

70 Year Protecting People Forced to Flee

Short regional panel reports

Region: Southern Africa

Hosting/organising institution: University of Pretoria

Session Title 1: Strategies on Refugee Protection in Southern Africa

Context/Background of the panel:

Protecting refugees has become a significant issue in the Southern African region. Cast against a broader African context, there is a need for a more concerted effort towards refugee protection leveraging on norms and experiences across various governance levels. This panel reflects specifically on refugee protection in the Southern African region.

There are two panels in this session. Panellists reflected on the political dimensions of responsibility sharing and refugee protection in the Southern African region. Discussions in this session zoomed in on challenges and opportunities for refugee protection in Southern Africa. In the second panel, panellists further reflect on local integration of and durable solutions for refugees in the Southern African region. Panel discussions reflected on regional priorities, promising partnerships, challenges and opportunities for local integration.

Quick Overview of Session

Session 1: Strategies on Refugee Protection in Southern Africa

Moderator: Prof Frans Viljoen

Director, Centre for Human Rights

Panelists:

Dr Cristiano D'Orsi

Senior Research Fellow and Lecturer, University of Johannesburg

- Protecting Refugees in Southern Africa: reflection on the complementarity of the UN Refugee Convention and the OAU Convention in practice

Dr Christopher Nshimbi

Director, Centre for the Study of Governance Innovation, University of Pretoria

- Migration Governance and the Protection of Refugees and Migrant Workers in Southern Africa

Ms Angèle Maria Dikongué-Atangana

Deputy Director for the Regional Bureau for Southern Africa, UNHCR

- The UNHCR in Southern Africa: priorities, partnerships and potentials

Session 2: Local Integration of Refugees: The Southern African experience

Moderator: Dr Romola Adeola

Coordinator, Global Engagement Network on Internal Displacement in Africa (GENIDA)

Panelists:

Dr Elizabeth Macharia-Mokobi

Senior Lecturer and Head of Department, Department of Law, University of Botswana

- Refugee/Asylum Seeker Protection in Botswana

Dr Pedro Figueiredo Neto

University of Lisbon

- Integration of Refugees from Angola in Zambia

Ms Jessica Kaye Lawrence

Attorney, Lawyers for Human Rights/University of Johannesburg

- The shrinking space for asylum and barriers to refugee protection in South Africa

Report on sessions

Session 1: Strategies on Refugee Protection in Southern Africa

Major points arising from speakers and discussions:

Dr Cristiano D’Orsi examines the protection of refugees in Southern Africa reflecting on the complementary relationship between the 1951 Convention and OAU Convention in practice. He points to relevant part of the OAU Convention that recognizes the complementary relationship, specifically the provision of article 8 of the OAU Convention. He makes the point that the complementary relationship is also affirmed by the UNHCR Executive Committee. He further reflects on the fact that the OAU Convention reflects the refugee definition while also containing an extended definition of refugees. He observes that, in comparison to the 1951 Convention, the OAU Convention contains a more limited set of rights for refugees, ranging from protection from refoulement, voluntary repatriation and issuance of a travel document. However, he makes the pertinent point that the limited package of rights in the OAU Convention does not pose a significant problem in practice for refugees across Africa given the fact that the majority of African states have also ratified the global refugee instrument. He makes mention of the fact that there is no country in Southern Africa that has not ratified the 1951 Convention and OAU Convention. He clarifies on the geographic space of Southern Africa has emphasized by the African Union to include: Angola, Botswana, Eswatini, Lesotho, Malawi, Mozambique, Namibia, South Africa, Zambia and Zimbabwe. He zooms in on the

refugee regulation in South Africa which assumes a restrictive stance to refugee issues and the situation in Malawi where there are yet challenges to refugee protection in spite the existence of normative protection at the national level. He points to some of the reservations under the Refugee Convention that need to be addressed. He observes that the reservations appear to be in paper. However, he emphasizes that the country should be encouraged to leave the reservations more formally.

Dr Christopher Nshimbi discusses the issue of migration governance and protection of refugees and migrant workers in Southern Africa. He reflects on the 16 members of the SADC community which subscribe to a common treaty and various other instruments. He touched on three issues: conceptual clarity; governance and protection frameworks and solutions which point to the challenges that refugees and migrant workers face. He emphasizes that migration in the SADC region is a historic reality: pre-colonial, colonial and post-colonial in nature. From the nature of definitions on migrants, he highlights some pertinent points: usual residence and changes in peoples' residence and the duration of time spent in places that not their places of nationality. He argues that there is a tendency in the academic literature to move from migration to the narrative of mobility broadly. He explains some of the causes of mobility including conflict, disaster and climate change. He emphasizes that in the SADC region, there are some moves towards recognizing environmental migration. He makes the point that all countries in the SADC region host asylum seekers, refugees and migrants. Much as South Africa is the economic hub of the region, all countries in the region host asylum seekers, refugees and migrants. He emphasizes that when you reflect on Southern Africa, it is quite difficult to differentiate the cause of movements, there are mixed migration that co-exist with claims of asylum and informal border flows. He argues that it is imperative to reflect on the Southern African situation in the context of the diverse patterns of inter and intra-regional migration. He makes the point that a lot of movements are within the continent as opposed to those moving outside the continent. In terms of governance and protection frameworks, he reflects on some of the pertinent frameworks that cut across human rights, free movement, refugee law, migration and development.

Ms Angèle Maria Dikongué-Atangana discusses the UNHCR in Southern Africa: priorities, partnerships and potentials. She begins with a reflection on the significance of the narrative of protection following forced displacement. She mentions that this really means accessing safety from where one has run away in order to ensure preservation of physical integrity. She emphasizes that while catering for refugees, UNHCR also engages in IDP protection. She emphasizes that in the 1951 Refugee Convention entrusts on UNHCR the mandate of supporting states in fostering international protection and also in seeking durable solutions, traditional considered in three formats: voluntary repatriation (more than 80% of refugees avail themselves of this solution where available); local integration in the country of asylum and resettlement to a third country. She emphasizes the pertinence of the whole-of-society approach to refugee protection which requires the involvement of various stakeholders. She underscores the pertinence to ensure that refugees are involved in this process. She makes the point that while we tend to consider refugees as just beneficiaries, they are critical assets and indeed, the COVID-19 situation has reflected this whereby refugee doctors and nurses have been put through conditions to respond to the pandemic.

Session 2: Local Integration of Refugees: The Southern African experience

Major points arising from speakers and discussions:

Dr Elizabeth Macharia-Mokobi discusses the refugee/asylum seeker protection in Botswana. She makes the point that Botswana is a party to the 1951 Convention and the OAU Refugee Convention. However, it has not ratified the regional IDP Convention (Kampala Convention). She mentioned that Botswana, however, made reservation to the 1951 Convention specifically on free movement of persons. In terms of national legislation, Botswana has an old legislation enacted in 1968 called: Refugee (Recognition and Control) Act 1968. The document is control-oriented rather than protection-oriented. She argues that this is one of the difficult in refugee protection. In terms of status determination under the Refugee Act, the asylum seeker is required to present themselves at an immigration checkpoint to a police officer or UNHCR and it is at this point that an official interview will be arranged. What happens to the asylum seeker pending interview is that they would be detained pending the hearing by the Refugee Advisory Committee and will be placed at the Centre for Illegal Immigrants at Francistown. When the hearing is conducted, the individual will not have any access to case preparation facility and very interestingly, there is no set of rules that accompanies the refugee act providing for procedural safeguards as would be expected. These are challenges evidently, because in terms of the Constitution there is specific safeguard. But there is a gap in terms of refugee protection more specifically. Also, the RAC Committee does not have representation from skilled experts in international law or refugee law, it is comprised of district commissioners, police, immigration officers/government officials essentially. Evidently, this has its challenges as the RAC Committee may not be alive to refugee protection issues. However, there is a specific safeguard in terms of the UNHCR's presence as an ad hoc member of the Committee. However, best practice would require the presence of an international law or refugee law expert specifically within the RAC Committee. Typically, the proceedings are not open to the public and reasons for decisions are not furnished to the asylum seeker. Reasons are furnished to the minister in charge of these matters. The asylum seeker receives a yes or no answer not accompanied by reasons. Moreover, there is no opportunity for appeal. Moreover, there is no opportunity for legal representation. Further, delays in removal of unsuccessful applicants have resulted in litigation. She points to two cases of women who were detained in the Centre for Illegal Immigrants following the unsuccessful application for asylum until such time as an application for habeas corpus was brought with respect to them and their minor children. However, she points to the fact that the decision by the court was rather not progressive on refugee law. She mentions that for those who have received protection for persons with refugee status, the encampment policy is still in place, education and health are provided by government and donor organizations. However, there is limitation in movement which also relates limited access to employment. She further emphasizes that there have been challenges with regards to Namibian refugees in particular which has also been the subject of some litigation.

Dr Pedro Figueiredo Neto discusses the integration of refugees from Angola in Zambia. He gives a brief historical context to the situation to the mobility in the region and the refugee crisis. He considered the development of the Meheba Refugee Camp in Zambia. He mentioned that between 2001 and 2003, the Meheba camp hosted more than 50,000 refugees roughly 90% were Angolans. At present, the camp hosts almost 20,000 individuals. It is about 700km roughly the size of Singapore. Refugees are entitled to farm land and expected to attain self-

sufficiency. Hence it is often regarded as a settlement and not necessarily a camp, although the terms are interchangeably used. He points to the fact that the UNHCR data from August 2020 points to more than 18,000 Angolan former refugees in Zambia considered of concern, of which some 6,000 still live in the Meheba camp. From 2002 to 2012, many Angolans had returned, some spontaneously. Many remained in Zambia or moved elsewhere. Some returned under voluntary repatriation efforts. However, repatriation was not always voluntary. Many families were repatriated because no other solution was offered and many wanted actually to remain and integrate in Zambia as they were already to some extent, integrated. However, the return to Angola does not mean that most returnees have integrated in Angola. Regarding the group of Angolans that resisted the several repatriation exercises, in 2014, the Zambian government created the strategic framework for the local integration of former refugees in Zambia which aimed to regularize the status of former refugees from Angola and Rwanda. He noted that in 2017, Zambia refugee act was signed. He closed with a significant audio-visual reflection into the region and the situation discussed. The audio-visual essay is titled: “Withering Refuge”

Ms Jessica Kaye Lawrence discussed the state of refugee protection in South Africa. She discussed the asylum application system, its challenges and the Refugees Amendment Act. She observed that distinct to other refugee receiving countries in the region, refugee protection in South Africa has been progressive and rights-based historically. However, new Refugee Amendment Act and policies have unveiled a less generous approach which is quite restrictive. She reflects on some of the restrictive policies from 2010 to 2020. Overall, she points to the fact that there is a general consensus that the asylum application system is incredibly strained and failing to fulfil its function. She identifies specific challenges including resource constraints, staff capacity constraint and corruption which have led to backlogs, access issues, lack of documentation, arrest, detention and risk of refoulement. She observed that prior to the Refugee Amendment Act, the time frame for the determination of an asylum application was 180 days. While this was not really adhered to, the 180 days has now been removed from the Refugee Amendment Act and therefore, no time exists for asylum seeker claims. The reality is that many asylum seekers spend years waiting on adjudication with some waiting for up to 15 years and more. She reflects on some of the ways in which the Refugee Amendment Act contains restriction to asylum seeking and refugee protection and makes the point that there is a shrinking space and urgent changes in the implementation of South African legislation and policies towards asylum seekers and refugees are required for compliance with international standards and the South African Constitution.

Recommendations/Conclusions on the way forward (*These should be actionable and directed to specific actors where possible*):

Some of the key points that emerged from the discussants are:

- The need for the review of laws and policies which relate to refugee protection
- Need for states to address reservations to the refugee frameworks;
- The need to facilitate access to documentation for asylum seekers and migrants for the purposes of work;
- The need for actors involved in refugee protection to engage with national-level institutions for refugee protection;

- The need to implement legislations and enhance the capacity of stakeholders including those involved in refugee determination processes;
- The need to address delay in the asylum-seeking processes and restrictive asylum processes;
- The need to increase access for those working in the informal sector to social services and promote inclusive and transparent frameworks that allows them to operate as small businesses and traders
- The need to encourage health professionals to attend to refugees and asylum seekers without discriminatory practices;
- The need for a whole-of-society approach to refugee and asylum seeker protection.
- The need for targeted training of refugee and border officials;
- The need for strengthening protection for asylum seeking children.