Refugee Integration in South Africa and the Challenges of International Protection Laws

OLAWALE LAWAL

Abstract

The South African Refugee Act of 1998 is a major encumbrance to the integration of refugees, since local government authorities are allowed to take direct responsibility for the management of refugees in South Africa. A key issue here is that refugee expenditures are not captured in the budget allocations to municipal governments who generally demur in view of this. At the same time, international protection and municipal law often clash where refugee rights stretch the national economy of the host state. This paper examines the institutional challenges with respect to refugee integration in South Africa, a challenge which begins in the second chapter of the Republic's constitution which gives responsibility to the municipal government to provide services which are of immediate interest to refugees. Snowball sampling was utilized in selecting refugees and asylum-seekers to interview, which enabled the researcher to locate other potential respondents to be interviewed. The information gathered from refugees already integrated in the South African community of Cape Town details the living condition, survival and general experiences of the refugees. Findings reveal that municipal authorities and citizens of South Africa act against refugees in contravention of the provisions of the Refugee Act because the Ministry of Home Affairs in South Africa fails to manage the interaction between international protection laws and the municipal laws of the country.

Keywords: South Africa, Refugee Act, Refugees, Integration

Introduction

1 Olawale Lawal holds a PhD degree in Political Science from the University of Ibadan, Nigeria's premiere University. His research thesis was on refugee law and the challenges of the principle of non-refoulement in Africa He is a senior lecturer at the Department of History and International Studies, Lagos State University where he teaches diplomacy, international law and foreign policy. Olawale Lawal was a member of Lagos History Project established by the former Governor of Lagos Mr. Raji Babatunde Fashola from 2012-2015. He has published 23 articles in local and international journals, and chapters in six books. He has attended a number of academic conferences, some of which are: the 30th Camden Conference on Refugees and Global Migration, Maine. USA, the 19th International Academic Conference, Florence, Italy, amongst others. Olawale Lawal is the current Deputy Director of LASU Foundation Programme.
It has been reported recently that 30 percent of the entire population of South Africa are refugees.\(^2\) South Africa is host to refugees from Zimbabwe, Somalia, the Democratic Republic of Congo and asylum-seekers from Ghana, Nigeria and even from countries as far as Pakistan, India and Sri Lanka. The situation of Zimbabwean refugees and asylum-seekers is of particular interest as Zimbabweans constitute 42 percent of all refugees and asylum-seekers in South Africa.\(^3\) Zimbabwean refugees are generally a mixture of refugees and economic migrants, since there is a long-term and well-documented influx of Zimbabweans coming to South Africa in search of economic opportunity since 2008 after the general elections in Zimbabwe.

This paper focuses on the issue of refugee integration in South Africa. Based on primary data collected between 2014–2017, consisting of focus group discussions, in depth interviews with officials of government institutions, refugee center managers, refugees and asylum-seekers, as also secondary material such as South African refugee laws and immigration act, this paper sets out to examine the major impediments to refugee integration in South Africa. Since refugee and asylum administrations in South Africa are difficult to access for those who do not have direct business with these institutions, the help of a research guide was needed to understand and navigate the very complex asylum system. Our research guide was a support staff of the Refugee Reception Office at Beitbridge port of entry in South Africa.

Refugee laws in South Africa are normally confused with immigration laws as was evident during the course of this research, based on interactions with a number of South African nationals. Although the majority of the middle-class South Africans were aware of the National Refugee Act, it was generally confused with the immigration law of the country. In South Africa, the Refugee Reception Offices (RROs) are responsible for attending to refugees within the country. The RROs are visible at border and port areas i.e. at the points of entry for refugees and therefore this is where the integration process begins. During this research, four such RROs were visited, namely Rosettenville RRO, Pretoria RRO, Beitbridge and Komatipoort ports of entries.

To begin with, we found that all refugee claimants are required to present a transit permit called S23 with their claims. The S23 is a non-renewable five-day asylum transit permit issued to refugee claimants and asylum-seekers by immigration officials. This practice is an established immigration procedure in South Africa as the Immigration Act No. 13 of 2002 (amended by s15 of Immigration Amendment Act No. 13 of 2011) states that:

> The Director General may, subject to the prescribed procedure under which an asylum transit visa may be granted, issue an asylum transit visa to a person who at a port of entry claims to be an asylum-seeker, valid for a period of five days only, to travel to the nearest Refugee Reception Office in order to apply for asylum.

It was observed that this permit was issued as provision to ensure that undocumented asylum-seekers are allowed safe passage into South Africa, despite them not having a travel permit issued from their own authorities, in order to register their applications at a RRO within South Africa. In principle, this provision, although an immigration act, is envisioned to aid the functions of the Refugee Act as it provides for easy accessibility to asylum in South Africa.


\(^3\) UN Integrated Regional Information Network (IRIN), “South Africa”.
Through the assistance and cooperation of authorities at Beitbridge and Komatipoort RROs, this research is able to understand the current practice of the refugee admission principle in South Africa via the practices employed at these two ports of entry. The Beitbridge border port is the main port of official entry of refugees, especially those from Zimbabwe, and as a result, Beitbridge is about the most active RRO Office in South Africa. Beitbridge is also connected to the national road which directly links the border to Johannesburg, Durban, and Cape Town. The Komatipoort port of entry serves asylum-seekers from Somalia to South Africa but, in comparison, the Beitbridge RRO is a far more busy centre as a majority of the over four million refugees (an estimate provided by our research guide) from Zimbabwe use this border post as a point of entry into South Africa.

Beitbridge is locally referred to in South Africa as “foot and mouth.” The first concern of this research was why the place has adapted this particular name. A Somali refugee claimant interviewed during the course of this research, explained that Beitbridge is called so because refugee claimants have to make symbolic use of their feet and mouth for a successful application. The “mount” represents the words spoken by that person, as it could secure asylum for them. The “feet” aspect refers to the ability of the refugee claimant to be very quick on their feet in order to answer to their name on the asylum-seekers list. Otherwise they may forever miss that opportunity.

A refugee, upon approaching the first gate of entry into South Africa through Beitbridge RRO, is required to show their passport to the Immigration Officer or policemen who request to see passports of virtually every asylum-seeker in Beitbridge. If the refugee is not in possession of any passport (as it is usually the case), they would not be allowed to enter South Africa. This, of course, is a contravention of the South African Refugee Act and also the principle of non-refoulement. In the course of this research, it was observed on a particular day that 160 of Zimbabwean refugees were not allowed to enter the country and were forced to return to Zimbabwe.

Some refugees, however, made it into the RRO at Beitbridge and there they were faced with the enormous task of obtaining a S23 permit. The issuance of the S23 permit is based on the refugee’s ability to establish why they are fit to seek asylum in South Africa. It was observed that most asylum-seekers from Zimbabwe were refused the S23 permit on the grounds that a functioning government exists in Zimbabwe and as such, refugees from that country are not ‘truly’ asylum-seekers.

The RRO at Komatipoort, although not as busy as the Beitbridge office, employs similar practices. The entry port of Komatipoort is used primarily by Somali refugees. The application process for refugee and asylum seeker appears to be stricter in Komatipoort as compared to Beitbridge. At Komatipoort, refugees with a failed asylum application are sometimes detained by the local police. They are then taken to Lindela repatriation facility and from there deported to Somalia. The situation in Komatipoort at the time this research was conducted, was quite unsuitable for refugees and asylum-seekers. One of the officials at the Komatipoort RRO explained in an interview that the strict asylum application measure was a preventive mechanism against dissidents from Somalia crossing to South Africa. He explained that because of the war in Somalia, the government of South Africa is careful not to provide protection for dissidents from Somalia. He mentioned, however, that those refugees and asylum-seekers who have genuine claims are protected once the RRO is convinced that the applicant deserves the protection of the South African government.
The influx of refugees to South Africa has placed an enormous burden on South Africa. The authorities in South Africa often applied immigration laws to refugee and asylum processes in order to check the influx of refugees. The view that refugees who enter South Africa are economic migrants rather than refugees has gained widespread acceptance in the country, to the extent that the media often refer to refugees as “a human tsunami, illegal immigrants” or “border jumpers.”

The government’s approach to this influx is to label refugees as voluntary economic migrants.

The government of South Africa believes that economic migrants are not, strictly speaking, refugees and this often pits government agencies against advocacy groups that provide technical support for them in their centres. This research however reveals that a strong resentment of economic migrants and refugees alike fuels the incidence of xenophobia in South Africa.

**Local Government and Integration of Refugees in South Africa**

Local government administration has no statutory responsibility toward refugees in South Africa. However, the Refugee Act states that all refugees are entitled to health care, employment and education. Most of these services are the primary functions of municipal authority according to chapter two of the South African constitution. Yet, a local government official interviewed for this research was of the view that they have no statutory duties to refugees and affirmed that provision of services for refugees should be the responsibility of the Department of Home Affairs (DHA) at the national level. In view of this assumption, local governments in South Africa have put in place control measures which suggest that xenophobia in South Africa is patronized by official support.

Indeed, local government involvement in refugee integration is the inadvertent consequence of the Refugee Act which provides for the integration of refugees into South Africa, although it does not clearly state how this may affect the work of municipal authorities. As refugees are left at the mercy of the city (local) government officials, they are denied access to schools, clinics, housing, and many other services.

A major problem encountered by refugees is the implementation of the refugee protection policy by the Ministry of Home Affairs. This creates a policy stalemate as there is no clear direction as to whom, why and how should protection be offered. As a consequence, the pace of processing applications for asylum, in particular, is very slow. The inefficient manner in which asylum applications are processed is a key concern for refugees. There is a long period between when a refugee application is filed and when refugee status is decided. As a local administration officer at the Cape Town Municipal Office reported, this process takes anywhere between six months and several years.

In a bid to survive without receiving an income (since status has not yet been decided), asylum seekers work as street traders, car guards etc., and may often get into trouble as such vocations are prone to frequent security checks and scrutiny. In any case, most refugees are repatriated in South Africa, not because they have not satisfied South African refugee provisions, but because the law enforcement agencies have issues with them, as a refugee claimant explained to us in the course of this research. The way refugees are often pronounced guilty raises the suspicion that some of these offenses are staged to provide grounds for their repatriation and non-integration. Most refugees interviewed for this research viewed South African authorities as presenting two faces; one, where South Africa was assumed to be a refugee-friendly country due

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to the Refugee Act and, two, where South Africa in practice denied refugee rights with impunity. In addition, refugees believed that there was a strategic reason for the DHA to process asylum applications slowly. Some of the refugees believed that the slow processing of applications is to quicken their refoulement while others believed that it was meant to provide cheap labour as the refugees are exploited for minimal wages.

At the same time, it was also observed during the research process that the RROs often lacked the necessary equipment to achieve more efficient services. For example, laptops and other machines would break down and be inactive for weeks without repair. This adds to the waiting time and vulnerability of applicants having to go for weeks or months without the necessary documents. In response to the delay and complaints of refugees, the DHA introduced refugee smart cards, similar to that of a driver's license. The smart card is an innovation by the UNHCR to the refugee community in South Africa. The idea is for refugees to use smart cards to apply and do any business relating to their status as refugees. They can also use it to open a bank account anywhere in the country. However, refugee participants of the study reported that the DHA has used this smart card and the entire refugee system to facilitate corruption. Refugees say bribes are extracted from them for any service rendered by officials in charge of refugees in South Africa.

During this research, it was discovered that the DHA is critical to any meaningful study of refugee laws in South Africa. As a follow up to this observation, interviews were conducted with eighteen refugees specifically on how the DHA processes asylum claims. All the respondents mentioned various difficulties encountered in the process of acquiring asylum; a chief concern that emerged was that the asylum process was rarely completed within the five days allowed by the Refugee Act. In effect, most of the respondents said they processed their asylum from one to three months.

It should be noted that the DHA makes a difference between asylum-seeker and refugee and there are different methods and periods of application for the two. An asylum-seeker is, “a person who is seeking declaration of status, while on the other hand, a refugee is someone whose application is still under consideration (for integration) by the government.” According to the South African Refugee Act, a refugee “can apply for permanent residences after five years of continuous residence since date of asylum being granted, and only recognized refugees can apply for identity documents and an asylum application should be adjudicated within 180 days, including the appeal”. The Act further states that, “…to apply for refugee status, you need an asylum seeker permit from a Refugee Reception Office in South Africa.”

It was observed that four of the eighteen respondents were still on an asylum permit at the time of the study. Some applied for refugee status in 2006 and were yet to have their status decided. The gross effect of this is that respondents were denied refugee status and rights because they do not have the correct documents. This situation heightens the possibility of forcible return to their countries whenever there are routine checks of documents of migrants by the security agents in South Africa. One of the respondents, who said he arrived in South Africa in 2004, claimed to have escaped the war in the Democratic Republic of Congo. He had been on asylum-seeking status since then, despite his glaring refugee conditions. He concludes:

There are implications of being on asylum-seekers status for such a long time before getting refugee status. This is done deliberately to prevent integration.

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5 Section 24 of the South African Refugee Act.
and respect refugee rights. Asylum-seekers are given identification for easy identification but that is a clever form to return you to your country.

The officials of the DHA, however, defended the Ministry and remarked that the challenges of the Ministry were due to the unprecedented number of asylum-seekers who have entered the country amidst false asylum claims. One of the officials at the Cape Town DHA explained that it is asylum-seekers who are responsible for this prolonged situation as most of the people who applied for refugee status were, in fact, not refugees. These large numbers of asylum-seekers put a lot of pressure on the DHA and this pressure, he said, had been interpreted to be the fault of the DHA.

The issue of corruption is identified as the main challenge for refugees in South Africa. In fact, the DHA inadvertently confirmed it. Within the DHA office and RROs, there were bills on the walls which read “REPORT CORRUPTION” and a telephone number given to report the same. The bill carries a rider which stipulates "SAY NO TO GIFTS or PAYMENTS” with an instruction that reads:

It is the policy of this Department that no official may accept a gift. You are therefore kindly requested not to offer any "token of appreciation" or gift to any Home Affairs Officials.

…any official who accepts a gift is in contravention of the code of conduct for the public servant as well as the Department's policy on gifts and this is regarded as a serious transgression, which could lead to a charge of misconduct.

South Africa, in theory, has made efforts to address the challenges of corruption in affected government departments. Nationwide complaints from civil societies and state anti-corruption agencies snowballed into the drafting of the Anti-corruption Act on April 27th, 2004, when then President Thabo Mbeki signed the Preventive and Combating of Corrupt Activities Act 12 of 2004 into law. The Act, according to a Cape Town DHA official, is to be a preventive instrument for offenders and a deterrent for those contemplating corrupt activities.

In practice, efforts to fight corruption were limited as per the information gathered from asylum-seekers. The researcher asked respondents whether they had bribed officials of the department. Only one of the respondents mentioned that he did not bribe any official before getting his permit. The other seventeen said that they paid between R500 to R1500 ($10- $28) to get their permits. During a Focus Group Discussion (FGD) conducted at the Cape Town DHA, respondents explained that payments were made to ensure that they received their refugee status within two months.  

This study generally observes that the problem of the DHA is structural because of the over bureaucratic method of service and the nature of service the department provides. Refugees are in need of protection and are thus susceptible to all forms of exploitation. The net result of the DHA’s challenges raises concern for the principle of non-refoulement, according to Fatima Khan of the Refugee Law Clinic, who observes that:

Though some progress had been made to reduce corruption in the department, there is still incidence of perpetual bribery and corruption which have affected the system adversely. This is very chronic and

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6 FGD conducted by the researcher at Cape Town DHA, April 2015. Two sessions conducted with 17 asylum-seekers.
difficult to eradicate as some corrupt officials benefit from the system and will prefer the trend for their own advantage. Those include asking refugees and asylum-seekers for money before granting or renewing their permits. If they did not give the bribe either their papers are denied or not renewed which makes them more vulnerable to arrest or deportation or to remain in the country illegally.\footnote{Interviewed with Fatima Khan, University of Cape Town Refugee Law Clinic, September 2014.}

The principle of non-refoulement is fundamentally impaired in South Africa because the DHA appears to be staggering in view of the refugee influx to South Africa. This issue of rising numbers is further exacerbated by the existence of various ports of entry to South Africa. The net result of such challenges is the widespread disregard of refugee protection laws and non-integration of refugees.

The Cape Town Refugee Centre (CTRC) reported that the issuance of the asylum-seeker permit follows a strict process where applicants are required to submit themselves for fingerprints, provide passport-sized photos and other basic information which will be valid for three to six months. On the expiration of the permit, they are required to return to the RRO where they initially got the permit in order to be granted refugee status which is usually valid for four to five years. This process is simple in theory, but in practice, is riddled with administrative problems. Refoulement and non-integration of refugees in South Africa thrives on the numerous problems that refugees encounter in this chain of application for refugee status.\footnote{Bonaventure Rutinwa, “Asylum and Refugee Policies in Southern Africa: A Historical perspective,” Commonwealth Secretarial London for the Summit of the Commonwealth Heads of State and Government, 2002.}

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The red tape system refers to lack of resources (both human and material) to attend to the large volume of refugees in the asylum-seekers system. The resources take even more strain when the staff of the RRO must check identity and reasons for seeking asylum of all applicants. As a result, asylum status of refugees is left unresolved for a long time and several people must return to their states of origins where they fear persecution. According to an official of Cape Town Refugee Centre (CTRC), in the month of February 2013, about 75,000 unresolved cases of refugees were recorded in Beitbridge alone.

The CTRC official was of the opinion however that South Africa’s mistrust towards refugees is due to the fact that they are assumed to be economic migrants who seek asylum to gain benefits. The consequence of this is that the process of integration is sufficiently impaired and the non-refoulement principle is inhibited since refugees are not provided protection due to red tapeism resulting in a very slow asylum administrative procedure. A Congolese refugee working for a local NGO explained that the idea of refugee integration is not effective when the government of South Africa does not accommodate refugees. According to him:

Each new law surrounding immigration is worse than the previous one… I cannot understand for example why I have to go back to the same Reception Office where I got my first asylum-seeker permit… Although the permit grants me the right to work, I started working with the NGO only six months ago, after eleven years here.
The present study also observed that some asylum-seekers in South Africa, especially those from Zimbabwe, came to South Africa to seek medical attention to some of their ailments. This of course is exacerbated by the ruination of the medical infrastructures in Zimbabwe. Therefore, a research participant reported that the increasing number of people seeking asylum in South Africa are actually despondent medical patients in garb of refugee protection. The research participant further reported that many refugees from Zimbabwe were suffering from diseases like tuberculosis and HIV/AIDS and were over stretching the medical infrastructure of South Africa. The South African Refugee Act (Act No. 130 of 1998) Chapter 5 on Rights and Obligations of Refugees Protection and general rights of refugees provides that a refugee is:

“is entitled to the same basic health services and basic primary education which the inhabitants of the republic receive from time to time”. This study however observed that medical institutions in South Africa derived their lacklustre attention to refugee patients from the South African Immigration Act (Act No. 13 of 2002) which provides, under, Exclusions and Exemptions Prohibited persons that, “those infected with infectious diseases as prescribed from time to time”, may not, among other foreigner types, “qualify for a temporary or a permanent residence permit”.

The research participant observations are corroborated in a 2008 Human Rights Watch publication titled ‘Neighbors In Need: Zimbabweans Seeking Refuge in South Africa’ that reports that, as of December 2007, an estimated 1.7 million out of 13 million Zimbabweans were diagnosed with HIV/AIDS and were in need of anti-retroviral treatment (ART). Since the facilities in Zimbabwe could only cater for 90,000 people living with HIV/AIDS, the rest were fleeing to neighbouring countries and, in particular, to South Africa. In addition, the 2007 global tuberculosis control reports from the World Health Organization (WHO) ranked Zimbabwe among the twenty-two countries with the highest tuberculosis burden in the world. There was also a reported incidence of cholera in Harare and Bulawayo (Zimbabwe) in 2007. The South African government thus justifies the harsh application of non-integration of Zimbabwe refugees due to the health threat they allegedly pose to South African society. From a refugee’s perspective, however, the health system of South Africa is presented as discriminatory. Refugees claim that their health is not a priority, even when they are in danger, as health workers refuse to provide them with the necessary treatment. According to an asylum claimant interviewed for this research, public services like hospitals do not have enough money and/or staff to serve everyone in need and, often, they choose to treat South African citizens only.

The Theory and Practice of International Protection Law in South Africa

Although refugees and asylum-seekers from Zimbabwe in South Africa are found in Messina, Polokwane, the capital of Limpopo province, they enter mostly through the Beitbridge port of

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10 Ibid.
11 Ibid.
entry. As already noted, refugees from Zimbabwe are often not regarded as refugees because of the widely held belief that they are economic migrants. This is why Zimbabweans and most economic migrants in South Africa are often targets of overreaching migration controls of South African authorities.\textsuperscript{12} Asylum-seekers from Zimbabwe, however, perceived the South African authorities as high-handed and thus seek redress in refugee right-based advocacy groups who file asylum rights on their behalf. To understand refugee integration in South Africa, it is critical to document how would-be refugees are treated at ports of entry since refugee admission is the most critical point toward attainment of refugee integration. For this study, interviews were conducted at the Beitbridge port of entry around three key themes. First, the individual’s motivation for leaving Zimbabwe and expectations of life in South Africa. Second, the individual’s experiences while seeking asylum to South Africa, and finally, the individual’s experience since arriving in South Africa. Questions were asked about both personal and witnessed experiences. To achieve this, a semi-structured focus group discussion format was adopted.

All the respondents reported that the lack of basic resources combined with unemployment was a major reason for leaving Zimbabwe. Resources such as food, water, and shelter were said to be very scarce thus making it extremely difficult to remain in Zimbabwe. Again, it was reported that lack of employment made it difficult to purchase what resources were available. One of the female respondents reported, “I came here because I was running away from hunger and my husband was not employed there. The company was closed and he came here and looked for work. I followed my husband.”\textsuperscript{13} According to the respondents, other factors for leaving Zimbabwe were lack of health care and medication, political, civil unrest and violence and, together, they all act as push factors. A male respondent reported:

> I have worked in Zimbabwe for close to twenty-seven years, but the political situation was getting worse and the government fired me for my political views. I worked for private companies later but they were watching me. My life was in danger. My passport was stolen so I forced myself into this country without relevant papers. My entire village and children were beaten because of me.\textsuperscript{14}

The respondents identified various challenges they experienced on their way to South Africa, the most critical being witnessing and experiencing physical violence. Some even lost their lives on the way to South Africa. In addition, several female respondents reported sexual assaults and situations where sexual favours were demanded in exchange for resources and services. A female respondent reported:

> There were some guys helping us to cross we gave them money so that they (would) help us cross through Limpopo bush to Beitbridge to Messina. We found some lady lying. We don't know whether she was dead or what. But the guy said “No don't move near! Let's just go where we are going because this place is dangerous.”\textsuperscript{15}

\textsuperscript{13} Focus Group Discussion (FGD), conducted by the researcher at Beitbridge port of entry, June 2016.
\textsuperscript{14} FGD, June 2016.
\textsuperscript{15} FGD, June 2016.
The challenges which these refugees faced since arriving in South Africa holds significant relevance to the application of refugee law and the principle of integration of refugees in South African protection law. The participants reported minimal access to water, food, and shelter. Many of them said that there was little difference between their plight in Zimbabwe and what they faced in South Africa as refugees. They reported payment of ten Rand ($0.5) per night for accommodation. Since most refugees have financial challenges, it was gathered that most of them who could not afford that sum ended up sleeping on the streets. The immediate reaction of South African police is usually to arrest such refugees under the South African vagrancy law. The participants reported that for such unfortunate refugees there were two options, namely, either bribing the police or facing forced return to Zimbabwe.

Many participants reported that they were vulnerable to harassment and extortions of South African security agents because their refugee status was not yet decided. The participants reported cases of exploitation for the few fortunate refugees who managed to get jobs. There were issues raised regarding non-payment for work done by farm owners. One female participant reported that:

> We worked for almost two or three hours on the farm and we agreed that he is going to pay us seventy Rands ($3.7). And when we were almost done, the man started complaining that we did not do the farm work well and chased us with his dogs. We ran and trekked about six kilometres back to our station.16

Interactions with the participants also revealed the gap between theory and practice of refugee law in South Africa. The South African Refugee Act gives refugee determination responsibilities only to DHA which in turn establishes RROs for that purpose. In practice however, according to the participants, all para-military forces are involved in the process of status determination of refugees. There were reports of even South African soldiers getting involved in the process. The soldiers were reported to use helicopters to chase the refugees around the Limpopo River and when refugees were caught, they were either forced to pay for their release or risk return to Zimbabwe.

### South African Refugee Act, Municipal By-laws and the Integration of Refugees

Although the South African authorities promulgated the Refugee Act in 1998 as national reference for asylum administration, there were silent provisions in the municipal laws which inhibit the Refugee Act or altogether prevent refugees to access the benefits of the Refugee Act.17 For instance, most municipal governments have established by-law enforcement units to deal with vagrancy and evictions of people settling illegally, especially on council-owned land. According to these by-laws:

> If an unlawful occupier has occupied the land in question for less than six months at the time when the proceedings are initiated, a court may grant an order of eviction, if it is of the opinion that it is just and equitable to do so, after considering all the relevant

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16 FGD, June 2016.
circumstances including the right and needs of the elderly, disabled persons and households headed by women.\textsuperscript{18}

Those working in the vagrancy unit have been trained on how to identify ‘illegal immigrants’; however, they do not take cognizance of the international protection law in the execution of their duties. According to a local official at the Cape Town DHA, the vagrancy unit detains all undocumented migrants they come across and hand them over to the police. It was observed that the training of this unit depicts refugees and other non-nationals as a burden on local authorities, who further contribute to land shortage in the country. Although Section 27 of the Refugee Act entitles refugees to apply for low-cost housing, the by-law prevents refugees from applying as it is believed that doing so will create hardship for South Africans. The net implication of this is that refugees are systematically excluded from housing and frequently evicted from lands in South Africa. Refugees are thus inevitably forced to return to their country.\textsuperscript{19}

The challenges faced by refugees in South Africa begin with the slow pace of their applications. Further complications may arise when their status is not decided and when they do not have official permission to work. Refugees resort to trading in order to provide for themselves pending the determination of their status. The City Vagrancy Unit, however, prohibits trading by foreigners. To ensure this, the City Vagrancy Unit established the Business Areas Management (BAM) team which is responsible for the management of all business and also the registration of both formal and informal businesses. BAM also gives trading sites to applicants. BAM, however, requires that applicants who desired trading sites should show identification. Since most refugees are without identification, they are denied trading sites as they do not have the kind of identification required by the BAM. According to an asylum seeker who participated in this study, there is also an implicit assumption (by South African authorities) that trading sites should be given to South Africans in the first instance.

\textbf{Discussion}

The South African Refugee Act is generally developed in compliance with international protection laws. This sometimes encourages mass refugee flows to South Africa. To forestall this, a more restrictive approach to refugee administration is adopted in the country. To understand the factors affecting smooth integration of refugees in South Africa, respondents of this study were asked why refugee integration was not applied. Out of a total of 110 respondents, 78 percent said because they were not citizens, fifteen respondents (14 percent) said because they were unskilled and nine respondents (8 percent) said they did not know why. The FGD further affirmed that the principle of integration of refugees, from the point of view of respondents, was completely disregarded.

The officers in charge of the application of the principle were interviewed and all of them were aware that the Refugee Act of South Africa allows for the integration of refugees. To discover the factors responsible for the failure of its implementation, twenty-three respondents were interviewed. Twenty respondents (87 percent) admitted the impracticability of the principle, and three respondents (13 percent) disagreed and maintained that integration of refugee is practicable.

\textsuperscript{18} Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998.

Different reasons were adduced for the failure: 60 percent of respondents blamed the lack of resources, 28 percent of respondents accredited it to false refugee claims, and 12 percent of the respondents gave the national Refugee Act as reason for the failure of refugee integration.

Conclusion

Lack of resources, human, as well as material, is a serious obstacle to the implementation of local integration of refugees in South Africa. The issue of local integration of refugee is firmly incorporated in the OAU/AU Refugee Convention of 1969. Article 2 (3) on asylum states:

“No person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened for the reasons set out in Article I, paragraphs 1 and 2”.

Article 5 (1) on voluntary repatriation states: “The essentially voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will”. Both these articles promote obligations that ease refugee integration in member states.

Although most countries in Africa have adopted the OAU/AU Refugee Convention of 1969, they lack adequately trained personnel to attend to the implementation of the convention. Agencies entrusted with the responsibility of implementation are, paradoxically, the very institutions responsible for the plight of refugees. Most African states use the police, immigration officers and even the army to carry out refugee management functions. In South Africa, the major challenge to the integration of refugees is partly the inadequacy of officials to attend to status determination effectively due to red-tapeism such that leads to refugees and asylum-seekers becoming vulnerable. The road to integration of refugees is sloppy especially since status determination processes are arduous. This provides leeway for law enforcement agents to interfere and thus immigration becomes criminalised. In South Africa refugee administration, it is safe to conclude that local integration of refugees suffers because of the nation’s overt effort to protect its refugee act.

Note

All refugee and asylum-seeker respondents in this research already possessed the S23 permit. In order not to jeopardise their asylum applications and in keeping with research ethic, no names of refugees and asylum-seekers have been used.

References


South Africa S. 15 Immigration Amendment Act No. 13 of 2011


