offence under this section, it is alleged in the charge that an accused or any other person was at a time specified a non-citizen, the

court shall presume that the person was at that time a non-citizen unless the contrary is proved.

23. (1) An application for a permit shall be lodged with an authorised officer, in the prescribed form and accompanied by such fee as may be prescribed.

(2) An authorised officer shall assess an application and endorse his or her recommendations on the application and transmit it to a board.

(3) For the purpose of making his or her recommendations in accordance with subsection (2), the authorised officer may require any person to submit immediately to examination or to present himself or herself to the authorised officer at such time and place as shall be specified, and at that time and place submit to examination.

(4) A person who has been required to submit to examination shall answer truthfully and to the best of his or her knowledge, every question put to him or her for the purpose of making the required recommendation.

(5) A Board shall consider every application for a permit put before it and it shall either issue a permit or reject the application, in which case the authorised officer shall inform the applicant of the decision of the Board in writing, without stating the reasons for such a decision.

(6) For the purpose of considering and determining an application for a permit, a Board may call for and obtain such additional information relating to the applicant, including his or her fingerprints and palm prints, as it may be necessary to have.

(7) In determining an application for a permit, a Board shall have primary regard to the interests of Botswana and shall take into account the character of the applicant and whether

(a) in the case of an applicant who proposes to take up employment or engage for reward in any business, profession or other occupation in Botswana, he or she has or has not the qualifications, education, training and experience likely to render him or her efficient in that employment, business, profession or occupation and sufficient prospects of obtaining that employment or sufficient capital to engage in that business, profession or occupation, as the case may be;

(b) in the case of any other applicant, he or she is or is not in a position to support himself or herself and any dependants in Botswana otherwise than by taking up employment or engaging for reward in any business, profession or other occupation;

(c) the issuance of a permit affects the opportunities for employment or for other engagement for reward or profit in the occupation in question, as the case may be open to citizens of Botswana; or

(d) in the case where the application relates to employment, the arrangements made or to be made by the employer to train a citizen of Botswana to replace the person in respect of whom the application is made in the event of a work permit being issued.

(8) In the case of an application for a residence permit by (a) a spouse or a child under the age of 18 years; or (b) the aged parent or grandparent of a holder of a permit who

the holder of a permit has undertaken to maintain, a Board shall not be required to take into account the matters prescribed by subsection (7).

(9) The Minister may direct in writing, either generally or with reference to a particular application for a permit, to a Board that the interests of Botswana include such matters as the Minister shall specify and the interests of Botswana shall be deemed, for the purposes of subsection (7), to include those matters either in respect of applications or in respect of the particular application in question, as the case may be.

(10) A permit shall be issued in the prescribed form for such period

(a) not exceeding five years for employees; or

(b) not exceeding 10 years for investors, and may be issued subject to such conditions as a Board may determine, which conditions shall be specified in the permit.

5.5 Bilateral Labour Migration Agreements (BLMAs)

Botswana has a Bilateral Labour Agreement with South Africa dating back to 1973, which governs employment of citizens of Botswana in South Africa, including:

- issues remittances and workers' welfare and compensation funds;
- governs movement of persons across the countries;
- establishes a Botswana Government Labour Office in South Africa;
- provides regulations for repatriation of former migrant workers

6 LABOUR MARKET INSTITUTIONS

6.1 Industrial Court

The Trade Disputes Act establishes an Industrial Court that is headed by a Judge President. Industrial Court Judges are appointed by the President. The Judge sits with two assessors, one nominated by an organization representing the workers, and another by an organization representing the employers. The Court has jurisdiction to hear and determine all trade disputes except disputes of interest including those to interdict any unlawful industrial action and to hear appeals and reviews from decisions of mediators and arbitrators.

6.2 Minimum Wages Advisory Board

The Minimum Wages Advisory Board shall investigate the wages in the trade, section of trade, industry or section of industry in question and make recommendations to the Minister as to the minimum wage which should, in the Board's opinion, be payable to employees belonging to the relevant category. The Board shall take into account any statements which the employers, registered employers' organizations, employees or registered employees' organizations concerned may wish to make to the Board and shall, where it is reasonably practicable to do so, make arrangements for such employers, registered employers' organizations, employees or registered employees'

organizations to be heard by the Board. In formulating its recommendations to the Minister, the Board shall take into account the needs of the employees concerned and their families, taking into consideration the general level of wages in Botswana, the cost of living, any social security benefits and the relative living standards of other social groups; the desirability of eliminating discrimination between the sexes in respect of wages for equal work and economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.

6.3 Labour Advisory Board

A Labour Advisory Board advises the Minister on any proposed legislation, rules, codes, guidelines or model agreements relating to dispute prevention and resolution. The board reviews dispute prevention and resolution procedures under the Trade Disputes Act and to advise the Minister thereon where necessary. The board has an advisory capacity in advising the Minister on the qualifications, appointment, terms and conditions of appointment, and the removal of mediators and arbitrators.

7 FAIR RECRUITMENT OF MIGRANT WORKERS

The following is extracted from Part 5 of the Botswana Employment Amendment Act. The provisions of the Act apply both to citizens and migrant workers, unless limited by legislation, administrative or regulatory means.

Prohibition of recruitment save under licence.

(1) No person shall be engaged in recruitment unless he is the holder of a valid recruiter's licence issued to him under this Part.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to the penalties prescribed by section 172 (d).

56. Issue of recruiter's licence.

(1) Every application for a recruiter's licence shall be made to the Commissioner in the prescribed manner and every such licence shall be issued in the prescribed form and contain the prescribed particulars.

(2) Subject to the other provisions of this section, every recruiter's licence shall be valid, unless previously cancelled or suspended, during such period not exceeding 12 months as shall be specified therein and there shall be paid for the licence such fee or fees as may be prescribed.

(3) A recruiter's licence shall be issued at the discretion of the Commissioner; but before issuing such a licence the Commissioner shall -

- (a) take into account the possible effects of the withdrawal of adult males to be recruited on the health, welfare (both physical and moral) and development of the local population concerned;
- (b) satisfy himself that adequate provision has been made for safeguarding the health and welfare of the persons to be recruited; and
- (c) satisfy himself that the applicant is a fit and proper person to hold a recruiter's licence and is in a position to fulfil his obligations thereunder.

(4) Every recruiter's licence shall be subject to such conditions as the Commissioner may, subject to any general or special directions he may be given by the Minister, think fit to specify therein and, without prejudice to the generality of the foregoing, the Commissioner may, for the purpose of safeguarding the population of any area likely to be adversely affected by the withdrawal of adult males therefrom following their recruitment under the licence or for any other good and sufficient reason, specify in the licence conditions as to any of the matters following -

- (a) the restriction of the number of adult males which may be recruited under the licence in any area;
- (b) the closing of any area to recruitment under the licence;
- (c) the employment of persons recruited under the licence in a particular area within a specified area only.

(5) The holder of a recruiter's licence who fails to comply with any condition specified therein by the Commissioner shall be guilty of an offence and liable to the penalties prescribed by section 172 (d).

(6) Any applicant for a recruiter's licence who is aggrieved by any decision of the Commissioner to refuse to issue the licence or to specify any condition therein may appeal against that decision to the Minister.

(7) Every appeal under this section shall be in writing and shall be delivered to the Minister not later than 30 days immediately after the day on which the decision complained of was communicated to the applicant.

(8) The Minister shall consider every appeal made to him under this section and shall -

- (a) in the case of an appeal against a decision to refuse to issue a licence, either dismiss the appeal or allow the appeal, in which last case the Commissioner shall forthwith issue a recruiter's licence to the applicant; or
- (b) in the case of an appeal against a decision to specify any condition in the licence, either dismiss the appeal or allow the appeal, either wholly or in part,

and rescind the condition or vary its terms accordingly, in which last case the condition as so varied shall be deemed, for the purposes of this section, to have been specified in the licence by the Commissioner.

57. Prohibition of assisting recruitment without permit.

(1) No person shall assist a recruiter in recruitment and no recruiter shall employ any person to assist him in recruitment unless that person is the holder of a valid recruitment permit so to do issued to him under this Part.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to the penalties prescribed by section 172 (b).

(3) Every application for a recruitment permit shall be made to the Commissioner in the prescribed manner and every such permit shall be issued in the prescribed form and contain the prescribed particulars.

(4) Subject to the other provisions of this section, every recruitment permit shall be valid, unless previously cancelled or suspended, during such period not exceeding 12 months as shall be specified therein and there shall be paid for the permit such fee or fees as may be prescribed.

(5) A recruitment permit shall be issued at the discretion of the Commissioner and shall be subject to such conditions as the Commissioner may think fit to specify therein; but before issuing such a permit the Commissioner shall satisfy himself that the applicant is a fit and proper person to hold a recruitment permit and is in a position to fulfil his obligations thereunder.

(6) The holder of a recruitment permit who fails to comply with any condition specified therein by the Commissioner shall be guilty of an offence and liable to the penalties prescribed by section 172 (d).

(7) Subject to any general or special directions he may be given by the Minister and without prejudice to the generality of subsection (5), the Commissioner may specify as a condition of a recruitment permit that the holder thereof shall not receive from the recruiter for his services remuneration calculated at a rate per head of employees recruited; where the Commissioner permits such remuneration, he shall specify in the permit a condition that such remuneration shall not exceed such amount per head as shall be specified.

(8) Every recruiter shall, on being required so to do by a labour officer, tender his recruiter's licence to the labour officer for entry therein of the name of every person in

his employment who is the holder of a valid recruitment permit issued to him under this Part.

(9) Any applicant for a recruitment permit who is aggrieved by any decision of the Commissioner to refuse to issue the permit or to specify any condition therein may appeal against that decision to the Minister.

(10) Every appeal under this section shall be in writing and shall be delivered to the Minister not later than 30 days immediately after the day on which the decision complained of was communicated to the applicant.

(11) The Minister shall consider every appeal made to him under this section and shall

-

- (a) in the case of an appeal against a decision to refuse to issue a permit, either dismiss the appeal or allow the appeal, in which last case the Commissioner shall forthwith issue a recruitment permit to the applicant; or
- (b) in the case of an appeal against a decision to specify any condition in the permit, either dismiss the appeal or allow the appeal, either wholly or in part, and rescind the decision or vary its terms accordingly, in which last case the condition as so varied shall be deemed, for the purposes of this section, to have been specified in the permit by the Commissioner.

58. Power of Commissioner to take security from applicants. Before issuing a recruiter's licence or a recruitment permit, the Commissioner may require the applicant to execute a bond in the prescribed form for such amount as the Commissioner may consider reasonable for the due observance and fulfilment of any condition which may be specified in the licence or permit and for the due observance of this Act.

59. Power of Commissioner to cancel or suspend licences and permits.

(1) The Commissioner may -

- (a) cancel any recruiter's licence or recruitment permit if, in the opinion of the Commissioner, the holder thereof has committed an offence under this Act or is guilty of other misconduct rendering him unfit to engage in recruitment; or
- (b) suspend any recruiter's licence or recruitment permit pending the result of any enquiry by the Commissioner into the fitness of the holder thereof to continue to hold the licence or permit.

(2) Any person aggrieved by any decision of the Commissioner to cancel or suspend a recruiter's licence or recruitment permit may appeal against that decision to the Minister.

(3) Every appeal under this section shall be in writing and shall be delivered to the Minister not later than 30 days immediately after the day on which the decision complained of was communicated to the appellant.

(4) The Minister shall consider every appeal made to him under this section and shall either dismiss the appeal or allow the appeal, in which last case the Minister shall set aside the cancellation or suspension as the case may be.

60. Renewal of licence or permit. A recruiter's licence or recruitment permit may be renewed by the Commissioner and the material provisions of sections 56, 57 and 58 shall apply, with all necessary modifications, in respect of every such renewal and application therefor.

61. Liability of recruiter for offences committed by his employees.

(1) Where any employee of a recruiter commits an offence under this Act, the recruiter shall be deemed, for the purposes of this Act, also to have committed that offence unless he proves that the offence was committed without his knowledge or consent.

(2) Where a recruiter is deemed by virtue of subsection (1) to have committed an offence under this Act, he may be prosecuted for the offence either alone or jointly with the employee who in fact committed the offence.

62. Prohibition of recruitment of children and young persons.

(1) No person shall recruit any child or young person.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to the penalties prescribed by section 172 (d).

63. Families of recruited persons.

(1) No member of the family of a recruited person shall be treated as if he has himself been recruited solely by reason of the recruitment of that other person.

(2) Where the wife or child of a recruited person has been authorized by the employer to accompany or follow the recruited person to and to remain with him at the place of employment, the wife or child shall not be separated from the recruited person except with that person's express consent.

(3) The authorization by the employer of the wife or child of a recruited person to accompany or follow him to the place of employment shall be deemed, for the purposes of this section, to be an authorization to remain with him at the place of employment for the full duration of his term of employment:

Provided that this subsection shall not apply where the recruited person has entered into an agreement to the contrary before his departure from the place of recruitment.

(4) Any person who contravenes this section shall be guilty of an offence and liable to the penalties provided by section 172 (d).

64. Prohibition of recruitment by public officers.

(1) No public officer shall -

- (a) recruit, either directly or indirectly, for a private undertaking except where the recruited employees are to be employed on works of public utility for the execution of which a private undertaking is acting as contractor for a public authority;
- (b) exercise pressure on persons to engage or not to engage for employment; or
- (c) receive from any source whatsoever any remuneration or other special inducement for assistance in recruitment.

(2) No person shall give or offer to give any money or other consideration whatsoever to a public officer for the purpose of obtaining a supply of labour.

(3) Any person who contravenes this section shall be guilty of an offence and liable to the penalties prescribed by section 172 (d).

While the section on recruitment in the Act is extensive, much of it is focused on the administrative process and it does not say much about ensuring fair recruitment directly e.g. who pays the costs of recruitment, whether a prior employment contract is mandatory etc. However, some of these provisions may be covered in other parts of the Act.

8 SKILLS RECOGNITION OF MIGRANT WORKERS

The Botswana Qualifications Authority (BQA) sets standards for recognition of external qualifications and evaluation of local and external qualifications in terms of Section 4 (2h) and (2i) of the BQA Act, 2013.

Regulation 13 of Botswana Qualifications Authority (National Credit and Qualifications Framework) Regulations, 2016 requires the Authority to develop criteria and guidelines for evaluation and recognition of external qualifications. This is to achieve the objectives of the NCQF which is to facilitate access and progression within education and training, and career path.

Evaluation of qualifications is the process of analysing external qualifications in terms of their country of origin, contexts and points of difference and/or similarity in relation to local qualifications and contexts. This is a twin process that involves:

- **Verification:** a process of authenticating the status of awarding body and/or Education and Training Provider and the qualifications offered by them, along with investigating the authenticity of qualifications documentation and verifying that the qualification was awarded an individual.
- **Comparability:** a process which entails comparing external qualifications with NCQF qualifications, considering the structure and outcomes and locating them within the NCQF.

The evaluation process leads to either recognition or non-recognition of the evaluated qualification. Recognition of a qualification facilitates access and progression within education and training, and world of work.

Botswana is responsible for developing the Quality Assurance component of the SADC Regional Qualification Framework (SADC-RQF).

9 SOCIAL PROTECTION OF MIGRANT WORKERS

Botswana has “a strong and long-standing commitment to state-led social protection” (RHVP, 2011) The country has ten main state-run programmes: ten main state-run social assistance programmes’. These are: Destitute Persons Programme; Orphan Care Programme; Community Home Based Care; Primary and secondary school feeding programs; vulnerable groups feeding; Remote Area Development Programme; Old Age Pension Scheme; Ipelegeng; and WW2 Veterans allowance (World Bank, 2014, 2021). All of these programs are directed at providing support for citizens. Labour migrants are generally not eligible to access and benefit from any of these programs and most, in any case, are directed towards support of children and vulnerable populations such as the elderly. The Table below from the SAMM Labour Migration Stocktaking provides additional information on social protection programming by status.

	Social Assist- ance	National & Occupat- ional old- age & disability pension	Unemploy- -ment Benefits	Health Care & Health Insurance	Public Housing	Public Schooling
Citizens	✓	✓	✓	✓	✓	✓
Permanent Residents				✓	✓	✓
Temporary Residents					✓	✓

REFERENCES

- Campbell, E. and Crush, J. (2015). *Unfriendly Neighbours: Contemporary Migration from Zimbabwe to Botswana*. SAMP Migration Policy Series No. 61, Cape Town.
- Galvin, T. (2015). “‘We Deport Them But They Keep Coming Back’: The Normalcy of Deportation in the Daily Life of ‘Undocumented’ Zimbabwean Migrant Workers in Botswana.” *Journal of Ethnic and Migration Studies*
- Galvin, T. (2017). “What Else Can We Do?” Strategies and Negotiations Around Place and Space in the Case of “Undocumented” Zimbabwean Migrant Workers in Botswana.” *Anthropology Southern Africa* 40(2): 96-107.
- Mhiza, C. and Mojewa, B. (2020). “From Expatriate Labour to Localisation: A Milestone Analysis of Botswana Education Sector 2008 – 2014.” *Journal of Economics and Sustainable Development* 11(12): 114.
- Mutsindikwa, C. and Gelderblom, D. (2014). “The Social Context of Migrant Social Capital: Explaining the Rise of Friends and the Decline of Family as the Main Bases of Support for Undocumented Zimbabwean Migrants in Botswana.” *South African Review of Sociology* 5(2): 27-43.
- Oucho, J., Campbell, E. and Mukamaambo, E. (2000). *Botswana: Migration Perspectives and Prospects*. SAMP Migration Policy Series No. 19, Cape Town.
- Republic of Botswana (2021). *Botswana National Social Protection Recovery Plan: Parts 1 and 2* (Gaborone).
- RHVP (2011). *Social Protection in Botswana: A Model for Africa?* Frontiers of Social Protection Brief No. 9, Parktown, Johannesburg.
- Schmidt, A., Thekiso, E., Overeem, M. and Siphambe, H. (2010). *Consultancy to Forecast and Identify a List of Priority Vocational Skills and Develop Strategies to Fast Track Priority Skills Development: Final Report* (Gaborone: Botswana Training Authority).
- Statistics Botswana (2011). *Labour Statistics Report* (Gaborone: Statistics Botswana).
- Statistics Botswana (2017). *Botswana Demographic Survey Report* (Gaborone: Statistics Botswana).
- Statistics Botswana (2019), *Quarterly Multi-Topic Survey: Labour Force Module Report, Quarter 4: 2019* (Gaborone: Statistics Botswana),
- Statistics Botswana (2020). *Work Permits Stats Brief, Quarter 4 2019* (Gaborone: Statistics Botswana).

Statistics Botswana (2021). *Work Permits Stats Brief, Quarter 2 2021* (Gaborone: Statistics Botswana).

Takaindisa, J. and Palmary, I. (2020). "Invisibility as a Livelihood Strategy: Zimbabwean Migrant Domestic Workers in Botswana." In J. Bjarnesen and S. Turner (eds), *Invisibility in African Displacements: From Structural Marginalization to Strategies of Avoidance* (London: Zed Books),

UN DESA (2019a). *International Migrant Stock 2019 : Country Profile: Botswana* at <https://www.un.org/en/development/desa/population/migration/data/estimates2/countryprofiles.asp>

UN DESA (2019b). *Migrant Stock by Origin and Destination 2019 Update* (UN DESA 2019b)

World Bank (2014). *Botswana Social Protection*. Discussion Paper 1405, World Bank, Washington DC.



www.sammproject.org
samm-project@ilo.org