

COMMENT

Existing in limbo

SA has displayed conflicted, ambivalent attitude towards protection of genuine refugees

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TODAY, people across the globe will observe World Refugee Day. On this special day, state officials, civil societies and academics take time to recognise the distressful journey of refugees to and their plight and resilience in host communities.

For South Africa, it is a moment to reflect on its commitment to protect refugees for the past 20 years.

Refugees were not allowed in the country before 1994. Those who were able to sail through borders into South Africa stayed as illegal migrants and survived through labour exploitation. Refugees could claim neither state support nor legal protection because there was no refugee protection system.

Legally and politically, they were viewed as “undesirable people” who had to be traced, apprehended and deported. When South Africa became a democracy in 1994, it opened its borders to asylum seekers.

Driven by the principles of ubuntu and human dignity, South Africa acceded to the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa and the 1951 Convention Relating to the Status of Refugees (and its 1967 Protocol) in 1995 and 1996, respectively. The accession was ratified through the adoption of the Refugees Act of 1998, which came into effect in 2000.

Unlike other African countries where refugees live in camps, South Africa applies the community integration approach. This implies that the individuals who seek asylum should be assisted to integrate into the community. Humanitarian assistance is central to community integration.

While walking or travelling – often through difficult terrains or open sea – to their destination, they face violence, dehydration, malnutrition, hunger, exhaustion and increasing vulnerability to ill health. Despite the humanitarian concerns, South Africa adopted a self-integration refugee policy that does not provide for humanitarian responses. Asylum seekers must integrate themselves in communities.

They must support themselves until their applications are successful and they are recognised as “genuine” refugees. During this time, they have to find accommodation, food, and send their children to school. In order to meet their needs, they need to work.

Although they are required to fend for themselves, refugee laws bar asylum seekers from taking up employment, engaging in small business or having access to critical services. Exclusion from social welfare and economic activities led the Supreme Court of Appeal, in the 2004 case of Minister of Home Affairs versus Watchenuka, to



A SOMALIAN mother and her child were among the refugees and asylum seekers who camped outside the Cape Town offices of the UN High Commissioner for Refugees in October last year. On World Refugee Day today, South Africa needs to reflect on its commitment to protect refugees as it has been doing for the past 20 years, says the writer. | BRENDAN MAGAAR African News Agency (ANA)

order the state to allow asylum seekers to work and study.

The Watchenuka decision did not sit well with the state. In 2017, it revised the Refugees Act under which it indicated that the rights to work and study were available in restricted circumstances. The 2017 amendments (not yet in operation) seek to remove asylum seekers from communities and confine them in the Asylum Seeker Processing Centres where they would be provided for by the UN High Commissioner for Refugees. This gives credence to the state’s unwillingness to protect asylum seekers.

The reluctance manifested in the closing of Refugee Reception Offices (RROs) in Cape Town and Port Elizabeth. Asylum seekers in these cities had to travel every three months, along with their dependants, to RROs in Gauteng, Limpopo and KwaZulu-Natal to regularise their permits.

Destitute asylum seekers, who were unable to travel to these provinces, became illegal foreigners overnight. This led to a collision with law enforcement and a loss of employment as they were no longer legally staying in the country. Without work, life became unbearable. Without valid permits, they were subject to, among others, arrest, detention and deportation.

Non-protection of asylum seekers is justified by the state on the grounds that they are irregular migrants who do not deserve refugee protection. They are accused of abusing the asylum

management system to regularise their stay, and competing with citizens for access to available national resources, thereby placing the nation at risk.

The 2017 White Paper on International Migration consolidates these contentions by noting with concern that South Africa is the largest economy in Africa in that it attracts a high number of economic migrants that use the asylum management system as an entry point. With these high demands being placed on refugee protection, the state’s ability to offer effective protection services to “genuine” refugees and asylum seekers in the greatest need of protection, is therefore compromised.

In her 2011 World Refugee Day commemoration address, Fatima Chohan, the former deputy minister of Home Affairs, acknowledged that the influx of economic migrants disadvantaged recognised refugees, as resources were diverted away from offering them full legal protection services.

The state’s misconceptions about asylum seekers have negative impacts on their protection and their applications. For the past 10 years, 90% of applications were rejected, compelling asylum seekers to stay in the country as individuals awaiting decisions on their appeals. This creates anxiety and uncertainties about their future. Their being limbo is further exacerbated by the state’s reluctance to renew their permits. Documentation becomes integral to the frustration and uncertainties faced by asylum seekers and

“genuine” refugees. This is a reality despite the fact that the Refugees Act is praised to be progressive.

It is clear that in the past 20 years the state has displayed conflicted and ambivalent attitudes towards the protection of genuine refugees. The conflicted attitudes manifest themselves in the adoption of socio-economic measures that tend to distribute socio-economic rights and benefits to previously or historically disadvantaged people. Refugees are excluded from socio-economic measures taken to redress and eradicate inequality. They have no access to subsidised socio-economic development programmes such as housing. They do not fall within the scope of affirmative action in terms of employment. BEE and National Health Insurance are out of their reach.

In this lockdown, the conflicted attitudes are evident in the exclusion of refugees and asylum seekers from the Covid-19 economic relief measures. Struggling to access critical basic services, refugees and asylum seekers took to the streets of Cape Town and Pretoria and demanded to be resettled in a third country.

Despite the Refugees Act and its noble intentions, South Africa is politically not willing to offer asylum seekers and refugees the protection they desperately need.

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