

Access to Socio-Economic Rights for Non-Nationals

in the Southern African Development Community



O?ENLEARNING





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OSISA

Open Society Initiative
for Southern Africa



Access to Socio-Economic Rights for Non-Nationals in the Southern African Development Community:

This report was prepared as part of research into the rights of non-nationals in the Southern African Development Community (SADC). It was agreed at the beginning of the enquiry that an investigation of this nature should be accompanied by an enquiry into the levels of access of nationals themselves to socio-economic rights in each country in addition to questions of access by non-nationals. The project was co-ordinated by the Studies in Poverty and Inequality Institute (SPII) with the assistance of researchers from SPII and a number of other civil society organisations across the region.

Executive summary and key recommendations

While many countries in Africa are contemplating ways in which to extend access to social protection for their citizens, the enjoyment of socio-economic rights by non-nationals receives scarce commentary. Despite the existence of international, continental and regional instruments and treaties that guarantee both access to socio-economic rights for all and equality within states of nationals and non-nationals, for many these rights remain paper rights.

This report was commissioned by the Open Society Initiative of Southern Africa (OSISA) to inform their advocacy strategy for the next five years in the SADC region in respect of the rights of non-nationals, as well as the cross-cutting issues of access to socio-economic rights (including health rights) that address the requirements of people affected or infected by HIV and AIDS. It was agreed at the beginning of the enquiry that an investigation of this nature should be accompanied by an enquiry into the levels of access of nationals themselves to socio-economic rights in each country, in addition to questions of access by non-nationals.

This report seeks to reflect – through a combination of primary and secondary research – the extent to which both nationals and non-nationals in SADC countries enjoy these rights.

The report was compiled through a partnership with researchers based in ten SADC countries, and the Studies in Poverty and Inequality Institute (SPII), a not-for-profit research institute based in Johannesburg (South Africa).

The use of the term ‘non-national’ is fairly broad and includes a number of overlapping, diverse groups of people with distinct vulnerabilities and requirements. These groups include refugees, asylum-seekers, economic migrants and undocumented migrants. The highly vulnerable nature of many people within these categories directly impacts on the availability of verifiable data, as many people are reluctant to emerge from the shadows into the spotlight of formal research enquiries. As a result, it was agreed up front that this enquiry would be limited to the conditions of refugees and asylum-seekers, given the greater and more verifiable nature of data on their access to socio-economic rights compared to other groupings.

The report focussed on the rights to health care, education and social security as indicative of broader enjoyment of social protection within the region.

There is a growing field of publications in respect of access to socio-economic rights and social protection in the region (and the African continent). The value of this report is the use of primary research to verify de facto access by ordinary people, over and beyond the ratified

treaties, national constitutional guarantees and nationally legislated rights.

The main findings of this work suggest that access by refugees and asylum-seekers to social protection in the southern African region is pretty parlous. Access by citizens also needs to be improved. Although there are guaranteed rights of access and formal institutions of delivery for enjoyment of the rights in many of the participating countries, the quality of services provided often undermines the value of that guarantee. This is especially true in respect of the right to health care and education. Many of the respondents advised that the low standard of quality of the provision of these services led to many already vulnerable people using their limited income to purchase private services, thus reducing their ability to provide for their other needs and requirements. Access to social security was in general limited to formal contributory social insurance pensions for formal sector workers and civil servants.

Issues around the encampment of refugees and asylum-seekers emerged from the research. Conditions in existing camps differ widely, and are intimately affected by the prevailing policies and attitudes of national governments to non-nationals and their relationships with neighbouring countries. An issue of concern was the question of income strategies for non-nationals in countries that follow a policy of self-settlement rather than encampment, given that in most countries even

accredited refugees and asylum-seekers find it hard to obtain work for a variety of reasons (including the high levels of unemployment in their host countries, an inability to gain accreditation for their qualifications from their countries of origin and a prevailing prejudice experienced by many as a result of being seen as 'foreign'). In such instances, the reflections were that it was better for people to be in camps as their basic needs had a better chance of being met. However, restrictions on the movement of people within camps were highlighted as being a challenge for those respondents who were camp-based.

The other main issue that emerged was the role of intermediary bodies, including the UNHCR, in the management of refugees and asylum-seekers and the report concludes with some recommendations in this regard.

The latter sections of this report contain a list of advocacy recommendations that emerged through the primary research, which included both structured interviews and administered questionnaires and focus groups. It is hoped that these recommendations will be used to build a comprehensive rights-based framework for work by civil society organisations and other partners in the region.

The recommendations are broadly grouped under two distinct advocacy tracks:

Firstly, access to socio-economic rights in the

region by all people, citizens and non-nationals, needs to be expanded and improved; and,

Secondly, access by refugees (in particular) to socio-economic rights needs to be improved. It is important to ensure that refugees can access the same rights as non-nationals and simultaneously try to move towards a higher standard of access for all – nationals and non-nationals.

These two advocacy tracks can be taken up at three levels:

- Research;
- SADC-wide lobbying for the domestication of treaties; and,
- National campaigns.

Key recommendations emerging from this research project include:

- Mainstreaming refugee issues into national and regional policy discourses;
- Clarifying refugee rights and entitlements in the individual countries;
- Campaigning for the provision of citizenship for those who have been in camps for more than ten years;

- Advocating for trauma counselling of refugees, many of whom have pasts marred by violence;
- Lobbying governments to scrap the encampment policy and grant refugees access to the labour market;
- Creating oversight and accountability mechanisms that track progress on socio-economic rights for nationals and non-nationals over time;
- Monitoring gender parity in access to socio-economic rights for both nationals and non-nationals;
- Improving access to refugee camps;
- Considering the role of the media in promoting positive messages around cross-border migration;
- Lobbying national and regional parliaments to adopt human rights treaties and strengthen their oversight role of treaties and conventions;
- Addressing corruption (which remains a problem); and,
- Analysing the role of the UNHCR, its powers and autonomy, and its relationship with national governments.

List of participating researchers and reference team

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Hermien Kotze was commissioned to undertake the initial socio-economic desktop research and designed the methodology section and the research tools.

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DEMOCRATIC
REPUBLIC OF
THE CONGO

TANZANIA

ANGOLA

MAL
AWI

MOZAMBIQUE

ZAMBIA

ZIMBABWE

NAMIBIA

BOTSWANA

SWAZILAND

SOUTH AFRICA

LESOTHO



SEYCHELLES

MAURITIUS

1.

INTRODUCTION AND OBJECTIVES

“Cross-border migration is a fact, and we should be considering how to promote strategies that strengthen a sense of solidarity.”

This report contains the findings of a six-month study undertaken by Studies in Poverty and Inequality Institute (SPII) on behalf of the Open Society Initiative for Southern Africa (OSISA) to explore the extent to which non-nationals are able to access socio-economic rights in the southern African region. It was decided to use the rights to education, health care and social security as indicators of access. The study was restricted to the ten countries in which OSISA works¹ and Tanzania.

The report begins with a chapter on the methodology employed in the study. This is followed by a cross-country comparative analysis. The next section contains country-specific studies of the prevailing socio-economic indicators for each country and then proceeds to set out what access to socio-economic rights exists for citizens of that country in law and in fact, and then the situation for refugees and asylum-seekers. The final section contains a list of recommended areas for further advocacy strategies and interventions for OSISA and other actors to consider embarking on, based on the research findings.

The research in this report is the result of collaboration between SPII and civil society research organisations based in each country. It is hoped that this initial collaboration will be strengthened through future joint research projects.

Challenges

The study findings were a combination of fieldwork conducted by researchers from all mainland SADC countries except South Africa. In many instances, researchers struggled to access current statistical data for their countries. In some instances, access to the camps was not possible either as a result of official refusal (Zimbabwe), bureaucratic delay in granting permission resulting in a de facto refusal (Botswana) or due to the geographical location of the camps (Namibia and Mozambique). The results of this research are indicative, given the limited size of the sample, but it is hoped and anticipated that this indicative study will be used to identify areas for further in-depth research.

Special focus

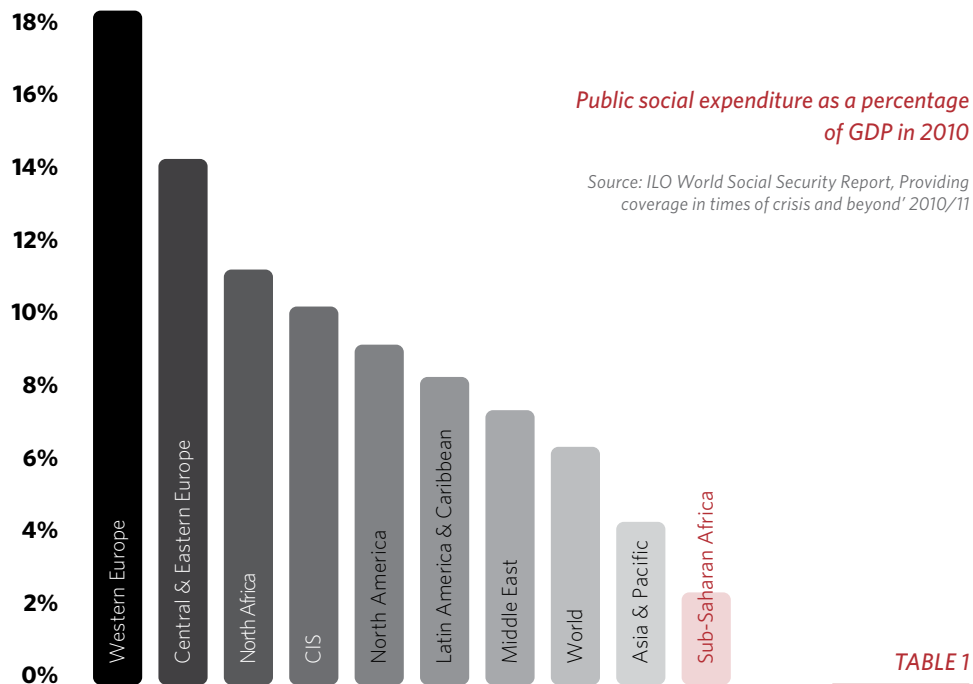
Poverty levels in sub-Saharan are significantly high. The SADC report on vulnerability to food insecurity and poverty in the region for the period ending in March 2011 reports that 'Overall the number of people vulnerable to food insecurity and poverty in SADC has increased by 23 percent to an estimated 4.04 million from last year's estimate of 3.3 million'². This is compounded by the fact that about 70 percent³ of the population in SADC lives in rural areas where they are dependent on subsistence agriculture. This has drastically affected spending on social protection within the region, condemning increasing numbers of people to experience the effects of poverty.

Largely dependent on subsistence agriculture, the majority of the population in SADC is not covered by social insurance schemes. This is particularly true of the unemployed, the self-employed, casual workers, and workers in the informal sector. Women are under-represented in formal employment, because of a long history of marginalisation. In Zimbabwe, only 22 percent of economically active women are in paid employment, while in Zambia females constituted 12 percent of those employed in the formal sector in 1996⁴.

Public social expenditure is particularly low in the sub-Saharan region. Coverage of social security schemes is low not only with respect to social insurance schemes, but also with respect

to social assistance schemes. Among a host of reasons, inadequate budgetary allocation for social assistance is the decisive factor. Government commitment to social assistance schemes is questionable. The majority of women are not covered by social insurance schemes, making them extremely vulnerable to the effects of poverty.

Poverty in sub-Saharan Africa is widely acknowledged to rest unevenly on women for a variety of interlinked reasons, including the traditional patriarchal location of power and decision-making, and the primary role of women in child-care and social reproduction. The gendered nature of this study is mainstreamed throughout the report.



“Diversification of the economies in the region beyond extractive activities should be considered as integral to the creation of more jobs.”

In addition, we have tried to capture the conditions of children and youth as vulnerable groups, and the issue of access to education speaks critically of the rights of children in the region. Finally, the prevalence of HIV and AIDS in the region is considered, especially in relation to the social impact of the epidemic, as well as the related issues of access to suitable health care initiatives.

The study overwhelmingly finds that conditions for both citizens and non-citizens in the region are challenging, and in many cases bleak. Access to socio-economic rights, although guaranteed in many international and regional instruments, is often not realised in reality, although there are many attempts by governments to progressively improve this. Levels of formal employment and the security of decent work (including social insurance, health care and the ability to save for retirement) are low, while poverty hampers demand for locally-produced goods and services.

Interventions to promote socio-economic rights for all need to be located in this context, and we argue that it is necessary to consider new and innovative approaches that take social protection beyond the formal designs based on situations in developed countries. Diversification of the economies in the region beyond extractive activities should be considered as integral to the creation of more jobs. Economic growth, as the report demonstrates, has not of itself translated into an improvement in the lives of the poor.

It is hoped that this study will stimulate consideration of a variety of issues, including the building of solidarity between citizens and refugees, as well as between peoples of neighbouring countries and people within countries. Cross-border migration is a fact, and we should be considering how to promote strategies that strengthen a sense of solidarity that is critical for the advancement of the region as a whole.

“conditions for both citizens and non-citizens in the region are challenging, and in many cases bleak”

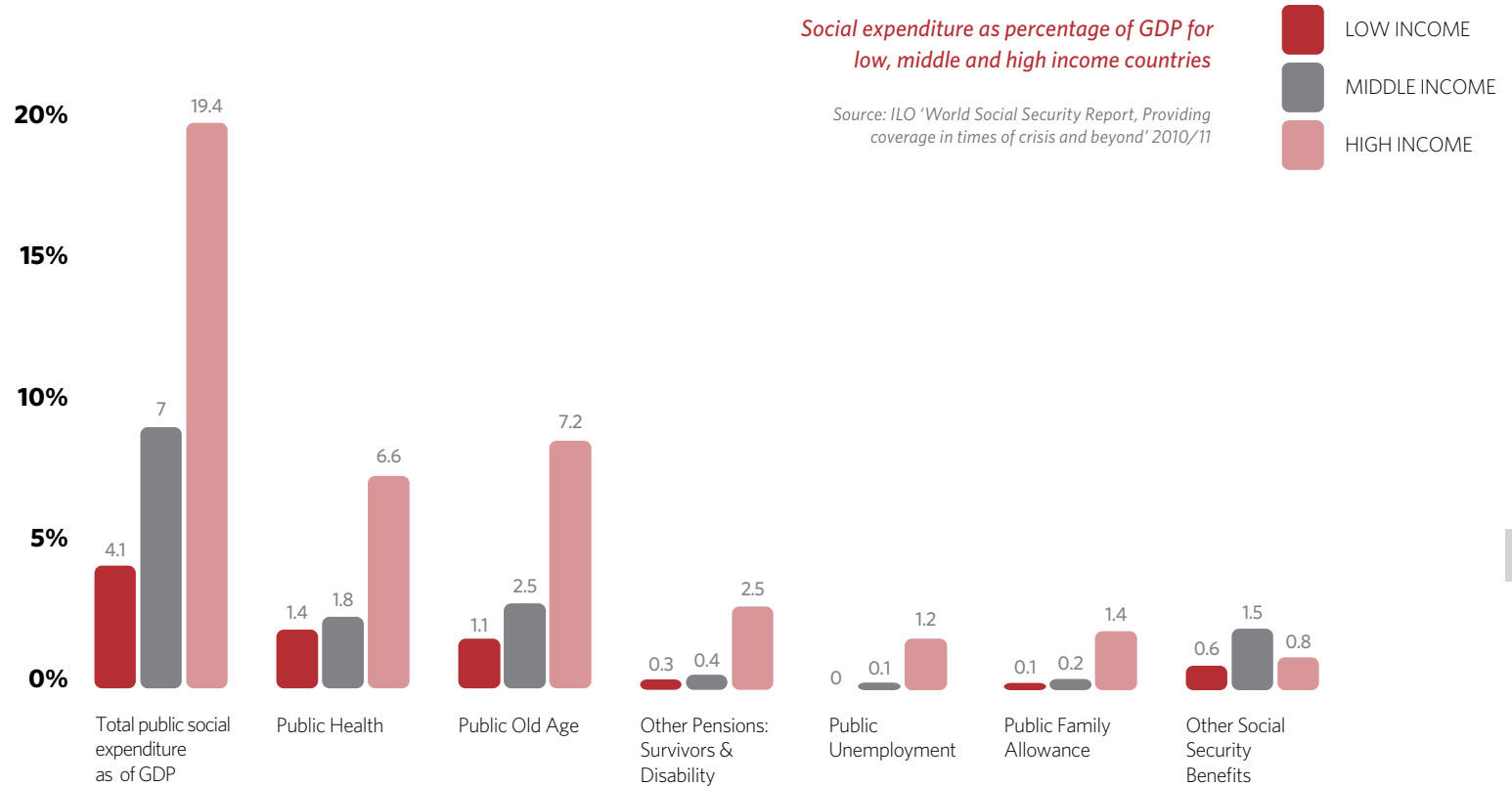


TABLE 2

2.

METHODOLOGY

“Non-nationals are categorised as refugees, asylum-seekers, undocumented migrants and temporary residents.”

Introduction

The study consisted of an initial desktop scoping of social and economic indicators. This work was then verified by locally-based researchers in each country through a variety of qualitative research tools. These included structured interviews with key informants or stakeholders (such as local representatives of the UNHCR, the Red Cross and government officials where possible) in order to try to provide an understanding of the policy environment and the formal rights of refugees. This data was then triangulated through a combination of administered questionnaires with refugees and asylum-seekers, and focus groups. This report provides an indication of how many interviews and focus group sessions were held in each country, as well as providing explanations for any deficits that might have occurred in the data collection.

Each of the country case studies was conducted by locally-based research partners. This report is a composite of their data which was then collated and analysed by SPII. The collaborative nature of this work provided a

rewarding complexity to the data, but also provided some challenges in terms of ensuring comparability of the data. This was anticipated, and the research team met twice in Johannesburg to workshop the methodologies, data sources and protocols, and these decisions were then captured in Memoranda of Understanding with the research partners.

Selection of the researchers

The researchers needed to be experienced in order to:

- (a)** steer the interview intelligently;
- (b)** listen well, and;
- (c)** identify and probe issues arising during the interview;

Also the researchers were required to be familiar with refugee and migrant issues in their country, especially regarding their socio-economic rights and entitlement, and were asked to include specific national issues.

Data gathering

The preferred method of data gathering was to record the interview using a tape recorder and transcribe it afterwards. No corrections were to be made by the interviewer (either during the interview or during transcribing) to make sure that no information was lost. In case no tape recorder was available or a respondent refused to be recorded, notes had to be taken by another person. These notes had to be transcribed as well. In order to make sure that the respondent was able to answer the questions easily, the researcher conducted the interview in the language of the respondent. In some cases, the questionnaire or discussion guide had to be translated into the home language by a reputable translator before the interview took place, and the responses then had to be translated back into English.

Target groups

The target groups included the following respondents:

- Experts working in the field of migration trends, forced migration or refugee studies (e.g. academics, researchers) in the specific country;
- Senior staff of international relief agencies working with refugees and refugee issues in the country (e.g. UNHCR, IOM, UNICEF, etc.);
- Senior staff of national or international NGOs and faith-based organisations (FBOs) working with refugees and refugee issues in the country;

- Key government officials from departments responsible for refugee reception, management and protection (e.g. Home Affairs or its equivalent in each country), and members of the national committee that determines asylum and refugee status; and,
- Leaders and spokespeople from the various refugee groups in different camps or settlements.

Research objectives

The interviews were conducted in order to acquire knowledge about the following issues:

- The current situation of refugees, asylum-seekers, and other migrants;
- The specific dynamics and country context around refugees and migrants in each country (including the most evident issues, problems and challenges these groups have to deal with, as well as popular debates taking place in the country);
- The legal position regarding the socio-economic rights for asylum-seekers and refugees, and the practical implementation;
- Some pointers and guidelines as to the exact locations of refugee populations;
- Practical suggestions regarding the selection of research respondents and key people to interview in these communities;
- The identification of possible problems in terms of access to refugee camps and other refugee settlements; and,

- The internal dynamics among refugee populations that might need to be taken into consideration in the research process.

Scope of the study

For the purposes of conceptual clarity, the following terms identify what is meant by a non-national. The term non-national refers to the broad category of people who are not citizens or nationals of the country that they are living in. Non-nationals are categorised as refugees, asylum-seekers, undocumented migrants and temporary residents. These groups are contextualised differently in many countries, but international and regional definitions were used for the purposes of this study.

Definition of migrants and refugees

1969 OAU Convention: 'The term refugee shall mean every person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residency as a result of such events is unable or, owing to such fear, is unwilling to return to it. **(OAU 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa)**¹⁵ 1951 UN Convention

Relating to the Status of Refugees:

'The Convention applies the term "refugee", first, to any person considered a refugee under earlier international agreements.' Article 1A, paragraph 2, read now together with the 1967 Protocol and without the time limit, then offers a general definition of the refugee as including any person who is outside their country of origin and unable or unwilling to return there or to avail themselves of its protection, on account of a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular group, or political opinion. Stateless persons may also be refugees in this sense, where country of origin (citizenship) is understood as 'country of former habitual residence'. Those who possess more than one nationality will only be considered as refugees within the Convention if such other nationality or nationalities are ineffective (that is, do not provide protection). The refugee must be outside his or her country of origin, and the fact of having fled, of having crossed an international frontier, is an intrinsic part of the quality of refugee, understood in its ordinary sense. However, it is not necessary to have fled by reason of fear of persecution, or to have actually been persecuted. The fear of persecution looks to the future, and can also emerge during an individual's absence from their home country, for example, as a result of intervening political change.'⁶

2005 SADC Protocol on the Facilitation of the Movement of People:

1. State Parties hereby reaffirm their commitment to their obligations under international agreements to which they are parties, and which relate to refugees;
2. The management of refugees in the Region shall be regulated by a specific Memorandum of Understanding (MoU) between State Parties; and,
3. State Parties reaffirm their commitment to co-operate with the Office of the United Nations High Commission for Refugees (UNHCR), the International Organisation for Migration (IOM) and other International Organisations.

The UN Convention on the Rights of Migrants 2003

The convention refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state of which he or she is not a national as an economic migrant.

“Every interviewer was encouraged to add in-depth questions about the specific circumstances in that country.”

This includes the following categories:

- The term 'frontier worker' refers to a migrant worker who retains his or her habitual residence in a neighbouring state, to which he or she normally returns every day or at least once a week; and,
- 'Self-employed worker' refers to a migrant worker who is engaged in a remunerated activity otherwise than under a contract of employment, and who earns his or her living through this activity, normally working alone or together with members of his or her family, and to any other migrant worker recognised as self-employed by applicable legislation of the state of employment or bilateral or multilateral agreements.

Main areas of inquiry

Given the differing contexts in the 11 countries where the research was conducted, every interviewer was encouraged to add in-depth questions about the specific circumstances in that country. In addition, there were common areas that needed to be covered by the researcher, including:

- a broad overview of migration flows from and to the country, over time and in the present;
- ascertaining the general status of refugees and asylum-seekers in the country, including their legal and socio-economic status in principle and in practice;
- any significant changes in migration patterns to or from the country, and the implications for government's policies and practice regarding refugee reception and protection;
- the existence of unauthorised or undocumented migration into the country and the government's general response to it – do these people have access to essential social services such as education and health?;
- is the country used as a transitional country for refugees and migrants (or even human trafficking) and what is the estimated extent of this?;
- an in-depth understanding of the specific issues, problems, challenges and complexities surrounding the protection of refugees and asylum-seekers in the country;
- a general assessment of the extent to which citizens in the country can realistically exercise their socio-economic rights and entitlements as provided for in the legislation;
- the extent to which refugees and asylum-seekers are entitled to socio-economic rights in law and in practice; and,
- who is responsible for the implementation and provision of the required basic social services?

3.

SOCIO-ECONOMIC RIGHTS IN SADC: A CROSS-COUNTRY COMPARISON

“In general refugees are able to access basic education in most countries, although a range of obstacles exist.”

Introduction

This section presents a reflection on the state of access to socio-economic rights for refugees and asylum-seekers, as well as citizens, in SADC member states. A comparison of existing legislation guiding socio-economic rights within SADC member states will also be presented. Data informing this comparison was collected by researchers based in the participating countries from both key informants working with non-nationals, and, where possible, from non-nationals themselves, specifically in respect to access to education, social security and health care. Data on citizens’ access was largely obtained through secondary sources.

The findings indicate that a gap between international and regional rights commitments, existing legislation and actual practice still exists. Whether this represents a deficit of resources or weak political will to provide for the needs of both citizens and non-nationals remains a challenging question. Recommendations for how civil society should address this deficit are contained in the final section of this report.

Socio-economic rights

The degree of access to socio-economic rights for non-nationals in SADC countries is generally not encouraging. There is growing desire among non-nationals in different SADC countries to obtain equality of human rights, including socio-economic rights. Although most national constitutions make provision for socio-economic rights, in some instances a lack of clear legal mechanisms has led to the exclusion of non-nationals from these provisions. In respect of citizen access in SADC countries, constitutional guarantees of social and economic rights seem relatively comprehensive, whereas the necessary national policies and laws seem to be much less developed.

A number of socio-economic rights are written into the Malawian constitution, for instance, namely the right to education, economic activity and labour. This applies also to Angola where the 1991 Constitution (as amended in 1992) provides legal protection for many social and

economic rights, with an obligation resting on the state to ensure access to the rights to health care, early childhood care, maternal health care, assistance for the disabled, the elderly and those incapable of working, as well as promotion by the state of access for all to education, culture and sport.⁷

In ascertaining the gap between policy and implementation, the government of the DRC adopted Law No 021/2002 of July 16, 2002, which entrusts the National Commission for Refugees (NCR) with the management of refugees and asylum-seekers' affairs on a daily basis. This law in principle guarantees refugees access to housing, health care, education, training and employment. However, little has been done by the NCR to fulfil its mandate according to the respondents in this study, who advised that the NCR had done very little to improve the social well-being of refugees and asylum-seekers, particularly in Bas Congo Province (although some attention was being given to refugees in the eastern parts of the country).

The constitution of Lesotho does not specifically refer to socio-economic rights, but instead provides for the protection of fundamental rights and freedoms for citizens. In Namibia, Articles 20 and 21 of the constitution guarantee everyone the right to education, including refugees and immigrants, and compel the state to provide and maintain state schools. Primary education

has to be provided for free⁸. Such provisions suggest that refugees should be treated in the same way as nationals in respect to wage earning employment, access to courts, legal assistance, labour legislation, elementary education and social security.

In Zambia, the constitution guarantees every person access to social protection, health and education as stated in articles 67⁹, 68¹⁰ and 69¹¹ respectively, and there are also policies and strategies that exist for the provision of health care, education and social security for citizens, and such policies and strategies are aligned to national development plans (the current plan being the Sixth National Development Plan - 2011-2015).

Education

The right to education for all children has been set out in key international instruments, including the Universal Declaration of Human Rights; the International Covenant on Economic, Social and Cultural Rights; and, the Convention on the Rights of the Child. As stated by the Committee on Economic, Social and Cultural Rights, 'the principle of non-discrimination extends to all persons of school age residing in the territory of a state party, including non-nationals, and irrespective of their legal status.' This obligation sets the platform on which an analysis of access to education for non-nationals can be undertaken.

Findings from the study indicate that in general refugees are able to access basic education¹² in most countries, although a range of obstacles exist, including high costs and low-quality education in some places¹³. Generally, basic education is relatively easily accessible for refugees both within and outside the camps. But despite being accessible, a number of challenges have made it difficult for refugees to fully enjoy this right to education. For instance, issues such as language and incidents of discrimination on the grounds of being foreign were reported as posing a challenge to full enjoyment of the right to education. In addition, while many SADC countries have committed to the provision of basic education, much more needs to be done in terms of secondary education, tertiary education and skills training. Of the seven countries that have implemented an encampment model of refugee reception, all have basic educational facilities within the camps.¹⁴ Young children have more opportunities to attend school and receive some form of tuition than youth and adults, who find it difficult to finance their tuition.

Angola has adopted a self-settlement model of refugee reception. Officially, this means that refugee children are in principle admitted to any public or private schools, but the reality of the country's education system is that access to education is extremely limited even for nationals. At Dukwi camp in Botswana, children have access to primary education only within the camp, although there is room for those

undertaking secondary studies to enrol for schools outside the camp. In the DRC it was established that refugee children have access to state schools. Indications are that there is significant mobility in and out of the camps as shown by Dukwi camp, where conditions are flexible enough to allow children to secure tuition outside of the camp.

Though respondents did not indicate the type of fees¹⁵ they pay, user fees are a critical challenge for refugees accessing education in their host countries.¹⁶ As in the case of primary education, the two most common fees collected are PTA or community contributions and other school-based activity fees. These fees are collected informally.¹⁷ User fees in the form of tuition payments, compulsory uniforms and other payments are, in some countries, one factor keeping the poorest children out of school and making it hard for them to stay in school for the 5-6 years that are essential for achieving functional literacy.¹⁸

It is important to stress that fees are not necessarily the only factor impeding access to education for both nationals and non-nationals. The presence of a cocktail of user fees has not entirely prevented refugees from accessing education, but it has had a negative impact on their already strained resource base. Despite growing commitment by southern African states to implement free basic education, this remains a pipe dream. Where citizens have not managed

to enjoy free basic education, the case of non-nationals is worse.

Funding for education remains a critical challenge for refugees, particularly those who live outside camps. Children have to pay school fees even at primary level, which prevents many poor children from attending school. However, this is not characteristic of non-nationals only, with citizens also suffering the same fate. In those cases where children do not attend school, it is reported to be because their parents do not have the money to pay the school fees and they are not supported by organisations like the UNHCR, or because there is no possibility for the children to attend a school.

In Lesotho, respondents gave varying responses, with some stating that basic education was expensive and that they had to sacrifice to get their children to school, some claiming that fees were affordable and others saying that the education was free and they did not pay anything as this was the government's responsibility. In terms of fee exemptions, a number of respondents in all SADC countries lamented the lack of any provisions to exempt them and their children from paying fees, and their refugee status led to them not being able to receive any financial assistance.

In Swaziland, the constitution of 2005 guarantees access to free primary education for every Swazi child but this initiative is still in

its inception with free education currently only available in grades 1 to 3, while grades 4-7 pay a state-subsidised school fee.

Findings indicate that refugees pay for their education at all stages, as the current legal framework does not make provision for free education for non-nationals.

The medium of instruction is another critical challenge affecting refugees in their respective host countries.¹⁹ Indications are that when refugees migrate to other countries where the languages (official or otherwise) are very different from their own, they face serious challenges adapting to the learning environment. Where the medium of instruction is not familiar to refugees, learning is difficult. However, it is evident that in some instances there are special amendments with reference to the medium of instruction so as to accommodate individuals from different countries, with Zambia (for example) giving classes in French for refugees coming from the DRC. In Angola, the curriculum is a major challenge for refugee children. Communication and application is delivered in Portuguese, making it difficult for children with no background in the language to understand.

Social security

The need for social security to protect incomes in southern Africa in the face of high formal unemployment and high levels of poverty is

clear. However, HIV and AIDS, limited and declining formal sector employment, and high inflation rates have undermined the likelihood of social security initiatives being implemented and sustained. The low formal tax base in most countries provides a fiscal resource challenge, and systems of administration and delivery of benefits provide further challenges for the roll-out of comprehensive systems, although there are a growing number of pilot social security schemes across the region. However, in general, there appears to be an inability, both at national and regional level, to provide adequate social protection.²⁰ The International Covenant for Economic, Social and Cultural Rights stipulates a minimum standard of protection that has to be accessible to all. This could be used as a basis against which to compare access to socio-economic rights in the region.

A comparative analysis of social security systems in the region reveals that the majority of schemes that do exist are social insurance schemes (to which members contribute) rather than social assistance schemes (which are funded through the fiscus). The social insurance schemes are limited to formal sector workers and members of the civil service, excluding informal and self-employed workers (i.e. most of the economically active people in the region). This type of cover is often further limited in that only certain categories of the formally employed benefit from social security schemes set up to deal with particular contingencies.²¹

“Across the board, respondents in the study indicated that refugees are subjected to exclusion and neglect when seeking services at state institutions.”

Such deficiencies are the product of the regional policy framework on social protection. There are few policies that indicate any commitment to making access to socio-economic rights portable between SADC countries.²² The 2003 SADC Social Charter, which deals with social security, states in Article 2.1e that one of its main aims is to ‘promote the establishment and harmonisation of social security schemes’, while Article 10 expresses the member states’ commitment to social protection.²³ However, no mention is made of extending access within member countries to refugees or asylum-seekers.

The pace of the roll out of access to socio-economic rights in SADC member states has not been very encouraging. This study identified striking variations in terms of state commitments to the welfare of refugees. While some of the respondents stated they did not receive any welfare payment or stipend from the host nation,

a few respondents indicated that they received cash transfers from other organisations. A sizeable number of respondents reported having received some form of non-cash assistance from non-state organisations in the form of periodic distributions of food, blankets, clothes and other basic necessities.

Where there are laws and policies concerning social protection, difficulties have been experienced in terms of access to social security. This has not been experienced by non-nationals only, but in many instances by citizens too. The provision of social security is a particular challenge for refugees living outside camps. Across the board, respondents in the study indicated that refugees are subjected to exclusion and neglect when seeking services at state institutions (including government hospitals, schools and refugee documentation offices).

“Respondents stated that services and infrastructure at both camp and government hospitals were poor, and that they faced a lot of discrimination.”

Failure to document refugees stands out as a critical factor affecting refugee access to social security. In Angola, respondents stated that delays in the documentation process have led to them not being able to obtain any social security and work. According to the respondents, the government of Angola stopped issuing official documentation to refugees about two years ago, leaving the system open to corruption. However, whether refugees are documented or not, findings indicate that some form of stigma is attached to being a non-citizen. Respondents indicated that their children were at times harassed in schools and that they were often neglected when seeking health services at state hospitals.

State commitment to contributing towards the welfare of refugees is relatively uneven. Findings from the study indicate that the provision of cash transfers or welfare stipends are minimal, and in most cases absent. One exception to this is Lesotho, where a number of respondents confirmed that they received some form of stipend from the Department of Home Affairs. Respondents stated that they received at least M400 monthly to buy food and clothing, although this was only accessible to refugees registered with the home affairs office and office of the commissioner for refugees. They named the United Nations High Commissioner for Refugees (UNHCR) and the related World Food Programme (WFP) as sources of food and money. Support has largely been granted by organisations like the UNHCR,

the Red Cross and local organisations. With the exception of Lesotho, indications from the study are that refugees in SADC countries do not receive any welfare payment or stipend from host governments.

Access to employment is a challenge for refugees in Swaziland. Generally their illegal status is a major reason for the exploitation of refugee workers, where they receive poor remuneration and work under harsh conditions. There were mixed views on whether refugees are allowed to work in Malawi. Most of the respondents stated that they were not allowed to work in and out of the camp. Those who worked stated that these were illegal arrangements and were temporary. However, respondents with official refugee status stated that they were allowed to work since this status allowed them to stay outside the camp. The relevance of this is that work serves as an escape route out of poverty. The idea that refugees are not permitted to work means that they do not have an income and are therefore dependent on social security (which is not available except in of Lesotho).

Overall, the role of the state in matters relating to refugees has – in most instances – been to document refugees, leaving other organisations with the burden of offering humanitarian assistance. Most support seems to come from the UNHCR, which assists a large share of the respondents with cash transfers and non-cash

assistance, although the non-cash assistance does not seem to be very widespread. Only in Lesotho did we have respondents stating that they did not get any cash transfers from international organisations, saying that it is only the government that assists them.

Health care

Access to health care for non-nationals in SADC countries is a challenge due to a myriad of factors. Minimal standards in health care provision, infrastructure and services are prevalent. Inadequate infrastructure, substandard services, lack of drugs and equipment, and a shortage of health personnel are the key factors affecting access to meaningful health services for both non-nationals and citizens.

Issues and challenges faced by refugees at camp and state hospitals are peculiar. This is not to say that citizens find the going easy at all state hospitals but refugees are disadvantaged by the fact that they are non-nationals. Although private health institutions appear to offer better services, in many instances respondents stated that services and infrastructure at both camp and government hospitals were poor, and that they faced a lot of discrimination. Once identified as a foreigner, refugees are in some instances ignored, abandoned or subtly harassed. In some instances, foreigners are made to

pay higher hospital fees or resort to bribing health personnel at government hospitals to receive any attention. Upon consultation at the hospitals, patients were faced with drug shortages, unfriendly treatment tantamount to harassment and, in some instances, ignored by nurses. Some respondents stated that bribes had to be paid to nurses to get assistance.

There was difference in opinion among the refugee respondents in SADC countries about their access to health care on a number of fronts. Some said that the health care that they received was the same that citizens received.

However, in Zambia there was an overriding sense among the respondents that they received an inferior service at a higher cost than their Zambian neighbours. It was reported that there is a general shortage of medicines and drugs in the refugee centre clinic and in the government clinics in the surrounding areas. It was further found that once health personnel discovered that the patient was a foreigner (and much worse a forced migrant), then they did not treat them with the attention that is given to Zambian nationals.

One way to obtain better health services in all SADC countries remains the private health system. Private health care stands as the beacon of hope for both refugees and citizens, but exorbitant fees are a hindrance to many who find it difficult to put food on the table. Private health

care is often not a viable alternative for the already struggling refugees, whose vulnerability is compounded by hunger, unemployment and absolute poverty.

Despite the challenges in the health systems in SADC countries, indications are that refugees do have access to health facilities. Of note is the access to HIV and AIDS treatment and prevention services at camp hospitals, clinics and state hospitals. Most respondents in all countries indicated that voluntary testing was done, that they received HIV and AIDS education and that they could access anti-retroviral treatment from hospitals.

4.

ANGOLA

“Addressing the situation of internally displaced individuals remains a top priority for the government.”

Introduction

Findings in this country report give an indicative picture on the issue of access to socio-economic rights for refugees in Angola. This country report is based on findings from 13 individual interviews with refugees as well as secondary sources. Unless otherwise stated, demographic and economic data is from the CIA World Factbook.

Refugees in Angola

Having been a refugee-producing country for decades, one of Angola’s biggest challenges in the post-war period has been the return and reintegration of the millions of people displaced during its decades of war. Four million people have already returned to Angola, but 61,615 people remain internally displaced.³³ Addressing the situation of internally displaced individuals remains a top priority for the government and it is, therefore, possible that migrants from other countries receive less attention.

However, there is also a group of between 13,000 and 15,000 Congolese refugees from Katanga Province of the DRC (figures vary), who have been in Angola for more than three decades. These people have achieved ‘a significant level of socio-economic integration in the country’ and the UNHCR is advocating for their naturalisation.³⁴

The UNHCR website refers to another 4,000 refugees and asylum-seekers from various countries (unspecified), who will need a range of services, including ‘legal assistance, income-generation projects, HIV and AIDS awareness campaigns and the distribution of non-food items.’³⁵ The website also mentions that the asylum system in Angola needs to be strengthened, as it is presently burdened by a backlog of 4,000 applications. No mention is made of unauthorised migrants. However, Makhema (2009) in her report entitled Social Protection for Refugees and Asylum Seekers in the Southern Africa Development Community (SADC) contends that ‘it is likely that many more refugees from the Great Lakes Region remain unregistered and have self-settled in Angola’.³⁶



Demographic and Social Development Indicators

TABLE 3

Population:	13,068,161 ²⁴ - 18,021,000 ²⁵ (Angola has not conducted a census since the 1970s so estimates vary)
Net migration rate:	1.05 migrants/1000 of population
Urbanisation:	57% of population lives in urban areas (est. urbanisation rate of 4.4% between 2005 and 2010)
Infant mortality rate:	220 deaths/1000 live births ²⁶
Life expectancy at birth:	48.1 ²⁷
Adult literacy rate:	40% ²⁸ to 67.4% ²⁹ (estimates vary)
HIV prevalence rate:	2.1% (2007 est.)
HDI rank (and value):	146 (0.403) ³⁰

Economic Indicators

TABLE 4

GDP (purchasing power parity/PPP):	\$114.1 billion (2010 est.)
GDP (official exchange rate/OER):	\$85.1 billion (2009 est.)
GDP real growth rate:	5.9% (2010 est.)
GNI per capita (US\$ PPP):	\$4,041.2 (2008) ³¹
Unemployment rate:	Not available
Human poverty index (HPI-1)	40.5% (UNICEF 40.3%)
Poverty, intensity of deprivation:	58.4
Gini coefficient:	58.64 (2000) ³²
Public debt:	\$17.98 billion (December 2010 est.)

The refugee programme is managed by the UNHCR and its implementing agencies, including the Lutheran World Federation,³⁷ in cooperation with the Angolan government. The dominant model of refugee reception in Angola is self-settlement.³⁸ Refugees do not live in camps but are urbanised within the towns and cities.

Legal framework

Angola acceded to the 1951 UN Convention Relating to the Status of Refugees in 1981, but with the following reservations noted: 7, 8, 9, 13, 15, 17, 18, 24 and 26.³⁹ The country also has quite recent national legislation in this regard:

- Law on Refugee Status (8/1990);
- Lei no 1/05: *Lei da Nacionalidade* (2005); and,
- Lei no 2/07: *Lei somber o regime juridico dos estrangeiros na Republica de Angola* (2007).

These laws provide a legal framework for refugees and migrants, and provide specific procedures for application to remain in Angola. They also make provision for the granting of asylum or refugee status in accordance with the 1951 UN Convention and its 1967 Protocol. In terms of the implementation of the various legal provisions regarding asylum-seekers and refugees, the Angolan government cooperates with the UNHCR.⁴⁰

Socio-economic rights

Formally, the 1991 Constitution of Angola (as amended in 1992) provides legal protection for many social and economic rights.⁴¹ Articles 76⁴², 77⁴³ and 79 represent the rights to work, health and social protection, and education respectively. Constitutional guarantees of social and economic rights are relatively comprehensive but national legislation seems to be much less developed in these matters.

Apart from UNHCR references to some of the basic needs of refugees and asylum-seekers, there is no specific indication in the sources consulted as to whether refugees and asylum-seekers have de facto access to socio-economic rights. Given that the UNHCR appears to be carrying the main responsibility for the protection of refugees and asylum-seekers, it provides as far as possible for the most immediate basic needs of these groups.

Education

In 2001, the Basic Law Education 2 System (Law 13/01 of 31 December) established the legal basis for the realisation of the second educational reform in Angola – the objectives of which were the expansion of school network, improvement in teaching quality and strengthening the effectiveness of the system.⁴⁴ The expansion of the school network has resulted in greater capacity for admitting new students into the system. Figures from the Ministry of Education

indicate that in 2004 there were 4,393,497 students enrolled, of whom 1,922,634 were female. In 2010, the number of students had swelled to 6,168,454 students, with 2,775,804 females.⁴⁵

The law on primary school education guarantees the right to free basic education. The government of Angola spent 2.6 percent of GDP on education in 2010. In the state budget for 2011–2012, the majority of education funding is for primary education. Primary and pre-primary education combined receives around three times as much funding as secondary and higher education combined.⁴⁶ Angola has signed and ratified the Convention on the Rights of the Child and has affirmed its commitment and intention to achieve the Education for All (EFA) goal that states that by 2015 all children will 'have access to and complete free compulsory primary education of good quality' (UNESCO 2000) and that gender disparities will have been eliminated.

Education for refugees

Refugee children in Angola are in principle admitted to state primary and secondary schools⁴⁷ but the reality of the country's education system means that in practice access to education is extremely limited even for nationals. Lack of adequate educational facilities has resulted in challenges to getting enrolled. Furthermore, few refugee children have been registered at birth and this is a prerequisite for enrolling at school.

This problem is not limited to refugee children; it is estimated that some three million Angolan children have no birth certificates.⁴⁸

Respondents stated that refugee children have difficulties in accessing school, primarily due to a lack of documentation. Discrimination was also cited as a serious issue affecting refugee children. Where access to school was granted, integrating into the social environment was a challenge because of language differences and the stigma associated with the refugee label. The Angolan curriculum is offered in Portuguese, making it a challenge for most refugee children. Communication and application is delivered in Portuguese, making it difficult for children with no background in the language to understand.

Access to education in Angola is a challenge for even the citizens of the country since the country is still in a period of reconstruction and there are few government schools available for a growing population. This has resulted in enrolment being a challenge and in some instances government schools conduct three sessions in a day (morning, afternoon and evening learning sessions) to accommodate as many children as possible.

Social security

Access to social security is a challenge in Angola. No legislation specifically binds the government as a guarantor or provider of social security for its citizens (or non-citizens). However, there is

reference to Law no. 18/90, whose provisions call for the social security system to ensure the livelihood of people in the event of absence or reduced work capacity, and in case of death, the surviving family (art. 2). The act covers matters relating to benefits, administrative services, and health and social action (art. 3).

Social security for refugees

No food distribution is done in Angola by the UNHCR. Refugees are supposed to be self-reliant. Administration of social protection initiatives in Angola is generally a challenge. Respondents stated that delays in the documentation process have prevented them from getting employment. Indications from the study are that refugees do not receive any welfare payment or stipend from the government. The UNHCR has in some instances provided minimal aid. Some of the respondents stated they received small once-off pay-outs and other items (such as blankets).

Health

The framework for access to health services is set out within the Constitution of Angola.⁴⁹ The government of Angola offers health services to everyone in Angola but the services are poor.

Health care for refugees

Refugees access health services in Angola in the same way as nationals do. No documentation

“Access to education in Angola is a challenge for even the citizens of the country.”

is required to access health services. Despite the challenges in the health system of Angola, indications are that refugees have access to health facilities. Findings indicate that pregnant refugee women access Angolan reproductive health care services the same as nationals. However, with services at government hospitals being sub-standard, refugees are faced with the challenge of meeting the costs of a very expensive private health system. Respondents stated that services and infrastructure at the government hospitals are poor and that they face a lot of discrimination. Once identified as foreign, refugees are in some instances ignored, abandoned or subtly harassed. Upon consultation at the hospitals, patients are faced with drug shortages, unfriendly treatment tantamount to harassment and sometimes ignored by nurses. Some respondents stated that bribes need to be paid to nurses to get assistance.

Recommendations from respondents for advocacy initiatives

Documentation of refugees

Respondents indicated that there is an urgent need to fast-track the documentation of refugees. There were calls for the government to be more hands-on in terms of co-ordinating refugee affairs. There were calls for the UNHCR to assist in the documentation of refugees. Respondents indicate that official documentation was halted two years ago and this has led to a rise in corruption. Officials have often been paid to document refugees.

Advocacy for refugee rights

The Angolan government is not known for handling human rights particularly well. Respondents stated that there is a need to step up advocacy efforts in respect of refugee rights, which have been trampled upon by the government. This requires the help of all stakeholders and for the UNHCR to be more visible.

Advocacy efforts should also be directed towards the citizens of Angola to curb issues of discrimination towards refugees. Refugees indicated that they were usually discriminated against due to their status. Campaigns should be undertaken to educate nationals on accepting and recognising refugee rights, and integrating with refugees.

5.

BOTSWANA

“the legal status of migrants is something of a grey area.”

Introduction

This country report is augmented with qualitative data from six in-depth interviews (key informant interviews) that were conducted with the following respondents: Mosweu Simane of the Botswana Council of Churches (BCC) and Botswana Council of Non-Governmental Organisations (BOCONGO); Boitumelo Segwabanyane, Botswana Red Cross Society; Madoda Nasha, UNHCR; Dr Treasa Galvin, University of Botswana; Mr Sanoto, Ministry of Defence, Justice and Security and a representative of the Botswana Network on Ethics, Law and HIV/AIDS (BONELA). Unless otherwise stated, demographic and economic data is from the CIA World Factbook.

Refugees in Botswana

As of January 2010, there were 3,022 refugees and 206 asylum-seekers living in Botswana.⁵⁵ There are no stateless or internally displaced people in the country. The number of ‘persons of concern’ as defined by the UNHCR is 3,228 (less than 0.2 percent of the population).⁵⁶ The number of migrants

living in Botswana in 2010 increased from 80,000 to 115,000 in 2005, representing a 43.8 percent increase in total migrant inflows.⁵⁷ Therefore, migrants comprise 6.8 percent of the population as per the 2001 census. According to the Ministry of Defence, Justice and Security and the UNHCR, Botswana follows a strict encampment policy for all refugees entering the country, but is moving towards embracing the 1951 refugee control and recognition act to which it is a signatory.

Legal framework

Botswana acceded to the 1951 UN Convention and the 1967 Protocol in 1969, but expressed reservations on articles 17, 26, 31, 32 and 34. The first relates to employment of refugees and was justified in terms of Botswana high unemployment rate. The rest (including article 26, which refers to free movement of refugees) were reserved on the basis of various national security concerns.⁵⁸ Immigration to Botswana is regulated by the Immigration Act of 1966, which allows unrestricted access for citizens of most countries in the region.

Population:	2,029,307
Net migration rate:	4.19 migrants/1000 population
Urbanisation:	60% of population (2008)
Infant mortality rate:	11.79/1000 live births
Life expectancy at birth:	60.93 years
Adult literacy rate:	81.2%
HIV prevalence rate:	23.9% (2007 est.)
HDI rank (and value):	9850 (0.63351)
Gender inequality index, value:	0.633

GDP (purchasing power parity/ PPP):	\$26.56 billion (2010 est.)
GDP (official exchange rate/ OER):	\$12.5 billion (2009 est.)
GDP real growth rate:	3.1% (2010 est.)
GNI per capita (US\$ PPP):	\$13, 204 (2010)52
Unemployment rate:	7.5% (official, 2007); unofficial, 40%
Human poverty index (HPI-1):	31.4 (2005)53
Poverty, intensity of deprivation:	N/A
Gini coefficient:	60.5 (2007)54
Public debt:	22.6% of GDP (2010 est.)



According to Olivier, 'the legal status of migrants is something of a grey area, with illegality hinging on failure to travel through formal entry and exit points, lack of documentation or participation in prohibited activities, rather than failure to comply with visa requirements or overstays.'⁵⁹ Refugees have to apply for official refugee status in terms of the Refugee (Recognition and Control) Act 25:01 of 1967, a process which Olivier describes as 'lengthy and highly bureaucratised, often entailing detention and consultations and interviews with the police, immigration and prison services, before the status of refugee may be granted with ministerial approval.'⁶⁰

As indicated before, the government of Botswana has recently shifted to a more restrictive immigration policy (largely due to the arrival of thousands of Zimbabweans during the last decade), including stricter border controls and harsher punishment for unauthorised migrants. Similar to neighbouring South Africa, Botswana has also experienced rising levels of xenophobia. The government's response to this situation was to bring in a new amendment to the Immigration Act, which essentially increases exclusionary and punitive measures against undocumented migrants. Therefore, Botswana has shifted from being the only country (for decades) in the region with a pro-immigration stance to one with a very restrictive and punitive (even arbitrary) immigration policy.

Socio-economic rights

Botswana stands out as one of the many African countries that have neither entrenched socio-economic rights in their constitutions nor expressed them as directive principles of state policy. Dinokopila (2011) argues that such an anomaly has made the judicial enforcement of socio-economic rights virtually impossible. Botswana's 1966 constitution contains an extensive list of civil and political rights, with no mention of socio-economic rights.

Botswana is a signatory to the Charter of Fundamental Social Rights in SADC (since 26 August 2003) and the African Charter on Human and People's Rights (since 15 January 1988), but these treaties do not have obligatory clauses that guarantee socio-economic rights. The country has not ratified the International Covenant on Economic Social and Cultural Rights. The following sections compare and contrast the socio-economic entitlements (and realisation of these entitlements) of Botswana nationals with those of immigrants (including refugees).

Education

There are no specific national provisions for the education of refugee children. However, refugee children can be considered under the definition of 'child' under the 2009 Children's Act and as a 'child in need of protection' under section 42 of that same act. In 2006, school

fees were introduced. The view of the UN Special Rapporteur on the Right to Education was that there was likely to be an increase in school dropout rates, a reduction in Botswana's educational achievements and increased discrimination and bullying of those students identified as being poor. This has particularly affected children of migrants who have to pay higher school fees than locals.

Education for refugees

According to the UNHCR, children at the Dukwi camp have access to primary education and there is a primary school within the camp.⁶¹ However, many refugees do not speak the languages in which they are taught, thereby affecting the ability of refugees to be taught effectively. Another hindrance to accessing education is that children without citizenship have to pay school fees even at primary level, which prevents many poor children from accessing it.⁶² Refugee children attend secondary school outside of the camp either in Dukwi village or in Francistown or, in a few cases, in other locations in Botswana.⁶³ Their clothing, uniforms, toiletry and travel costs are paid for by UNHCR.⁶⁴ It is hard for the refugees to access tertiary education, but there is a scholarship programme for successful students to leave the camp for higher education.⁶⁵ Refugees who wish to go on to university in Botswana or elsewhere in the region pay the same fees as local students under a UNHCR-negotiated waiver of the foreign student levy.⁶⁶

“In Botswana, humanitarian assistance is provided by the state only on the basis of claiming and being granted refugee status.”

According to the UNHCR (2010), asylum-seekers in the Dukwi camp who have been denied refugee status are not allowed to enrol for tertiary education.⁶⁷ Short vocational training and tertiary distance learning are provided in Dukwi.⁶⁸ Vocational training is provided by the Professional Management Venture (PMV) Training College. The Botswana Council of Churches (BCC) is responsible for the oversight and provision of support to the primary school, secondary and previous years' tertiary level students.⁶⁹ In terms of gender equality, girls have equal access to education as boys in policy terms. However, there are several factors that keep girls out of school in practice, including exclusions due to pregnancy.⁷⁰ In an interview with Dr Treasa Galvin of the Department of Social Sciences at the University of Botswana, there is relatively easy access to education facilities in and around Dukwi camp but the main challenge remains funding which is very inadequate.

Social security

The Refugees (Recognition and Control) Act 1968 does not provide for refugees' rights to social security. Public assistance is rendered through presidential or ministerial directives. The directives authorise measures for social protection to be provided on a case-by-case basis.⁷¹

Social security for refugees

Although Botswana follows an encampment policy, there are provisions for refugees to seek employment and apply for work permits. Respondents stated that to obtain work permits, refugees must present a letter from an employer wishing to hire them, and the employer must prove that there was no local person who could have been hired.⁷² According to Mr Sonata, the government of Botswana does not assist refugees in obtaining employment, but offers

empowerment skills so that refugees can set up income-generating projects (such as poultry, horticulture, tie and die, and brick-moulding). Refugees are able to run businesses and engage in trade, and are entitled to the protection of labour legislation through the services of the Ministry of Labour and Home Affairs.⁷³ Asylum-seekers awaiting status determination and those whose applications are rejected by the government are restricted from operating income-generating projects inside the refugee camp.⁷⁴ The requirement of a work permit (and the process that comes with acquiring it) makes it difficult to get a job.

In the Dukwi camp, food is provided by the UNHCR.⁷⁵ Refugees who have been in the camp say that the food distributed in the camp is not sufficient. In 2008-2009, the Botswana Red Cross Society (BRCS) started a food aid project for urban refugees, who receive financial support on a monthly basis.⁷⁶ In Botswana, humanitarian assistance is provided by the state only on the basis of claiming and being granted refugee status. However, the majority of Zimbabweans either do not qualify for refugee status or have decided to opt out of the system due to their need to move back and forth between Botswana and Zimbabwe to support their families.⁷⁷ In Dukwi, refugees and asylum-seekers are allocated basic shelters (two-roomed brick houses or tents). These houses are of the same standard as those provided to the poor in Botswana or to low income earners or domestic workers living in residence. Those

refugees in urban areas are provided with housing allowances to pay for their house rentals.

Health care

Health care for refugees

Given that, as per the constitution, Botswana does not discriminate in terms of the enjoyment of fundamental human rights (except for political rights), migrants are in theory equally entitled to benefit from the activities of the Ministry Health in the provision of health services.⁷⁸ Refugees only receive aid in the camp, which is mostly funded by the government.⁷⁹ In its Sexual and Reproductive Health Policy Guidelines and Service Standards, the Ministry of Health noted that services for refugees and migrants must be developed.⁸⁰ The Ministry of Health does operate a clinic in Dukwi, where 90 percent of consultations are for refugees, although cultural and linguistic barriers remain.⁸¹ Primary health care services at Dukwi refugee camp are provided by the Ministry of Health. There is a camp-based clinic providing primary health care that includes reproductive health services, family planning, services for sexually transmitted infections (STI's), antenatal and postnatal care, HIV services for prevention, testing and infection treatment. If needed, women are referred to Tutume district hospital (an hour's drive away) for additional services.⁸²

In Botswana, refugees and migrants are not included in the government's programme for free

ARV provision and Prevention of Mother to Child Transmission (PMTCT) care.⁸³ As of April 2009, BRCS introduced a programme which provides ARVs and PMTCT care to refugees registered as living in the Dukwi refugee camp, but this represents only a small percentage of all migrants and refugees in the country.⁸⁴ All pregnant women are tested for HIV on a routine basis. Pregnant refugee women living with HIV are counselled on the various delivery options.⁸⁵ Prior to this UNHCR community-based PMTCT protocol, pregnant refugee women living with HIV were unable to access essential PMTCT services.⁸⁶ At the same time, the UNHCR programme (financed by the US government) made it possible for refugees at Dukwi to go for voluntary HIV tests at the government-run health centre in the camp. If found to be HIV positive, they receive counselling through the BRCS. They are then transported to the Tati River clinic in Francistown, about 90 minutes away, for further tests and the free provision of ARV drugs if they need them.⁸⁷

The BRCS has undertaken an advocacy role on issues to do with health care for refugees at the Dukwi camp. This was revealed in an interview with the BRCS Co-Ordinator of Refugee Health and Psycho-Social Support, Boitumelo Segwabanyane. The Red Cross has provided transport and accommodation to refugees referred out of the camp hospital. With the Red Cross being the UNHCR's implementing partner, it has played a critical role in refugee welfare at the Dukwi camp.

Recommendations from respondents for advocacy initiatives

Public awareness

Public awareness needs to be raised about refugees and their situation in order to create a more inclusive environment. Botswana generally have a negative attitude towards refugees. They usually associate them with 'illegal immigrants', who have often been regarded as criminals. The general public is not well informed about refugee issues so there is no public pressure to expand access to human rights for refugees.

Lobby government

The government of Botswana should be lobbied to observe its treaty obligations by ensuring that the rights of refugees are protected and promoted. Although Botswana is party to the United Nations 1951 Convention and the 1967 Protocol, it has entered reservations on a number of articles. This has resulted in a reluctance to address the rights of refugees. Botswana is not party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and it has to be pressured into ratifying this treaty. A motion calling upon the government of Botswana to ratify the ICESCR was passed in parliament on the 1 April 2011.

Update legislation

Botswana refugee legislation needs to be updated and amended so that it provides a comprehensive legal framework in keeping with its international law obligations. The Botswana Refugees (Recognition and Control) Act of 2005 has to be amended to clearly state the rights of

refugees. In addition, the Organisation of African Unity (OAU) expanded the definition of a refugee in 1969 but Botswana has not yet incorporated the expanded definition into its refugee legislation. The government needs to draw a clear distinction between asylum-seekers and refugees on the one hand, and 'illegal immigrants' or undocumented migrants on the other, and inform the public about this. The current lack of information and understanding may lead to xenophobia and is very harmful to positive developments in the living conditions of refugees in Botswana.

There needs to be a clear critical examination and review of current domestic legislation, which is constituted by different provisions within the Immigration Act and the Refugee (Recognition and Control) Act, as well as government policy for dealing with refugees and asylum-seekers. The result is that the laws and policies of Botswana relating to refugees and asylum-seekers are inadequate, out-dated and confusing (according to a shadow report by Ditshwanelo to the UN Committee on the Elimination of Racial Discrimination, 68th Session of the 3rd to 6th March). The laws have to be amended to be clear and unambiguous.

Rescind encampment policy

The government should also accord refugees human rights by rescinding the encampment policy. Refugees should be given a chance to make their own living and be able to move freely within the country. The encampment policy should be changed to give all refugees who do not have another durable solution, the possibility of integrating into society.

If refugees are expected to stay in camps, they have to be provided with healthy food and adequate shelter. Access to income-generating activities would also decrease the rate of alcoholism, drug abuse, and crime (which is now very high). Law enforcement needs to be improved in the camps to make them safe to live in, especially in relation to rape. There seems to be access to education and health care in the camp but more students should be offered scholarships to go to university. The policy of keeping asylum-seekers in detention also needs to be changed by encouraging free movement of refugees. The waiting time for receiving refugee status should be reduced – currently the waiting time is 28 days, but it depends on how many people the committee has to meet.

Facilitate access to HIV programmes

Although there is access to health care, refugees are currently excluded from both the national ARV therapy programme and the PMTCT programme in Botswana. This clearly has adverse effects on the health of refugees. According to Ditshwanelo's report to the UN Committee on the Elimination of Racial Discrimination, 68th Session, it is discriminatory. This discrimination has an adverse effect on the rate of transmission of the disease. The government of Botswana should accord refugees access to the national ARV and PMTCT programmes. Access to psychological health care should also be improved.

Educate enforcement agencies

Law enforcement officers and other people working with refugees need to be educated about their duties and

responsibilities towards refugees. They should also be held accountable for their actions. A number of refugees who were interviewed alleged that they have experienced police brutality and that there were no subsequent investigations or punishment of the police responsible.

Ensure independence of the UNHCR

UNHCR need to be truly independent from the government and to function as a body which actually works for the rights of refugees. It has to work with the government to do away with limitations on the freedom of movement and the use of camps to manage asylum-seeking populations. The camp has impeded refugees' efforts to become self-reliant. The use of camps has increased pressure on the limited humanitarian resources available and adversely affected the reception of refugees by host communities.

Access to information

There should be more access to information for both the refugees and civil society. It is difficult for civil society to have access to information about refugees due to security considerations of the government. Access to Dukwi and to the Gerald Detention Centre is limited.

6.

DEMOCRATIC REPUBLIC OF THE CONGO (DRC)

“the broad impression from the review is that the dominant DRC refugee reception model is one of self-settlement.”

Introduction

This country report is augmented with the findings of 31 individual interviews with refugees at Lingual National Refugee Camp and other parts of the DRC, two focus group discussions, as well as three key informant interviews with unnamed officials from UNHCR, Committee on Refugees (COMIREF) and an unnamed human rights organisation. Respondents sought anonymity due to fear of victimisation. Unless otherwise stated, demographic and economic data is from the CIA World Factbook.

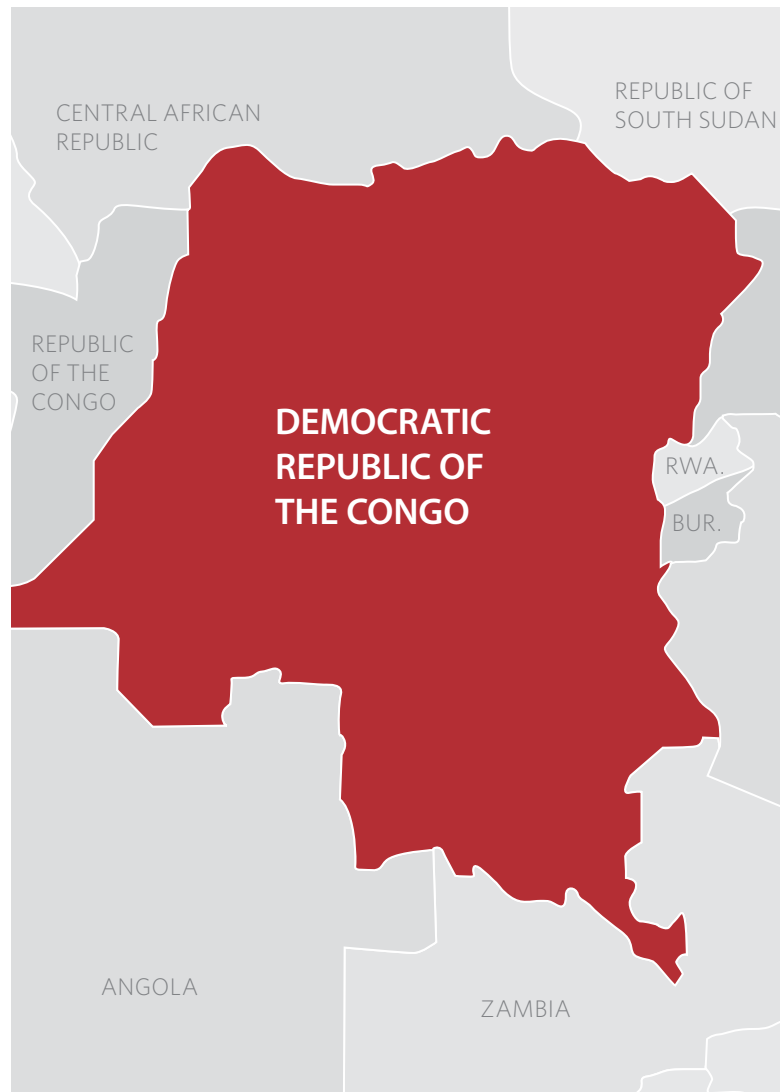
Refugees in the DRC

The DRC is in quite a unique position regarding migration, in that while it is predominantly a refugee producing country, it also receives substantial numbers of refugees and migrants. The exodus of refugees from the country is well-known. Countries in southern Africa have been receiving refugees from the DRC since the late 1990s. What is less well-known is that the DRC also hosts a substantial population of refugees and asylum-seekers, presently estimated at

around 180,000 by the UNHCR, with the highest concentrations in North and South Kivu, Bas Congo, Katanga, Bandundu and Kasai.

The refugees hail largely from neighbouring countries such as Angola (60,900), Burundi (14,600), Republic of Congo, Rwanda (65,500) and Sudan. The presence of the Lord's Resistance Army (LRA) in the Central African Republic also caused civilians from that country to flee to the DRC. Apart from these bigger groups of refugees, the UNHCR also lumps refugees from other countries together under the category 'various' (2,200). Although the UNHCR DRC profile refers to the need for improved camp management, the broad impression from the review is that the dominant DRC refugee reception model is one of self-settlement. Most refugees are reported to be living amongst Congolese citizens in both rural and urban areas.

Internal displacement continues, especially in the provinces of Orientale, Maniema and Katanga, with the total estimated figure for internally displaced people now standing at



Demographic and Social Development Indicators

TABLE 7

Population:	70,916,439
Net migration rate:	0.77 migrant(s)/1000 population (2010 est.)
Urbanisation:	34% of total population (2008) ⁸⁸
Infant mortality rate:	79.36 deaths/1000 live births
Life expectancy at birth:	48 years ⁸⁹
Adult literacy rate:	67.2% (SARPN: 34.7%)
HIV prevalence rate:	4.2% (2003 est.)
HDI rank (and value):	168 ⁹⁰ (0.239 ⁹¹)
Gender inequality index, value:	0.814

Economic Indicators

TABLE 8

GDP (purchasing power parity/ PPP):	\$22.92 billion (2010 est.)
GDP (official exchange rate/ OER):	\$12.6 billion (2009 est.)
GDP real growth rate:	3% (2010 est.)
GNI per capita (US\$ PPP):	\$342
Unemployment rate:	Not available
Human poverty index (HPI-1)	41.4 ⁹²
Poverty, intensity of deprivation:	53.7 ⁹³
Population living below \$1.25 PPP p/d:	59.22% ⁹⁴
Gini coefficient:	44.4 ⁹⁵
Public debt:	\$4.3 billion (2009 est.)

2 million. Internal displacement (and the rapid urbanisation rates it entails) remains a major development challenge for the country. A proportion of this displaced population is being cared for, as far as possible, by a partnership between the UNHCR and a range of UN and other international relief and development agencies, including the United Nations Organisation Stabilisation Mission in the DRC (MONUSCO), FAO, UNDP, UNICEF, WFP and WHO.

The big mining operations and other commercial activities in the country attract migrant workers from other African countries and elsewhere, although these movements are not well studied and data is generally unreliable. Specific information on the numbers and whereabouts of migrant workers is not available, again due to the largely informal nature of the economy in the DRC. Data is also lacking on irregular (undocumented) migration, which, given the ethnic links between nationals of neighbouring countries and those in the DRC, is assumed to be a significant phenomenon. The International Organisation for Migration (IOM) estimates the total number of migrants (all categories) in the DRC to be around 445,000. Mixed migration flows to and from the DRC are thus on-going, complex and under-studied.

Legal framework

The DRC is signatory to international legal instruments relating to refugees, including the UN

Convention (1951), that of the OAU Governing the Specific Aspects of Refugees Problems in Africa, signed in Addis Ababa (1969) and that of SADC (2005). However, little effort has been made to domesticate these instruments. Louise Olivier, Law Programme Manager for OSISA, observes that the DRC has not yet developed a comprehensive approach to legal migration, and as a result it has one of the highest numbers of migrants, asylum-seekers and refugees in the continent. On 16 October 2002, Law no. 021/2002 concerning the status of refugees was adopted. In terms of this law, a National Commission for Refugees (NCR) was established as an independent public body within the Ministry of Interior, Centralisation and Security.

There is not a lot of information available on refugee legislation in the DRC, and the sources found differ quite radically in their assessment of the situation. Olivier states in an article on immigration and refugee legislation in southern Africa that, 'the legislation relating to migration is archaic and inappropriate, and court challenges largely rely on a number of refugee appeal laws that do not reflect a coordinated approach to providing a protective legal framework for refugees and migrants'.⁹⁶

Socio-economic rights

Law No 021/2002 entrusts the NCR with the management of the affairs of refugees and asylum-seekers. This law relates to housing,

health care, education, training and employment. However, little has been done by the NCR to fulfil its mandate. Respondents in the study stated that the NCR had done nothing to improve the social well-being of refugees and asylum-seekers, particularly in Bas Congo Province, saying that attention was being focused on refugees in the eastern parts of the country.

Given the lack of clarity in terms of the legal and human rights of refugees and migrants in the DRC, the on-going conflict in parts of the country, the large internally displaced population, the country's low HDI ranking, the high poverty rates of its own population and many other factors, access to socio-economic rights remains a challenge for both citizens and refugees in the DRC. The overall impression gained from the available material is that the UNHCR, in partnership with other UN agencies and international development and relief organisations, provides the bulk of the required assistance in this regard.

In a section on 'basic needs and services', the UNHCR in the DRC indicates that it provides emergency shelter to 55,000 people and permanent shelter to 18,000, while another 20,000 individual and family shelter supports are provided. It also provides 'basic domestic and hygiene items' to people of concern: 31,000 people receive household goods, and more than 18,300 women and adolescent girls receive sanitary materials.⁹⁷ Most significantly, UNHCR

reports that 86 percent of school-age refugee children are enrolled in primary school, which is a very good indicator that the government of the DRC does, in fact, extend the right to education to children of refugees and migrants. No mention is made of access to health facilities, and social security is presumably not available in a country with the range and depth of problems facing the DRC at present.

Education

The right to education is guaranteed in the 2005 constitution of the DRC. Articles 43, 44 and 45⁹⁸ enshrine the provision of free, obligatory primary education and the elimination of illiteracy. The education system in the DRC is governed by the law 25/95 of 17 November 1995 (amending the School Act No. 008/90 of 6 September 1990). This law stipulates the right to education, ensuring equal access to education and vocational training. Public education is free for citizens, but not for refugees. Basic education is compulsory.

Education for refugees

Most of the respondents interviewed have children who attend school, either a normal state school or a school for refugees inside the camp funded by a donor organisation. Only a few children go to private schools outside the camp. In those cases where children do not attend school, it is reported to be because their parents

do not have the money to pay school fees and are not supported by organisations like the UNHCR, or there is no possibility for the children to attend a school. The respondents whose children attend school commented that fees are expensive, even though some get partial or full support from the UNHCR, and a few are exempted from fees.

The standard of education received by children is perceived as acceptable and equal to the standard of education received by children of citizens. Most parents are happy with the treatment their children receive from teachers, school principals and school governing boards, but some report discrimination on the part of other schoolchildren because of their status as refugees. The majority of respondents received at least eight years of school, and about half of them technical and vocational training, but only a small minority received further education.

Most of the respondents stated that they did not get the chance to further their education in the DRC. The few people who received tertiary education (training or university courses) either had to pay for it or received it for free. No case was reported where the fees for further education were higher for refugees than the fees for citizens, but the provision of financial assistance is not very well known. Since education is seen as the key to access the labour market, there is demand to receive training.

“86 percent of school-age refugee children are enrolled in primary school, which is a very good indicator that the government of the DRC does, in fact, extend the right to education to children of refugees and migrants.”

Social security

Social security is governed by the National Social Security Institute (INSS), in charge of pension management in DRC, and created by the Statutory Order of 29 June 1961 from the fusion of Katanga and Lower Congo social security funds. It only covers three sections (pension, old age benefits and family allowances) instead of the nine sections explained in Convention 102 from the WTO.⁹⁹

A report by the IOM in November 2009 states: 'No system of housing loans exists in the DRC. The government does not provide subsidised housing although a limited number of homes for the elderly can be found in Kinshasa. People returning from abroad will receive no assistance from the government in finding accommodation and need to know that they will need to cover this cost entirely by themselves.'

Social security for refugees

Findings from the study revealed that the UNHCR is responsible for the upkeep of documented refugees in DRC, and the NCR handles undocumented refugees. According to the UNHCR, refugees are allowed to work in any sector but are prohibited from serving any political institution.

Most of the respondents were not employed or were self-employed in their home country. They claimed that they have skills in the non-industrial sector, including dressmaking, beauty treatment and commerce. None of the respondents has a work permit and only a minority of them are presently employed, which includes small-scale retail work and whatever the respondent can do. Speaking about welfare payment and stipends from the host country government, the respondents all say that they are denied this kind of support. One respondent

said "If the NCR does not do anything we are simply abandoned to our sad fate."

The biggest support seems to be from the UNHCR, which assists a large share of the respondents with cash transfers and non-cash assistance (although the non-cash assistance does not seem to be very widespread). Since money is necessary to make a living and to access healthcare and education, respondents requested better access to work facilities or financial assistance to start their own businesses. More assistance with education for their children was also desired.

Health care

The armed conflict in the DRC has severely weakened the already vulnerable health facilities in the country, and they continue to struggle amid the on-going lack of security. Needs are great

*Health expenditure, public
(as a percentage of government expenditure)*

TABLE 9

Source: WDI and GDF 2010

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
DRC	2.51	3.06	10.61	9.44	8.98	12.16	13.82	17.55	16.97	

and far exceed the support and aid provided by the government, WHO, ICRC and other humanitarian organisations. However, government has prioritised health care in the country. Total public health expenditure (as a percentage of government expenditure) has gradually increased from 2.51 percent in 2001 to 16.97 percent in 2009. This shows commitment by the government to addressing challenges facing the health sector, as well as addressing issues to do with access to health care.

Health care for refugees

Access to health care is commonly regarded as difficult. The reason is mainly the lack of money (if the respondents and their dependents are not supported by the UNHCR) and the poor quality of service (which is a problem experienced throughout the country). *“Difficult because we enjoy the same rights as Congolese, but they are also deficient in that respect,”* said one respondent. It seems that the respondents generally have access to primary health care, paediatric care for children, maternal health care, hospitals, HIV and AIDS education and prevention campaigns, HIV and AIDS voluntary testing and counselling, and the prevention of mother to child HIV transmission. Reproductive health care, emergency medical care and anti-retroviral treatment are reportedly not accessible. Health insurance for the whole family is requested by some respondents, in order to have proper access to health care and enjoy a decent life.

Recommendations from respondents for advocacy initiatives

Improved monitoring of refugees' affairs by SADC

Respondents would like to see more involvement of SADC, for refugees to get improved conditions and to establish free movement of people and goods. This coincides with the demand for a socio-legal framework and an adjustment of living conditions, and financial and material assistance similar to the assistance that refugees in Europe get.

Full commitment to ratified refugee legislation

The DRC needs to implement fully the existing refugee legislation, including the Geneva Convention of 1967 and the laws governing the status of refugees in the DRC.

7.

LESOTHO

“there are no specific policies or laws in place in Lesotho that directly address the socio-economic rights of migrants.”

Introduction

This country report is based on qualitative data obtained from four in-depth interviews, ten individual interviews with non-nationals and two focus group discussions, consisting of a total of 17 respondents. Individual interviews and focus group discussions were conducted at Maholalitoe Refugee Reception Centre. Respondents in the in-depth interviews were: Mohapi Boi of Justice and Peace (a faith-based organisation); Lerotholi Moholo, Commissioner of Refugees in the Home Affairs Department; Mapeete Jonothane of the Immigration Department; and, a Labour Migrant Officer. Unless otherwise stated, demographic and economic data is from the CIA World Factbook.^{7.1}

Refugees in Lesotho

Lesotho’s small size and geographical location – being completely surrounded by South Africa – has, by and large, shaped its history of refugee protection.¹¹¹ Refugees fleeing political unrest in Lesotho generally moved to South Africa, often in the guise of economic migrants. South African

refugees, especially from the liberation movements during the apartheid era, used Lesotho as a place of refuge during the 1970s and 80s.¹¹² Since 1997 this has no longer been the case and the UNHCR reports that there are now only 60 refugees in Lesotho (countries of origin unspecified) to whom they provide protection and assistance.¹¹³ Lesotho is sometimes used as a transit country by refugees and migrants trying to reach South Africa.

Legal framework

Lesotho has acceded to several international instruments, including the UN Convention Relating to the Status of Refugees of 1951 (which was ratified in 1981) and the OAU Refugee Convention of 1969 (which was ratified in 1988). Non-citizens are regulated by the Refugee Act of 1983 as well as the Aliens Control Act of 1966. The provisions control migrants and refugees in Lesotho. It is important to note that there are no specific policies or laws in place in Lesotho that directly address the socio-economic rights of migrants. The legislation is silent on the socio-economic rights of



Demographic and Social Development Indicators

TABLE 10

Population:	2 million (2007) ¹⁰⁰
Net migration rate:	8.68 migrant(s)/1000 population (2010 est.)
Urbanisation:	25% of population
Infant mortality rate:	132/1000 live births ¹⁰¹
Life expectancy at birth:	45.9 years ¹⁰²
Adult literacy rate:	82.2% ¹⁰³
HIV prevalence rate:	23.2%
HDI rank (and value):	141 ¹⁰⁴ (0.427 ¹⁰⁵)
Gender inequality index, value:	0.685 ¹⁰⁶

Economic Indicators

TABLE 11

GDP (purchasing power parity):	\$3.31 billion (2010 est.)
GDP (official exchange rate/OER):	\$1.799 billion (2009 est.)
GDP real growth rate:	3.5% (2010 est.)
GNI per capita (US\$ PPP):	\$2,021.1 ¹⁰⁷
Unemployment rate:	45% (2002 est.) ¹⁰⁸
Population below poverty line:	49% (1999) ¹⁰⁹
Poverty, intensity of deprivation:	45.8 (UNDP)
Gini coefficient:	63.2 (2001) ¹¹⁰
Public debt:	\$647 million (December 2010 est.)

migrants. While the Aliens Control Act addresses the regulation of migrants, the Refugee Act only deals with refugees. However, the latter does not replace the former.

Socio-Economic Rights

The constitution¹¹⁴ is the supreme law of the country. Under Chapter II it provides for a bill of rights, which is limited to civil and political rights. Socio-economic rights are provided for under Chapter III, and are classified as principles of state policies so they are not enforceable by the courts of law. Protections such as the right to health¹¹⁵ fall under this category and are not justiciable. They are limited to citizens.¹¹⁶ The constitution provides that 'Lesotho shall adapt policies aimed at attaining standard health for its citizens'. Article 28 of the constitution provides for the right to education, stating that 'Lesotho shall endeavour to make education available to all'. The provision shows no discrimination from any perspective. There is also the right to work¹¹⁷, which does not distinguish between nationals and migrants.

42 The right to health care and education are not justiciable for citizens and no specific provisions in relation to migrants exist. However, public health care services in Lesotho are subsidised by the government making them affordable. There is no discrimination between nationals and migrants in accessing services, and everyone can access these socio-economic rights. A new law promulgated in 2010¹¹⁸ makes free

primary education compulsory. It seeks to ensure 100 percent literacy for boys and girls. Since the Act is still new, its implementation is still being worked on, but to date there has been no challenge to anyone claiming the right to education. Lesotho is a signatory to the 1951 UN Convention and the 1967 Protocol (signed in 1981 with no reservations). The refugee protection policy is guided by the Aliens Control Act of 1966 and the Refugees Act of 1983. The constitution of Lesotho assents to the protection of fundamental rights and freedoms for citizens, but socio-economic rights are not guaranteed and entrenched within the constitution.

Education

Lesotho adopted free primary education in the year 2000 as a major strategy towards achieving the Education for All (EFA) goals. This was followed by the passing of the Education Bill of 2009, which legally entrenched free, compulsory education at primary level in Lesotho. The Bill clarifies the roles and responsibilities of the people and institutions tasked with the administration of the education system. In this regard, the government of Lesotho has been hailed, with education being visibly enjoyed by the citizens of the country as well as non-nationals.

Education for refugees

It is difficult to discern questions of access, as respondents gave varying responses. Some

stated that basic education was expensive and that they had to sacrifice to get their children to school, while some stated that fees were paid but affordable, and others stated the education was free and they did not pay anything as it was the government's responsibility. Respondents lamented the lack of any provisions to exempt them and their children from paying fees, stating that they were not at all exempted from paying school fees, and that their refugee status meant that they were not liable to receive any financial assistance.

It is difficult to generalise about access to education in Lesotho, due to the fact the answers given by respondents varied. This might be due to either a lack of information about what rights they are entitled to or an inconsistency in the way the state administers access to education by refugees. With reference to the standard of education, respondents stated that their children received an acceptable standard of education. In this case, some respondents stated that migrants received an acceptable standard of education because they are not expected to pay for basic education, but they do have to pay for tertiary education (which might have resulted in a misunderstanding of the question).

Some respondents stated they were satisfied with the treatment their children got from teachers and other pupils at schools, saying that there was no abuse or discrimination and that all children were treated in the same manner. Other respondents

stated that they have not had an opportunity to further their education in Lesotho, citing issues to do with lack of proper documentation, while issues of affordability also surfaced. Some respondents stated that they had not attempted to apply to further their education. However, one of the respondents stated that he had managed to further his studies with the government of Lesotho subsidising the fees, leading to him obtaining a diploma, which he claimed was the highest level of education that refugees were assisted to obtain.

Overall, the data collected on access to education in Lesotho is very problematic. It is impossible to get a clear picture of the situation given the diverging answers provided by the refugees.

Social security

Findings from the study revealed that citizens of Lesotho do enjoy social protection, although the magnitude was debatable. According to Mohapi Boi, Basotho do not really enjoy social protection since the government is not bound to provide it as per the constitution. However, others stated that citizens receive free health services and education.

Social security for refugees

A number of respondents stated that they received some form of stipend from the Home Affairs Department. Respondents stated that they received at least M400 per month to buy food

and clothing, although this was only accessible to refugees registered with the home affairs office and the UNHCR. Some respondents stated that they did not get anything at all, saying that funding stopped once some form of employment was established within the family. Respondents said that they received non-cash assistance from the Home Affairs department in the form of food and blankets. Respondents stated that they did not get any cash transfers from international organisations, saying that it is only the government that assists them.

Health care

Findings from the study revealed that health infrastructure is good, and non-migrants have access to health facilities close to them. Some of the respondents stated that they had easy access to hospitals and were treated without any discrimination. However, respondents stated that at times they were discriminated against by health personnel at hospitals and, in some instances, were made to pay extra charges for being foreigners. Others expressed dissatisfaction with the service provision, stating that nurses were slow to attend to patients and did not show any care for their patients. Some respondents suspected that they were deliberately discriminated against because of their refugee status. Despite this, respondents stated the government was doing a lot to try and assist refugees to ensure they are given adequate assistance in comparison with citizens.

Recommendations from respondents for advocacy initiatives

Review current legislation governing non-nationals

The government needs to review the Aliens Control Act of 1966 as well as the constitution to acknowledge the socio-economic rights of refugees. The current act does not make clear provisions for socio-economic rights for migrants.

Commit more funding towards further education

Respondents indicated that there is a need to increase funding and sponsorship for refugees to further their education, particularly tertiary education.

8.

MALAWI

“Malawi appears to be increasingly regarded as a transit country for refugees and migrants heading south.”

Introduction

The country report on Malawi is based on qualitative interviews conducted with Patrick Mphundukwa (Camp Administrator at Dzaleka Camp); the UNHCR Country Representative; Benedict Kondowe of the Civil Society Coalition for Quality Basic Education (CSCQBE); Malawi Health Equity Network (MHEN); Joseph Moyo of the Malawi Red Cross; Mavuto Bamusi of the Human Rights Consultative Committee (HRCC); the World University Service of Canada (WUSC); and, the Jesuit Refugee Service (JRS). In addition, 20 individual interviews were conducted at Dzaleka Refugee Camp and other locations using an administered questionnaire, and two focus group discussions were held with a total of 19 participants. Unless otherwise stated, demographic and economic data is from the CIA World Factbook.

Refugees in Malawi

Malawi was host to tens of thousands of Mozambican and Rhodesian refugees in the 1970s and 1980s, but most of these were repatriated after independence was achieved in

Mozambique and Zimbabwe. Official refugee statistics are debatable with various institutions coming up with different figures. However, the US Committee for Refugees and Immigrants, World Refugee Survey 2009 estimated that Malawi hosted around 11,600 refugees at the end of 2008, mostly from Rwanda, the Democratic Republic of Congo (DRC) and Burundi.

According to the 1989 Refugee Act, refugees are required to stay in camps where their needs are attended to with assistance from the UNHCR. Refugees are provided with basic assistance such as shelter, food, water, relief items, education and health care, but they do not enjoy the right to work and move outside of camps.¹²⁸ This is in direct conflict with article 20 of the constitution, which prohibits any form of discrimination on the grounds of race, nationality and ethnicity.¹²⁹ However, this study identified refugees who were legally living outside the camp.

Malawi appears to be increasingly regarded as a transit country for refugees and migrants heading south, mainly to



South Africa, as indicated by the UNHCR:

*'Malawi is a significant transit country for mixed movements from the Horn of Africa and the Great Lakes region. A number of asylum applications submitted by Somalis and Ethiopians are abandoned soon after being submitted, suggesting that these individuals have continued their onward movement to South Africa and raising concerns with the authorities.'*¹³⁰

There is only one refugee camp left in Malawi – the Dzaleka Camp just north of the capital, Lilongwe. The camp has been in existence for over 20 years.¹³¹ Prior to 2008, refugees were hosted in three different locations:

Demographic and Social Development Indicators

TABLE 12

Population:	15,447,580 (2010 est.)
Net migration rate:	0 migrant(s)/1000 population
Urbanisation:	19%
Infant mortality rate:	86.01/ 1000 live births ¹¹⁹
Life expectancy at birth:	54.6 years ¹²⁰
Adult literacy rate:	64.1% ¹²¹
HIV prevalence rate:	11.9 (2007 est.)
HDI rank (and value):	153 ¹²² (0.385 ¹²³)
Gender inequality index, value:	0.758 ¹²⁴

Economic Indicators

TABLE 13

GDP (purchasing power parity):	\$13.51 billion (2010 est.)
GDP (official exchange rate/ OER):	\$5.035 billion (2009 est.)
GDP real growth rate:	6.5% (2010 est.)
GNI per capita (US\$ PPP):	\$911 ¹²⁵
Unemployment rate:	N/A
Population below poverty line:	53%
Poverty, intensity of deprivation:	53.2 ¹²⁶
Gini coefficient:	0.39 (0.48 urban; 0.34 rural) ¹²⁷
Public debt:	\$1.213 billion (December 2010 est.)

Luwani Camp (Southern Region), Karonga Transit Shelter (Northern Region) and Dzaleka Refugee Camp (Central Region). Luwani Camp was closed in May 2007 following a government-directed consolidation of the two main camps. By November 2008, all refugees resided in Dzaleka Camp. This placed considerable pressure on already limited land, further reducing the land available for cultivation.

Socio-economic rights

Socio-economic rights in Malawi are written into the constitution. The constitution ensures a small number of socio-economic rights, i.e. the right to education,¹³² economic activity and labour. These are dealt with in sections 22, 25, 28, 29, 30 and 31. Health care is not emphasised in the constitution. There are a few national policy frameworks that guarantee the right to health, including the Essential Health Package (EHP), the Social Protection Policy 2009 and the National Education Sector Plan (NESP 2008-2017). With regard to the right to education, primary education is recognised as being important for human development, but it is not compulsory.

Malawi has signed and ratified the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the African Charter on Human and People's Rights, and the Charter of Fundamental Social Rights in SADC,

but international treaties are not binding until they are implemented into national law. Among the rights laid down in the ICESCR are the rights to adequate health care, education and food. Malawi also ratified the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol and the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, which were incorporated into Malawi's 1989 Refugee Act. The 1951 Convention promotes the rights of refugees to (among other things) employment, education and health.

There are a number of domestic laws in Malawi regulating the rights of refugees – the Immigration Act of 1964 (which distinguishes between permanent and temporary residents, but fails to recognise refugees and asylum-seekers as being in need of special social protection) and the Refugees Act of 1989 (which regulates the approach to refugees, but no basic refugee rights are highlighted, and it is more about controlling than protecting the refugees).

Education

Although school fees were abolished in 1994, over 10 percent of children of primary school age do not attend school and only 40 percent of the pupils enrolled in Standard 1 reach Standard 4. The quality of education is limited by the size of classes (107 pupils to one teacher) and the lack of facilities and materials. With regards to tertiary education, refugees have to pay the same

fees as foreign students at university, while the government subsidises national students (as is the case in most SADC countries).

Education for refugees

Having studied the education situation in Malawi, refugees and other migrants generally experience worse conditions than citizens. The situation is also dependent on whether the respondents lived inside or outside the camp. Different respondents had different views on access to education. 79 percent of the respondents with children of school-going age stated that their children attended school, while the other 21 percent stated that their children did not attend school

The majority of the respondents indicated that access to education by refugees and asylum-seekers is limited. Both in the camp and in urban areas, they have access to pre-school, primary and secondary school, but are not allowed to pursue tertiary education at the nation's university. However, citizens also struggle to access the university. Malawians, refugees and asylum-seekers go to the same public schools. There was a generally-held view that the quality of state education in Malawi is not that high, but refugees said that private school fees were exorbitantly expensive.

Refugees are not allowed to attend public schools outside the camps at primary level. Government provides schools for refugees within the camps.

On the other hand, children from the local communities (citizens) close to the camps are allowed to attend primary school within the camps.

The majority of respondents commented on the policy to use the Malawian curriculum for all refugees regardless of their country of origin. They saw it as a major drawback, saying that it takes a considerable amount of time before it becomes familiar and user-friendly. They added that it is problematic when refugees return to their home countries and have to adapt to different school curricula. This apparently seems to be the case in all SADC countries, where incoming refugee children have no special provisions in terms of the language of instruction. It is only by coincidence if the language of instruction in the host countries is the same as their language of communication.

There are some scholarships for secondary education, but even the best school graduates are precluded from enrolling at the university. Respondents said that if they were allowed to enter tertiary learning, it would be a better preparation for life when they return home in the near future.

The current arrangement is that refugees who qualify for university education can apply to go to Canada through the World University Service of Canada (WUSC) Student Refugee Programme. However, WUSC, in partnership with JRS, only offers a maximum of twenty refugee students the chance to study in Canada every year. The

selection standard is very high. Some of the conditions are that students must (a) be single, (b) have been a refugee for at least three years, (c) be under 25 years of age, and (d) pass internationally recognised language tests besides other academic achievements. The views or concerns raised in the interviews were corroborated by refugees and asylum-seekers, who experience these conditions first-hand, including the discrimination in respect of access to tertiary education. They said that the WUSC conditions were too tough. They went further to mention other areas of concern, including unfair treatment of refugee children during learning, punishments being disproportionate to the offences committed by refugee children, and their struggle to pay the school fees (known as the General Purpose Fund or GPF) because they do not have employment.

In addition to basic education, refugees in the camp are also provided with vocational skills training, including income-generating activities. The respondents mentioned that training courses offered at the camp include tailoring, computer courses, literacy classes, carpentry, Swahili and WUSC language classes.

Social security

There is very limited social assistance available to citizens because the systems of social service provision and social security are not yet fully developed. Perhaps the situation will change once the Social Protection Policy that is currently

being drafted is finalised. At the moment, no public housing schemes are available in the country. Public pensions are not available and occupational pensions are only provided in the form of severance allowance and gratuity. Social assistance to the people of Malawi is provided by the Ministry of Women and Child Development through the Department of Social Welfare. Unlike other countries within the region, there are no specific grants that are given out to extremely poor individuals and households. The main form of social assistance provided by the department is in the form of technical support for the running of community-based organisations caring for orphans and vulnerable children through community based child care centres.¹³³

Social security for refugees

The World Food Programme (2010) stated that 'All refugees receive a monthly food basket consisting of cereal, pulses, vegetable oil, sugar, salt and corn-soya blend'. In an interview with Joseph Moyo of Red Cross Malawi, it was established that food distribution is done once a month by the Red Cross, and recipients get food portions consisting of rice, maize, sugar, cooking oil, salt and beans. It is not disputable that this food assistance has played a crucial role in meeting the basic food needs of the refugees and helped to prevent malnutrition.

Assistance in terms of shelter, food, water, relief items, education and health care is provided

by the UNHCR, the government of Malawi, and organisations like the Red Cross and JRS. Refugees are not allowed to work within the formal sector in Malawi so they are not entitled to any employment-related benefits.

The refugees had varying views on whether they were allowed to work in Malawi. Most of the respondents stated that they were not allowed to work inside or outside the camp. Those who worked said that these were illegal and temporary arrangements. However, respondents with official refugee status said that they were allowed to work, since this status allowed them to stay outside the camp. All respondents agreed that they did not receive any form of cash transfer, welfare payment or stipend from the government or any other organisation.

Respondents acknowledged that non-cash assistance is provided by the Red Cross and WFP, although issues to do with adequacy were raised. When respondents stated that quantities were not enough, Moyo responded that WFP provided food aid in terms of the globally recommended calorie intake per day, and were convinced that the monthly food provisions were enough to meet the daily calorie intake for families.

Health care

Despite the constitution of Malawi not guaranteeing access to healthcare, Malawi has committed to allocating a significant portion

of government expenditure to health. In 2009, Malawi spent 11.9 percent of its total expenditure on health, which is higher than the African median of 9.1 percent.¹³⁴ The budget is partly used to cover ARVs for those who are HIV-positive. Over the past few years, the Malawian government has made efforts to improve the quality of the health service, increasing the annual budgetary allocation to improve the availability of drugs as well as infrastructure development, which includes various new clinics and hospitals, or hospital extensions (such as maternity wings).

However, the delivery of services continues to be hampered by persistent lack of sufficient drugs in the clinics and hospitals. According to respondents, there have been reports in the local media about medicines and other hospital equipment being stolen. Shortage of personnel in most clinics and hospitals is another perennial challenge. There is a trend for health care professionals to leave Malawi for better jobs, mostly in western countries. This scouting for greener pastures has had a negative impact on the delivery of service because the ratio of medical staff to patients has decreased. Mismanagement of funding has also played a negative role in the quest to deliver decent health services in Malawi.

Health care for refugees

When asked about the problems that refugees and asylum-seekers face in accessing health services, the majority of the respondents

mentioned that (as for Malawians) the lack of sufficient drugs in most hospitals is a problem. They complain that they do not have any alternative but to visit public clinics or hospitals because of the financial implications of going to private facilities. Respondents stated that insufficient staffing is another major challenge in most hospitals.

The camp's hospital ratio is 200 patients per clinician on a busy day. This affects the quality of services offered. Again the issue of financial constraints hits the refugees hard. Issues to do with discrimination were also raised by the respondents. There are reports of discrimination based on racism, nationality, tribalism and language by certain local medical staff. This is manifested in the languages used, case handling and general attitude towards the sick. They complain that every refugee is referred to as 'a Burundi'.

The UNHCR does not provide medical treatment for refugees who live outside the camp. Limitations with the refugee documentation system also led to complaints from the respondents. They stated that there are medically qualified refugees who could work in clinics and hospitals, but their skills are wasted because they need work permits, which take a long time to obtain and are expensive.

Recommendations from respondents for advocacy initiatives

Improve infrastructure and services in refugee camps

Respondents indicated that the facilities and services at the refugee camps need to be improved, especially with regard to health and education.

Allow refugees to work

There were calls for the government to allow refugees to work in order to safeguard their livelihoods, as well as to contribute to the development of the country. Some respondents indicated that they are qualified in different fields, and feel that they could assist as volunteers if given the opportunity (especially in education and health care).

Naturalisation, resettlement and voluntary repatriation

There is a need to reconsider naturalisation, resettlement and voluntary repatriation as options. Some of the respondents stated that they have stayed in Malawi for more than ten years and feel that the government

should give them the opportunity to naturalise and resettle in Malawi. Others indicated that they would appreciate assistance to voluntarily repatriate to their countries of origin.

Assist with funding for further education

Malawi officially eliminated fees for basic education and refugees have benefitted from this. However, non-nationals pay more fees to further their education, since the government does not subsidise their education. This remains a critical challenge for refugees in Malawi, since they do not have the capacity to pay the required fees.

observations appear in the table below. Most notable are the exceptionally long time periods indicated for the Blantyre High Court (although from a small number of observations), as well as the fact that the median time period for release from police detention is two days – suggesting that half of the detainees spend more than two days in custody at Blantyre police station. The fourth quartile indicates that a quarter of detainees spend more than five days in police detention in Blantyre.

9.

MOZAMBIQUE

“Mozambique experiences significant movements of people from the Horn of Africa towards South Africa.”

Introduction

This country report is augmented with findings obtained from six in-depth interviews with key informants. These were complimented with ten individual interviews conducted with refugees. Unless otherwise stated, demographic and economic data is from the CIA World Factbook.

Refugees in Mozambique

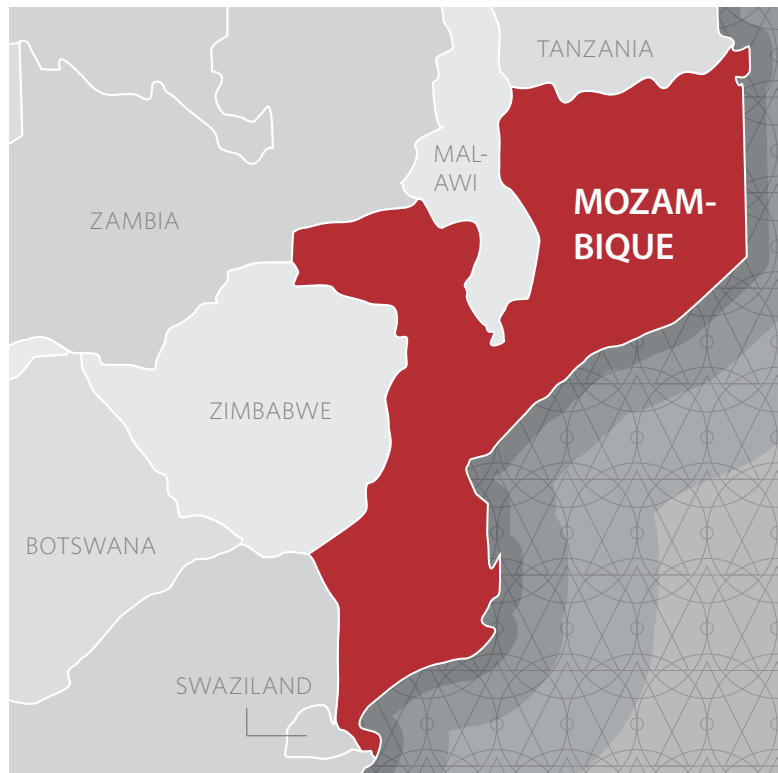
During the 16 years of civil war, Mozambique lost about two million of its own citizens, who fled to various neighbouring countries. Most of these refugees had repatriated by the mid-1990s.

The UNHCR estimates that there are 7,700 refugees and asylum-seekers in Mozambique – 4,750 living in Maratane refugee camp in Nampula Province and the rest in various urban centres.¹⁴⁵ However, this is not indicative of the actual number of refugees in the country. The country appears to have a mixed model of refugee reception, with both camp-based refugee protection and self-settlement. Although the

UNHCR works closely with the Mozambican government, it is essentially the main agency responsible for refugee protection.¹⁴⁶

According to the UNHCR, Mozambique ‘continues to support self-reliance and local integration by providing agricultural land to refugees and allowing them freedom of movement and the right to work throughout the country, with the exception of Maputo’.¹⁴⁷ The UNHCR is working with the government to establish a legal framework for local integration, and aims to enhance the self-reliance of both camp-based and urban refugees with a focus on crop production, micro-credit and vocational training. It also indicates that education for camp-based students will receive priority in 2011.¹⁴⁸ There is no mention of access to education for refugee children and students who are not living in camps, which is an area for further research.

Apart from the more recent arrival of Zimbabweans, who (as elsewhere in southern Africa) are not regarded as refugees,¹⁴⁹ refugees and asylum-seekers in Mozambique are



generally not from the SADC region. Most come from Burundi, the Democratic Republic of Congo (DRC) and Rwanda, and have passed through refugee camps in Malawi, Tanzania and Zambia before arriving in Mozambique. Like those countries, Mozambique appears to be acting as a transit country for many refugees and migrants en route to South Africa. According to the UNHCR, Mozambique experiences significant movements of people from the Horn of Africa towards South Africa. For example, in the first half of 2010, around 2,200 Somalis arrived on the northern coast of the country by boat and were taken to Maratane camp. By the end of June 2010, only 205 remained.¹⁵⁰

Demographic and Social Development Indicators

TABLE 14

Population:	22,061,451 (2010 est.)
Net migration rate:	0 migrant(s)/ 1000 population
Urbanisation:	37% (2008 est.)
(Under 5) Infant mortality rate:	130/ 1000 live births ¹³⁵
Life expectancy at birth:	48.4 years ¹³⁶
Adult literacy rate:	47.81
HIV prevalence rate:	12.5%
HDI rank (and value):	165 ¹³⁷ (0.284 ¹³⁸)
Gender inequality index, value:	0.718 ¹³⁹

Economic Indicators

TABLE 15

GDP (purchasing power parity):	\$22.19 billion (2010 est.)
GDP (official exchange rate/ OER):	\$10.21 billion (2009 est.)
GDP real growth rate:	8.3% (2010 est.)
GNI per capita (US\$ PPP):	\$854.1 ¹⁴⁰ (UNICEF \$370, 2008) ¹⁴¹
Unemployment rate:	21% (1997) ¹⁴²
Population living below poverty line:	54% (70% in early 2000s) ¹⁴³
Poverty, intensity of deprivation:	60.2% ¹⁴⁴
Gini coefficient:	47.3 (2002 est.)
Public debt:	40.8% of GDP (2010 est.)

Legal framework

Mozambique acceded to the 1951 UN Convention and the 1967 Protocol (in 1983 and 1989 respectively) but registered the following reservations: 13, 15, 17, 19, 22, 26 and 34. Refugee reception and protection is guided by the Refugee Act (21/1991) and Law No 5/93 (1993). Researchers need to scrutinise this legislation, especially its implications for the socio-economic rights of refugees and migrants.

Law No 21/91 establishes the procedure for granting refugee status to a person in Mozambique. This law is a complimentary instrument to the international conventions and protocols concerning refugees that Mozambique has ratified, and allows for the correct implementation of the same international instruments. It establishes the appropriate procedural mechanisms that guide all formalities required for the application and granting of refugee status.

According to Article 5 of Law No 21/91, once the applicant is granted refugee status, the person may in principle enjoy the same rights and duties as a foreigner residing in Mozambique. This means that refugees enjoy the same rights as national citizens. Article 4 of Law No 5/93 of December 28, 1993 determines the legal regime for foreign citizens, together with Article 35 of the constitution (although Mozambique has made some reservations when ratifying the UN

Convention and its Protocol of 1951 relating to refugees). From a theoretical legal perspective, refugees have the right to education, health and social security under the same terms as national citizens.

According to Article 35 of the Constitution of the Republic of Mozambique (CRM), all citizens are equal before the law,¹⁵¹ which means that all persons, domestic or foreign, shall enjoy the same rights and duties, such as the right to health (which is the right of all citizens under Article 89 of the CRM) and the right to education (which is also a right of every citizen and the state must ensure that all citizens have equal access to the fulfilment of this right under Article 88 of the CRM).

Socio-economic rights

The situation differs between camp-based and self-settled refugees and asylum-seekers. In the case of the former, the UNHCR provides most of their basic needs, including education of refugees and their children. In the case of the latter, some self-settled refugees have received agricultural land for settlement.

Education

The constitution guarantees the right to education, but there is no constitutional provision that guarantees it to be mandatory and free (at least at a primary level). Law 6/92 regulates the

operation of the national education system. Under the CRM, the right to education is a right and duty of every citizen (art.88). The same article makes no distinction between Mozambican citizens and non-nationals, and it can be understood that the CRM is referring to citizens in general as people lawfully residing in Mozambique. This is how non-nationals, including refugees and legal immigrants, are entitled to education as a fundamental right.

With regards to access to education for citizens in general in Mozambique, it should be noted that this fundamental right is still a major challenge, given the social and economic difficulties that the country faces. Every year thousands of children of school-going age are left without access to education due to the limited number of places available for new registrations. Some children do not even enrol due to the lack of identity records. Without an identity document it is not possible to register.

Education for refugees

Concerning access to education for refugees, it should be noted that there is a complete primary school at the Maratane refugee camp that is open not only to refugees but to any citizen, although the school is designed to satisfy the right to education of the refugees living in the camp. Asylum-seekers and refugees exercise their right to education according to the national education system and within the framework of the national

“the CRM establishes the fundamental rights of citizens, including social protection or assistance.”

education policy. The Maratane primary school provides education from the first to the seventh grade, and had 2,258 students in 2010. Of these 1,173 were refugees and 1,085 national citizens. 608 of the refugee students were male and 565 female. There is a ratio of one teacher for every 56 students.¹⁵² However, pupil-teacher ratios are a problem not only in Maratane but in schools located in rural areas throughout the country.

Refugee children are not guaranteed access to secondary education because Mozambique has made reservations on the access to public education for refugees (although the country has not applied those reservations). The UNHCR supports about 301 refugee students attending various secondary schools located within the city of Nampula, the largest city near Maratane camp.¹⁵³ The refugees benefit from educational assistance with the exception of those who show that they are self-sufficient, since some refugees and asylum-seekers are engaged in business activities at Maratane.

Social security

According to Mozambican Law, social security, social protection and social assistance is generally treated as indistinct. However, it is understood that social protection is broader and includes both social security and welfare. Thus, under the terms of the Social Protection Law no4/2007, social protection is defined as the system adopted with appropriate means to satisfy social needs, according to the distribution of income within the solidarity framework among the members of society.

The CRM does not outline a general or explicit form of the right to social security. However, it purposely establishes the right to social assistance of certain vulnerable groups (such as the elderly and the disabled) when specifying in article 95 that all citizens are entitled to assistance. In the case of the disabled, the elderly and workers, it states that the employee is entitled to protection and safety in accordance with article 85 of the CRM. It is important to note that the CRM establishes the fundamental rights of citizens, including social protection or assistance, which must be interpreted according to the Universal Declaration of Human Rights and the African Charter of Human and People’s Rights.

The right to security or social protection is mainly regulated in terms of the Law on Social Protection, Law No 4/2007 and in terms of the Compulsory Social Security Regulations, Decree no 53/2007.

However, there is broad legislation that directly or indirectly regulates the issue of social protection in Mozambique, including:

- Decree No. 16/93 approves a subsidy for food for people who are unable to work;
- Decree No. 24/89 approves the regulating of automobile transport for the elderly, and calls for the exemption of payment for any fare on public transport for those aged 70 or over;
- Law on HIV/AIDS and the Worker, Law No. 5/2002 aims to protect the rights of workers and job applicants;
- Labour Law, Law No. 23/2007 defines and establishes the form of protection and social security at work;
- Family Law, Law No. 10/2004, deals with family rights and social protection within the family, and establishes the standard prohibiting discriminatory practices; and,
- Land Law, Law No. 19/1997 establishes the rules for accessing land for vulnerable people in the context of social protection and security.

According to the law, social security constitutes a basic and fundamental right for all citizens, be they nationals or non-nationals, provided they are under Mozambican jurisdiction and have applied for the necessary requirements in order to benefit from the right to social security. Three levels of

social security are set out (basic, mandatory and complementary) according to Article 5 of the Social Security Law.

Basic social security as defined in article 7 of that Law, which includes the provision of risk and the provision of social support, covers only nationals unable to work who lack the means to meet their basic needs. It is not clear why the legislator makes a distinction here between national citizens and non-nationals, seeking only to ensure basic social protection for nationals when the same law calls for universality and equality amongst citizens and the constitution makes no distinction between nationals and non-nationals. Besides the social security system, there are policies and strategies that directly or indirectly guarantee the implementation of social security in Mozambique, such as:

- Social Action Policy;
- Gender Policy and Implementation Strategy;
- National Policy for Disabled Persons and Implementation Strategy;
- Social Action Strategy on Children; and,
- Food Safety and Nutrition Strategy II.

Social security for refugees

In an interview carried out with UNHCR officers and protection assistants in Mozambique (Marla Hamene and Jesus Sanchez), it was reported

that in practical terms it is difficult to talk about the existence of specific cases of social security or protection given to the refugees in the Maratane refugee camp. This was confirmed by INAR's Plisca Neves, who stressed that while considerable help and socio-economic support was being provided to the refugees in Maratane, she was unaware of any examples of social security and protection. She said that the main forms of assistance at Maratane are feeding the needy, primary education, and access to basic health and sanitation for those with no means of self-support.

Although there are laws and policies covering social protection, difficulties with accessing social security confront not only refugees but also the majority of Mozambican citizens. Some investigators note that 'social protection policies in Mozambique have been, up to the present time, more of a marginal contribution to a central theme of a strategy to reduce poverty in Mozambique'.¹⁵⁴ It was also reported by officers from both UNHCR and INAR that the Maratane refugee camp is run in co-ordination with some designated ministerial departments - namely the ministries of Education, Health, Labour, Agriculture, and Women And Social Action).

Upon contacting these ministries to ascertain the implementation status of the right to social security at Maratane, the response given was that this type of information can only be obtained at the provincial government level. Unfortunately,

it was not possible to travel to Nampula to meet with provincial officials.

Health care

The constitution guarantees the right to health care for all citizens, whether national citizens or not (art. 89). Access to health care remains a big challenge for the majority of citizens, especially when it comes to medicines and specialised doctors. Even citizens with financial means often cannot access the appropriate care in hospitals for some of the health problems they may face, and so resort to foreign hospitals or clinics. Increasingly, Mozambicans who can afford it are visiting hospitals and clinics in South Africa.

The health system in Mozambique is composed of the public sector, and both for-profit and non-profit private sector. The public sector is the main provider, but its network only covers about 60 percent of the population. Despite promising progress towards the achievement of the health targets in the Millennium Development Goals, health outcomes are still unsatisfactory. Malaria continues to claim too many lives. HIV prevention activities have been inadequate to curb the epidemic. Dual infections of TB and HIV remain high, and the threat of increasing multi-drug TB resistance has complicated the national TB programme response. The high maternal and child mortality rates reflect the status of women and children, and their ability to access essential health services.¹⁵⁵

“Despite promising progress towards the achievement of the health targets in the Millennium Development Goals, health outcomes are still unsatisfactory.”

Health care for refugees

The Maratane Health Centre includes a maternity section and has a medical technician. It still needs many improvements. The centre is designed for nationals and non-nationals, including the refugees living there. It guarantees access to basic health care for refugee and citizens with no financial capacity. In severe cases, patients are transferred to the Nampula Central Hospital, which has an ambulance for this purpose.

Like many other health centres in the country, the Maratane Health Centre faces a serious shortage of medicine, especially with the large number of arrivals from Ethiopia and Somalia. In the first few months of 2011, there were outbreaks of various diseases, including

chronic diarrhoea, leading to the death of many refugees and asylum-seekers. These illnesses and deaths were mostly caused by malnutrition and related health problems. The Mozambican press, including Radio Mozambique (the National Radio), reported that according to witnesses at least two refugees or asylum-seekers were dying every day at the Maratane Centre. During the months of March and April the authorities responsible for handling refugees (including UNHCR personnel) organised emergency visits to the Maratane Centre to learn more about the problem and to minimise the crisis. One of the officers from the Ministry of Interior addressed the public in order to confirm that many of the sick refugees and those that had died were in a weak physical state when they had arrived in Mozambique.

Recommendations from respondents for advocacy initiatives _____

Address refugee legislation

Ensure adoption and implementation of clear and specific public policies to allow for better access to basic rights for refugees, including education, health and sanitation, adequate nutrition and social security.

Advocacy and awareness of refugee rights

Action strategies need to be implemented for the dissemination of information and awareness of refugee rights, and programmes to fight discrimination against refugees.

Government commitment to protecting refugee rights

The legal, political and institutional structures for the protection of human rights and the fundamental freedoms of refugees need to be clarified and simplified, particularly on the issue of social security and the status of applicants in Mozambique.

10.

NAMIBIA

“Namibia recognises that local integration will be the most appropriate solution for many Angolan refugees.”

Introduction

The Namibian country report is augmented with findings from two key informant interviews conducted with the Refugee Commissioner in the Ministry of Home Affairs and Immigration and Richard Mukonda of the Legal Assistance Centre. In addition interviews with non-nationals were held with ten respondents. Unless otherwise stated, demographic and economic data is from the CIA World Factbook.

Refugees in Namibia

Namibia hosts 8,650 refugees and asylum-seekers, mostly from Angola and the Democratic Republic of Congo (DRC), with more than 7,400 living in the Osire refugee camp, 245 kilometres north of the capital, Windhoek.¹⁶⁵ They do not have freedom of movement.¹⁶⁶ About 500 refugees who have work or study permits live outside the camp.¹⁶⁷ The camp-based policy appears to be about to undergo some reforms with UNHCR stating that the government of Namibia recognises that local integration will be the most appropriate solution for many Angolan refugees who have been in the country since 1992.¹⁶⁸

The UNHCR is providing technical support towards the development of such a strategy, and hopes to see the formal adoption and implementation of a policy framework on local integration soon.¹⁶⁹ There is no indication about the future policy direction regarding refugees from the DRC, which is an area that needs to be investigated further.

Legal framework

Namibia acceded to the 1951 UN Convention in 1995 (but not to the 1967 Protocol), making only one reservation: 26. The legislation guiding refugee reception and management is contained in the Refugee (Recognition and Control) Act of 1999.¹⁷⁰ Namibia is also a signatory to the 1969 OAU convention and the 2005 SADC protocol. Namibia has domesticated certain articles from the conventions and protocols into its immigration acts and legislation (such as the Namibian constitution and the immigration act of 1993). Immigration into Namibia is regulated by the constitution, the Immigration Control Act of 1993 and the Refugee Act of 1999. The legislation covers entry into Namibia for training, employment and education.



Demographic and Social Development Indicators

TABLE 16

Population:	2,128,471 (2010 est.)
Net migration rate:	0.25 migrant(s)/ 1000 population
Urbanisation:	37%
(Under 5) Infant mortality rate:	42/1000 live births ¹⁵⁶
Life expectancy at birth:	62.1 ¹⁵⁷
Adult literacy rate:	85%
HIV prevalence rate:	15.3%
HDI rank (and value):	105 ¹⁵⁸ (0.606 ¹⁵⁹)
Gender inequality index, value:	0.615 ¹⁶⁰

Economic Indicators

TABLE 17

GDP (purchasing power parity):	\$14.64 billion (2010 est.)
GDP (official exchange rate/ OER):	\$11.45 (2009 est.)
GDP real growth rate:	4.1% (2010 est.)
GNI per capita (US\$ PPP):	\$6,323.1 ¹⁶¹
Unemployment rate:	20.3% ¹⁶²
Population living below poverty line:	55.8% (\$2 a day)
Poverty, intensity of deprivation:	47.2% ¹⁶³
Gini coefficient:	74.3 ¹⁶⁴
Public debt:	\$2.373 billion (2010 est.)

Socio-economic rights

Namibia has been lauded for having one of the most innovative social security approaches, structures and models. The country embarked on a comprehensive codification of the social insurance system, including retirement and in-principle health provision. The constitution (articles 20 and 21) guarantees everyone the right to education, including refugees and immigrants, and refers to the state to provide and maintain state schools. Primary education has to be provided for free.

Namibia ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1994, which includes the rights to social security, adequate food, clothing and education for nationals and non-nationals. However, despite Namibia being one of the beacons of hope in terms of access to socio-economic rights, not much has been done in the extension of the rights to non-citizens. Refugees do not have freedom of movement and are confined to the Osire refugee camp, although there is some flexibility and refugees with the requisite documents are allowed to leave the camp to work or study. Approximately 500 refugees with work or study permits live outside the camp.¹⁷¹

Education

The constitution of Namibia makes provision for everyone in Namibia. Article 20 of the constitution refers to education and states that all persons shall have the right to education. This means that nationals, refugees and displaced people all have the right to education. The constitution also sets out that the state shall provide reasonable facilities to render effective this right for every resident within Namibia, by establishing and maintaining state schools at which primary education will be provided free of charge. Everyone residing in Namibia is covered by the constitution, and the right to education extends to immigrants as well. The national report on the development of education in Namibia (2004) stipulated that education is for all, and refugee children in particular benefit from the national education budget through the provision of education to the Osire refugee camp. Both nationals and immigrants are charged the same school fees at primary and secondary levels, but are charged differently at tertiary institutions and at private schools.

Education for refugees

Education facilities from kindergarten to grade 12 are provided in the camp. After the completion of grade 12, students receive study permits and some are awarded with bursaries from the UNHCR or private companies.¹⁷² Children are taught the same curriculum as the children of

nationals. Bursaries for higher education are only available for those with excellent marks.¹⁷³

The children of the three respondents attend school, but it was reported by one respondent that their oldest child (who is no longer of school-going age) is unable to enrol in a tertiary education programme due to the lack of money. The UNHCR pays for schooling of the child of one respondent, but only up to high school level. The standard of education is generally seen as acceptable and equal to the standard received by children of citizens, although materials (such as textbooks) are lacking and the teachers are often absent. One respondent said that the children are in class with Namibian children and are treated equally.

Adults did not have the opportunity to further their education in Namibia, even though most respondents would like to have the opportunity. A lack of money is seen as the biggest obstacle to tertiary education.

Social security

The Social Security Act of 1994 states that every employee in the country should be registered with the Social Security Commission. This means that whoever is employed in Namibia qualifies to benefit from the different schemes (maternity leave benefit, sick leave and the death benefit fund). Immigrants with work permits are covered by this act and are expected to be registered with the Social Security Commission.

Social security for refugees

Most of the respondents are self-employed or do small jobs (e.g. selling groceries and clothes). Access to work for the respondents is difficult since refugees cannot access job advertisements. Some of them stated that they would be allowed to work in Namibia though and that, once they found a job, the treatment in the workplace was equal to the treatment nationals receive. According to the refugee commissioner, access to the labour market and treatment of refugees as employees has to be equal to the access and treatment of citizens, which includes access to social security. But in practice getting a job is more difficult, since people are afraid to employ non-nationals.¹⁷⁴

None of the respondents receive a welfare stipend or cash transfers. They named the UNHCR and the WFP as sources of food and money. One respondent said that they receive beans, maize meal, cooking oil and half a cup of sugar once a month, which does not last for a long time. Other respondents said that they receive also toiletries, blankets and paraffin once in a while. In one case, a refugee stated that she does not receive food support any more, since she does voluntary work and gets paid on an irregular basis.

Health care

The National policy on HIV/AIDS (2007) make special provision for refugees and displaced

people, stating that ‘the right of refugees in Namibia shall be respected, protected and fulfilled and refugees and other displaced persons shall be provided access to affordable prevention, treatment, care and support and impact mitigation services.’ This in principle means that there must not be any discrimination between nationals and non-nationals with regards to access to health care (in this case related to HIV and AIDS). Although the government guarantees health services to all citizens, immigrants in Namibia also have access to health services, although at a higher cost.

Health care for refugees

Access to health care is provided by a clinic in Osire. Access to health care facilities in Namibia is seen by the respondents as easy and the health centre is reasonably well equipped. The respondents reported that they have access to primary health care (e.g. a clinic), reproductive health care, hospitals, HIV and AIDS education and prevention, HIV voluntary testing and counselling, prevention of mother to child HIV transmission, and anti-retroviral treatment. The majority of respondents said that they do not have access to paediatric care for children. Some respondents mentioned that they get only Panado if they are sick and that there is a lack of doctors in the hospital. If medicines are prescribed, they are not directly available to the patient, since they have to come from the town of Otjiwarongo.

Recommendations from Respondents for Advocacy Initiatives

Improve infrastructure within the refugee camp

There is a need to improve the infrastructure within the refugee camp at Osire. Respondents indicated that the living conditions were not satisfactory, since the houses are poor quality and lack electricity. Indications at Osire camp were that refugees are allowed to construct their own dwellings within the camp. Respondents stated that there is a need to consider family size when building materials are distributed within the camp.

Integration of refugees

Respondents indicated that there is a need for the government of Namibia to consider integrating refugees who have stayed for a long time in the country. The situation in the refugees’ home countries is not safe, and people would rather be integrated into Namibian society.

11.

SWAZILAND

“refugees in Swaziland are enjoying some basic rights which are enjoyed by the citizens of the country.”

Introduction

The country report on Swaziland is based on qualitative interviews conducted with an overseer of the refugee reception centre, a police officer in charge of interviewing asylum-seekers on arrival, a lecturer in international law and human rights, and the Commissioner of Refugees. In addition, two focus groups were conducted at Malindza Refugee Reception Centre with a total of 18 participants, and ten administered questionnaires were completed with refugees at the reception centre. Unless otherwise stated, demographic and economic data is from the CIA World Factbook.

more recently, Zimbabwe. Most of these people are deemed to be using Swaziland as a transit country in order to reach South Africa. The UNHCR no longer has a presence in Swaziland, so ‘education, health and other services are provided by UNHCR’s implementing partner, Caritas’ (an international Catholic relief and development organisation). The government model of refugee reception is one of self-settlement and self-reliance, and local integration is encouraged.

Legal Framework

Swaziland acceded to the 1951 UN convention and the 1967 protocol in 2000 and 1969 respectively. The reception and management of refugees and asylum-seekers is guided by the Immigration Act of 1964 and the Refugees Control Order of 1978. The Refugee Control Order of 1978 has been labelled as grossly inadequate and out-of-date, especially its definition of refugee. A Refugee Bill, which is supposed to address the deficiencies of the 1978 order, is currently before parliament. The Refugee Bill aims to provide for

Refugees in Swaziland

Swaziland historically hosted refugees from the liberation movements in South Africa, who were often transiting to Mozambique. Today, it hosts around 1,400 refugees and asylum-seekers, largely from the Great Lakes region and the Horn of Africa (particularly Burundi, the Democratic Republic of Congo (DRC), Rwanda and Somalia) and,



Demographic and Social Development Indicators

TABLE 18

Population:	1,370,424 (July 2011 est.)
Net migration rate:	0 migrant(s)/1000 population
Urbanisation:	25% (2008 est.)
(Under 5) Infant mortality rate:	83/1000 live births ¹⁷⁵
Life expectancy at birth:	46 ¹⁷⁶
Adult literacy rate:	80% ¹⁷⁷
HIV prevalence rate:	26.1% (2007 est.) ¹⁷⁸
HDI rank (and value):	121 ¹⁷⁹ (0.498 ¹⁸⁰)
Gender inequality index, value:	0.668 ¹⁸¹

Economic Indicators

TABLE 19

GDP (purchasing power parity):	\$6.055 billion (2010 est.)
GDP (official exchange rate/ OER):	\$3.165 (2009 est.)
GDP real growth rate:	2% (2010 est.)
GNI per capita (US\$ PPP):	\$5,132.0 ¹⁸²
Unemployment rate:	40% (2006 est.)
Population living below poverty line:	69% (2006 est.)
Poverty, intensity of deprivation:	44.4% ¹⁸³
Gini coefficient:	50.4 (2001 est.)
Public debt:	\$497 million (2010 est.)

the recognition of refugees, their protection, assistance and control. It is further hoped that this new legal regime will usher in an innovative scheme that will be in line with the international instruments, especially the 1969 OAU Convention Governing Specific Aspects of Refugee Problems in Africa. This Bill also aims to repeal the Refugee Control Order No. 5 of 1978, which has outlived its lifespan.

Refugee rights are regulated by the 1951 convention, 1967 protocol, the OAU convention and the Africa (Banjul) Charter on Human and People's Rights (1981).

Socio-economic rights

The constitution of Swaziland stipulates socio-economic rights, especially the right to free education for Swazi children. The government may be impeached in court if Swazis feel that it does not protect and promote socio-economic rights. A lecturer in international law and human rights reported on various human rights abuses of citizens, including the eviction of people from land, banning of political parties, censorship of the press and detaining people without the option of bail. However, the Commissioner of Refugees stated that *'refugees in Swaziland are enjoying some basic rights which are enjoyed by the citizens of the country. The global economic changes have not spared Swaziland... the citizens too are struggling to make ends meet. Social grants are coming late and medical supplies are dwindling*

now. This has affected the services offered to the refugees in the country.'

There are a number of freedoms that refugees in Swaziland enjoy, including free movement (and deciding whether to stay inside the camp or not), freedom from xenophobic attacks, and freedom to pursue any trade or self-employment. Caritas provides day-to-day assistance with the regulation of refugees' status, education, health and livelihood.

Education

Swaziland adopted a ten-year basic education programme as part of the 1997 SADC Protocol on Education and Training, which acknowledges the need for SADC member states to strive to provide universal basic education for at least nine years of schooling.¹⁸⁴

Education for refugees

Refugees have to pay the same fees as Swazi citizens for their children. It was reported that some children dropped out of school because their parents could not afford to pay the fees. Caritas pays half the school fees for children of refugees and the refugees are expected to pay the other half. The respondents said that it is hard to afford the fees and there is no other assistance available. Some of the respondents with children reported that they are being harassed by the principals because of school fees. Children

of refugees who cannot afford to pay fees are excluded from education. Training or university courses are not free for adults and refugees have to pay the same fees as Swazi citizens, but Caritas is supporting some refugees financially. In general, the parents interviewed are happy with the treatment their children receive at school and the standard of education. Refugee children attend the same schools as Swazi children.

Social security

The government supports citizens with some grants, such as quarterly grants for the elderly, school fee payments for orphans and vulnerable school children, and supplies of free food to drought-affected areas of the country. Swaziland has to deal with high rates of unemployment (an estimated 40 percent of the population was unemployed in 2006¹⁸⁵) and poverty (69 percent were living below the poverty line in 2001).¹⁸⁶

Social security for refugees

The community is the centre of employment for most respondents, even though they are employed only part-time. Some stated that they are allowed to work in Swaziland but there is, as one respondent said, 'covert discrimination against refugees'. At the centre, people receive free food for three months after arrival and children get two meals a day. Some NGOs have started food programmes for children at school. Monthly cash allowances were cancelled. On

paper, refugees are allowed to work but the respondents pointed out that it would be almost impossible to find a job unless they have skills that are scarce in Swaziland. Therefore, self-employment is about the only way to earn a livelihood, but these jobs depend to a large extent on external circumstances. Respondents said that grants for the elderly are not given to refugees (as they are to Swazi citizens), and there are few grants and benefits for the unemployed.

Health care

Prior to 1993, health care provision focused on curative measures provided by hospitals in urban areas. Therefore, access was problematic for the rural dwellers, who comprise 85 percent of the population. In 1993, the government launched the Primary Health Care Strategy, which sought better provision and increased accessibility for people in the country's rural areas. Health services have now been decentralised throughout the four regions of the country.

It is estimated that over 66 percent of the population rely on the public health system, with 34 percent relying on private health care.¹⁸⁷ Total health expenditure as a percentage of government expenditure stood at 9.3 percent in 2009, while in 2008 total health expenditure amounted to only 6 percent of GDP.¹⁸⁸

The HIV and AIDS pandemic continues to be a major obstacle to economic and social progress.

“It is estimated that over 66 percent of the population rely on the public health system, with 34 percent relying on private health care.”

With an overall HIV prevalence rate of 25.9 percent (Demographic and Health Survey 2006-2007), Swaziland has the highest HIV and AIDS rate in the world. Women have a higher prevalence than men (31.1 percent and 19.7 percent respectively).

Health care for refugees

Accessing health care is easy and free for refugees. Serious cases can be referred to a clinic, but emergency medical care cannot be accessed according to the majority of the respondents. Occasionally there are not enough drugs and specialist services cannot be accessed. The respondents are in general happy with their access to health care, but they also reported that there are not enough staff in the clinic and that waiting times are long.

Recommendations from respondents for advocacy initiatives

Respondents noted the following recommendations to establish better access to socio-economic rights for refugees.

Funding of refugee education

Access to education (and its quality) is generally seen as good but some parents struggle to finance their children's education, even though Caritas pays half of the school fees. Children's education should be secured, so that they do not drop out of school because their parents cannot afford to pay the fees. The fact that the health services are free is regarded with gratitude.

Implementation of income-generating projects

Respondents indicated the need for income-generating projects as a source of livelihoods. Inside the camp, refugees are provided with food only for the first three months, which is a problem when the refugees do not have access to employment in order to become self-reliant. The majority of the respondents want to be self-reliant and therefore need to have a job. But Swaziland has a very high level of unemployment, and there seems to be a tendency to give citizens preference when hiring.

“Tanzania has been hosting the largest refugee population in Africa for the last five decades.”

Introduction

Four in-depth interviews (key informant interviews) were conducted with the Executive Director of Tanganyika Christian Refugees Services, the Programme Coordinator of the National Organisation for Legal Aid, and the Programme Coordinator of the Women’s Legal Aid Centre. Two further interviews were conducted with community leaders in the Nyarugusu refugee camp, and two focus groups (six men and six women in each) were conducted in the Nyarugusu and Mtabila camps in Kiswahili, for between 45 and 60 minutes each. In addition, thirty-two administered questionnaires were completed with refugee respondents in both of these camps. Unless otherwise stated, demographic and economic data is from the CIA World Factbook.

Refugees in Tanzania

Tanzania has been hosting the largest refugee population in Africa for the last five decades. Most of the refugees hail from the Great Lakes region, most notably Burundi (56,800),

Rwanda (no figure) and the Democratic Republic of Congo (56,100). Tanzania enforces a strict encampment policy, which requires all refugees to live in designated areas. Restrictions on movement are actively enforced, leaving the refugees with ‘few opportunities to supplement their incomes and diets’ and no alternative other than remaining dependent on humanitarian assistance, sometimes for decades.¹⁹⁸

As recently as 2000, camp-based refugee numbers topped 700,000 and the UNHCR was running eleven refugee camps, but due to active repatriation programmes, and resettlement and naturalisation solutions, numbers have fallen to a total figure of 274,626 ‘persons of concern’, and only a few camps remain in the Kigoma region in the northwest of the country. In addition, about 218,000 refugees who fled Burundi in 1972 live in three so-called ‘old settlements’ in the Tabora and Kigoma regions, and about two hundred people from Somalia live in the Chogo settlement camp in the Tanga region¹⁹⁹.



Demographic and Social Development Indicators

TABLE 20

Population:	41,892,895 (2010 est.)
Net migration rate:	0.81 migrant(s)/1000 population
Urbanisation:	25% (2008 est.)
(Under 5) Infant mortality rate:	104/1000 live births ¹⁸⁹
Life expectancy at birth:	56.9 years ¹⁹⁰
Adult literacy rate:	69.4%
Mean years of schooling (adults):	5.1 ¹⁹¹
HIV prevalence rate:	'Nearly 9%' ¹⁹²
HDI rank (and value):	148 ¹⁹³ (0.398 ¹⁹⁴)
Gender inequality index, value:	N/A

Economic Indicators

TABLE 21

GDP (purchasing power parity):	\$62.22 billion (2010 est.)
GDP (official exchange rate/ OER):	\$22.43 (2009 est.)
GDP real growth rate:	6.4% (2010)
GNI per capita (US\$ PPP):	\$1,344.3 (2008 est.) ¹⁹⁵
Unemployment rate:	N/A
Population living below poverty line (US\$1.25):	88.52% ¹⁹⁶
Poverty, intensity of deprivation:	56.3% ¹⁹⁷
Gini coefficient:	34.6 (2000 est.)
Public debt:	23.3% of GDP (2010 est.)
External debt:	\$7.576 billion (2010 est.)

66

“The right to education is not included in the Bill of Rights, and hence the country’s obligation to provide for education depends on its ability to provide at the time.”

In April 2010, the government of Tanzania took the unprecedented decision to naturalise 162,200 of the Burundian refugees from the ‘old settlements’. The UNHCR will continue to assist the government with the completion of the local integration of this group²⁰⁰. Another group of Burundian refugees (from the 1972 group), who settled in villages in the Kigoma region, will also be offered ‘opportunities for durable solutions, including naturalisation’.²⁰¹

The registration of this group of 22,000 is underway and individual preferences for repatriation to Burundi or naturalisation in Tanzania are being recorded. ‘Other refugees’ (mainly ethnic Hutus who arrived from Burundi in the mid-1990s) and Congolese (mainly ethnic Wabembe from South Kivu) now live in the last two remaining camps in northwestern Tanzania – Mtabila and Nyarugusu refugee camps.²⁰²

After so many decades of caring for hundreds of thousands of refugees, the UNHCR states very clearly that its emphasis in Tanzania is now on searching for long-lasting solutions for the remaining refugees, which is why it – together with the government – has been exploring various options, including regional peace-making in Burundi and the DRC, repatriation, resettlement and naturalisation. There certainly appears to be a sub-text of ‘refugee fatigue’ in the UNHCR country profile, which states that ‘it is the government’s wish that voluntary repatriation and other solutions bring an end to the refugee situation in the country’.²⁰³

Like many other countries in the region, Tanzania also experiences ‘large-scale unlawful entry of irregular migrants’, some in search of economic opportunities, others leaving their countries for political and security reasons.²⁰⁴ It appears that the country is not very tolerant with regard to this category of migrants. By early 2008, 550 people had been convicted of unlawful entry into the country and some 1,300 illegal immigrants (mainly from the Horn of Africa) were detained pending deportation back to their home countries. Most of those intercepted by the authorities appear to have been in transit to southern Africa.

Legal framework

Tanzania acceded to the 1951 UN convention and the 1967 protocol in 1964 and 1968 respectively, with only one reservation (4). The huge refugee protection programme is guided by the Refugee Act of 1998 and administered in partnership with the UNHCR and the Ministry of Home Affairs (the Refugee Affairs and Immigration Department). The UNHCR also works with the Prime Minister’s Office, specifically its Regional Administration and Local Government section, on the local integration programme.²⁰⁵

Under the 1951 convention, member states have an obligation to apply the provisions of the convention to refugees without discrimination on the basis of race, colour or country of origin.²⁰⁶ The receiving states are expected to treat refugees at least as favourably as their

own nationals. The convention goes further to state that this obligation extends even to times of emergency.

Socio-economic rights

The constitution has not incorporated all the rights contained in the Bill of Rights. Despite its recognition in many international human rights instruments, the right to health is not recognised and guaranteed under the constitution. The right to education is not included in the Bill of Rights, and hence the country's obligation to provide for education depends on its ability to provide at the time.

Certain rights have been incorporated in Articles 12 to 29 in the constitution. These articles contain the following guarantees: equality of human beings (Article 12), equality before the law (Article 13), the right to life (Article 14), the right to personal freedom (Article 15), the right to privacy and personal security (Article 16), and the right to freedom of movement (Article 17).

Education

Nationally, the state has tried to improve the education system through the abolition of enrolment fees and the expansion of schools. The national education budget is about 18.3 percent of the total annual budget.²⁰⁷ In 2008, the net primary school enrolment rate was 97.1 percent,²⁰⁸ although in the same year only 62.5 percent of children completed primary education. In 2009, only 28 per-

cent of students who completed primary school enrolled for secondary education. In 2008/9, the rate of enrolment in higher education institutions was only 30 percent – and only one third of the students were female.²⁰⁹

Education for refugees

Despite the guarantee of equality between nationals and non-nationals under the constitution, and the guarantee of the right to education under Section 31 of the 1998 Refugee Act, according to eleven respondents the schools at Mtabila camp have been closed since about 2007 (apparently for 'political reasons'). It is 'a method used by the government to force refugees to move back to their own country'. Before this, education was provided at both primary and secondary levels, and it was provided free to refugees.

There was no report of discrimination against children due to their refugee status. Distinct training courses were provided for the refugees prior to the closure of the facilities, which appears to have happened at the same time as the closing of the schools. Training included courses in cooking, baking, batik making, business studies, training around HIV, peace and conflict resolution, and a secretarial course. One respondent said that the college in the camp was sub-standard. Some of the training was funded by organisations (including World Vision and the UNHCR).

Further bursaries for study were provided by the AHADI Institute in Kigoma (run by the Brothers of Charity). However, finding work was a problem as refugees were in reality restricted to working within the camps. According to the respondents, although people could apply for permits to work outside of the camp, these were very difficult to obtain and labour rights were experienced quite differently by nationals and refugees. Workers did not generally enjoy access to social security as a result of their inability to work, but medical treatment was provided in the camps.

According to the respondents, 12 undertook voluntary work in the camp for which they received a small 'incentive' (although one volunteer working on gender-based violence received no incentive). Six undertook small-scale farming and related business activities, three reported that they depended on donations, one depended on relatives and one made food (chapatis) from time to time. One respondent who reported depending on donations also stated that they sometimes escaped to the local community (to dig), but said that this was highly risky.

Social security

Social security is not a constitutionally guaranteed right, although article 22 of the constitution does protect the right to work and to remuneration. In 2003, the state adopted the National Social Security Policy (2003), which provides for three categories of social security: social assistance for

vulnerable groups (including the sick, the disabled and older people); provision for compulsory contributions to social insurance funds for employed workers; and, provision for private, voluntary, contributory schemes.

Social security for refugees

Given the restrictions on work, work-related social security remains relatively inaccessible to refugees. Cash transfers were also not received by refugees. The majority of respondents said that they received food, or food and clothes. Two respondents noted that clothes were donated to women only. Three respondents said that they received toiletries as well and one mentioned receiving blankets. The main donors of food appeared to be the World Food Programme through NGOs and the UNHCR. Despite the regular receipt of food, a frequent recommendation for improvement in the conditions in which they lived included a request for more food and for a more varied diet, or to allow people to produce their own food in the camps.

Health care

Although this is not a constitutional right, Tanzania has set targets for providing health services to its people, including the Millennium Development Goals (MDGs). The state faces certain challenges in realising these goals due to the state of the health care system. These

include the inaccessibility of health care services, and the inadequacy of facilities and resources to meet demand.²¹⁰ According to the MDG Report 2000 to 2008, there was a shortage of about 65 percent of the required skilled personnel in the health sector.²¹¹ Health care received 11 percent of the total national budget in 2009/10²¹², which is below the 15 percent benchmark contained in the 2001 Abuja Declaration on HIV/AIDS, Tuberculosis and Other Related Diseases.

Health care for refugees

There was a general consensus that health care was available at hospitals for free in the camps. However, 21 of the respondents commented on the poor standard of the health care. One respondent said that great changes have been implemented to improve the services. Some complained about the inadequacy of the supply of health care, and eight respondents mentioned the lack of drugs. One respondent claimed that the doctors sold the drugs, and another respondent claimed that as a result of the poor quality of health care, 'people are dying because they turn to traditional healers who are not very effective'. Another respondent claimed that people were dying because of the poor service and lack of drugs. All 32 respondents said that the health care service should improve through the expansion of access, better delivery of services, and an increase in the availability of drugs. A better referral system to large hospitals for critical cases was also recommended.

Recommendations from respondents for advocacy initiatives

Respondents specifically noted the following as recommendations to improve their lives.

Re-opening of facilities at Mtabila refugee camp

Following the official decommissioning of Mtabila camp, basic services ceased. There is a need to reopen the schools at the camp. Mtabila camp still has a growing number of refugees due the fact that the Nyarugusu camp is not capable of accommodating all refugees. The government of Tanzania must reopen the schools and places of worship within the camp, as well as allow the refugees to engage in income-generating projects. There is also a strongly stated desire that refugees be allowed to work outside the camps.

Improvements to the health system

There was universal agreement that while access to health care exists in principle, it is not adequate in terms of either service standards or access to medicine or health staff.

Halting forced repatriations

Respondents stated the government should not force refugees to repatriate to Burundi as 'it is not yet safe'. Respondents indicated that repatriation to Burundi is something that people accept will happen in the future, but they do not wish to return until the country is more stable.

“forced migrants have a minimal level of access to their socio-economic rights in Zambia.”

Introduction

The desktop data was augmented with five in-depth interviews with key informants at the UNHCR, IOM, University of Zambia, and Action Africa Help International (AAHI) to obtain a general insight into the situation pertaining to refugees and migrants in Zambia and the key challenges they face. Seventeen interviews were conducted with refugees and asylum-seekers in Lusaka to verify the extent of access to socio-economic rights and to understand some of their general concerns. Two focus group discussions were held at refugee transit areas in Lusaka – at Makeni Refugee Transit Camp (with 26 refugees from the Democratic Republic of Congo (DRC), Rwanda, Burundi and Somali) and at Chawama Refugee Outreach Centre (with 16 refugees from the DRC, Rwanda and Burundi). Unless otherwise stated, demographic and economic data is from the CIA World Factbook.

There were three major challenges in this study. The first was that the researchers were denied access to the major refugee

settlement situated in north-western Zambia (Maheba) and denied an interview with the Commissioner for Refugees housed at the Ministry of Home Affairs in Lusaka. The second challenge faced was the limited time within which to complete this study, and the third challenge was the nature of migration flows in Zambia, mainly where there have been resettlements, making the exact statistics on refugees and asylum-seekers difficult to determine. Despite these challenges, most of the necessary information was gathered to meet the objectives of the study.

Refugees in Zambia

According to the UNHCR, Zambia started hosting refugees fleeing wars in neighbouring countries just two years after its independence in 1964.²²⁴ The UNHCR has maintained operations in the country ever since, ‘expanding and contracting as the situation demanded’.²²⁵



At its peak in 2001, Zambia hosted over 280,000 refugees, mainly from Angola and the DRC, but also from Rwanda, Burundi and Uganda.²²⁶ As a result of improved political stability and security in most of these refugee-generating countries, the UNHCR has helped tens of thousands of refugees to return to their countries via its voluntary repatriation programme, bringing the number of refugees and asylum-seekers in Zambia down to 55,800 refugees and 115 asylum-seekers, mostly from Angola (21,300), the DRC (14,100) and Rwanda (5,000) in 2010. There is also a category entitled

Demographic and Social Development Indicators

TABLE 22

Population:	13,460,305 (2010 est.)
Net migration rate:	-0.62migrant(s)/1000 population
Urbanisation:	35% (2008 est.)
(Under 5) Infant mortality rate:	148/1000 live births ²¹³
Life expectancy at birth:	47.3 ²¹⁴
Adult literacy rate:	80.6% (2003 est.)
HIV prevalence rate:	16% ⁺²¹⁵
HDI rank (and value):	150 ²¹⁶ (0.395 ²¹⁷)
Gender inequality index, value:	0.752 ²¹⁸
Mean years of schooling (adults):	6.5 years ²¹⁹

Economic Indicators

TABLE 23

GDP (purchasing power parity):	\$20.03 billion (2010 est.)
GDP (official exchange rate/ OER):	\$15.69 billion (2009 est.)
GDP real growth rate:	7% (2010 est.)
GNI per capita (US\$ PPP):	\$1,358.5 ²²⁰
Unemployment rate:	50% (2000 est.)
Population living below poverty line (US\$1 per day):	64% ²²¹
Poverty, intensity of deprivation:	51.1 ²²²
Gini coefficient:	53.0 (2003) ²²³
Public debt:	24.1% of GDP (2010 est.)
External debt:	\$3.495 billion (2010 est.)

'various', including 4,100 refugees and asylum-seekers from various countries.²²⁷

According to the UNHCR Global Appeal 2011, '(t)he vast majority of refugees in Zambia have been granted status on a prima facie basis, while some have been recognised after individual refugee status determination (RSD) conducted by the National Eligibility Committee (NEC)'.²²⁸ Currently, only two settlement areas remain hosting large numbers of refugees – Maheba and Mayukwayukwa.

Legal framework

Legal and policy frameworks relating to refugees and asylum-seekers include the 1970 Refugee (Control) Act and the Immigration and Deportation Act of 2010. The aim of the 1970 Refugee (Control) Act is to 'make provisions for the control of refugees'. The Act is geared towards controlling refugees rather than protecting them and promoting their rights. Refugees in Zambia's legal framework are defined as 'persons who are, or prior to their entry into Zambia were, ordinarily resident outside Zambia and who have sought asylum in Zambia owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion'.

The Refugee (Control) Act of 1970 is currently undergoing review, and there is a proposed Refugee Bill of 2008 that has not yet been tabled in parliament nor made widely available. The

aim of the 2008 Bill is to replace the 1970 Act, enhancing it and domesticating the 1951 Refugee Convention and the 1969 OAU Convention. The Bill also contains provisions for refugee status determination that are not contained in the current Act. The Bill does not explicitly set out the rights that refugees are entitled to.

Generally speaking, the 2008 Bill is an improvement on the 1970 Act, but more could be done (such as explicitly tabulating the rights of refugees, and pointing out some of the durable solutions to refugee problems, especially for those who have stayed in Zambia for a long time or those from countries where conflicts are ongoing). The Immigration and Deportation Act of 2010 is quite progressive in that it provides for the issuance of temporary permits to asylum-seekers who have not been given the status of refugee.

Socio-economic rights

There are policies and strategies that exist in Zambia for the provision of health care, education and social security for citizens, and these policies and strategies are aligned to national development plans (the current plan being the Sixth National Development Plan 2011-2015). Despite provisions relating to rights to health, education and social security, these are not fully institutionalised and protected constitutionally (as could be done by including such rights in the Bill of Rights, and making them justiciable and legally enforceable). A person lacking access to these rights cannot

legally claim such a right, even when a provision (like the one on free education) exists.

Despite the lack of any explicit mention in Zambia's legal and institutional frameworks of the rights to health, education and social security, refugees residing in camps have access to these services mainly through assistance from organisations such as the UNHCR and, until very recently, the Red Cross. The major problem in terms of access to these services occurs for those residing outside the camps and those without refugee status or permits as asylum-seekers.

The general livelihood of refugees and asylum-seekers varies based on whether they are living in the settlements, in a transit camp or are integrated into local communities. Based on the reservation to the 1951 Refugee Convention's Article 26 (on freedom of movement of refugees), Zambia has an encampment policy whereby refugees are obliged to reside in designated settlements, which become their permanent places of residence. At the moment, there are two designated settlements in Zambia: Maheba in North-Western Province (about an hour's drive from Solwezi) and Mayukwayukwa settlement in Western Province (about two hours from Mongu).

The field research revealed that, in general, forced migrants have a minimal level of access to their socio-economic rights in Zambia. Rights such as freedom of movement and the right to work were luxuries for most of these people.

Levels of access to socio-economic rights varied depending on whether the person was a legally recognised asylum-seeker or refugee – those who are legally recognised generally have better access to socio-economic rights than those who are not. Forced migrants in the settlements had access to the education, health care and social protection provided there, but it was a different story for those integrated into local communities. The research also discovered that most forced migrants did not understand their rights under international or Zambian law.

Education

The right to education is not a constitutionally justiciable right, but there is provision for free primary education. Bursaries are available for children unable to access secondary and tertiary education. The right to social security is contained as a non-justiciable directive in the constitution. Social security measures include cash transfers in select areas of Zambia (currently still in pilot stages) and some welfare initiatives for vulnerable groups.

As a signatory to the 1951 Refugee Convention, Zambia has a reservation to Article 22 of the convention on education. Education facilities in the settlement are provided by the government and the UNHCR. Unfortunately, only basic education is available. The UNHCR does not have funds for secondary education and most refugees (especially those in the settlements) do not benefit from secondary education. The UNHCR

usually commits itself to offering educational support (to cover things like uniforms, books and so on) to refugees living in local communities with valid urban residence. For those living outside the settlements and without legal authorisation, there is no educational support, which means that many of these children do not attend school.

Most of the refugees struggled to enrol in government schools, which de facto limited their access to free, state primary education. As a consequence of this, refugees in urban areas usually take their children to community or private schools whose fees are barely affordable. Refugees with valid urban permits receive K50,000 per term per child from the UNHCR, but it was found that the average primary school fees were K250,000 per term per child so the support had little effect. The UNHCR admits only a limited number of children to the education support programme.

Respondents stated that, in general, when the children are in school (whether government, community or private schools) they received an acceptable standard of education equal to that received by Zambian children. One respondent said that her children were not attending school 'because this is a transit centre, there is no school. Back in Maheba, the schools are not conducive and I did not want to take them to school.'

The research found that adult refugees aspiring to study at tertiary institutions had no difficulties in getting admitted to colleges and universities, but

were faced with the challenge of finding funds for tuition fees. Asylum-seekers temporarily settled in transit camps have no access to education, as it is argued that they are about to be resettled. They can only access education after they are granted refugee status and resettled to either the settlements or urban areas. 'We just sleep around in this transit centre while our friends out there attend school,' said a 17-year-old Congolese girl who had lived in a transit camp for eight months at the time of the research. 'There are no opportunities for us to go to school as they are telling us that we should wait for status.'

Social security

Following its subscription to the 1951 Refugee Convention, Zambia has a commitment to provide social security to refugees and asylum-seekers, despite the fact that Zambia has reservations to Article 17 that deals with refugees' right to work. However, the research found that to a large extent, forced migrants did not benefit from social security in Zambia.

According to respondents, apart from having the right qualification, a refugee is required to be in possession of a valid work permit for them to work. The challenge for refugees who hold professional qualifications was obtaining the work permit, because the refugee had to provide proof from the employing company that there was no Zambian national who can do the job in question. One respondent said that he had been employed for only four of his fourteen years in Zambia. Most

qualified refugees do not have work permits so they have no access to jobs in Zambia.

The only sector that was found to readily offer refugees jobs was the health sector. These refugees were employed on a contract basis, without access to pensions or gratuity, making it impossible for them to secure a future. One of the respondents indicated that foreigners always experience discrimination in the workplace. Another said, "They ill-treat us and call us names." Respondents survived through a number of informal activities that included piece work, selling clothes and vegetables at the market, plaiting hair, helping relatives with their businesses and selling shoelaces.

According to respondents, the Zambian government does not provide any stipend or welfare payments to refugees and asylum-seekers. When a refugee is resettled in one of the settlements, they are given a plot of land, agro- inputs and tools (usually sponsored by the UNHCR and other stakeholders) to start agricultural activities within the settlement.²²⁹ For the first two years or so, newly resettled refugees are provided with food by the FAO and WFP. They are expected to be self-reliant by the end of this period. In the urban areas there is a category for vulnerable families who are unable to provide for themselves. The UNHCR – in collaboration with AAHI – provides such families with supplementary allowances for a period of at least three months, after which the case is reviewed and (depending on the assessment) the allowance is either given for another

three months or cancelled in the event that the family is deemed self-reliant.

When asked about cash transfers from non-state sources, five respondents mentioned that the UNHCR provides assistance towards school fees and one mentioned receiving 'some money from AAHI'. The UNHCR apparently also provides food, washing paste and baby clothes, and an urban refugee community project in Chawama provided one respondent with clothing, blankets and mosquito nets.

Health care

Due to the country's poor macroeconomic performance, health services remain under-funded. The World Health Organisation Commission on Macro-economics has estimated that a country such as Zambia needs a per capita expenditure on health of US\$33 in order to deliver the Basic Health Care Package. In 2000, the total per capita expenditure on health from government and cooperating partners was estimated at US\$10.8 and was projected to increase to US\$12.0 by 2005. However, the actual per capita expenditure during the period 2001 to 2004 only averaged US\$10.5.

The government has made a commitment to progressively increase annual funding for the health sector from the current 11.5 percent of the budget to 15 percent, but this was reduced to 10.8 percent in 2009.²³⁰ There is no justiciable right to health in the constitution, but there are policies that

provide for free health care for under-five children, pregnant women, and the elderly in public health care institutions, and for free basic health care in mainly rural public health institutions.

Health care for refugees

According to the interview with the Senior Protection Officer of the UNHCR, within the settlements there are health clinics funded by the government and the UNHCR, and these have what they call 'drop -in' centres whose primary purpose is to provide counselling services to victims of sexual and gender-based violence and other types of social counselling. The drop-in centres are managed by staff from the Ministry of Development and Social Services. Health personnel reside in the settlements, but terminal cases and those requiring advanced medical attention are referred to the nearest hospitals or to the University Teaching Hospital (UTH) in the capital, Lusaka.

Refugees integrated into local communities access the same type of health facilities and services as Zambians do, and are expected to pay the same medical charges as anyone else. Those with valid cards can go to any refugee transit camp's health centre and get free medical attention and drugs, and those needing further attention are then referred to UTH or other hospitals. However, it was found that transit centre health facilities are highly understaffed, with only one nurse and one doctor to attend to cases, and there were usually no drugs available.

There was a difference of opinion among the refugee respondents about their access to health care in Zambia on a number of fronts. Some said that the health care they received was the same as the care that Zambians received, while others said that they were definitely charged higher prices than Zambians ('they do not equally treat refugees, foreigners have their own price'). Some said that the quality was good (and better than their own countries) if you could afford to pay for it. The overriding sense from the respondents was that they received an inferior service at a higher cost, than their Zambian neighbours.

It was reported that there is a general shortage of medicines and drugs in the refugee centre clinics, but the same applies to government clinics in the nearby surrounding areas. "There are no drugs in the clinics, they just give us prescriptions to go and buy the drugs, but we do not have money and no one gives us money so we do not know where they expect us to get the money to buy the drugs," said one of the respondents in a compound in Lusaka. It was also found that once health personnel discovered that patients were foreigners (or much worse forced migrants), then they did not treat them with equal care and attention. In the transit centre, there are no under-five clinic services, so mothers have to find an under-five clinic in the nearby communities (where they risk being ill-treated).

Challenges

The research concluded that there were no political obstacles to the work of concerned stakeholders. All those interviewed stated that the Zambian government was very generous and open towards refugees. However, the UNHCR was concerned by the Zambian government's apparent lack of response to its recommendation that the government consider local integration as a durable solution for refugees, in particular the Angolan refugees who have lived in Zambia for more than 40 years.

Recommendations from respondents for advocacy initiatives

Timeous documentation of refugees

The waiting period before an asylum-seeker is granted refugee status is too long, and getting the status is uncertain. Some asylum-seekers stay in the transit centres for as long as 9 months without any certainty of getting refugee status. "We have lived in the transit camp for six months now and COR recently refused to grant me and my brother status. We lost both our parents in the war back in my country, where do they expect me and my brother to go now?" asked a 15-year-old Burundian boy living in a transit centre in Lusaka.

Reforms to the current Refugee Control Act of 1979

There is a need to speed up reforms to the current Refugee Control Act of 1979. The act needs to reconsider issues to do with repatriation and naturalisation of refugees. Most of the forced migrant participants were displeased with the repatriation process in Zambia, which was mainly involuntary, especially to Rwanda and other East African countries. "I have lived here for about 14 years, my two children grew up here, and now the government says that there are no more refugees from Rwanda so I have to be taken back there. But how will I and my children live there because as far as we are concerned Zambia is our home now," said a refugee woman living in one of the urban communities of Lusaka. Naturalisation of refugees is another area the government needs to commit to.

14.

ZIMBABWE

“Some registered refugees later decided to leave the camp and settle themselves in urban areas illegally.”

Introduction

This study is drawn from five key informant interviews and two interviews with refugees. The study was hampered by the refusal by the Ministry of Public Service and Social Welfare to allow the researchers access to the refugees at the one remaining camp (Tongogara in Chipinge), and the ministry also refused the researchers permission to interview the Commissioner of Refugees. The key informant interviews were held in March 2011 with the Associate Resettlement Officer, the Protection Officer and the Assistant Programme Officer of the UNHCR country office, the Programme Officer of Caritas, Mrs Mutukwa of the Jesuit Refugee Services and the Director of Christian Care, and the Tracing Officer of the International Red Cross. The interviewees were not comfortable having the interviews taped and so direct transcription took place. Unless otherwise stated, demographic and economic data is from the CIA World Factbook.

Refugees in Zimbabwe

Table 24 shows the rate of flow of refugees and asylum-seekers into Zimbabwe. The majority of refugees and asylum-seekers originate from the Great Lakes region (Democratic Republic of Congo (DRC), Rwanda and Burundi).

As of 15 November 2010, there were 4,746 refugees and asylum-seekers registered in Zimbabwe, 74 percent of whom reside in Tongogara refugee camp. The vast majority are Congolese from the DRC (69 percent), followed by Rwandans (15 percent) and Burundians (13 percent). According to the UNHCR Associate Resettlement Officer, the figure had risen to around 5,200 by February 2011.

An average of one hundred refugees enter Zimbabwe every month. Those who enter legally are immediately referred to the reception facility at Tongogara. However, most asylum-seekers

TABLE 24



NATIONALITY	REFUGEES	ASYLUM-SEEKERS	TOTAL
DRC	2947	346	3293
RWANDANS	655	63	718
BURUNDIANS	545	49	594
OTHERS*	120	21	141
TOTAL	4267	479	4746

Source: 2010 proGes Statistics Report after verification exercise

*According to the UNHCR staff interviewed, this category comprises refugees from countries that include Somalia, Ethiopia, Eritrea, Uganda, Angola, Sudan and Liberia.

enter the country illegally. Information on illegal asylum-seekers could not be obtained since the ministry responsible refused to be interviewed. Some registered refugees later decide to leave the camp and settle themselves in urban areas illegally. Of the more than 3,000 refugees in the camp, 70 percent are men, 20 percent are women, and 10 percent are children.

Legal framework

The government of Zimbabwe is a signatory to the 1951 Refugee Convention and the 1967 Protocol, as well as the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. In 1983, the government introduced national refugee legislation (the Refugee Act) that stipulates the reception and status determination procedures for newly arriving asylum-seekers. In line with the Refugee Act, the government established the Office of the Commissioner for Refugees within the Department of Social Welfare (under the Ministry of Labour and Social Welfare). The national eligibility body known as Zimbabwe Refugee Committee was established by the

Population:	11,651,858 (2010 est.)
Net migration rate:	12.87 migrant(s)/ 1000 population
Urbanisation:	37% (2008 est.)
(Under 5) Infant mortality rate:	96/1000 ²³¹
Life expectancy at birth:	47 ²³² (UNICEF: 33)
Adult literacy rate:	90.7%
HIV prevalence rate:	15.3% (2007) ²³³
HDI rank (and value):	169 ²³⁴ (0.140 ²³⁵)
Gender inequality index, value:	0.400 ²³⁶
Mean years of schooling (adults):	7.2 years ²³⁷

GDP (purchasing power parity):	\$4.395 billion (2010 est.)
GDP (official exchange rate/ OER):	\$5.74 billion*
GDP real growth rate:	4.1% (2010) (-14.4% in 2008)
GNI per capita (US\$ PPP):	\$172.6 ²³⁸
Unemployment rate:	85-95% (sources vary)
Population living below poverty line:	68%
Poverty, intensity of deprivation:	45.2 ²³⁹
Gini coefficient:	50.1 (2006 est.)
Public debt:	241.61% of GDP (2010 est.)
External debt:	\$5.772 billion (2010 est.)

*In 2009, the Zimbabwe dollar was taken out of circulation, making Zimbabwe's GDP at the official exchange rate a highly inaccurate statistic.²⁴⁰

same legislation. According to a Caritas official interviewed, the Zimbabwe refugee legislative framework is more favourable than that of countries such as South Africa, so some refugees seek refugee status in Zimbabwe and then cross over to work in South Africa.

Key actors:²⁴¹

Government of Zimbabwe

The government is the administrator of the Tongogara refugee camp. The government is responsible for the registration of all refugees. Technically, the government should provide all services to refugees and provide for all infrastructure needs, but due to funding constraints the UNHCR plays a major role in terms of resource mobilisation on behalf of the state.

UNHCR

The UNHCR established offices in Zimbabwe over 20 years ago, working with the government and other partners (such as IOM, UNICEF and Save the Children) in delivering protection and assistance to refugees and asylum-seekers. The UNHCR, with the assistance of the Office of the Commissioner for Refugees, promotes the identification of durable solutions for refugees, in particular voluntary repatriation and resettlement. The UNHCR recognises that primary responsibility for the welfare of refugees lies with the state, but understands that the state currently lacks the

financial resources to satisfy this obligation, and accordingly views itself as having a necessary role in raising resources for the implementing bodies to provide for the needs of refugees.

In 2008, the UNHCR assumed a stronger involvement in the Protection Sector Working Group ((PSWG) and co-led the group together with IOM, Save the Children Alliance and UNICEF. In June 2009, the PSWG turned into a fully-fledged Protection Cluster (the PC) with the UNHCR taking the lead. The establishment of the PC enhanced the coordination with civil society partners and government. The UNHCR is responsible for the provision of services, with Christian Care as the implementing organisation. They are responsible for interviewing refugees for voluntary repatriation, local integration or relocation.

Caritas

Caritas works mostly with the Internally Displaced Persons Programme.

Jesuit Refugee Services

The JRS is active at the Tongogara refugee camp and provides skills development programmes (e.g. language classes, sewing, computer classes, bakery, goat rearing, poultry and basketry). The organisation runs a library at the camp and also offers peace-building workshops (a maximum of four workshops annually). These are attended by representatives from the committees that the refugees

have set up in the camp. The JRS further provides start-up capital for small business development

Christian Care

Christian Care is the implementing organisation for UNHCR programmes in the Tongogara camp. They provide skills training, water and sanitation services, education, health and livelihoods (such as gardening), and offer services linked to water (including the provision of boreholes) and sanitation.

International Committee of the Red Cross

In Zimbabwe, the ICRC provides refugees at the Tongogara refugee camp with meals, and assists people to trace their families and then restore and maintain contact through the Red Cross Messages.

Socio-economic rights

According to the refugee respondents, while citizens are entitled to access health care, pensions, social security and food parcels, water and basic services, and education, in practice (with the exception of education) citizens experience difficulty in accessing these services. Assistance is delivered to refugees and asylum-seekers in Tongogara camp, which is the government's officially designated residence for refugees and asylum-seekers in line with the government encampment policy. No material assistance (except for medical) is given to those who stay in

urban areas, save for a few protection and medical cases that have been authorised in Harare.

Education

All camp children have access to Tongogara primary and secondary schools, which are barely a kilometre from the camp. The camp has a crèche that offers zero-grade as per new Ministry of Education regulations. Primary to secondary education is offered and nationals have access to the same facilities. The ratio of refugees to nationals at the school is 80:20. School fees, uniforms and stationery are all paid for by social services through funding from the UNHCR or grants from the JRS.

There has been no record of prejudice towards refugee children in the schools, and they have a harmonious relationship with local Zimbabweans and their children. However, language does provide a challenge. Most education is offered in Shona and English, although Kiswahili is also offered. Boarding school options are only offered to those children whose parents are either too old, or too unwell to take care of them. Adult education is usually under community service programmes organised by the refugees themselves. The initiative is there but the system is rather moribund.

When children reach university-going age, the UNHCR²⁴² usually takes over from social services and pays for their college tuition and

other expenses, although one of the two refugee respondents noted that previously tertiary education was provided free of charge and now people are expected to pay for it. Currently, Africa University has six camp students. Upon graduation, most of these seek relocation to countries such as the US, Canada, Australia and South Africa, where employment opportunities are fair. Vocational and technical skills training are also available in the camp, led by Christian Care staff and the Jesuit Refugee Services. Such training is usually in agriculture and income-generating projects (such as butchery, tailoring and basket making). However, due to the lack of sponsorship, some students fail to further their studies.

Challenges

A number of challenges were highlighted in the education sector for the refugees. The distance of the primary school from the camp was highlighted as a major hindrance, since small children find it too far to walk. The UNHCR used to send the refugees to boarding school for secondary education, and the introduction of the day secondary school was met with some resistance by parents who felt that this might represent inferior education to that of the boarding schools. One major challenge is that young refugees who complete secondary education cannot automatically proceed to tertiary level due to a lack of funding. They end up leading very unproductive lives in the camp since the law does not allow them to seek employment.

According to the official interviewed at the Jesuit Refugee Services, the situation of refugee employment is ambiguous. Theoretically, refugees can work, but practically it is almost impossible. The government requires that any refugee seeking to work should first get a work permit. In order to get the work permit, they have to submit a letter from the prospective employer, demonstrating that they have exhausted all possibilities of engaging a Zimbabwean for that position.

Social security

According to UNHCR officials, food requirements account on average for around US\$600,000 of the annual budget of US\$1.5million. However, in 2010, the refugee programme budget allocation was reduced from US\$1.5million to US\$1,387,927. The UNHCR provides monthly food rations to individuals consisting of the following items: 10kg maize meal, 2kg rice, 750ml cooking oil, 1kg sugar, 125g salt, 2kg corn soya and 2kg beans. Food distribution is done monthly. The rations are given per individual.

Refugees also receive non-food items, including blankets, sleeping mats, kitchen sets, water containers, mosquito nets, baby sets, soap and sanitary ware for women and girls, clean and safe water, sanitary facilities, health, shelter, education, and support for agriculture and income-generating activities. According to both the UNHCR and Christian Care, special assistance is given to women, children, orphans,

unaccompanied and separated children, the chronically ill, sick and elderly. Those refugees who are able to obtain working permits generally contribute to pension schemes and medical aid if their income enables them to do so.

Challenges

Challenges that were observed with the food basket are that it has dietary restrictions and was viewed as being monotonous by some of the refugees. As a way of expanding their choices, some refugees sell or trade some of the food and non-food items in order to buy items of choice (e.g. beef, cigarettes etc.). The Caritas Programme Coordinator confirmed that on food distribution days, villagers are seen milling around waiting to buy food and non-food items from the refugees.

Tongogara refugee camp is in Zimbabwe's geographic Region 5, which is naturally dry and has very poor yields, and the local communities are relatively poor. As a result of receiving their monthly rations, the refugees have a better living standard than the locals and sometimes locals offer to carry the refugees' goods to their houses in return for a small quantity of the goods. Some cases have been reported of Zimbabwean women marrying refugees to get material support.

Due to Zimbabwe's encampment policy, services are limited to those refugees who are within the camp, and one has to be physically present in order to receive the rations. This means that those

refugees who have gone to seek employment in South Africa have to frequently come back to Zimbabwe for routine checks as well as to receive food rations for their families. Information gathered from ICRC showed that those refugees who are in urban areas make arrangements whereby one member carries the IDs of the rest, and manages to collect their rations on food distribution days at the camp.

Health care

For all health requirements there is a fully-fledged clinic in the camp, which meets all requirements regarding children's care, reproductive health, maternal health, and HIV and AIDS treatment. The clinic is well equipped and has well trained staff. Specialist doctors come into the camp twice a week for refugees who require special attention (usually for eye and ear care and psychological disorders). Complications are usually referred to Chipinge provincial hospital, and more serious cases are taken to Mutare, where patients are then transferred into the care of social services. Common ailments are skin diseases and malaria.

There is a very high birth rate in the camp (about ten births every month) despite refugees receiving birth control measures. Some argue that they need to replace relatives and family lost, especially those coming from warring countries. The clinic is run by Christian Care, which reports to the Ministry of Health, and Zimbabwean nationals have access to the same clinic. HIV

“on food distribution days, villagers are seen milling around waiting to buy food and non-food items from the refugees.”

and AIDS remains an issue, and the camp witnessed a rise from 10 cases to 44 cases at end of September 2009. HIV-positive people have access to ART through the government's national programme. Immunisation of children is also provided by government.

General challenges facing refugees and asylum-seekers in Zimbabwe

- The policy restrictions on freedom of movement limit refugees' prospects for socio-economic development, especially for those who hold qualifications that could secure them good jobs;
- Zimbabwe does not have an exit strategy for the refugees so some people remain perpetual refugees;²⁴³
- The intentions of most refugees are not very clear, although most cite politically-related reasons for their presence in Zimbabwe, but they often have economic reasons for seeking refugee status than the political one they cite;
- Without thorough screening strategies, refugee migration has the potential to undermine regional and continental integration as some skilled 'refugees' leave their countries of origin for greater economic opportunities. For some of them, entry into education is difficult in their countries of origin, and they get it for free in the refugee camp. For people from French-speaking countries, an opportunity to learn English is most welcome and they will resist all efforts for repatriation;
- The current policy does not offer opportunities for those refugees who have completed either secondary or tertiary education to find employment, and they end up leading very unproductive lives in the camp;

- There is the challenge of double-dipping, since some refugees allegedly cross over illegally to South Africa for employment or even engage in income-generating activities within Zimbabwe' while at the same time continuing to access monthly food rations and other basic services;
- Sometimes asylum-seekers are denied entry without any legal basis, and detained with criminals, which can be traumatic;
- The issue of birth certificates for refugee children remains a challenge. Government is concerned that if refugee children are issued with Zimbabwean birth certificates, then automatically they gain citizenship and this would present more challenges. Currently new-born children only get birth notifications. Discussions about regularising the birth certificates have been going on for more than five years now. Players such as the UNHCR find it difficult to influence the process since it is the government's prerogative; and,
- In relation to human dignity, the focus with regards to refugees should be two-fold. On the one hand there is the fulfilment of basic material human needs such as food, shelter and health. On the other hand there are human socio-cultural rights and needs such as respect, freedom and a meaningful life. Unfortunately, none of these needs is fully realised for refugees, either for those in the camp or those who are self-settled.

Recommendations from respondents for advocacy initiatives

Exit strategy for refugees

There is a need to put in place an exit strategy to encourage refugees to plan for a reintegrated future. It has been observed that Zimbabwe's regulatory framework is relatively friendly. Refugees easily get refugee status and they leverage that to seek employment in South Africa. Because the government control systems are weak, some refugees engage in economic activities (e.g. some operate commuter omnibuses or run flea markets) and have no intention of returning to their home countries where such opportunities are limited.

Citizenship for long-standing refugees

Government needs to consider giving citizenship status to refugees who have been in the camp (with valid reasons) for more than ten years.

Meaningful activity within the camp

There is a need for more robust activities within the camp to keep the refugees occupied and leading meaningful lives. Government could consider making more land accessible to refugees, especially Rwandans who have demonstrated a keen interest in agriculture.

Preventing xenophobia

There is no strict monitoring of refugees' movement within the communities surrounding the camp, and there is a fear among some observers that this might present a fertile ground for xenophobic tendencies, as there are cases of refugees having affairs with local people.

Access to information

The experience of working on this study has shown that there appears to be a deliberate effort by government to put a lid on information. One is tempted to conclude that policies and decisions with regards to refugees are often made with very limited information. Therefore, it is important that government opens up space for information sharing, and that transparency and accountability become guiding principles.

15.

OVERALL RECOMMENDATIONS

“several respondents reported that their children were being abused for being foreign.”

Introduction

This report has investigated the very complex topic of access to socio-economic rights for nationals and non-nationals in southern Africa. Some of the recommendations arising from the research were raised by the experts or the refugees interviewed, and others emerged from focus group discussions and a workshop held with all the civil society organisations participating in this research project. As a result, recommendations range from the specific to the general.

merely look at the access of refugees and criticise the lack of sufficiency. In several countries, non-nationals actually receive the same access to some socio-economic rights as nationals. However, these countries did not necessarily fare well in our report, as the level of access provided to all is very poor. As a result, when moving forward with this research it will be of crucial importance to embark on two distinct advocacy tracks:

- Firstly, access to socio-economic rights in the region by all people, citizens and non-nationals, needs to be expanded and improved; and,
- Secondly, access of refugees to socio-economic rights needs to be improved simultaneously.

In other words, it is important to ensure that refugees can access the same rights as non-nationals, and simultane-

Socio-economic rights for nationals and non-nationals

Before proceeding with listing some of the key recommendations emerging from this research, it is important to state that access to socio-economic rights across the region is poor. As a result, it is insufficient to

ously try to move towards a higher standard of access for all – nationals and non-nationals.

These two advocacy tracks need to be taken up at three levels:

1. Research:

- Undertake a specific study into the practice of encampment and international best practices.

2. SADC-wide lobbying:

- Ensure the domestication of treaties, both in relation to social protection and to the matter of refugees and migrant workers' rights;
- Introduce a SADC-wide basic income grant based on a tax on extractive industries; and,
- Secure SADC-wide recognition of the right of refugees and asylum-seekers to work, as well as standard methods for the recognition of foreign qualifications.

3. National campaigns:

- Education campaigns on the rights of refugees and asylum-seekers, both among refugees and asylum-seekers, but also for nationals using the media, key leaders and institutions such as the church, and developing specific guidelines on human rights and best practices for officials working with refugees and asylum-seekers.

Key recommendations emerging from this research project

- Mainstream refugee issues into national and regional policy discourse since only then will the question of access to socio-economic rights be addressed in all its complexity. A comparable level of access to rights across the region would also put an end to the existence of transit countries.
- Clarify refugee rights and entitlements in the individual countries. The research has shown that the situation of refugees is often not clearly stated in the constitution or in legislation.
- Campaign for the provision of citizenship for those who have been in camps for more than ten years, given historical patterns of displacement.
- Advocate for trauma counselling of refugees, many of whom have been scarred by violence.
- Lobby governments to scrap the encampment policy and grant refugees access to the labour market. This way, skilled refugees could become an asset for the host country and provide for their own income. Linked to this, it would be very useful to facilitate the recognition of qualifications in host countries.
- Create oversight and accountability mechanisms that track progress on socio-economic rights for nationals and non-nationals over time. This will facilitate advocacy campaigns and inform policy-making.
- Monitor gender parity in access to socio-economic rights both for nationals and non-nationals.
- Improve access to refugee camps. Several countries did not permit researchers to visit refugee camps and conduct research freely. On the sensitive issue of refugees, it is of crucial importance to create transparency. One of the challenges this report had to grapple with was a lack of reliable and consistent data. Access to information around refugees is at times difficult to obtain.
- Consider the role of the media in promoting positive messages around cross-border migration. Assumptions about, and prejudices against, non-nationals have to be tackled in order to prevent xenophobic attacks and ensure better treatment of refugees in the countries they live in. Aside from xenophobic attacks, several respondents reported that their children were being abused for being foreign, and that they were treated badly by state institutions (such as public hospitals).
- Lobby national and regional parliaments to adopt human rights treaties, and strengthen their oversight role regarding treaties and conventions.
- Tackle corruption since several refugees reported having to bribe state employees in order to get access to services that they were entitled to (such as health care). Similarly, in refugee camps, services that should benefit everyone are sometimes not forthcoming.
- Analyse the role of the UNHCR, its powers and autonomy, and its relationship with national governments.

Abbreviations and acronyms

- AAHI** Action Africa Help International
ACSD Africa Centre for Sustainable Development (Swaziland)
ACTSA Action for Southern Africa
AIDS acquired immune deficiency syndrome
ARV antiretroviral
BCC Botswana Council of Churches
BRCS Botswana Red Cross Society
CIA Central Intelligence Agency (US)
COR Commission on Refugees (Zambia)
CRC Convention on the Rights of the Child
CRM Constitution of the Republic of Mozambique
CSCQBE Civil Society Coalition for Quality Basic Education
CSC Centre for Social Concern
CSR Centre for Social Rights
DRC ... Democratic Republic of Congo
EFA education for all
FAO Food and Agricultural Organisation
FBO faith-based organization
GNI gross national income
GDP gross domestic product
GRZ Government of the Republic of Zambia
HDI human development index
HIV human immunodeficiency virus
ICCPR International Covenant on Civil and Political Rights
ICESCR International Covenant on Economic, Social and Cultural Rights
ILO International Labour Organisation
INAR National Institute for Refugee Support (Mozambique)
IOM International Organisation for Migration
JCTR Jesuit Centre for Theological Reflection
JRS Jesuit Refugee Service
LaRRI Labour Resource and Research Institute (Namibia)
LHRC Legal and Human Rights Centre (Tanzania)
MDG millennium development goal
NCR National Commission for Refugees (DRC)
NEC National Eligibility Committee (Zambia)
NGO non-governmental organisation
OSISA Open Society Initiative for Southern Africa
PMTCT prevention of mother-to-child transmission (of HIV)
PRFT Poverty Reduction Forum Trust
RSD refugee status determination
SADC Southern African Development Community
SAMP Southern African Migration Project
SANGOCO South African NGO Coalition
SARPN Southern African Regional Poverty Network
SPII Studies in Poverty and Inequality Institute
STI sexually transmitted infection
UN United Nations
UNDP United Nations Development Programme
UNHCR United Nations High Commission for Refugees
UNICEF United Nations Children's Fund
UTH University Teaching Hospital (Zambia)
WFP World Food Programme
WLSA Women and Law in Southern Africa
WUSC World University Service of Canada.

Endnotes

Chapter 1

1. OSISA works in Angola, Botswana, Democratic Republic of Congo (DRC), Lesotho, Malawi, Mozambique, Namibia, Swaziland, Zambia and Zimbabwe
2. SADC Regional Vulnerability Assessment and Analysis Programme 2010, State of Vulnerability to Food Insecurity and Poverty in the Southern African Development Community (SADC)
3. Kaseke, Edwin, 2004, *Social Protection in SADC: Developing An Integrated and Inclusive Framework-A Social Policy Perspective*
4. *ibid*

Chapter 2

5. http://www.unhcr.org/BasicFacts/Docs/Refugees_IDP_Stateless.pdf
6. <http://untreaty.un.org/cod/avl/ha/prsr/prsr.html>

Chapter 3

7. *Constitution of Angola, 2010, Chapter 111 on Economic, Social And Cultural Rights And Duties*
8. *Namibia also ratified the International Covenant on Economic, Social, and Cultural Rights (ICESCR) in 1994, which includes the rights to social security, adequate food, clothing and education for nationals and non-nationals*
9. *Constitution of Zambia bill, 2010, article 67 (1) every person has the right to access social protection including if the person is unable to support themselves and their dependents, social assistance for that person and dependants of that person*
10. *Ibid, article 68 (1) every person has the right to health, which includes the right to access health care services and reproductive health care*
11. *Ibid, article 69 (1) every person has the right to education*
12. *The definition for basic education is a rather contested one, with*

different definitions being used for different contexts. However, for the purposes of this study, basic education covers notions such as fundamental, elementary and primary education. Beyond pre-school education, the duration of which can be fixed by the State, basic education consists of at least nine years and progressively extends to 12 years. Basic education allows personal development, intellectual autonomy, integration into professional life and participation in the development of the society in the context of democracy. In order to achieve these aims, basic education must lead to the acquisition of: key skills, used as personal development tools and, later on, as a basis for lifelong learning; initial vocational guidance; and, the knowledge, values and abilities that are needed for individual development, and for the exercise of participatory and responsible citizenship in a democracy. There is no legal instrument or strategic document stipulating the duration of basic education. According to the International Standard Classification of Education (UNESCO, revised 1997), basic education consists of nine years of formal education at two levels: six years of primary education and the first stage of secondary education, which lasts three years

13. *Basic education is offered for youth and adults who did not have the opportunity to receive and complete basic education at the appropriate age*
14. See Makhema M, 2009:14, *Social Protection for Refugees and Asylum Seekers in the Southern Africa Development Community (SADC), Botswana, Malawi, Mozambique, Namibia, Tanzania, Zambia and Zimbabwe adopt the encampment model of refugee reception, whilst Angola, DRC, Lesotho, South Africa and Swaziland adopt the self-settlement model*
15. *Tuition and textbook fees are collected in 24 countries, and 33 countries collect fees for mandatory uniforms. PTA fees are the most commonly collected type of fee, followed by fees for other school-based activities, uniforms, tuition, and textbooks*
16. *Internationally, ten countries have no fees, but do require a community/PTA contribution. Those countries are Argentina,*

Azerbaijan, Iran, Jordan, Maldives, Namibia, Panama, Sierra Leone, Timor-Leste, and Ukraine

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18. *Countries that removed fees had substantial increases in enrollment rates. Uganda increased its enrollment rates by 68 percent and Malawi by 49 percent. When certain countries removed user fees there was a noticeable pattern of increased funding for education by governments. For example, the governments of Malawi, Uganda, Cameroon, Zambia, Tanzania and Cambodia increased their share of spending on education after eliminating school fees*
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21. *ibid*
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23. *Ibid, Article 10: Social Protection 1. Member States shall create an enabling environment so that every worker in the region shall have a right to adequate social protection and shall, regardless of status and the type of employment, enjoy adequate social security benefits. 2. Persons who have been unable to either enter or re-enter the labour market and have no means of subsistence shall be entitled to receive sufficient resources and social assistance.*

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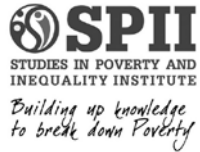
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Notes



Studies in Poverty and Inequality Institute (SPII) is an independent research think tank, which focuses on generating new knowledge, information and analysis in the field of poverty and inequality studies. Through facilitating collaborative partnerships with and between government, institutions of democracy, academia and civil society organizations, we will be able to develop innovative and empirically based social and economic policies capable of combating poverty, reducing inequality and promoting sustainable development. We will work to support the development of a tradition of effective public participation in policy making and implementation.

The main objectives of its founding trustees was to create a safe space within which policy analysts and activists in civil society, researchers, intellectuals and government policy makers could come together to interrogate the development and implementation of effective evidence-based anti-poverty policies necessary to address the growing levels of economic, social and political exclusions and inequalities in South Africa in particular, as well as the southern Africa region more broadly; to encourage our democracy and institutions of democracy; and, to support the realization of our social, economic and political constitutional rights.

These objectives are pursued by:

- Bringing together policy makers, analysts and implementers from government, academia and civil society formations, as well as

international role players/ academics/ researchers and activists;

- Sharing information about poverty and inequality research and policy processes in order to stimulate new areas of collaboration among stakeholders;
- Identifying further areas of research and/or gaps in current knowledge on an ongoing basis and to commission such research which will contribute to public knowledge and innovation;
- Disseminating information and research produced by the Institute to assist in policy development processes and campaigns;
- Participating in building regional collaboration and disseminating innovative practices focused on fighting poverty and inequality in the Southern African region.

Cutting across all of SPII's research work is the commitment to strengthening public participation in the policy and political arenas as an essential condition precedent for South Africa's constitutionally guaranteed participative democracy. Supporting people's active involvement in decision-making processes also emphasizes the agency of individuals and communities, rather than seeing people as passive recipients of the largesse of state or charity.

For more information, www.spii.org.za

Access to Socio-Economic Rights for Non-Nationals in the Southern African Development Community

While many countries in Africa are contemplating ways in which to extend access to social protection for their citizens, the enjoyment of socio-economic rights by non-nationals receives scarce commentary. Despite the existence of international, continental and regional instruments and treaties that guarantee both access to socio-economic rights for all and equality within states of nationals and non-nationals, for many these rights remain paper rights.

This report was commissioned by the Open Society Initiative for Southern Africa (OSISA) to investigate to what extent non-nationals were able to access socio-economic rights in 11 countries in the Southern African Development Community (SADC). It was agreed at the beginning of the enquiry that an investigation of this nature should be accompanied by an enquiry into the levels of access of nationals themselves to socio-economic rights in each country, in addition to questions of access by non-nationals.

The use of the term 'non-national' is fairly broad and includes a number of overlapping, diverse groups of people with distinct vulnerabilities and requirements. It was agreed up that this enquiry would be limited to the conditions of refugees and asylum-seekers, given the greater and more verifiable nature of data on their access to socio-economic rights compared to other groupings. The report also focussed on the rights to health care, education and

social security as indicative of broader enjoyment of social protection within the region.

The value of this report is the use of primary research to verify de facto access by ordinary people, over and beyond the ratified treaties, national constitutional guarantees and nationally legislated rights.

The main findings of this work suggest that access by refugees and asylum-seekers to social protection in the southern African region is pretty parlous. Access by citizens also needs to be improved. Although there are guaranteed rights of access and formal institutions of delivery for enjoyment of the rights in many of the participating countries, the quality of services provided often undermines the value of that guarantee. This is especially true in respect of the right to health care and education. Access to social security was in general limited to formal contributory social insurance pensions for formal sector workers and civil servants.

The report provides an overview of the situation across southern Africa as well as specific chapters on each of the 11 countries and includes a list of advocacy recommendations that emerged from the research. It is hoped that these recommendations will be used to build a comprehensive rights-based framework for work by civil society organisations in the region.