Chapter Six: Conclusion and Recommendations

6.1 Conclusion
This research investigates the compliance of South African with the international refugee law and standards including the processes of achieving her obligations in protecting the rights of refugees and asylum seekers in the country. It traces the genesis of refugee protection and policy debate that characterised the initial stage of refugee regime in South Africa. However, the post-apartheid South Africa proactively emerged as a country without history of refugee protection and the UNHCR played a tremendous role in supporting South African in putting in place the necessary infrastructures to protect refugees and asylum seekers. The Alien Control Act was used as an initial instrument that was based to protect refugees and asylum seekers in the country while the debate for the formulation of new refugee law in the country was been negotiated.

Attempts to comply with various international instruments relating to refugee protection prompted the ratification of the UN and OAU refugee conventions and other human rights instruments, and subsequently lead to the development of South African national refugee law and standards that incorporated international refugee principles. The issue of developing refugee legal framework in South Africa was achieved not without contestation, debate and controversies between various interest groups and more specifically the civil society and the UNHCR whose stake in refugee protection is vary much pronounced. Much of the debate was issues of how refugees and asylum seekers can enjoy adequate protection of their rights, and the need for the observance of human rights and administrative justice. The South African refugee law is an impressive legislation that can effect protection of the rights of forced migrants in the country if the legislation is properly implemented.

While South Africa has absolutely complied with the international law and standards in developing policy legal framework for refugee protection, it has failed to achieve a creditable implementation process that meets international standards and this has been detrimental in the protection of refugees and asylum seekers in the country. One of the
difficulties is accessing some of the rights provided by the law while inability to get proper
documents from the Department of Home Affairs had left many refugees and asylum
seekers unprotected resulting to violation of their rights. Thought the democratic South
Africa is built on the cornerstone and principles of human rights, the issue of refugee
protection in many instances lack core observance of the principles of human rights
necessary for refugee protection as the implementation of the official policy framework has
a reduced probability of compliance since the realisation of refugee rights remain
problematic.

The research highlighted the roles played by NGOs and courts in fostering the rights of
refugees in South Africa. This included advocacy, providing basic legal and economic
assistance, counseling and traumatic assistance, and litigation, lobbing and invoking human
rights instruments to guarantee that the basic rights of refugees and asylum seekers are
secured among others. The courts have also been a significant player in resolving
controversies emanated from the legal disjuncture. The discrepancy in law, procedures and
practices has resulted in inconsistencies in refugee policy and practice in South Africa and
sometimes requires legal adjudication. During the last ten years of democracy in South
Africa, courts have intervened in some contentious issues with regards to refugee
protection. More specific to mention is the issue of the right to work and study in respect to
asylum seekers and the court has made a landmark decision on the issue while all the
parties involved upheld courts’ decisions as the custodian of the constitution and the rule of
law. A human rights institution such as SAHRC continues to strive for the protection of
human rights and has taken active part to promote the rights of refugees and asylum seekers
in the country.

The research also identified some impediments and major challenging still confronting the
protection of the rights of forced migrants in the country. These include mal-
administration, corruption, xenophobia and lack of service delivery among others. These
ills have not only affected the protection of the rights of refugees and asylum seekers in the
country but have negative implications on the country’s efforts to build sustainable
democratic and human rights cultures permissible in the present era. The research observes
the inextricable links between human rights and refugee protection and some indicator of democracy at work as people and organizations have the freedom to express their views and contribute to public debates on issues of refugee regime and protection. There are also numbers of legalistic and rights based organizations that have used the instruments of human rights to pursue and achieve social transformation with respect to the rights of refugees and asylum seekers.

The UNHCR and many refugee NGOs have assisted the government in number of ways and in particularly in creating an enabling environment that are permissible for the protection of the rights of refugees and asylum seekers despite many obstacles on the road. But many challenges still confront the protection of refugees and asylum seekers in South Africa particularly in realisation of some socio-economic rights such as health, education and social welfare rights. Many of the respondents believe that greater push for human rights and awareness of the rights of refugees and asylum seekers can play an imperative role towards improving the realisation of the rights of forced migrants in the country. This will help to develop a better understanding that will help to meet the challenges and the needs of refugee and asylum seekers in the country.

6.2 Recommendations

South African refugee protection still faces many challenges that require great attention by all stakeholders including government, civil society and international community. The South Africa government should ensure strict adherence to its obligations to protect the rights of refugees and asylum seekers in the country. On this note, government should ensure that implementation of the government policy on refugee protection is in compliance with the international refugee standards set to actualise the rights of refugees and asylum seekers in concrete terms. The involvement of NGOs and other stakeholders are imperative to ensure that government policies are appropriately implemented and where necessary to complement government efforts and that of the international community.

It is also important to increase human rights awareness among all the role-players on the understanding that democracy and the effective protection of human rights provide the
foundation for lasting national development and social justice. The UNHCR should continue to give financial and technical assistance to NGOs and in building capacity within the Department of Home Affairs, which can go a long way to improve the services of the department and ensure administrative efficient that recognises refugee dynamics and pursue to meet the challenges of the present time. Also capacity building in terms of staff training, acquisition of equipment, strengthening the responsive service delivery and engaging in high profile professionalism should play a pivotal role in improving the services of the Department of Home Affairs.

The government should also establish additional Refugee Reception Offices in the country to strengthen the department’s efficiency. This is geared towards decongesting the five existing Refugee Reception Offices from their current asylum backlog and to ensure speedy processing of applications. At present, the existing five Refugee Reception Offices are not sufficient for the number of refugees and asylum seekers entering the country and this will also help to elimination the concentration of refugees and asylum seekers in the five major cities hosting refugee reception offices.

South African government should also make more money and budgetary allocations available to the Department of Home Affairs to enable it discharge it duties more efficiently. It is necessary to mention the importance of proper funding in achieving the desired objectives of any establishment and as such, government providing enough resources for the Department of Home Affairs is quite indispensable. But at that, the department should also sort for more funding from some national and international organisations that may be willing to assist in the funding of some of their projects. This will help to build more capacity and efficiency of the department in areas of manpower development and equipment including access to modern facilities.

There should be more critical interventions to create better understanding and educate the public about refugees and asylum seekers, and the rights and obligations that they have in the country. The campaign should also be extended to denouncing xenophobia and other
inhuman and degrading treatment meted on refugees and asylum seekers in South Africa. The NGOs, UNHCR, SAHRC and the government have ardent tasks in this direction to encourage people to respect and protect the basic rights of non-South Africans and refugees in particular. These rights are guaranteed in the South African Constitution, the Bill of Rights, and under international law. The interventions are fundamentally important for any meaningful achievement to be made in area of refugee protection in South Africa since xenophobia affect any genuine and constructive effort to give adequate protection to refugees and asylum seekers in the country. Fighting xenophobia also requires some strong political framework from the national, provincial and local government levels to root out the pandemic.

The South African government should recognise the skills and potentials within the refugee community and the contributions this can make to South African economy. Refugees and asylum seekers should therefore not to be seen as a burden to the state particularly those with skills but as potential self-sufficient population that can be able to contribute to general development of South Africa. This can help the government to sort for potentials and skills from the refugee community for maximum economic gains, which can as well reduce their involvement in crimes and in other social vices. The refugee community should also facilitate and engage their energies on how refugees and asylum seekers can be viable and pragmatic in becoming more enterprising and creativity which can help forced migrants to engage in more productive life.

The rights of refugees and asylum seekers should be respected and considered in all levels of government such as national, provincial and local government levels and considered in current and future policy deliberations. Government should ensure that rights granted to refugees and asylum seekers are respected and protected to great extents which have impact on the lives of this vulnerable group. This is to ensure the all government departments that responsible for the protection of the rights of refugees and asylum seekers respond satisfactorily to the protection of refugees and asylum seekers in accordance with the stipulated standards, ethics and government policy guidelines. If the processes of asylum procedures are effective, efficient and reliable, it will help to eliminate false claims,
corruption and other forms of irregularities that are common within the Department of Home Affairs and other government agencies working with refugees and asylum seekers. This calls for re-orientation and instilling of the virtues of discipline, honesty and hard work among the staff of the department in discharge of their statutory duties. Proper and fast administrative action and justices in processing of asylum and refugee applications are necessary in the realisation of the rights to asylum in the country. Indeed, this can ensure credible asylum system and refugee protection that will respond positively to the democratic demands of the present time and give effect to South African obligations in complying with the international refugee standards.

The right to education should not be undermined, as children of all nationality deserve the rights to education irrespective of where they come from. It has been well established that education is an indispensable aspect of social integration and can play a dominant role in building a harmonious, peaceful and integrated world, which is the primary ideals of the United Nations. Education can also intrinsically facilitate the process of refugees and asylum seekers’ children learning local languages, which may help refugee community to unleash their potentials and acquire new status in social mobility. The children of refugees and asylum should therefore be allowed to enjoy the right to education that they are entitled in South Africa and be treated like other South African children in the public schools. This includes provision of necessary support from the government in terms of fee exceptions where indigent refugee parents cannot afford the payment of school fees for their wards.

The provision of free or low cost public medical services for refugee community is also of vital importance for the healthy living of refugees and asylum seekers in the country. The government should ensure that refugees and asylum seekers without discrimination enjoy its free medical services provided in clinics to assist citizens who cannot afford medical fees. Where fees are required in government hospitals, refugees and asylum seekers should be well informed about that without sentiment of xenophobia and should be asked to pay the appropriate medical fees that are commensurate and payable by citizens in similar situation.
However, the Department of Home Affairs should ensure that the Rosettenville Refugee Reception Office acquires a new and comfortable building that is very convenient to carry out its functions and forthwith commences the processing of applications and issuing of asylum permits to new applicants who have arrived in the country to seek asylum. This can help to ease the problems which new asylum applicants are facing as they are referred to Pretoria Refugee Reception Office to get their asylum applications processed because of the inability of the Rosettenville Refugee Reception Office to assist them.

The Department of Home Affairs in collaboration with refugee NGOs and with the support of UNHCR should carry out the backlog project that will help to clear all the accumulated asylum application claims. The backlog project should be carried out in a comprehensive manner to determine and issue out refugee status to deserving applicants and to reject the applications that are manifestly unfounded which will help to sanitise and improve the services of the department. Preventive measures should also be put in place to avoid future hiccup that may result to corruption as well as asylum backlogs. This measure will ultimately prevent economic migrants from fraudulently abusing the asylum procedure that have caused a major havoc in the protection of refugees and asylum seekers in the country. The Department of Home Affairs should continue in the building and updating its refugees and asylum seekers database that meets the UNHCR standards and ensure that the new smart identity cards currently issuing to refugees are easily available, accessible and free from corrupt practices and unnecessary hiccups. Finally, South Africa can be a model of democracy and human rights in Africa if all aspect of its social, political and economic life is guided by human rights and democratic cultures that meet international standards in practices. Refugees and asylum seekers deserve their rights and adequate protection.

6.3 Areas for further research

This study should be part of the beginning in the ongoing process and evolution of empirical research in the area of refugee regime in South African. South Africa is still likely to be a better choice for forced migrants in years to come particularly those from other African countries.
There is need for further research to close the gap or disparity that exists between South African policy framework on refugee protection and the practice. This is to find out possible ways to fill in the gap and to ensure that the policy framework is in consonant with the implementation of the policy as well as guarantee that the core ideals of the policy and the new democratic vision are meticulously achieved in the process of implementation.

It is also necessary to conduct further research in order to get comprehensive and reliable data on different categories and number of migrant communities in South Africa which will help in demographic and development planning as well as assist in other areas of national interest. This will help South Africa to find out hidden and available skills possessed by the refugee community and know how it can be tapped to fill in skills shortage in the country for the benefit of national development and growth. It is ridiculous, unacceptable and absolutely wrong to cluster all categories of migrants into one homogenous entity which usually creates confusions and miscarriage of justice. It is also useful to conduct authoritative research on various aspects of refugee regime in South Africa, which will be available to policy makers and service providers in the field.