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# Human rights and refugee protection in South Africa (1994-2004)

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**2006-10-31T12:06:12Z**
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# Chapter Five: Major Problems of Refugees in South Africa

## 5.1 Introduction.

This chapter examines the problems facing refugees and asylum seekers in South Africa, which pose major challenges to South African government, civil society and the international community. These problems include policy implementation, xenophobia, and access to services, corruption and lack of awareness of human rights for refugees. These problems negate the rights and interest of refugees and asylum seekers in South Africa.

## 5.2 Policy Implementation

The efficient implementation of the government policy regarding refugees is an integral part of protecting the rights of refugees and asylum seekers in South Africa. The Department of Home Affairs (DHA) is responsible for implementing refugee policies as well as issuing of appropriate permits and documentations to refugees and asylum seekers. The South African Refugee Act 130 of 1998 mandated the DHA to issue in a right manner appropriate permit to refugees and asylum seekers in order to protect their rights and legalise their stay in the country. According to Refugee Act, when an asylum seeker filled an application form for a refugee status, such application must be processed by the DHA not later than six months of such application. This is to enable the applicant enjoy adequate legal protection and have access to some of the basic rights entitled by refugees and asylum seekers in the country since they are vulnerable and depended on government and international community for protection. Interviews were conducted with some refugees and asylum seekers to determine their experiences in obtaining appropriate documentations and the length of time in achieving that.

Refugees and asylum seekers interviewed were selected through method of snowball sampling which enabled the researcher locate other potential respondents to be interviewed. They provided information about their living condition, survival and experiences in South Africa as well as the way their rights are been achieved. Ten out of twenty-five respondents

[267]Garderen and Jaichouth and, Perspective of Refugee Protection in South Africa, Lawyers for Human Rights, South Africa .2001. p7

interviewed were refugees while fifteen were asylum seekers and they got their asylum or refugee status from the Refugee Reception Office in Johannesburg. The respondents were asked about the length of time it took them to get their refugee status or asylum permits approved as well as the problems they encountered in the process of getting those permits. Out of the twenty five respondents, ten said it took them three months to get their asylum permits, eight mentioned one to two months, while four said they got their asylum permits within one to two weeks and the remaining two respondents indicated that they got their permits within one and two days. In effect, majority of the respondents processed their asylum permits from one to three months. These respondents said they renew their asylum permits once every month and have to spend a lot of time or days on long queues to be able to renew their permits and they also complained about the process as being slow and frustrating. One respondent stated thus:

> One of the major challenges facing South Africa and the international community is the issue of providing adequate protection to refugees. South Africa must be fair, committed and discharge their obligations in an honesty way because they have the means to do so if they so wished. The UNHCR and the international community should put pressure on South African government to ensure that their international obligations are seriously implemented particularly timely processing of permits by the department.

According to them, you need to leave all your business or whatever you are doing to be able to get to the DHA for your paper or fall in trap or trouble with the security operatives. Out of the ten respondents who have acquired refugee status, three said they spent one to three months to get their refugee permit approved and the remaining seven waited for about one to four years before their refugee status were approved while two respondents said they are yet to received their refugee identity document after one and half years of approval of their refugee status. On this note a refugee said:

> I am 23 years old and arrived in South Africa in December 2002 to escape the war in DRC. I applied for asylum status in December 2002 and my refugee

> status was approved in January 2003. I paid a huge sum of money to do that, thinking that it was a normal fee without knowing that the so-called agent ripped me off. He told me he works in the Home Affairs and can make my refugee status approved within a shortest possible time. I paid him and it happened that way. I got my refugee status within one month.

It was observed that three of the respondents who are still on asylum permit have applied for refugee status in 1998 and 1999 but are still remaining in the asylum permit since then. The respondents that said they submitted their applications for refugee status between 2000 and 2003, only ten of such applications have been approved. Majority of refugees and asylum seekers alleged that the difficulties of accessing the services of the DHA and their inability of getting the required documents at the rights time aggravated their problems in the country since their ability to access some of their rights depended greatly on their possession of the right papers. Indeed, the Department of Home Affairs in the post-apartheid era has witnessed significant challenges and lacks the capacity of deal with the increasing number of refugees and asylum seekers present in the country. Some respondents also indicated that they encounter barriers linked to submission of application for refugee status, renewal of asylum permits, obtaining refugee status permits and renewal of refugee permit among others. Two respondents similarly stated that:

> Refugees and asylum seekers still have a long way to go in terms of realising their rights and the government implementing their obligation to refugees. South Africa has not fully achieved its policy obligation positive to refugees. When you are new in the country, fears and anxieties are put into your minds by those exploiting asylum system that your application will be rejected if you didn't go through them in submitting your application. Sometime, under frustration of visiting the department for several time without success may encourage you to go through a third party or have a deal with an official of the department to have your permit approved on time.

They also complained that since Refugee Reception Offices are located only in five major cities in the country, that these locations have conditioned their stay in the country and makes them concentrate their living within those cities, as they need to visit the department regularly for the renewal of their documents. Many asylum seekers also said that they have been in asylum seekers permit (section 22 permits) for over three to four years waiting for their application for a formal recognition as a refugee to be approved. These have negative impact on the lives and aspiration of people since asylum seekers has less legal protection than refugees as well as rights in the country. This also affects their ability to obtain a permanent residence within the five years required stipulated period.

In a related development, two officials of the Department of Home Affairs were also interviewed in order to find out their opinions on the issue of unnecessary delays in the processing of documents of refugees and asylum seekers submitted to their department. According to the officials, their inability to deal with the problem of issuing permits to refugees and asylum seekers timely emanate from the fact that South Africa lacks history of refugee protection and the unprecedented number of asylum seekers who have entered the country to seek asylum in the post-apartheid era. These they explained imposes a serious challenge to the department coupled with lack of staff and functional office equipment as computers, fax-machines, stationery, telephones, furniture, computerised data-base, vehicles and other office equipment necessary to facilitate and improve the services of the department. They maintained that these problems have affected the capacity and ability to deal with the present influx of refugees and asylum seekers in the country and has led to asylum backlog, which made it difficult for some asylum seekers to get their asylum or refugee status at the appropriate time. Asked what the department has done in the recent time to tackle and remedy the problems as well as ensure that refugees and asylum seekers enjoy adequate protection in the country? The officials held that the department has recently recruited and increase the number of their staff and has also sent some staff for training and has acquired some equipment with high performance.

On the negative side, they said the department still needs to deal with the accumulated asylum backlog, put in place proper and sustainable mechanisms to avoid such backlog in

the future as well as acquire more office spaces and information technological equipment, get more budgetary allocations from the government, personnel and capacity building. On the other hand, the UNHCR has blamed the growing backlog on the large number of economic migrants who abuse asylum procedure to legalise their stay in the country and the inadequate processing capacity of the Department of Home Affairs couple with under-resource. [268] According to UNHCR, the phenomenon of mixed flow of economic migrants and refugee continued to pose major challenges to the protection of refugees. In that vein, UNHRC argues that in the absence of an immigration regime which allows economic migrants to enter easily and remain in the country legally, prospective immigrants abused the existing asylum procedure in an effort to legalise their stay, thus clogging the asylum procedure.

The right to asylum demands that refugees and asylum seekers should be given legal protection on time and have their applications processed as soon as they are submitted to enable them access social services such as medical facilities, education, welfare services, accommodation and other rights which they are entitled as well as to prevent arbitrary arrest. These rights are necessary for the survival of refugees and asylum seekers since without appropriate documents access to these rights became extremely difficult for refugees and asylum seekers. On that note, Dosso during interview replied to my question by saying:

> There are psychological implications of being in asylum seekers' status for such a long time like five to six years before getting refugee status. This makes asylum seekers not to establish themselves fully and integrate into the country. The asylum permits are renewed within one to two or latest three months and refugee status is also placed on two years duration. This makes the lives of this community still difficult as they can only plan for a short period of time. The issuing of the maroon identify card is a violation of the constitution. South Africa is refusing to use integration as part of broader way of finding durable solution to refugee problem

[268] UNCR, Country Operation Plan Overview: South Africa Planning year 2006 www.unhcr/cgi-bin/vtx/home/opendoc.pdf?tb1=RSDCO1&id=4321a34f2&page=home

> but rather adopting temporary measure so that refugees and asylum seekers can be easily returned to their country of origin with any slighted opportunity.

In essence, many refugees and asylum seekers believe that government has failed to provide them with primary assistance required for their survival in the country despite acceding to international commitments to do so as one of the respondents lamented:

> South Africa is a great country with possibilities and opportunities but not an open society. We have come here to secure our lives but we are been accused of coming to stay here unnecessarily. This has made the government not to think of providing anything for us or ask us how we survive. Life is heard in this country and you can feel the pains when you don't have any cent to pay your house rent. They say nothing for *mahala* (meaning nothing is for free).

The Refugee Act, which meant to protect the rights of refugee and asylum seekers, was promulgated in 1998 and "the law binds the government, asylum seekers and refugees to certain obligations and rights."[269] This development was generally acknowledged as prerequisite for providing proper protection to refugees and asylum seekers in the country but the accompanied regulation was criticised by some NGOs for deterring the rights of refugees and asylum seekers and making the implementation procedures difficult. Hence, government interventions in protecting the rights of refugees and asylum seekers have been viewed as palliative action that never solve the problems and refugees and asylum seekers continue to suffer in the country. Refugees and asylum seekers have in addition view South Africa through negative stereotype and prejudice with the notion that South Africa is not only a violent society but attempt to shift their dissatisfaction on government deficiencies and constraints on immigrant population.

[269] Maltou P, The Creation of Refugee Act: The South African Experience in Majodina Zonke (ed) The Challenges of Forced Migration in Southern Africa. Africa Institute of South Africa.2001. p131

### 5.3 Xenophobia

Xenophobia is a serious problem in South Africa and has influences government policies regarding refugee protection. Xenophobia poses a serious threat to refugee protection and democracy in South Africa by negating the principles of human rights. Procher, Ilson and Ayto indicate that the word xenophobia is derived from Greek words 'xeno', meaning stranger or foreigner, and 'phobia', meaning fear.[270] It is a strong dislike, hatred or fear of foreigners and strangers. It is built on negative serotype, attitudes or perceptions, and may lead to intolerance, violence, human rights abuses or even death towards foreigners in extreme cases. UNHCR observes that:

> calling people derogating names is one way that xenophobia shows its ugly face. Harassment, hostility and violence are some of the other serious consequences of xenophobic attitudes in South Africa. Most victims of xenophobia are black African foreigners. Xenophobia is caused by ignorance and intolerance. Poverty, unemployment and crime in South Africa today make xenophobia worse because many people are completing for scarce resources. South Africans tend to blame black foreigners for the social and economic problems of the country.[271]

Xenophobia is also a psychological state of the mind and being uncomfortable with anything different and has been used to engage in politics of exclusion and discrimination. Sisulu argues that the manifestation of xenophobia in South Africa by nationals can be attributed to inexperience of the population in hosting refugees and other non-nationals[272]particularly those from other African countries. According to her, South African society has not been sufficiently educated on the issues of refugees, the causes of refugee movement and government's responsibilities towards refugees. She maintains that the problem of xenophobia is exacerbated by the confusion created in differentiating refugees from other foreign immigrants as well as economic impoverishment of the majority of South African citizens who see the presence of refugees as a threat to jobs, food, education

[270] Procher et al, Longman Dictionary of Contemporary English. London. Harlow.1978. p1275
[271] UNHCR, Working to protect refugees in South Africa: UNHCR Publications 2000
[272] Sisulu Lindiwe, Meeting the Challenges of Forced Migration in Majodina Zonke (ed) The Challenges of Forced Migration in Southern Africa, Africa Institute of South Africa.2001. p6

and other amenities provided by government. As such, refugees and asylum seekers may be more vulnerable to attacks and may be subjected to discriminations as a result of xenophobia[273] as they are portrayed as a burden and parasitical to the state.

Xenophobia encourages corruption, violence and barring access to public health, education and other social services which refugees and asylum seekers are entitled. Often, xenophobic attitudes by host communities create obstacles for participation in public life, which often results in psychological and practical barriers to full integration.[274] Rutinwa argues that one of the causes of xenophobia is the failure of the public to appreciate the special situation of refugees[275] and the contributions they can make in the society. He concluded that xenophobia can be tackled through public awareness campaigns and educations at all levels of the society as well as fostering positive attitude towards refugees and asylum seekers. On the other hand, Harris noticed that xenophobia arises as a result of struggle for space and opportunities between the citizens and foreign nationals in the new South Africa.[276] Similarly, Sinclaire links this conflict to the South African political transformation and attempt at building a common South African identity.[277]

The Southern African Catholic Bishops' Conference report released on 17 May 1995 had condemned xenophobia and appealed to the public to be more humane in the treatment of immigrants, refugees and displaced persons in South Africa:

> There is no doubt that there is a very high level of xenophobia in our country. The impression is given that illegal immigrants are flooding the country and the nation's

[273] Handmaker.J, How Determines Refugee Policy? Promoting the Rights of Asylum in South Africa, International Journal of Refugee Law, Vol.11 (2)209-309
[274] Motha Sarah, Forced Migration and Social Integration in A Host Community: A Study of Ekulindeni Village , Mpumalanga In South Africa, University of the Witwatersrand.2003. p20
[275] Rutinwa B, The End of Asylum? The Changing Nature of Refugee Policies in Africa. Refugee Survey Quarterly Volume 21.no.1 & 2 2002. p36
[276] Harris Bronwyn, A Foreign Experience: Violence, Crime and Xenophobia during the South Africa's transition, Violence and Transition series, Vol.5 August 2001. http://www.csvr.org.za/papers/papvtp5.htm
[277] Sinclaire, 1999

> social fabric is threatened by illegal fleeing economic, political and social upheavals in their countries.[278]

The rise in the number of migrants in South Africa has been accompanied by xenophobia against non South Africans[279] in language, policy and practice which appear to be increasingly directed towards African asylum seekers, migrants and immigrants both documented and undocumented.[280] Like apartheid, xenophobia is a major challenge to the new democratic dispensation and has been described by the Minister of Home Affairs Mapisa-Nqakula as "racist in its nature."[281] Although there is a discrepancy between racist actions and xenophobia, the latter is a basis for both overt racist actions and more subtle forms of exclusion hidden in its discourse.[282] In 1997, the South African Human Rights Commission (SAHRC) identified xenophobia as a major concern to human rights and democracy in the country[283] and embarked on a campaign to send a strong message that "irrational prejudice and hostility towards non-national are not acceptable under any circumstances."[284] According to Majodina in an interview:

> The SAHRC activities have become more pronounced with its involvement in the campaign against xenophobia and have also played a leading role in the establishment of the National Consortium for Refugee Affairs. The Commission also reports on series of human rights violations in the Lindale Repatriation Centre and made submissions in the formulation of both immigration and refugee Act including organising seminars to that effect. It has also campaigned to see that the children of refugees and asylum seekers are allowed and accepted in educational

[278] Minaar Anthony and Hough Mike, Who Goes There: Perspectives on clandestine Migration and Illegal Aliens in Southern Africa. Human Science Research Council Publishers, Pretoria.1996. p173
[279] Hilma Shindondola, Xenophobia in South Africa: The Voice of International Students, RAU South Africa. 2002
[280] Peberdy. S, Selecting Immigrants: Nationalism and National Identity in South Africa's Immigration Policies 1910 to 1998, Unpublished PhD Thesis, Department of Geography, Queen's University, Canada. 1999
[281] Mapisa-Nqakula, Minister Home Affairs addressing Refugee Community and NGOs during the Refugee Community Forum held in Civil Theatre on 5th October 2005.
[282] Yetunde Adeola Adelaja, Legal & Illegal Migrants: The Nigeria Experience in Johannesburg, University of the Witwatersrand, 2001. p90
[283] Crush Jonathan (ed) Immigration, Xenophobia and Human Rights in South Africa: AMP Migration Project Series No.22. 2001. p1
[284] Ibid

> institutions. Some problems of refugees and asylum seekers are non-access to social grants, economic and social rights.

The brutal murder of three Senegalese asylum seekers in 1998 by throwing them off a moving train traveling from Pretoria to Johannesburg and several attacks on many refugees and other foreigners inspired SAHRC and National Consortium for Refugee Affairs to embank on Role Back Xenophobia Campaign to educate South Africans on the dangers of xenophobia which was described as;

> The deep dislike of non-nationals by nationals and is base on fear of the unknown or anything that is seen different. In South Africa, these largely unfounded fears are that foreigners are to blame for our problems.[285]

The respondents interviewed were asked whether they had experienced incidence of xenophobia in South Africa and the effect this had on their rights. Twenty respondents claimed that they have experienced xenophobia in various forms in South Africa while three said they have not and the remaining two answered they do not know. Five of the respondents said they have experienced xenophobia severally in a public taxi leading to violent attacks and verbal abuse because they do not understand the local language and were accused of not paying their taxi fare while they indeed had paid. One of them complained that:

> There is too much xenophobia in this country and it follows you wherever you go. When you ask a question or somebody asked you a question. And you cannot understand and if you say please speak in English, and then you are in trouble. The person will stop and look at you several times and say *eish amakwerekere*. Why don't you speak my language? You must go back to your country. Here is South Afrik. The issue you are asking for or the help somebody wants to give you is gone.

[285] SAHRC, Role Back Xenophobia Campaign: National Action Plan. Parktown South Africa.1998

Four respondents also said they have experienced xenophobia in their informal trading and in the street while going about their normal businesses. According to them, they were refused informal trading stands because they are foreigners and were insulted by the locals for trying to get trading spaces before them. They also said they were called names and victimised to leave or be dealt with. Furthermore, eight respondents held they have experienced xenophobia when they have applied for job and never got the job which they are qualified simply because they are not South Africans and hold refugee or asylum papers. On respondent responded that;

> I hold a BSc degree in accounting and cannot get work in this country. I have applied for jobs in many companies and have been invited for several interviews. At last, they will ask you, my friend where is your ID? When you present your asylum or refugee papers, they will say, where do you come from? I said ID and not papers. And when you say, Sir, I am a refugee or asylum seeker, the job is already gone.

Three respondents said they were insulted at the Hilbrow Clinic and frustrated from getting medical attention by the fact that the medical personnel accused foreigners of spoiling their country and spreading disease and still want to use their tax payers' money for free medical treatment.

This shows the intensity of xenophobia in South Africa. The instances of xenophobia the respondents said they have experienced include calling of derogatory names as *amakwerekwere*, *amagrigamba* which lead to discrimination in both public and private circles, assault and violent attacks. It is assumed that inability to speak and understand any South Africa local languages make foreigners more delicate and vulnerable to xenophobic attitude, as locals believe that foreigners cannot even understand and speak their languages. This buttress the role language plays in building understanding, social cohesion and cultural values of a particular society and the negative impact of the inability to speak a language in a xenophobic linguistic environment. Also, the report of the Human Right Watch in 1998 indicates that some of the suspected illegal immigrants held in the Lindela

Deportation Centre are indeed South African citizens who are held because of misconception and prejudice based on xenophobic stereotype selection tactics such as having dark skin, ways of walking and speaking patterns.

Xenophobia affects the rights of refugees and asylum seekers in South Africa in various forms and has negative impacts on their ability to have access to services in both private and public fora. Hence, Timngum observes that xenophobic attacks and intimidation against refugees and asylum seekers in South Africa suggest that there may be systematic intolerance and violation of human rights of non-nationals which may affect their access to services, jobs, housing and other aspects of their daily lives.[286] Refugees and asylum seekers therefore suffer from xenophobia like other foreign nationals but they seem to be more vulnerable to discrimination and abuse as a result of their traumatised circumstances and their inability to pursue their rights.

Xenophobic attitude also penetrates the activities of state security agents and police in particular have become a source of worry to refugees and asylum seekers in the country. A study conducted by Wits University reveals that "most refugees feel that they cannot rely on the police or approach them if they are victims of a crime and 49% of forced migrants did not believe that the police could generally be trusted."[287] There have been some allegations from the refugee community about police harassments, corruption and arrest based on xenophobic sentiments despite their possession of valid documents. In most case, police have taken the asylum seeker's documents and either destroyed them or refused to acknowledge their validity.[288] Finally, xenophobia like apartheid is a misery that affects the society and its people as a whole both as citizens and non-citizens in their daily lives as it constraints their psych and mentality. It is also part of the societal evil that dehumanises human rights and dignity, limits people from achieving their fullest potentials necessary for the growth and development of a particular society. This vice should generally be condemned and dealt with in South African society.

[286] Timngum Desire, Socio-Economic Experience of Francophone and Anglophone Refugees in South Africa: a case Study of Cameroonian Urban Refugees in Johannesburg. University of the Witwatersrand. 2001. p33
[287] Segale Tebogo, Forced Migrants and Social Exclusion in Johannesburg in Landau Loren (ed) Forced Migrants in the New Johannesburg, University of the Witwatersrand, South Africa. 2005. p51
[288] Ibid . p51

### 5.4 Access to Basic Rights

The South African Bill of Rights and constitution including the Refugee Act spell out the rights and obligations of refugees and asylum seekers in the country. These include administrative justice, legal protection, non-discrimination, and access to social services, employment, education and basic medical services among others. This constitutes part of what can be described as the basic minimum rights and standards that facilitate the survival of refugees and asylum seekers in South Africa. Obtaining necessary documentation and permits from the Department of Home Affairs is a primary step in accessing these government services such as housing, education, medical services and employment by refugees and asylum seekers. To determine how refugees and asylum seekers have accessed these basic services and the difficulties they have encountered in the process, interviews were conducted with some refugees and asylum seekers in this research.

#### (i)Health Services

Access to health services is indispensable to the survival of refugees and asylum seekers in South Africa and a right. According to Silove and Steel "refugees and asylum seekers who flee conflict areas may develop mental health disorder and maybe traumatised by the consequences of war"[289] either on transit or in country of asylum. The difficulties in coping with the new environment and the inconvenience of getting the asylum and refugee permits from the Department of Home Affairs may worsen the situation leading to emotional disturbances, illness or deterioration in health. Respondents were asked to identify where they have being to access medical facilities when they are or their households are sick and the responses they received from such medical services. Seventeen of the interviewees said they access medical treatment from Hilbrow Clinic, Johannesburg Hospital, Helen Joseph Hospital, Kelskdrop Sephe Hospital, Baragwanath Hospital and Edenvile Hospital while eight respondents said they have never been to any government hospital in South Africa because they were not sick.

[289] Silove and Steel, The Mental Health and Well-being of on-shore asylum seekers in Australia, Psychiatric Research Unit. University of New South Wales.1998

While twelve of the respondents who have been to government hospitals or clinics for medical attention are asylum seekers, five are refugees. Out of the twelve asylum seekers who have or their households have been to either government hospitals or clinics, eight said they have been refused medical treatment in Johannesburg Hospital, Baragwanath Hospital, Kelskdrop Sephe Hospital and Edenvile Hospital because they were asked to pay some huge sum of money while four of the respondents said they have not denied medical treatment in Hilbrow Clinic and where not asked to pay for medical treatment. Other reason they claimed that resulted to their refusal was xenophobia which emanated from the fact that they were rebuked by the medical personnel for not having the money to pay for their medication. Five out of the eight asylum seekers who were refused medical attention at government hospitals said they went to private hospitals while two said they went to pharmacy and bought some medicines to treat themselves. The remaining one claimed he did not return to the hospital again but remained at home until the sickness disappeared on its own. However, two of the refugee respondents who said they have not been refused medical treatment in any government hospital because they always pay for their services while three claimed they were refused as a result of hospital fees.

Though some refugees agree that they are provided with services in the government hospitals and clinics but majority of the asylum seekers have difficulties in accessing medical facilities due to high cost of medical costs. It has been reported that a Somalia refugee gave birth at the reception of one of the big hospitals as the husband was unable to pay for admission fee for the maternity ward. According to Kaajal Ramjathan of Lawyers for Human Rights:

> "though South Africa has free emergency medical services but the hospital departments do not regard pregnancy as an emergency case expect where there is complications"[290]

[290] Kaajal Ramjathan, Lawyers for Human Rights in a talk with Refugee Community held in the Constitution Hill Female Prisons on 23 September 2005.

This may contribute to the ordeal of pregnant refugees and poor South African that are in similar conditions. South African legislation recognises the right of the poor, vulnerable and marginalised groups to access public health care and the Refugee Act 103 of 1998 Section 27 (g) guaranteed refugees the right to receive basic primary medical services similar to those provided to South Africans from time to time. This means they should receive the same assistance as their South African counterparts in similar social and economic circumstances. This section of the Act does not cover asylum seekers, which compound their problem coupled with the delay in getting refugee status from the Department of home Affairs. But in the broader context, asylum seekers are still protected by the constitution as Section 27 (1) of South Africa's Constitution guarantees "everybody the right to health care services, including reproductive health"[291] and section 27 (3) stated clearly that no one regardless of nationality or residency status may be refused emergency medical treatment.[292]

However, access to medical services vis-à-vis refugees and asylum seekers seem to be unclear as from the above interviews respondents seem not aware or understand their rights to medical treatment, government responsibilities and its limitations in terms of medical facilities and payments for medical services in government hospitals. South Africa do not provide free medical services in government hospitals but in primary health centres and clinics, and according to government policy refugees are entitled to the same medical services provided to its citizens from time to time and should pay for services where its citizens in the same condition are meant to pay. This seem to be misinterpreted and unclear to refugees and asylum seekers whether government provides free medical services and in the contrary, they are asked to pay for treatments and medication in government hospitals. Indeed, problems of refugees and asylum seekers to medical services may be complicated in relation to non-recognition of asylum and refugee permits by some hospitals' officials, which may place refugees in a disadvantageous category of patients that pay higher hospital fees. Also, language barrier, ignorance of the rights of refugees and asylums

[291] South African Constitution 1996.
[292] Pursell Rebecca, Accessing Health Services at Johannesburg's Clinic and Hospitals in Landau Loren (ed) Forced Migration in the New Johannesburg: Towards a Local Government Response, University of the Witwatersrand.2004. p94

seekers by hospital officials, xenophobia and assumption that all migrants are illegal and constitute financial strain to the government coffers may have worsen the situation of accessing health care services by refugees and asylum seekers. On the part of refugees and asylum seekers, ignorance of how the system function also complicate their problems of access to medical treatment since there are difficulties in interpreting government policies and practices and no proper education on the rights refugees and asylum seekers are entitled to and the procedure of claiming those rights.

Peberdy and Majodina argue that "unemployment and the fact that refugees and asylum seekers may find themselves in low income employment may affect their ability to access health services."[293] In effect, refugees and asylum seekers are vulnerable group and may lack economic, social, political influence that enable them improve their status and access to medical and health standards in the country.

**(ii) Education**

Education is one of the most important fundamental rights of refugees and asylum seekers in South Africa. The United Nations Secretary General, Kofi Annan described education as "human rights with immense power to transform and on its foundation rest the cornerstone of freedom, democracy and sustainable human development."[294] In effect, education provides children with essential opportunities for cognitive, social and emotional development and the ability to develop fullest their potentials that enable them contribute and face the challenges of the society.

Article 26 of the Universal Declaration of Human Rights recognises and guarantees the right to education. Also Article 13 of the International Covenant on Economic, Social and Cultural rights state the indispensable role of education in the development of human personality, realisation of human rights and stipulates compulsory and free primary

[293] Peberdy and Majodina, Finding a New House? A report on the lives of Somali refugees in Johannesburg , Graduate school for Humanities and Social Sciences : Forced Migration Studies Programme, University of the Witwatersrand, Johannesburg.
[294] Kofi Annan, cited in Stone Lee and Winterstein Shani, A Right or A Privilege? Access to Basic Education for Refugee and Asylum –Seekers Children in South Africa. Lawyers for Human Rights www.sahrc.org.za/national_consotium_onrefugee_. htm

education for all. In like manner, article 17 of the African Charter on Human and Peoples Rights acknowledges the right to education while the United Nations Convention on the rights of the child which South Africa has ratified guarantees access to education and establishes that "education must be achieved on the basis of equal opportunity and non-discrimination."[295] On the other hand, article 22 of United Nations Convention Relating to the Status of Refugees stipulates the responsibility of the state admitting refugees and asylum seekers in their territory to accord the same treatment accorded to nationals to refugees in relation to elementary education.

However, the South African Bill of Rights states that access to basic education is human rights for "everybody" irrespective of your nationality and in this respect article 27 (g) of the South African Refugee Act 130 of 1998 stated thus "a refugee is entitled to the same basic health services and basic primary education which the inhabitance of the Republic receive from time to time."[296] The South African School Act, 84 of 1996 also affirmed that "no one may be refused admission to public school on the grounds that his or her parent is unable to pay or have not paid the predetermined school fees."[297] The same policy provided that every school must have an exemption policy in place in order to assist indigent pupils to realise their educational dreams of which refugees and asylum seekers are inclusive. Stone and Winterstein argue that schools are often the only point of entry for refugees and migrants' children to integrate into South Africa.[298] In reality, there have been some problems in achieving the right to basic education of refugees' children in the country as well as the problem of integrating refugees and asylum seekers through educational institutions. These problems include rejection of refugees' children by some school heads, payment of school fees and provision of educational materials, xenophobia, ignorance of the rights of refugees and asylum seekers in the country and the problems of getting relevant documentations for accessing educational institutions in the country. An official of LHR articulated her views and stated thus:

[295] United Nations Convention on the Rights of a Child
[296] Republic of South Africa, Refugee Act 130 of 1998
[297] South Africa School Act, 84 of 1996, section 5 (3) (a).
[298] Lee Stone and Shani Winterstein, A Right or a Privilege? Access to Basic Education for Refugees and Asylum –Seekers Children in South Africa.

> Refugees' children are entitled to educational services like other South African citizens but some of them run into problems of providing school fees and other educational materials. They are not entitled to school grants, which are meant to help parents who cannot afford the school fees of their children, and some schools may be reluctant to admit refugees' children because of fees. Access to social grants is also difficult. Foster home grants that are usually intended to assist the indigent children by foster parents are not available for forced migrants' children.

In order to determine the realisation of the right to basic education with regard to refugees and asylum seekers in South Africa, the respondents where asked to indication how their children are achieving their educational needs in South Africa in relation to the right to basic education. Out of the twenty-five respondents interviewed which include refugees and asylum seekers, fifteen said they have no children while ten of the respondents said they have children. Seven respondents said they have fourteen children of primary and secondary school age and their children are residing in South Africa while three respondents said their children are already in the university. Out of the fourteen children of school going age of the respondents, eight are not in school while six are presently going to school. The major reasons for not sending their children to school are the problem of school fees and the provision of other educational support materials. The respondents claimed that as they are unemployed in the country, that things are extremely difficult for them to send their children to school while the government assistance are not extended to their children basically because they are refugees and asylum seekers. According to them, since they cannot afford the cost of sending their children to school, they are still waiting to see whether they can secure a job in the country before sending their children to school as they are very passionate about the education and the future of their children.

Preventing children from going to school because their parents cannot afford the school fees is quite detrimental not only to their families but to the society in general since education treasures the development of any society. Asked about some of the attempts they have made to seek assistance from organisations or bodies that assist indigent refugees' children in such condition. Five of the respondents claimed they have made some efforts to

approach UNHCR, some NGOs and have applied for school exception without success while three respondents said they have not done anything claiming they are unaware of what to do. UNHCR in recent time has showed its willingness to assist refugees' children to attend pre-primary, primary and secondary schools in terms of paying their school fees, negotiated for exemption of children of refugees and also provided some educational supports such are uniforms and books but has being constraint by financial problems which make the assistance unsustainable. Refugees and asylum seekers' pupils also have language problems in school but teachers can be of immense importance to children of refugees if they could assist them in their language and emotional problems in order to cope with their new educational environment. This will facilitate their integration into the new educational system and may help them achieve good academic performance.

**(iii) Employment**

Employment is indispensable and forms an important aspect of the basic rights of refugees and asylum seekers in South Africa. The Refugee Act allows refugees and asylum seekers the right to seek employment in both private and public establishments in South Africa. However, the regulation accompanying the Refugee Act prohibits asylum seekers from seeking employment and studying pending the finalisation of their asylum applications but the South African Human Rights Commission "questioned the constitutionality of the prohibition of asylum seekers to seek work while waiting for the approval of their refugee status"[299] The court subsequently declared such restriction unconstitutional and guarantees asylum seekers and refugees the right to work and study in South Africa. However, the chapter two of the South African constitution also allows non-citizens, which include refugees and asylum seekers, the right to benefit from the rights enshrined in the Bill of Rights except the rights reserves for citizens such as political right.

Employment provides refugees and asylum seekers means of livelihood and substance to support themselves and their families in South Africa as well as gives them access to other opportunities such as prestige, upward mobility and social status. Gainful employment will

[299] Education Rights Project, The Education Rights of Refugees, Asylum seekers and Migrants in South Africa. South Africa. 2005. p9

make refugees and asylum seekers less dependent on NGOs or government for assistance but will enable them contribute to national economy and in poverty alleviation. In order to evaluate the experiences of refugees and asylum seekers in realising their right to employment and the obstacles they encounter, respondents were asked to state their employment status, educational background and how they survival in case they are not employed. Nineteen respondents said they are not employed while six respondents said they are employed.

**Table 5.1 Employment status of respondents**

| | |
|---|---|
| Employed | 6 |
| Unemployed | 19 |
| Total | 25 |

On their highest educational level, fourteen of the respondents who are not employed have some level of tertiary education while other four respondents belonging to the unemployed group have completed their secondary education and the remaining one said he has some form of professional training. On the other hand, out of the six respondents that are employed, four of them are graduates while two completed their secondary school education.

**Table 5.2 Educational levels of respondents**

| Educational Levels | Numbers |
|---|---|
| Primary | 2 |
| Secondary | 5 |
| Tertiary | 18 |
| Total | 25 |

However, three of the respondents are employed in an informal sector (self-employed) while two are employed in a formal sector and one employed by CBRC which is a non-governmental organization. The respondent that was employed by CBRC stated how difficult it was for him to secure employment and he summarised his story as follows;

> I am an asylum seeker from Ivory Coast and entered South Africa in 1999 to seek asylum as a result of political turmoil that started to breed in my country. I was refused application because my country was not regarded as refugee producing country as at then. It was only in May 2001 that I succeeded in been granted asylum in South Africa after paying the sum of R300.00. However, when I got my permit as an asylum seeker, we were not allowed to work or to study and things were very difficult and the government did not provide support to us. I think things are better now as the asylum seekers can work or study though some employers of labour here still don't recognise or do not know anything about the rights of refugees and asylum seekers in South Africa talkless of employing them. This makes more difficult for forced migrants. I am now employed by CBRC but before then things were very difficult.

Respondents who were unemployed said they have all applied for jobs severally but the major reasons while they remained unemployed despite their level of education is as a result of not being a South African citizen or in possession of the South African ID booklet or work permit which are always requested by employers. This means that the employers often do not recognise refugee and asylum seekers' permits or that many employers are unaware of the rights of refugees and asylum seekers to seek employment in South Africa. One of the findings of this research is the financial problems which refugees and asylum seekers face in the country and their inability to get assistance from the government. Though financial problems are not peculiar to forced migrants alone but their condition in the country makes them vulnerable. This has led to another form of struggle for survival and engagement in some form of economic activities. Many refugees and asylum seekers have acquired tertiary education and abandoned their jobs in their home countries to seek asylum in South Africa and cannot go back again to secure their previous employments. Apparently, they are also excluded from employment on the basis of their status and many do not have sources of income and means of livelihood or been supported by the government.

As indicated in table 5.2 many refugees and asylum seekers have some levels of tertiary education which shows that many of the respondents are well educated and professionals in their various fields. This debunks the widely held perceptions that refugees and asylum seekers are unskilled and uneducated, and that their presence may impact negatively on South African economy and a burden to the state. On strategies for survival, some of the unemployed respondents said they are self-employed and have engaged in informal sector such as operating a petty business, street trading, hawking and have employed some South Africans in their businesses. This may equally show the creativity of refugees and asylum seekers which have created jobs for the local population particularly those who have not been employed by the government and other private institutions. But these efforts are sometimes hampered by lack of access to loans and credits facilities, which make business expansion very difficult and creation of more jobs unsuccessful.

South Africa has 26.2% unemployment rate in 2004[300] and some professional skills are lacking owning to brain drain in favour of some European and advanced countries where most South Africans have migrated for greener pasture as a result of higher salaries and better condition of services. In this situation, refugees and asylum seekers can be viable instruments in filling the skill shortages which can constructively contribute to the growth of South Africa economy since many refugees and asylum seekers have the skills and willing to work in the country.

Respondents also identified employment as one of the most pressing needs of the refugees and asylum seekers in the country as that means getting money to satisfy the basic needs and services such as housing, education, medical services and taking care of their families. On the other hand, slow pace of processing asylum permits by the Department of Home Affairs, constant renewal of asylum permits and non-recognition of such permits by the employers at state and private institutions are also major cause of concern. Under this circumstance, the employers of labour seem to doubt the authenticity of asylum and refugee permits, and as well find it very difficult to employ people whose permanent stay in the country is not assured and may not like to enter into contract that will violate the

[300] The World Fact book, Unemployment Rare http://www.cia.gov/cia/publications/factbook/fields/2129.html

labour law. According to Daniele "their uncertain status arouses some suspicions amongst employers, who are further discouraged by administrative complications and delays in obtaining permits."[301] This is why most refugees and asylum seekers are found in informal and casual business setting including professionals, and are sometimes subjected to exploitation and always harassed by the metro police and the city council. Some refugees and asylum seekers with skills and expertise believe that what they require from South Africa is to get the necessary permits and the enabling environment to work. This can help them make use of their skills in advancing their cause in the country since employment in the formal sector remains difficult. To sum-up, employment is a synergy of empowerment and facilitate integration of refugees and asylum seekers in South Africa which will help them become self-sufficient and regain their dignity and human rights.

**5.5 Corruption**

Corruption is identified as one of the major problems of refugees in South Africa and indeed a national issue. On 27 April 2004, South Africa celebrated ten years of democracy and President Thabo Mbeki signed the Preventive and Combating of Corrupt Activities Act 12 of 2004 into law.[302] The drafting of this Act involves submission from State Anti-corruption agencies, civil society and other stakeholders in the war against corruption. The Act aimed to provide "punitive instrument for offenders and a deterrent for those contemplating corrupt activities." [303]

In the last ten years, corruption has affected most government departments dealing with refugees, asylum seekers and other immigrant population particularly the Department of Home Affairs and has attracted wide media coverage. Audience has viewed with serious concern SABC Special Assignment programmes centred on corruption in the Department of Home Affairs. Newspapers and magazines have also published extensively on corrupt practices which have projected a bad image of the officials of the department.

[301] Daniele Joly , Refugee Asylum in Europe? Minority Rights Publications, London.1992. p59
[302] Institute for Security Studies, Anti- Corruption Strategic Programme, South Africa 2004 http:www.ipocafrica.org/events/2004/2911corract/2911 programme. pdf
[303] Ibid

This is harmful in building a new democratic South Africa that promotes human rights, equality and freedom. Corrupt practices in the Department of Home Affairs involve categories of employees ranging from senior and junior cadres, interpreters, security guards and state security agents working with the department. These corrupt practices take place at different stages of asylum application including submission, renewal or even approval for refugee status. Some refugees and asylum seekers are forced to pay bribe by some official of the department or through their agents to obtain service from the department that should ordinarily be free. To find out incidence of corrupt practices and its impact on right to seek asylum in South Africa, respondents involving refugees and asylum seekers were asked to indicate their involvements in corrupt practices with the officials or other agents in recent time in the process of obtaining or procuring their permits and accessing other services from the department. Ten asylum seekers responded that they have never been requested to pay bribe or being extorted by the officials of the department while five asylum seekers respondents responded affirmatively confirmed paying some money as bribe ranging from R300 to R1, 400. On the other hand, seven refugee respondents said they have not been asked to pay money or bribe by the officials or their agents while two refugee respondents confirmed paying the sum of R1, 800 and R1, 500 respectively to secure their refugee status. One respondent claimed been asked to pay the sum of R500 but he refused. However, the two refugee respondents who paid some money said they got their refugee status approved within one month while the remaining eight respondents got their refugee status approved within one to four years. From the above responses, it is believe that the level of corruption involving bribery and extortion of money from asylum seekers and refugees have reduced considerably in the recent time as compare in the past. But an official of the LHR also observes that:

> Though some little progress has been made to reduce corruption in the department, there are still incidence of perpetual bribery and corruption in the department which has infected the system adversely. This is very chromic and difficulty to eradicate as some corrupt officials is benefiting from the system and wilt absolute control of the trend for their own advantage. These including asking refugees and asylum seeker for money before granting or renewing there permits. If they don't give the

> bribe either their papers are denied or not renewed which makes them more vulnerable to arrest or deportation or remain in the country illegally. The only way out is to fight corruption and to call a spade a spade.

In all, only eight respondents were asked to pay money in form of bribe before accessing the services of the department while seventeen respondents have never been requested to pay money though majority of the respondents have not had their applications for refugee status approved. This may be attributed to some major interventions undertaking by the department in the recent time to curb corruption such as mantling of anti-corruption hotlines, dismissal of unscrupulous officials and chasing away touts who work as agents to siphon money from applicants.

Having been a street trader in the Braamfontein Refugee Reception Office in 2003, I experienced the suffering of refugees and asylum seekers in the hands of some unscrupulous agents who work in liaison with some staff of the department to siphon money from the refugees and asylum seekers. They adopt various strategies in their operations including making the department inaccessible, soliciting for bribe before extending permits or using threat to conceal an existing permit if their client was uncooperative. Report of a survey conducted by the South African Migration Project revealed that corruption in the Department of Home Affairs could be attributable to issues of "capacity limitations, systems and internal organisational problems"[304] and has far reaching implications on service delivery in the department. The survey revealed that customers and particularly non-citizens appear to still have a high level of tolerance for practices that might result in opportunities for corrupt practices to emerge and as such they are more vulnerable to be victims of corrupt practices. Mapisa-Nqakula perceives combating corruption as a key priority of her department, which must be prevented through enhancement of the systems of operation in the Department of Home Affairs. According to her, the department has embarked on Corruption and Fraud Prevention Plan to build the

[304] Mapisa-Nqakula, Opening Remarks by the Minister of Home Affairs on the Occasion of the Launching of the Home Affairs Service Quality Survey conducted by the Southern African Migration Project, Pretoria. May 2005 http://home-affairs.pwv.gov.za/speeches.asp?id=134

culture of corrupt-free department and observation of professional ethics governing public services. In that direction, the Department of Home Affairs has taken some drastic measures to combat corrupt practices which include tightening up of disciplinary procedures, introducing a whistle blowing policy, reviewing internal security policy, risking management strategy and the launching of anti-corruption hotline in the department.[305] According to official statistics from the department of Home Affairs between April 2004 to June 2005, 67 officials of the department has been dismissed for serious act of misconduct involving corruption, 54 have been issued warning, 40 final written warning and 34 verbal warnings.[306] Some of these cases involving corruption also relate to refugee issues.

**5.6 Human Rights Awareness**

As mentioned earlier, understanding of human rights by the displaced persons can be empowering since it helps refugees and asylum seekers to be aware of their rights and seek possible ways to pursue and secure them particularly where the state machinery is reluctant to protect their rights. Awareness of human rights and refugee rights as well as the obligations of the states to protect these rights is necessary in the struggle for the realisation of basic rights of refugees and asylum seekers in South Africa.

Respondents also involving refugees and asylum seekers were asked about their knowledge and awareness of human rights and knowing about their rights as forced migrants in South Africa as contained in various national and international legal instruments that protect refugees and asylum seekers. Sixteen respondents claimed they are aware of human rights and the rights of forced migrants in the country including the international and South African instruments that meant to protect refugees and asylum seekers. Nine respondents also said they are ignorance of such rights and instruments as well. Those who are aware of human rights and refugee rights indicated that they learnt of human rights in school though in a peripheral level. But that their practical experience concerning refugee rights emanate

[305]Mapisa-Nqakula, Statement of the Minister for Home Affairs on the Occasion of the release of a report of finalised Cases of Corruption and Misconduct http://home-affairs.pwv.gov.za/speeches.asp? id=134
[306] Ibid

from their tasks of struggling as forced migrants in South Africa and in attempt to find out the procedure and government responsibilities in protecting refugees in South Africa. According to them, been aware of these rights is not a perquisite for securing them but that it helps in fashioning appropriate strategies to liaison with out stakeholders to pursue the rights. It also helps in understanding the social context that exist and the forces that shaped it since South Africa is still undergoing transformation process involving all aspects of its social life and changing the rules regularly. They also mentioned xenophobia as one of the major problems of securing the rights of refugees in the country and that the awareness of human rights and the rights of forced migrants may be part of the possible ways of overcoming frustrating effects of xenophobia and intolerance. On the other hand, respondents that are not aware of both human rights and the rights refugees have in the country said they have heard of it but have not taking time to find out what it implies or the content of the various instruments. According to them, they know they got rights in South Africa but no body has told them what the rights are except issuing of refugee and asylum permits which is unnecessarily delayed. One of the respondents responded to my question by saying:

> I am ignorant of the international refugee law and instruments including domestic instruments that protect the rights of refugees in South Africa. I believe most of the security officers as well are not aware of the content and rights enshrined in those documents because of the way they treat us. There is also lack of respect for refugees by some Home Affairs officials who treat refugees and asylum seekers with disrespect and in an undignified manner. Ignorance and general lack of awareness by officials of both government and private establishment including refugees themselves on the rights and obligations of refugees in South Africa can be said to be responsible for some of the problems the refugee community is facing in South Africa.

They said their more pressing problem is the issue of processing their permits on time which according to them should be put in a priority list of government in tackling the problems of refugees and asylum seekers in the country. They also acknowledge the fact

that their lack of knowledge of human rights and refugee rights in the country may have affected their rights and survival in the country since sometimes they are intimidated by security agents and they do not know what to do in such situation since they are not even aware of the basic rights they have in the country.

The respondents were also asked about their most pressing right (s) which they needed most in South Africa and they mentioned socio-economic rights such as work, education, health care and legal rights. According to them, these are some of the basic rights that can empower refugees and asylum seekers in the development of their skills to be able to contribute to the growth of the country and as well be self-sufficient. The South African democracy built on the cornerstone of human rights are imperative to forced migrants and the role of NGOs in educating refugees, asylum seekers and other stakeholders are quite important. An official of the LHR in an interview told me that:

> Presently, LHR is planning a training programme for members of the police force and other stakeholders to enlighten them about issues of refugee rights, identifying different categories of immigrants and their permits. There are series of reports that lack of understanding of refugees regime by officials of the police force, the department of labour and other government agencies contribute to the arrest, detention and even deportation of genuine refugees and asylum seekers. Many South Africans do not know much about different categories of immigrants in the country and assumed that non-South Africans are illegal in the country and have no right to remain in the country which normal results to xenophobic attitudes against all immigrants including refugees.

The general awareness of human rights that seem to exist among the respondents can be attributable to the fact that many of the respondents are educated and may have read or learnt of some human rights values in their cause of their studies but have tried to apply it in practice while struggling to survive as a refugee or asylum seeker in the country.