



## **CCS Grant Report, 2005**

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## ABSTRACT

### **Displaced and discarded: the role of civil society organizations in promoting socio-economic rights for refugees and asylum seekers in South Africa by Jennifer Parsley, 2005**

Despite a legal framework outlined in the Refugees Act No 130 1998 which entitles refugees to the socio economic rights in chapter 2 of the Constitution<sup>1</sup>, in practice these rights are difficult to access for a number of reasons. Obstacles start with access to just administrative action and include limitations caused by corruption within the DHA, xenophobia, structural constraints within the economy and exclusion from government services. The paper explored the strategies being employed by refugee civil society organizations in promoting socio-economic rights for refugees and asylum seekers. The study identified four strategies being adopted by civil society organizations in attempts to enforce socio-economic rights. These include civil society organisations engaging in service provision to provide temporary relief to refugees and asylum seekers; lobbying and advocacy interventions; legal challenges and intracommunity support. There is little emphasis placed on protest actions or increasing linkages with other civil society organizations advocating for the expansion of rights for South Africans. Efforts at enforcing socio-economic rights are largely aimed at accessing the limited socio-economic rights expounded in current legislation and particularly the right to just administrative action, rather than expanding rights to refugees and asylum seekers.

Refugee organizations and the forms of mobilizing reflect a number of contradictory trends. Firstly, despite refugees facing common issues, the community is plagued by internal conflict limiting their ability to mobilize and advocate for these concerns. Refugees largely identify themselves by nationality, linguistic, provincial or ethnic affiliations and these cleavages inhibit their ability to mobilize around common refugee concerns. This makes them more reliant on more formal NGOs to act as intermediaries on their behalf. Secondly, for many refugees, fears of xenophobia and drawing attention to themselves have resulted in their retreating into small pockets within their own community. These efforts at ensuring invisibility have the unintended consequence of heightening their visibility by contributing to South Africans identifying with them in group categories leading to social and economic exclusion. The third trend is that of refugee and asylum seekers targeting NGOs and the UNHCR as the site of protest action rather than the government. Civil society organizations have limited powers to address issues of just administrative action, access to socio-economic rights and opportunities for self reliance. This frees governments to ignore the needs of this community and not be held accountable for not fulfilling obligations to them.

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<sup>1</sup> Along with the right to equality and dignity, the Bill of Right specifically mentions rights related to the environment (section 24), Housing (section 26), Health care, food, water and social security (section 27), the rights of children (section 28), the right to education, just administrative action (section 33), freedom of trade, occupation and profession (section 22).

## **CCS Refugee Paper**

**Displaced and discarded:  
The role of civil society organisations in  
promoting socio-economic rights for refugees  
and asylum seekers in South Africa**

**Jennifer Parsley**

**2005**

## **Abbreviations**

<b>CASE</b>	Community Agency for Social Enquiry
<b>CCMA</b>	Commission on Conciliation, Mediation and Arbitration
<b>CBO</b>	Community Based Organisation
<b>CBRC</b>	Coordinating Body of Refugee Communities
<b>DHA</b>	Department of Home Affairs
<b>DSD</b>	Department of Social Development
<b>FBO</b>	Faith Based Organisation
<b>JRN</b>	Johannesburg Refugee Network
<b>JRS</b>	Jesuit Refugee Services
<b>HRW</b>	Human Rights Watch
<b>LHR</b>	Lawyers for Human Rights
<b>LRC</b>	Legal Resource Centre
<b>NCRA</b>	National Consortium on Refugee Affairs
<b>NGO</b>	Non Governmental Organisation
<b>PPASA</b>	Planned Parenthood Association of South Africa
<b>SACC</b>	South African Council of Churches
<b>SAHRC</b>	South African Human Rights Commission
<b>UN</b>	United Nations
<b>UNHCR</b>	United Nations High Commissioner for Refugees

*You are living outside of space and of time, you have no roots, you have no past, you don't know whether you have a future.*

Latvia's President, Vaira Vike-Freiberga, former refugee (UNHCR 2002c:2)

## **Introduction**

Despite the South African government having signed international refugee agreements, there are few provisions for refugees or asylum seekers beyond the issuing of legal status. The socio-economic needs of refugees are therefore largely being addressed by non governmental organisations (NGO's), faith-based organizations (FBOs) and community-based organizations (CBOs).

Acknowledging that it is difficult if not impossible to achieve social change without organisation, this study looks at the ways in which refugee community-based organisations and NGO's are mobilising to address the socio-economic needs of refugees and asylum seekers. It explores the priorities, strategies and partnerships shaping the mobilisation of the refugee and asylum seeker community in South Africa. The study analyses the relationship between refugee community based organizations, NGOs and faith-based organisations providing services to refugees. The areas of collaboration and sites of tension are explored to assess the impact these have on building a broad-based alliance among refugee activists to advocate for refugees and lobby the government to fulfill its obligations to refugees and asylum seekers.

This report outlines the complex nature of the refugee community and how this impacts on civil society organizing. The diversity, geographical spread and marginalisation of the community inhibit its ability to form a cohesive movement to lobby and collectively articulate and advocate for their rights. Their marginalisation is exploited by unscrupulous government officials, landlords and employers leading to further erosion of their tenuous access to socio-economic rights in South Africa.

The papers identifies four strategies being adopted by civil society organizations in attempts to enforce socio-economic rights. These include NGOs, FBOs and CBOs engaging in service provision to provide temporary relief to refugees and asylum

seekers; lobbying and advocacy interventions; legal challenges and intracommunity support. There is little emphasis placed on protest actions or increasing linkages with other civil society organizations advocating for the expansion of rights for South Africans. Efforts at enforcing socio-economic rights are largely aimed at accessing the limited socio-economic rights expounded in current legislation and particularly the right to just administrative action, rather than expanding rights to refugees and asylum seekers.

This paper starts with a background to refugee protection in South Africa. It then explores the legal framework and practical experiences of refugees. The third section looks at how refugee organizations are responding to the issues faced by the community. The potential for partnerships is examined in light of the limited resources available for refugee protection. In closing, the paper discusses the limited possibilities of refugees forming a broad based alliance to lobby for refugee rights and the implications thereof (see appendix A for research methodology). This research does not explore organizational forms and strategies in asylum seeker and refugees' country of origin and how this would impact on mobilizing in the South African context. Further research would go a long way in clarifying the linkages and how this affects the power relations and cleavages within refugee civil society.

## **Background**

Throughout the 1980s the southern African region was beset by massive upheavals resulting from the civil wars in Mozambique and Angola; the occupation of Namibia and the apartheid government's "total strategy"<sup>2</sup>. Despite South Africa's relatively strong economic environment, the country was not a preferred destination for those fleeing war and persecution from neighbouring countries. Seeking refuge in apartheid South Africa would result in trading exposure to war and conflict for racist economic exploitation. And yet South Africa did receive some refugees, mainly those fleeing the civil war in Mozambique.

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<sup>2</sup> An intense destabilisation campaign in the Southern African region

Since the early 1990's the Southern African region has shifted from an area of conflict to one of relative peace. According to Crisp (2002:20), "The resolution of the long standing conflicts in Mozambique, Namibia and South Africa between the late 1980's and the mid 1990's, the southern part of the continent has been transformed from a major to a relatively minor refugee-hosting area."

With the demise of apartheid and growing optimism about the new South Africa, African refugees have increasingly been drawn south. South Africa receives asylum seekers from a number of what the United Nations High Commissioner for Refugees (UNHCR) calls 'refugee-producing countries' on the African continent. The total number of persons of concern to UNHCR in South Africa by 2005 was 214 000 (28 000 recognised refugees plus 186 000 pending asylum applications).

Despite this substantial increase in the number of refugees, the total number of refugees within South Africa needs to be placed within a broader context. Initial fears of 'floods' of refugees pouring across South Africa's borders have not been realised. The refugee figures for South Africa are substantially less than many other under-developed countries in the region. Africa currently hosts 4.2 million refugees of which about 200 000 reside in South Africa. If the number of refugees in Africa is disproportionately high, the number of refugees living in South Africa is disproportionately low. At the height of the crisis in Mozambique, Malawi had hosted nearly a million refugees (roughly 1 out of 7 of its national population) (van Garderen and Jaichand 2001:5). In 2000, Zambia hosted 160 000 Angolan refugees and 36 000 from the Republic of Congo. Tanzania hosted the largest refugee population in Africa with a total of 620 000 refugees (UNHCR 2000).

The South African government first signed an agreement with UNHCR in 1993 to formalize international protection. When South Africa signed the international refugee conventions in 1995<sup>3</sup>, a gap in national policy was exposed. National legislation had to contain provisions that reflected the spirit and letter of the International Conventions

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<sup>3</sup> The 1951 United Nations Convention Relating to the Status of Rights of Refugees and the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.

signed by the South African government as well as be guided by the Constitution, which guarantees rights to everyone in South Africa.<sup>4</sup>

After a lengthy and contested policy process, the Refugees Act No 130 of 1998 (hereafter referred to as the Refugees Act) came into operation in April 2000. The new Act outlines the process of status determination. The process begins with the issuing of a section 23 permit at the border post. This is a 14-day temporary permit to allow the applicant time to get to one of the 5 Refugee Reception Offices. At the Refugee Reception Office, an eligibility form is completed and the applicant is given a section 22 asylum seeker<sup>5</sup> permit. After a Status Determination Hearing, it is supposed to take 6 months for the claim to be processed. If the application is successful, the asylum seeker is given a refugee<sup>6</sup> permit, a section 24 permit that is valid for two years. The refugee is entitled to an identity document. If the person retains refugee status for a period of 5 years or longer, they are entitled to apply for permanent residence. Should their claim be rejected, they may appeal the decision (Parsley 2003).

### **Refugees experiences in South Africa**

The South African approach to refugee protection is that of local integration rather than the establishment of refugee camps.<sup>7</sup> This frees refugees from the constraints of camp life, but also places refugees in a vulnerable situation as there is little government support.<sup>8</sup> Although socio-economic rights are granted to all in the Constitution, there are specific acts where the beneficiaries of social welfare are defined as citizens. The Refugees Act provides for refugee rights, but intergovernmental cooperation is not

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<sup>4</sup> Except for 3 articles, all rights in the Constitution apply to *everyone*, including socio-economic rights. These three exceptions refer to political rights (19), the right to citizenship (20) and certain rights on trade, occupation and profession (22). The Roll Back Xenophobia Campaign, pamphlet ‘The Rights of Refugees and Migrants in South Africa.’ The Roll Back Xenophobia Campaign is a project of the National Consortium on Refugee Affairs, the South African Human Rights Commission and the United Nations High Commissioner for Refugees.

<sup>5</sup> An asylum seeker is a person whose asylum claim has not yet been examined to decide whether his/ her fear of persecution is genuine.

<sup>6</sup> A refugee is someone fleeing from persecution, systematic human rights violations or armed conflict in their country of origin.

<sup>7</sup> The human rights response to migration is integration, but South African communities are still struggling with internal integration post-apartheid and it is into this divided environment that refugees find themselves.

<sup>8</sup> The UNHCR 2003 Global report affirmed that, ‘many public services continue to keep their doors firmly shut to refugees.’

happening in practice. According to Joyce Tlou, the coordinator of the National Consortium on Refugee Affairs (NCRA), 'there is an ad hoc application happening in practice, depending on the levels of commitment and persuasive lobbying efforts of the various tiers of government. For example, in some provinces children are able to access children's grants and some Cape Town organizations have accessed government funding' (Interview, J Tlou, 22/09/04).

For many refugees and asylum seekers, one of the key challenges is accessing the system in the first place. Refugees and asylum seekers speak of sleeping outside the Department of Home Affairs (DHA) offices the night before in the hope of gaining entry to the building. The DHA and UNHCR attribute the overburdening of the system as lying with bogus applicants using the system to gain legal entry. Refugee activists concede that asylum seekers entering the system reflect a mixed flow, but they argue that increasingly there is a conflation of political and economic issues causing flight and that the definition of the term 'refugee' needs to be broadened to reflect movement complexities. Irrespective of the motive of movement, those without papers risk being captured and deported as undocumented migrants. In addition, they are excluded from the rights and entitlement associated with legal status.

Asylum seekers who accessed the system prior to 2002 were prohibited from working and studying whilst their status was being determined. This led to a situation of enforced destitution as it was illegal for asylum seekers (section 22 permit) to provide for themselves while they waited for their applications to be processed. The Watchenuka case of 2002<sup>9</sup> brought by the Legal Resources Centre challenged this prohibition and asylum seekers can now work and study.

Upon receiving refugee status (section 24 permit), further barriers emerge in achieving self-reliance. Although legally able to work, refugees enter an economy with an unemployment rate of 40 per cent resulting in extreme poverty facing South Africans. South African communities themselves face constraints in accessing services. The South African constitution guarantees an impressive array of socio-economic rights and yet the

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<sup>9</sup> Case number 1486/02

past ten years has seen enormous challenges to service delivery. Increasingly frustrated local communities have been known to claim that foreigners are burdening government services. In addition, not being able to speak local languages; not being able to afford an evaluation of foreign qualifications and not being able to register with various professional bodies due to strict membership requirements have resulted in many refugees living in poverty (UNHCR 2002b). The two-year limited duration of refugee permits also hampers job seeking efforts, as employers often want to make a longer-term investment.

Most studies and articles on refugees and asylum seekers identify access to identity documents as a key obstacle to achieving self-sufficiency and access to social welfare assistance (Landau 2004). Unrecognizable documentation is an obstacle to paid employment and without proper documentation, refugees are unable to access basic services like opening a bank account, accessing shelter and education facilities (Segale 2004). For those who have managed to acquire the maroon refugee ID book, their expectations that their problems were over were not realized. A refugee at the Cape Town Refugee Centre said, 'refugees thought that getting ID's would help them to get employment, but even those with ID's are not getting work and even then people do not accept the ID. The government produced a maroon refugee ID without doing any awareness.' When the DHA was asked about this, it was denied that the IDs are not recognized. Dr Machele of the DHA said, 'those who do not recognize the documents, what they are doing is wrong, but it does not happen often.' Sheldon Magardie of the Legal Resource Centre harshly criticized the practice of the DHA, 'the debacle around identity books negates talk of socio-economic rights because it makes it impossible to access them' (interview, 29/10/04). Civil society organizations and the UNHCR have been lobbying for refugee identity documents to resemble the green South African identity document. The latest announcement by the DHA was that refugees would be the guinea pigs in a trial run on the issuance of smart cards. How that will pan out remains to be seen. Until then they will remain, 'feared, fearful and faceless' (Rulashe 2004).

Another factor confounding refugee protection in South Africa is that of corruption. Chesang (2005:1) argues that South Africa's restrictionist migration policy regime has created a demand for legal immigration status. In the absence of other forms of immigration status, economic migrants are provided legal status through accessing the asylum process. Their stay is lengthened because of administrative delays and corrupt Department of Home Affairs officials whose 'income' increases through swelling numbers of people in the system coupled with the ongoing requirements of renewal of the asylum permits. This creates a whirlwind of pressure on the system, which results in additional delays that continue to serve the interests of bogus applicants and corrupt officials. The DHA motto that 'the client is always right' is absurd in light of the ongoing allegations of corruption and administrative capacity constraints.

The ones who suffer in this quagmire are genuine refugees fleeing war and conflict in their home countries. Prolonged delays create a sense of insecurity and uncertainty among refugees. This exacerbates their vulnerability to exploitation and extortion by government officials. According to Chesang (2005:3), 'corruption plays a role in determining who is entitled to what, and under what circumstances such entitlements are achieved.' Refugees participate in corruption for it is seen as the only way to get the required documents. The requisite bribes further deplete refugees' limited resources. The prevalence of corruption was confirmed by refugees interviewed for this report. A respondent said, 'the DHA is full of corruption. You must have R200 just to register, otherwise you stand in the queue for a week.' It appears that there is government denial at the extent to which there are administrative failures and corrupt practices within the DHA. When asked about corruption, Dr Machele alleged that it was the independent interpreters who were corrupt and that as a Department they have had no control over the interpreters. However, Chesang's (2005) research found that there is collusion between interpreters, government officers and 'dealers', which is premised on the imbalance of power between government officers and asylum seekers.<sup>10</sup>

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<sup>10</sup> See also US Committee for Refugees, (2003). *World Refugee Survey 2003*. [www.refugees.org/world/articles](http://www.refugees.org/world/articles) Downloaded on 6 September 2004 and Segale, Tebogo (2004). 'Forced Migrants and social exclusion in Johannesburg' in *Forced Migrants in the New Johannesburg: Towards a Local Government Response*, FMSP, University of Witwatersrand pg49

Efforts by civil society actors to counter corruption have been fruitless. Dr Ngenzi of the Refugee Ministries Centre in Johannesburg attempted to expose corruption,

we started collecting affidavits on corruption and went to the Bishop with this problem. Home Affairs has commercialized the asylum process. It is better to open this up and let the money go to the state. Refugees do not believe that the service is free. There are officials producing fake papers and we have reported it to the DHA. When presented with the evidence, they tear them up and destroy the evidence (interview 26/11/04).

The need to transform the DHA was reiterated by many respondents. Taryn Powys, the legal counselor at LHR Durban, commented, 'there are many problems of corruption and abuse at the DHA. There have been stories of Refugee Status Determination Officers asking clients to dance on the table and sing the anthem of their persecuting state' (interview 5/11/04). In response to the known problems within the Department, the DHA, under the leadership of a new Minister, Ms Mapisa-Nqakula and the previous Director General, Barry Gilder launched the DHA's *Strategic Plan 2004/5-2006/7* also known as the 'Turn Around Strategy'. Barry Gilder (2004:4) writes, 'revolutions happen when conditions become so bad that ordinary people can no longer take it. This is what has happened in Home Affairs.' The strategy looks at improving service delivery through addressing understaffing, poor office locations, resource gaps, poor attitudes and corruption. The strategy appears to emphasise what it terms 'aliens control' for under the Immigration section where refugees are also located, the budget allocated to the deportation of illegal immigrants was R251 391 000 whilst the combined budget allocated to refugee issues was R9 595 000 (DHAb 2004:26). The DHA annual report 2003/2004 reports that 165 387 'illegal foreigners' and 'undesirable persons' were removed and deported (DHAA 2004:71). This figure almost mirrors the number of people in the asylum process and yet aliens control receives a substantially higher budget allocation.

Refugees and asylum seekers are ignored and neglected when it comes to social services, economic empowerment or social support and yet are highly visible targets of xenophobia. According to a Human Rights Watch Report (1998:16-17),

For foreigners living in South Africa today, life continues to be fraught with difficulties disturbingly similar to those faced by black South Africans under the influx control system. South Africa has become increasingly xenophobic in recent years, with a large percentage of South Africans perceiving foreigners – especially, almost exclusively, black foreigners- as a direct threat to their future economic well being and as responsible for the troubling rise in violent crime in South Africa.

Xenophobia poses a threat to the government's commitment to provide a safe destination to those fleeing conflict and human rights violations. According to Crisp (2002:21), 'far from finding a safe refuge in their country of asylum, the continents refugee's increasingly find that by crossing an international border, they exchange one form and degree of vulnerability for another.' Gilroy (2004:3) described how racism and xenophobia can impact on integration between communities, 'the racial difference to which we are told we must become resigned, obstructs empathy... We cannot imagine what it is like to be somebody else, and it is hard to endow the savage, the native, or the stranger seeking hospitality with a reciprocal humanity'.

A refugee at the Refugee Pastoral Care in Durban, recounted his story, which reflects the experiences and perceptions of many other refugees interviewed for this study,

I came in 1998 and I had a paper saying that I was a prohibited person. I couldn't speak English, but I knew that I wasn't wanted and did not belong. I was harassed by the police. They then changed to the temporary permit, but we carried this permit for 3 or 4 years. This changed again to the section 24 which lasts for 2 years and then you find you are back to a section 22. The maroon ID book is not accepted in the banks or by the police. I thought that apartheid

changed from race to the colour of the IDs. Apartheid has now twisted against foreigners and the government is promoting it (interview 1/11/04).

The marginalisation of refugees and flouting of refugee protection opens them to exploitation at the hand of unscrupulous employers and landlords. One refugee lamented, 'it is a problem in that we have to fend for ourselves in a xenophobic environment. We are either disappointed or exploited' (interview 26/11/04). For refugee women, overcrowding and the lack of accommodation make them particularly vulnerable. A young Angolan woman, age 23, spoke of how she landed up in an overcrowded house with people she did not know in Johannesburg, 'I was living in a house before with my uncle. My uncle left me here and went to Zimbabwe. He left me there and there were many people living there. A Nigerian man put a knife to my neck and had sex with me. I have now got a baby. The boy is one week old' (interview 19/10/04).

Experiences of exploitation were raised by a refugee in Durban when he said, 'the South African government is going towards a slave trade. Refugees are being exploited. Refugees are working in closed factories because they are cheap labour. South Africa should be taken to court because it is a slave trade here. I love the principles in South Africa, but there is no follow up' (Interview 1/11/04). Xenophobia, marginalisation and exploitation pose threats to the integration of refugees. Stigma ensures that refugees are relegated to a quality of life, which falls short of the idea of life embodied in the Constitution (Posel 2004).

Although no government department is currently coordinating relief for refugees, all respondents interviewed in the course of this research identified the government as bearing primary responsibility for the provision of socio-economic rights to refugees and asylum seekers. It was also felt that the UNHCR should play a greater role. Respondents indicated that the lead departments should be the DHA and the Department of Social Development (DSD), although they called for an integrated multidepartmental strategy. The DHA, in contrast saw the long term responsibility for refugees as lying in the hands of civil society. Dr Molebogo Machele of the DHA said, 'my feeling is that upon entry

they should be catered for by government, but later should be handed over to NGOs' (interview 22/10/04).

There has been ongoing discussion about reviving the now defunct Refugee Relief Board. Joe Molifi, the Director: Disaster Relief Fund is tasked with setting up the Board within the DSD. In terms of government responsibility toward socio-economic rights of refugees he clarified government's understanding of who is responsible for what,

At the moment there is no interdepartmental coordination of refugee services. The Board will have to come up with a subcommittee that will have to interact with other departments. It will be the role of the Board to be the lead agency in socio-economic services for refugees. The DHA provides them with status, it is not their role to provide services. Each department needs to look at their role. The Board will coordinate all services including education and health (interview 23/11/04).

Considering that the ongoing discussions have been going on for over four years, it is not clear when action will be taken to ensure that this envisaged coordination mechanism is put in place. Until then refugee issues continue to fall between the cracks with the DHA saying that socio-economic rights are the domain of the DSD and NGOs and other departments saying that refugee issues need to be handled by the DHA. When probed on who was responsible for social welfare for refugees and asylum seekers Dr Machele of the DHA replied, 'you should ask the Department of Social Development. The mandate of the DHA is to determine status and grant asylum. The issue of pensions and grants should be referred to the DSD' (interview 22/10/04). The Community Agency for Social Enquiry (CASE) *National Refugee Baseline Survey* (hereafter referred to as the CASE survey) found similar sentiments among DHA officials.<sup>11</sup> The Head of the then Braamfontein DHA office said, 'shelter and social assistance is not our competence, it is the work of NGOs... NGOs need to be close by-

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<sup>11</sup> Belvedere Florencia, Ezekiel Mogodi & Zaid Kimmie. 2003 *National Refugee Baseline Survey*. The Community Agency for Social Enquiry (CASE) p158. The Case study conducted a survey of 1 500 asylum seekers and refugees and was administered in four sites namely Johannesburg, Pretoria, Cape Town and Durban. Focus groups and in-depth interviews were also conducted.

they should come in and take responsibility. There is some bad blood between the DHA and the NGOs. The NGOs should come and dish soup at 6am, check unaccompanied minors and the disabled' (Belvedere et al 2003:194).

Refugee organizations interpret this tossing of responsibility from one department to another in different ways. Most see it as revealing a lack of political will to guarantee the rights of refugees and migrants. According to Fedde Groot of the UNHCR, 'this is a new government with an ambitious agenda and refugees are not a priority' (interview 23/11/04). Joe Molifi of the Department of Social Development confirmed that government is cow towing to populist resentments against foreigners, 'the issue of xenophobia puts pressure on government not to be seen to be responding too quickly to the needs of refugees' (interview 23/11/04).

Others interviewed for this paper see it within the framework of government's restrictive migration regime and that through retaining an inhumane, corrupt and abusive system, new applicants may be deterred. Should the latter be the case, the outcomes are contradictory in that administrative weakness, corruption and abuse only assist the corrupt beneficiaries within government and bogus applicants who can remain in the system for years on a temporary asylum permit that should take 6 months to process.

### **Refugee organizations**

With the government providing no direct services to refugees, NGOs, CBOs and faith-based organisations, with the assistance of the UNHCR, have attempted to meet some of the needs of the most vulnerable. The NGOs are mostly South African run although refugee lead NGOs have also been registered as non-profit organizations. The South African run NGOs are better resourced and thus have greater capacity to deliver in their respective areas of interest. Refugees have also organised into community based organisations. Some of these are based on nationality and others bring refugees together from various countries together. These organisations have varied objectives and levels of organisation. Some have elected officials, whilst others are interest groups or political or evangelical organisations. Refugee organisations have also been formed by NGOs to facilitate accountability to the community being serviced. Informal networks,

for example, women's and children groups also serve as support systems for refugees not participating in organisations.<sup>12</sup>

### **Refugee priorities**

In terms of Constitutionally guaranteed rights, along with the right to equality and dignity, the Bill of Right specifically mentions rights related to the environment (section 24), Housing (section 26), Health care, food, water and social security (section 27), the rights of children (section 28), the right to education, just administrative action (section 33) and freedom of trade, occupation and profession (section 22). The socio-economic priorities identified by refugee NGOs and CBOs included access to food, accommodation, shelter, employment, access to education and health care. The CASE 2003 study cited the most mentioned priorities being employment opportunities (56 per cent), documentation (53 per cent) and education for asylum seekers and refugees themselves (48 per cent) (Belvedere et al 2003: 131).

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<sup>12</sup> The Johns Hopkins University Study on civil society in South Africa defines civil society organizations as organised, private, self-governing, operating not for profit and including voluntary contributions. The study estimated that there were about 100,000 civil society organizations of which 11% were strictly NGO section 21 companies, in Pieterse, E. (2003) 'Rhythms, patterning and articulations of social formations of South Africa' in (eds) David Everatt and Vincent Maphai in *The Real State of the Nation: South Africa After 1990*, Interfund Development Update, Special Edition.

	N	%
Employment opportunities	840	56%
Documentation	796	53%
Education for asylum seekers & refugees themselves	715	48%
Housing/shelter	633	42%
Food	267	18%
Education for children of asylum seekers/refugees	244	16%
Skills training	194	13%
Fair treatment from authorities (DHA, SAPS, SANDF)	173	12%
Health care	155	10%
Combating xenophobia	121	8%
Money/financial assistance	77	5%
Resettlement	76	5%
Welfare (support for children, disabled)	45	3%
Family reunification	32	2%
Clothing	24	2%
Don't know	8	1%
None	68	5%

Table 1: What are the three most important basic needs that you need assistance with? (Belvedere et al 2003:158)

All of these entitlements are underpinned by having recognized documentation and thus the link to access to just administrative action in the processing of papers and ID books was reiterated. David Masongezi, a refugee and founder of the Berea Children's centre, highlighted how the exile experience heightened the need for socio-economic support. He said, 'in a refugee's home country, he does not feel bad about his needs. If there is a problem, he can go to his aunt or other relatives. Some people come here with empty hands, not a cent. How do you start a new life like that?' (interview 13/10/04).

Xenophobia was also cited as an underlying constraint to accessing socio-economic rights and the rights to dignity and equality. Adelia de Souza of the Bienvenue shelter spoke of the challenges facing refugee women in their shelter,

How can refugee women with no work and living in a shelter pay for school fees? Once they say they are refugees the school turns them away. Even for piece jobs, they don't want refugees. Even for domestic work they don't get the jobs... A pressing concern is to be accepted. When I phone for donations and say refugees, there is a negative reaction. The xenophobia is very bad! (interview 19/10/04)

### Social security<sup>13</sup>

A priority identified by most of the respondents interviewed for this research was to ensure that refugees be integrated into the current social welfare packages available to South Africans. The Social Assistance Act 59 of 1992 barred refugees from obtaining social development grants as grants were only made available to South African citizens.<sup>14</sup> Motivations for the integration of refugees included concern that a separate system would create another avenue for corruption. A separate system would lead to duplication of infrastructure and could fuel xenophobia if the perception was created that refugees were getting more entitlements than South Africans. It was felt that refugees would constitute a drop in the ocean of welfare beneficiaries.

Although advocating for integration into the social welfare system, two areas of concern were identified. The first was that the welfare grant system was inadequate in addressing even the needs of South Africa's poor. The second related to genuine asylum seekers with less entitlements in terms of their status and yet often with more needs. Newcomers are often brutalized, traumatized, impoverished and yet needing to reestablish themselves. That applications were rarely processed within the required 6 months exacerbated their vulnerability. There were suggestions that a temporary, more comprehensive social support package be offered to newcomers until their applications were processed and as refugees they could then access the grant system.

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<sup>13</sup> Section 27 (1) (b) of the Constitution states that everyone has the right to have access to (c) social security, including if they are unable to support themselves and their dependents, appropriate social assistance.

<sup>14</sup> Even refugees with disabilities were unable to access a Disability Grant.<sup>14</sup> Legal action has secured grants for permanent residents, but this was not extended to refugees. Legal challenges are however underway to extend these to refugees.<sup>14</sup>

### Land, Housing and Environment<sup>15</sup>

On the question of access to land, most respondents agreed that refugees should be allowed access to land in principle, but felt that in light of the history of South African land dispossession that it was a sensitive issue. Access to accommodation and shelter were priorities identified by respondents. Considering that refugees in South Africa are not from neighbouring countries, it is likely that they once received shelter in camps in countries neighbouring their own and that they chose to leave these environments. When probed on this issue a refugee answered, 'you cannot leave camps if you want to. It is like a prison. Some people want to work and study and better themselves. Everybody wants freedom. It is better to be poor and free than rich and a slave' (interview 30/11/04). Another refugee spoke of similar concerns, 'camps do not develop people. In camps, life is just about eating and sleeping. There is more the to human experience than that' (interview 3/12/04).

The price of this freedom for many is high. Yasmin Raja, the Coordinator of the Mennonite Central Committee, described the living conditions of many refugees in Durban, 'we have found people living with no water or electricity. Parking lots have been turned into airless rooms where people are charged R600-R800' (interview 1/11/04). Taryn Powys of LHR Durban added, 'the eThekweni council declared the Arch Royale building derelict and cut off the water. People are still living there and fetching water from the beach. There is no sanitation. It is terrible' (interview 5/11/04). Most refugees and asylum seekers live in overpriced, overcrowded urban settings as they fear for their lives in townships citing the high levels of xenophobia, violence and crime.

That refugees and asylum seekers are excluded in housing policy was highlighted in the South African Human Rights Commission (SAHRC) 2000/2002 4<sup>th</sup> Socio-economic Rights report.<sup>16</sup> With regards housing, the SAHRC report (2000/2002:58) concluded that,

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<sup>15</sup> Section 26 (1) of the Bill of Rights in the Constitution states that 'everyone has the right to have access to adequate housing'. Section 2 says that reasonable measures must be taken to achieve progressive realisation of this right. Section 3 provides protection against evictions, or having one home demolished. Section 24 (a) that 'everyone has the right to an environment that is not harmful to their health or well being.'

<sup>16</sup> Refugees were mentioned as a vulnerable group to be reported on by government departments in the SAHRC protocols for the 2000/2002 report. Subsequent reports did not require that departments report

Despite the fact that South Africa acceded to the 1951 Convention Relating to the Status of Refugees, none of the instated measures by the national government and the respective provincial departments make provision to provide transitional housing for refugees and asylum seekers. Reasonableness should be interpreted within the context of the Bill of Rights. Section 26 guarantees “everyone” the right to have access to adequate housing. The word “everyone” includes refugees and asylum seekers and is not only restricted to citizens of the Republic. The Constitution requires that everyone be treated with care and concern irrespective of their country of origin or background, as long as they are within the Republic. It is common cause that South Africa, like any other politically stable country has a significant number of refugees. According to *Grootboom*, a programme that excludes a significant segment of the society cannot be said to be reasonable.

The SAHRC report (2000/2002) indicated that article 21 of the Convention Relating to the Status of Refugees obliges the government to provide housing to refugees. Hence, the national government is under an obligation to develop policy guidelines as well as the criteria to provide housing to people who are uprooted from their countries of origin by circumstances beyond their control.

#### Health Care<sup>17</sup>

Access to health care is a major area of concern. Although stated in the Constitution and the Refugees Act, in practice, the lack of distinction made between refugees and other migrants in the country, coupled with xenophobia, often means that refugees are denied access to basic health services or that they are charged exorbitant rates applicable to foreigners (Bhamjee and Klaaren 2004). The CASE survey revealed that 17 per cent of the respondents surveyed were denied access to emergency medical care (Belvedere et

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specifically on refugees/ asylum seekers as a vulnerable category and therefore scant attention was paid to them in subsequent reports.

<sup>17</sup> Section 27 (1) of the Constitution of the Republic of South Africa states that everyone has the right to health care services, including reproductive health care. This clause is followed by s 27 (2) that binds the State to make reasonable measures towards realising these rights. Section 27 (3) of the Constitution goes on to state clearly that no one- regardless of nationality or residency status may be refused emergency medical treatment

al 2003:145). One of the most pressing obstacles, once again, lies in the lack of recognizable identity documents (Pursell 2004).

The issue of HIV/AIDS is emerging as a crisis within the refugee community due to issues of stigma, silence and the inability to access medical care. In the UNHCR global report (2003:277) refugees are reported to have access to the public sector anti-retroviral treatment programme. Many refugees are however unaware of this. The report added that 'government departments and indeed existing civil society organisations were reluctant to open their doors to refugees and asylum seekers.' The UNHCR is attempting interventions through its reproductive health programme linked with the Planned Parenthood Association of South Africa (PPASA). The socio-economic fallout from HIV is unclear. According to a refugee at the Cape Town Refugee Centre, 'these days most refugees die of HIV. Many are afraid to open up' (interview 30/11/04).

In the SAHRC Socio-economic rights report (2000/2002:121-122), the National Department of Health made no mention of the provisions to ensure health care for refugees and asylum seekers, despite their being specifically identified as a vulnerable group in the SAHRC protocols.

### Education<sup>18</sup>

Although the SA Constitution and the SA Schools Act prohibit discrimination, asylum seekers and refugees face many obstacles in accessing education. They are prevented access and admission through high registration fees to enroll learners and through schools not upholding the admissions policies of the Department of Education (DoE). School Governing Boards routinely fail to inform parents of the criteria for exemptions from school fees forcing those who are unable, to pay the fees or withdraw their children (Winterstein and Stone 2004). In the CASE survey 16 per cent of the applicants had children with them of primary school going age. Over one quarter (26 per cent) indicated that they are not sending their children to school mostly because they do not

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<sup>18</sup> Section 29 (1) of the SA Constitution states that 'everyone has the right to (a) basic education, including adult basic education; and (b) to further education, which the state through reasonable measures, must make progressively available and accessible.' Section 5 (1) of the South African Schools Act sets out that "A public school must admit learners and serve their educational requirements without unfairly discriminating in any way"

have the money to afford the school fees. Thirty four per cent indicated that their children had been refused admission to the local primary school because parents cannot afford to pay for school fees, because the school is full or that the school does not accept refugee and asylum seeker permits. Seven per cent had children of secondary school going age. Thirty nine per cent of these children were not attending school mainly because of the inability to afford school fees (Belvedere et al 2003:152-157).

### Food<sup>19</sup>

Access to food was cited as a key area of concern. Forty four per cent of those surveyed by CASE indicated that they had one meal per day. Forty per cent had two meals and sixteen per cent three meals per day. Three quarters of the applicants indicated that there were days when there was no food for them or their families (Belvedere 2003: 138).

### Employment/ Income

Although the constitutional provisions with regards trade and occupation apply to citizens, refugees and asylum seekers have the right to work in South Africa legally. The ability to support oneself is crucial to survival, particularly when arriving in a foreign country, where the social support network of family and friends may not exist. Livelihoods are limited largely to the security industry, guarding cars, and informal retail and production enterprises (Ballard 2004). Despite refugees relatively high levels of education, over half surveyed by CASE are engaged in unskilled occupations. Seventy six per cent of the main source of income for the household was from work performed by the applicant themselves. Only two per cent described the assistance from NGOs/ churches and mosques as their main source of income. Seventy per cent of the applicants did not receive any form of financial assistance. Of those who were receiving assistance, seventy eight per cent were getting it from friends or relatives within and outside of South Africa. The study concluded that, 'per capital monthly income compares with that of poor South Africans in South Africa, with the exception that asylum seekers

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<sup>19</sup> Section 27 (1) of the SA Constitution states that, 'everyone has the right to have access to (b) sufficient food and water.

and refugees tend to be better educated and skilled, but unable to support themselves or to access social grants to supplement their income' (Belvedere et al 2003:53).

### **Strategies to enforce socio-economic rights**

Greenstein (2003:37) identifies a number of recourse measures available to enforce rights. The first is the activist route where rights discourse is used as a mechanism to force the state to change policies. The second is the legal route whereby the courts are used to enforce compliance. The third is the legal-activist route which he argues poses the most fundamental challenge to the organization and reach of state power. He suggests that the legal discourse on rights and popular mobilization be articulated simultaneously. The Treatment Action Campaign (TAC) was cited as an example of successful mobilization where they combine challenges from 'above' (court and public lobbying) with those from 'below' (constituency based grassroots campaigns).

Refugee responses have incorporated the abovementioned approaches in part. Four key responses by refugee civil society organizations are evident. The first is that of service provision in an attempt to fill the gaps created through no state intervention. The second is lobbying and advocacy in an attempt to leverage greater access to rights. The third is the legal route through court action and the fourth is intracommunity support. This section looks at the strategies undertaken and the strengths and weakness of them. A key gap evident in strategies to promote refugee rights is that of interventions from below i.e. constituency based grassroots campaigns.

#### Service provision

In light of the limited services offered, there are NGOs, faith based organizations and CBOs attempting to provide socio-economic relief to refugees and asylum seekers. These services range from temporary shelter and accommodation to food, clothing, blankets, life skills, education and funeral assistance. According to Rev Rakoba, a Director at the SACC, 'it is a difficult thing in South Africa because there are many refugees; few service providers and we are stormed. We used to have monthly food distribution, but we were stormed so now we only deal with special cases' (interview 20/10/04).

Although trying to meet some community needs, many service providers felt that in light of the limited resources available, their service delivery was weak and could not match the needs of this particularly needy and marginalized community. Some felt that the government should support NGOs already in the field. The Refugee Relief Board envisages using NGOs as implementing partners. If this does happen, it is likely that the Relief Board would take over from the UNHCR as the key funder of refugee service organizations.

The limited opportunities for self reliance for refugees has lead some organizations to fear dependency. Women face particular challenges that are met by a few organizations. Adelia de Souza of the Bienvenue shelter spoke of this, 'it is a stressful job and sad to hear the stories of loss. Women who come here asking for help, her luggage is usually 3-4 children. A man who comes asking for help, usually comes by himself with his bags' (interview 19/10/04).

In addition to lobbying for government services, refugee NGOs are also engaged in lobbying other service provider NGOs to include refugees in their services offered to locals. A challenge in this is that refugees have been known to manipulate service providers and lie in an attempt to extract maximum benefits from services being provided. In a country plagued by HIV/AIDS, poverty and destitution, this can exacerbate compassion fatigue and cause cynicism and doubt amongst service providers. It can add fuel to those already harbouring xenophobic sentiments.

Another factor compromising service provision to refugees is the provision of asylum seeker documents to non-genuine applicants. Rose Gasherebuka, a refugee from Rwanda and Development Officer at the Bon Esperance women's shelter in Cape Town identified this as a threat, 'we have a problem with the DHA. They give documents to people who are not refugees and they become trouble makers' (interview 2/12/04).

With limited resources some organizations have attempted to seek out resources from the private sector. The lack of corporate social investment in refugee programmes was attributed to xenophobia and the lack of priority given to refugee rights in general.

#### Lobbying and advocacy

Lobbying and advocacy strategies include meetings with government departments, making submissions on policies to parliament, writing letters, participating in civil society forums, meeting with NGOs, hosting public awareness and education activities and providing training on refugee law and refugee rights. Refugee organizations have been engaged in ongoing lobbying efforts. In the early 1990's informal networks of refugee activists came together to form the National Consortium on Refugee Affairs (NCRA). The NCRA brings together refugee organizations from across the country to network, share information on best practice and facilitate coordination. From 1998 civil society organizations came together to form the Roll Back Xenophobia Campaign. The three founding organizations were the South African Human Rights Commission, the United Nations High Commissioner for Refugees and the National Consortium on Refugee Affairs. Further impetus to gaining government recognition of the rights of refugees and asylum seekers was given through the National Conference Against Racism and Xenophobia hosted by the SAHRC in 2000 in the run up to the World Conference Against Racism held in Durban in 2001. Fledgling refugee run organizations participated in these processes and felt energized by the commitments made. Dosso Ndessomin, the Coordinator of the Coordinating Body of Refugee Communities (CBRC) said, 'it was a time of increased interaction between local communities and refugees. WCAR built the confidence of refugee groupings to intensify their campaigns' (interview 6/10/04).

Lobbying efforts have achieved a number of gains. In the past, refugee children were largely denied access to schools. The National Department of Education has been supportive in promoting refugee rights, which has led to the gradual acceptance of refugee and asylum seeker children. After the CASE survey revealed the extent to which refugee children were not in schools, UNHCR funded education officers in a number of NGOs to assist in registering children in local schools and in applying for exemptions

should they not be able to pay the school fees. A new study is planned to assess the effectiveness of this strategy.

With regards health care, most respondents interviewed for this research lamented the poor quality or lack of care received at state hospitals. Ongoing lobbying efforts have largely been unsuccessful as hospitals are unable to cope with the large numbers of patients in general. This was confirmed by Dr Majodina, a Commissioner at the SAHRC, 'we haven't had much luck on health issues. There is still talk of women giving birth on the street outside of hospitals' (interview 26/11/04).

Many refugee activists express frustration at the slow pace of provision of socio-economic rights to refugees despite their lobbying efforts. Uli Albrecht, the chairperson of the Johannesburg Refugee Network (JRN) said,

since 1994 there have only been setbacks. It is still taking the DHA so long to attend to the basics. Refugees are left on their own. They don't have accommodation. They don't have food. They are reliant on their own communities. For those who had a decent living in their own countries, here they have nothing! We were optimistic with the new Minister, but nothing has changed (interview 5/10/04).

Commissioner Zonke Majodina of the SA Human Rights Commission spoke of the ongoing delays in formalizing a coordinated approach to realizing the socio-economic rights of refugees, 'the Department of Social Development invited us to a series of workshops on reconstructing the Refugee Relief Board<sup>20</sup>. A task team was set up and members of the NCRA attended. The process ground to a halt. We suggested an interdepartmental structure with the Department of Social Development as the lead department, but we have come up against a brick wall. It is really frustrating!' (interview 26/11/04).

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<sup>20</sup> An interview with Joe Molifi, Director of the Disaster Relief Fund at the DSD confirmed that the Board is not yet set up and exists in name only. The mechanism for disbursing the funds were not yet decided, although an idea under consideration is to disburse funds to NGO service providers.

Despite high levels of anger and frustration, the idea of protest marches and petitions does not have much support. Dosso Ndessomin, coordinator of the CBRC explained why, 'we don't believe in protest marches because we know that we have rights, but we are not in our country and to give rights to us is to sacrifice and we should appreciate that. We go and thank the host for what is being done and then try and push for more' (interview 6/10/04). Suspicion of marches and public protest is evident from both civil society organizations and the refugee community. Some refugees protested outside of their embassies and then used the publicity as a call for resettlement. For most refugees trying to get through from day to day, there is no time for organizing and attending protest marches. Others fear fueling xenophobia and prefer to remain as invisible as possible. In addition, mobilizing a culturally diverse, geographically dispersed and vulnerable community poses many challenges, despite the commonalities of their concerns. Amisi and Ballard (2005) suggest that the absence of street protests resulted from an absence of organizations and not satisfaction amongst the refugee community with their conditions.

Some refugees recognized that unity could further their cause. Jean Pierre Kalala of the PPASA in Durban said, 'refugees must organize themselves to speak with one voice, but there are many problems. Divided we have not made much progress. People are organized on countries, tribes and provinces. Networks fall apart' (interview 5/11/04). These divisions and internal conflicts have impacted on the ability to pressure government. According to a refugee at the Cape Town Refugee Centre, 'the government are not seeing pressure from the refugee community. Refugee activism has been killed by conflicts' (interview 30/11/04). The lack of mobilization from the community themselves is a serious gap in efforts to promote refugee rights and inhibits the possibility of forging links with other progressive human rights based civil society organizations.

### The legal route

The South African Bill of Rights of the Constitution makes provision for legally enforceable economic and social rights. On at least four occasions, the Constitutional Court pronounced on the judicial enforcement of economic and social rights. In the

*Grootboom* case<sup>21</sup>, the court emphasized that economic and social rights cannot exist on paper only. The justiciability of economic and social rights was also reiterated in the case of *Minister of Health & Others v Treatment Action Campaign and Others*<sup>22</sup>. Both of these cases affirm that South Africa has a duty to observe both its constitutional and international obligation with regards to social and economic rights. According to the SAHRC (2000/2002), 'a violation of the government's obligation will only occur if it pursues, by action, or omission, a policy or practice, which deliberately contravenes or ignores its constitutional and international obligations, or fails to achieve the required standard.'

One of the first priorities of refugee organizations in 1994 was to lobby for progressive refugee legislation. Despite being contested, the Refugees Act that came into force was regarded as fairly progressive. According to Abeda Bhamjee, Chairperson of the NCRA and refugee legal counselor at the Wits Law Clinic, 'the enactment of the Refugees Act and particularly section 27 was a gain as it set the foundations up. Section 27b speaks of the full legal protection to refugees including the provisions in Chapter 2 of the Bill of Rights. Section 27g specifies that refugee receive the same basic health care and education as South Africans do from time to time' (interview 5/10/04).

Relations between civil society organizations and the DHA were at one time characterized by an atmosphere of cooperation and mutual learning as the issues were fairly new and processes were still being set up. The move by NGOs towards a greater use of litigation reflects a deterioration in this relationship. According to Taryn Powys of LHR Durban, 'NGOs can take a hard stand. I find as LHR you cannot negotiate with the DHA.' Abeda Bhamjee also expressed disillusionment, 'there is no sense of urgency. NGOs are frustrated and aware of the direness of the situation and this is fueling more litigation.'

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<sup>21</sup> *Government of South Africa & Others v Grootboom and Others* 2000 (11) BCLR 1169 (CC). This case centred on the right to access to adequate housing and the rights of children to shelter. The court found that not enough was being done to ensure the progressive realization of these rights.

<sup>22</sup> This case confronted the government to accelerate the programme for the prevention of mother to child transmission of HIV through the administering and distribution of a drug called Nevirapine.

Initially not a route followed by many NGOs in the field, the ongoing recalcitrance and slow rate of transformation in the DHA meant that negotiation and dialogue were increasingly regarded as ineffective in ensuring meaningful change. With refugees not high on the government priority list, the pathway to court has become an avenue pursued by organizations such as Lawyers for Human Rights (LHR) and the Legal Resources Centre (LRC). Sheldon Magardie spoke of the LRC approach, 'our strategy is that the DHA is intransigent, but does have obligations and we will enforce compliance through the courts. We continue to bring applications until there is compliance' (interview 27/10/04).

The LRC won an important victory in the Watchenuka case in November 2002 when the Cape High Court declared the prohibition for asylum seekers to work and study as unconstitutional. Many refugee cases have been linked to just administrative action. These include the case of Hassan vs the Minister of Home Affairs 4991 2001 that challenged sending people to the office where the original permit was issued if they had moved. The case of Mukhole vs Minister of Home Affairs related to delays in the issuing of ID books. Many cases have followed relating to ID books including case 4430 2003 where the Minister was declared in contempt of a court order for failure to provide ID books. Sheldon Magardie said, 'after that ruling, the ID document issue seemed to improve' (interview 27/10/04). It is important to note that legal action has therefore largely been undertaken to access the limited rights conferred through existing law, rather than to expand rights.

In 2004 LHR made an application against the Child Court to compel them to open cases for children in need of care. This would allow them to be considered for social grants. Another case is being pursued against the Department of Finance, Social Development and the DHA on the Social Assistance Act. Challenges are underway to ensure that refugees qualify for the disability grant and NGOs are confident that these actions will be successful (interview Jacob van Garderen, 22/09/04). In April 2005 a case came before the Pretoria High Court to force government to pay foster care grants. Selwyn Jehoma, the chief director of grants systems and administration in the Department of Social Development indicated that the Minister was sympathetic to such cases. He is quoted in

the Star (Broughton and Smillie 2005:1) as saying, 'I believe they do have a strong case and that the court will probably grant them that status.'

Refugee organizations see the legal actions as spurring the government into greater action. Dr Ngenzi of the Refugee Ministries Centre was optimistic about the extension of social grants to refugees, 'The DSD are looking at grants for recognized refugees and perhaps integrating them into the mainstream grants. The Department is being proactive because of the legal challenges by LHR' (interview 26/11/04).

The legal route is not only being used against the state. Cases are also being pursued against private companies seen to be discriminating against refugees and asylum seekers. Private security companies were targeted as they were barring refugees from entering the industry.

Limitations to the legal route were identified. One of the limitations is the high cost of court action. All reviews are done at the high court and it is expensive. Another downside is that it can sour relations and inhibit future possibilities of dialogue and negotiation. Legal decisions have not always been implemented by government departments, leading to further court action to ensure implementation of previous rulings. Refugees and asylum seekers have been persecuted for simply trying to access their rights - legal NGOs spoke of refugees being sent to the back of the queue if they presented lawyers' letters to the DHA.

#### Intracommunity support

The most trusted and reliable form of support offered to refugees and asylum seekers is found through networks of refugees and asylum seekers themselves. This is mostly offered to people from the same country of origin. David Masongezi, a refugee from the DRC described how this was done,

If you have got a place, a brother will come and visit late in the evening and say that he cannot find his way home as it is late. He will be moving from one person to another. Maybe you will get a bath at the place, but how do you wash your

clothes? We do help each other. For 6 months I received asylum seekers for one week at a time. The youngest I received was 12 years old. They were from East Congo. I showed the first ones where the DHA was and said that they must show others. We set up the Umojo Akivo as an association to help those from the East Congo. Some we would accommodate in the church. We would let them sleep and eat at our place. We would link them up with people selling fruits and they would get R50 a day and they would ask other people to take them to share accommodation later on. We had more than 30 at our place and that is just the young men. There was a flow of them in 1997 and again in 1999 (interview 13/10/04).

Informal networks and the goodwill of the community were cited as the key survival strategy adopted by refugees and asylum seekers. Even with these, the odds are enormous. Refugees and asylum seekers wanting to work as car guards are being required to register with the Security Industry Regulatory Authority (SIRA) which prefers South Africans. Those trying informal trading face constraints in getting street trader permits as their documents are often not recognized.

A woman refugee from the DRC spoke of her experiences and the support she got from fellow DRC refugees,

In Congo I was a dressmaker and I was teaching how to do it. Here I didn't find that job. We left everything and ran when the war came. When we first got here, we slept outside. We came through Zambia, through Mozambique- where they robbed us. We slept outside and then went to a church in Rosettenville. Other Congolese people, we found them and they showed us what to do. I started selling clothes at Bree Street market. It was nice, but they chased us away and now you must pay R600 to go to the flea market. After that I looked for piece jobs - washing clothes, washing carpets and every day looking for a job (interview 19/10/04).

Intracommunity support points to significant resourcefulness and resilience within these communities, serving as a buttress against the severity of everyday life. It also however, reveals that the burden for caring for this particularly marginalized group of people is being born by a community already under duress. Amisi and Ballard's (2005:3) study of Congolese refugees generated similar findings, 'self-sufficiency and self-organisation along ethnic lines at the micro-level is seen as the basis for material and social security in the hostile South African environment.' This is in line with trends recognized by other writers on civil society. Kotze (2004:20) described that, 'there is growing emphasis on self help whereby the poor are held responsible for their own deliverance.'

Many celebrate this resilience without discerning the difference between survival and coping. According to Fedde Groot of the UNCHR, 'the initial period where asylum seekers have to establish themselves is tough, but communities have the capacity to address the needs of their own communities' (interview 23/11/04). This ability to cope is questioned by refugees. Dr Ngenzi of the Refugee Ministries Centre in Johannesburg said, 'it is very painful. Many are surviving by sheer luck. A day comes and a day ends. Some go for days with nothing. The security industry was an option, but now foreigners are not allowed to work there anymore. The rate of separation of families is high. Men abandon their families rather than see them starve. It is terrible!' (interview 26/11/04).

The situation for many women is particularly dire. Rose Gasherebuka, at the Bon Esperance, a women's shelter in Cape Town spoke of their plight,

for those that come without a husband, they do suffer, but they try. Those without a husband and with children are suffering. They are forced to do the hard jobs like car guard. Those living in the township will get in a group of 10 women and take turns to look after the children. Many lock the children in the house while the mothers are away working (interview 2/12/04).

A teacher and refugee from the DRC, at the crèche at the Bienvenue Shelter for women in Johannesburg spoke of the effects on some of the children, 'some of the children are

troubled. They can't talk, but we play with them. Children here are not safe. Many have slept on the streets' (interview 19/10/04).

Children being locked in flats and houses has led to a number of fatalities and injuries. In Durban, the Union of Refugee Women was formed by a group of Rwandan refugees. They started a crèche after a number of children jumped out of the windows of their flats after being locked up day after day while their mothers, unable to afford childcare, were guarding cars. Another group of children were nearly burned to death when they were trapped in a flat that caught fire. There were cases where 6-year-old children were caring for babies and toddlers. In addition to the crèche, the Union of Refugee Women started other income generating projects in an attempt to free women from the dangers associated for them with car guarding. A Rwandese refugee woman and one of the founding members of the union recalled her days as a car guard, 'some people abuse you on the streets or they don't pay. Others think you are a prostitute. When I was doing car guard, I could think of nothing. Every day was just getting up and going to the cars. I could think of nothing else. I did this for 7 years.' That she has managed to break out of a debilitating mindset, she attributes to the support and community that she has received through the women's group (interview 5/11/04).

Amisi and Ballard's (2005:11-12) study on Congolese refugees in South Africa found that another motive for organising was to preserve culture and identity from home. Intracommunity support offered not only material support, but also an avenue for keeping language and traditions alive. This was in part underpinned by a sense of incompatibility between the culture from home and local culture. This resistance to assimilation imposes an ethnic structuring of civil society which further inhibits claims to rights and citizenship. They argue (2005:15) that refusing to assimilate is a kind of politics in itself. They write, 'in the face of xenophobic hostility, Congolese refugees respond with defiant pride in their culture- something they believe is not only valid but is actually *better* than their new cultural environment. Rather than accepting the denigration heaped on them, they reverse the hierarchy of inferiority placing themselves at the apex.'

## Partnerships

*Ubuntu inserts into the Constitution a new analytical framework based on the notion of human interdependence. A healthy life depends on social interdependence.*

Justice Albie Sachs (in Posel 2004)

With limited resources, there is emphasis on partnerships to ensure that services are not duplicated or being manipulated by refugee clients. The issue of partnerships plays itself out in many ways and includes partnerships between refugee organizations, between refugee organizations and the government and between refugee organizations and international organizations such as the UNHCR. These partnerships are complex and often conflictual. At the same time, in light of limited services, there is the need for collaboration and referrals to ensure that refugees and asylum seekers can access what is available.

### Partnerships with government

Partnerships with the government appear to be almost non-existent. Refugee organizations are frustrated at the slow pace of transformation within DHA and the slow pace of service delivery from other departments. Commissioner Zonke Majodina of the SAHRC, confirmed that there is little in the way of partnerships, 'at the moment, the government is doing its thing and the NGOs are doing their thing and when we meet there are shouting matches. There is suspicion between government and NGOs' (interview 26/11/04).

The suspicion and frustrations are fueled by the perception amongst civil society actors that government is either indifferent to the hardships being endured by many refugees and asylum seekers or unaware of how the realities of their experiences differ from the rights and entitlements on paper. When Dr Machele of the DHA was asked whether there were any practical constraints limiting access to socio-economic rights she responded, 'there are no constraints. In section 27 it has been specified that a refugee is entitled to full legal protection including the rights set out in Chapter 2 of the Constitution. Health and education are specifically mentioned' (interview 22/10/04).

Although the DSD is funding some organizations, concerns around partnerships with government related to three areas. The first related to possible future government funding of NGO. Concerns were that funding of NGOs could allow government to shirk its direct responsibility to refugees. In addition the capacity of NGOs to provide a high level of service was questioned. Kotze (2004: 23) argues that 'NGOs (and other civil society formations) cannot- with the best will in the world- address the structural causes of poverty and inequality and certainly not through uncoordinated social delivery projects.' She suggests that more effort goes into strategies to ensure that the state is made accountable and responsive to the needs of the poor. Refugee organizations concur. Jacob van Garderen of LHR explained, 'we do not want to see a situation of privatizing social services. The ideal situation is to integrate refugees into citizen's programmes. We do not need parallel programmes' (interview 22/09/04). The second area of concern was whether the ability to play a watchdog and advocacy role would be compromised through government funding. There were fears that organizations would not bite the hand that feeds them. The third area of concern related to the experience of partnerships in the past. Civil society cooperation in previous projects to address the backlog in processing claims was cited as one of negative experiences. At the time of that project in 2000, there was a backlog of 30 000 applications. The figures on World Refugee Day 2005 cited by SABC news (20 June 2005) puts the current number of asylum seekers at 186 000.

is the DHA's *Turn Around Strategy* (2004) mentions the idea of refugee reception centers. The centers would be establish to house asylum seekers for 30 days during which time, their application should be determined. Civil society organizations are largely against the idea, but also have mixed feelings in light of the accommodation needs of refugees. Fedde Groot of the UNHCR felt that the idea of reception centers, was unlikely to move beyond the discussion phase. He said, 'it does have advantages, but thousands of disadvantages. It has not happened because the implications are huge and there are cheaper alternatives such as a fast track procedure. The arguments for encampment are not served by encampment.' Others scoffed at the claim that the centers would allow for applications to be complete within 30 days when currently the DHA are not meeting the 6-month deadline.

Where the government is engaged in partnerships is in the area of 'aliens control'. The Lindela Repatriation Centre is a privately run detention facility to house 'illegal immigrants' and 'undesirable persons'. Despite documented accounts of ongoing human rights abuses, the centre continues to be funded by the Department of Home Affairs. Human rights allegations include people being unlawfully detained (including refugees and asylum seekers); irregularities in the arrest process and in the conditions of detention pending verification of status. Persons with valid asylum claims were not allowed to apply and the centre was found to be in violation of the thirty day maximum detention period more often than it was in compliance<sup>23</sup> (SAHRC 1999; SAHRC 2000). The conditions at Lindela have fuelled fears at the prospect of the abovementioned reception centre and added further skepticism to the notion of partnerships where profits are prioritized over compliance with human rights norms and standards.

With regards partnerships with government, the complexities of working in a resource scarce environment were acknowledged and should government offer funds to services providers, it is unlikely that they will decline. There is evidence that organizations funded by government can design programmes and proposals according to the known priorities of government and not on the basis of community needs and assessments (Kotze 1999). It was however recognized that refugee organisations are close to the community and its concerns and are therefore vital players in any strategy that looks at socio-economic rights for refugees and asylum seekers.

#### Partnerships with the UNHCR

According to the UNHCR Global Report (2003:277) its role in South Africa is to create an environment conducive to the local integration of refugees. The report identified 3,748 persons of concern as being provided with emergency short-term assistance (59 per cent more than in 2002), but that translated into only 3.4 per cent of the refugee and asylum seeker population. Legal assistance was provided for 5,230 cases by UNHCR funded legal counseling offices in all main refugee areas- this was to 4.8 per cent of persons of concern. According to the report, 'the increased numbers impelled the

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<sup>23</sup> These same allegations were made by a number of presentations to the SAHRC/ Parliamentary Portfolio Committee Hearings on Xenophobia and problems related to it, 2-4 November 2004

UNHCR to lobby hard for refugees to have access to public and voluntary sector services.'

The UNHCR's role in the country is informed by its urban refugee policy. According to this policy, if refugees travel further than a neighbouring country, they are regarded as 'irregular movers'. Most refugees in South Africa have fled from civil conflicts in countries such as the DRC, Burundi, Somalia and Sudan where refugee camps and programmes exist in neighbouring countries. Fedde Groot, Deputy Regional Representative UNHCR explained, 'if they had protection elsewhere, it is seen as irregular movement. South Africa is considered an urban refugee setting of irregular movers. We still regard this person as a refugee for it is a globally valid status and even if a person moves irregularly, protection still has to be granted' (interview 23/11/04). In principle, the UNHCR does not provide assistance in the urban context, with two exceptions. These are where non-protection would compromise basic protection and where non-protection is life threatening. It is for these reasons that the UNHCR supports programmes to assist the most vulnerable.

Human Rights Watch (HRW) (2002:3) attributes much of the neglect of urban refugees to the UNHCR *Policy on Refugees in Urban Areas*. It argues that this policy is based on the assumption that refugees should not be moving to or living in urban areas. The most fundamental problem in the Urban Refugee Policy is the lack of detailed protection recommendations resulting in urban refugees falling into a protection vacuum. Although revisions to the policy have strengthened protection commitments, Human Rights Watch argue that these are undermined by the assumption of urban refugees as 'irregular movers' and that the UNHCR does not have an obligation to provide assistance to refugees after irregular movement. This approach does not take into account the protracted nature of many of the conflicts in Africa resulting in camp confinement often being decades if not lifetimes. This scenario presents bleak future options and fails to consider the full nature of the human experience. That many refugees choose to forego the basic needs provided for in camps for a homeless and uncertain freedom speaks to the need for a fuller interpretation of what constitutes genuine durable solutions in the case of protracted conflicts. The HRW report (2002:3) finds that refugees living in urban

areas have chronic assistance needs, 'far from reducing assistance to urban refugees, as the Urban Refugee Policy advises, the UNHCR should be increasing assistance to refugees in urban areas who are desperately in need' (see also Refugee Consortium of Kenya 2003; Macchiavello 2004).<sup>24</sup>

To achieve their protection goals in South Africa, the UNHCR play a complex balancing act between being an active supporter and funder of the NGO networks and working to support and monitor government. Most of the organizations interviewed get a part of their funding from the UNHCR. The opinions expressed by respondents reflect an understanding of the difficult position occupied by the UNHCR and yet all felt that the UNHCR was not doing enough to fulfill their protection mandate. Three key areas of concern were expressed. The first related to what civil society organization see as a 'soft' approach on government. The second related to their role as a funder and the third to the impact of limited resources on service delivery.

Most organizations interviewed perceived the UNHCR to be soft on government in light of the ongoing dire situation experienced by many refugees and asylum seekers entering a corrupt, abusive and xenophobic system. One respondent said, 'the UN treads softly, saying that they are invited guests of the government and fear alienating their hosts. I cannot comprehend that South Africa as a member of the UN would boot out a UN organization.' The UNHCR were seen to be prioritizing their own interests above that of their clients. Fedde Groot confirmed the close relationship with the government, 'our primary relationship is with government. We are international civil servants.' Dr Machele of the Department of Home Affairs also spoke of the close relationship with the UNHCR, 'we have a good relationship with them. Even in Geneva, it was mentioned that we are doing a great job.' Although praising the government on the one hand, the UNHCR global report (2003) expressed veiled frustration at the pace of government responses to refugees. The report concluded that,

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<sup>24</sup> There are opportunities for further international comparisons that would enhance would enhance an understanding of the dynamics and constraints facing urban refugees and civil society.

there are promising signs that South Africa has made a modest start on a long process of integrating refugee rights into areas such as health, education and social welfare. These improvements have come, often agonizingly slowly, after sustained and intensive advocacy by UNHCR and its partners. Serious challenges remain and modest successes are being achieved at a high cost in terms of time and resources.

Another area where civil society organizations expressed unease related to their role as a funder. Some respondents mentioned that the UNHCR interfered with their independent strategies. One respondent commented that, 'the UNHCR have their bread buttered on both sides. They are playing good cop/bad cop, but there can be conflicting interests.' Another respondent said, 'many service providers are linked to the UNHCR so they are the foot soldiers of the UN. If you speak out you will burn your tongue.'

The third area of concern related to the limited funds available from the UNHCR. Although refugee organizations have attempted to expand their funding base, the limited emphasis on refugee issues in the country has meant that for many organizations, the UNHCR provides a large portion of their funds. Refugees interviewed for this research felt that the limited funds were a source of tension in that it created the perception of arbitrariness and discrimination. Refugee implementing organizations were only able to deal with a few desperate cases and the majority do not feel the impact of these interventions. Others complained that as the number of people of concern grew, that UNHCRs budget remained stagnant or decreasing. The UNHCR argued that the growing numbers in the system are not always people of concern to the UNHCR as many are bogus applications. In addition, their budget had been reduced to due priorities elsewhere (such as Darfur) and further eroded by the stronger rand.

#### Relationships between refugee civil society organizations

Relationships between refugee civil society organizations are extremely complex. Working in a fragmented, brutalized, diverse, geographically spread and traumatized community can establish conflictual dynamics. In-fighting within the refugee community was cited by many as an impediment to unity and service provision. Power struggles and

refugee mobility leads to constant changes in community leadership. Leadership contests often result in more than one person claiming democratic leadership of the same community. Pieterse (2003:118) suggests that civil society associations are not always virtuous. He argues that informal associations are contested social entities that can provide support and relief and at the same time serve as avenues for local actors to assert their power and control over resource flows in their communities. Democratic CBOs would be a preferred form of organization to articulate and advocate for the rights of refugees, but due to the fractured nature of the community, this is difficult.

The ability to unify is also affected by abuse of the asylum process which affects the composition, advocacy priorities and common purpose amongst the refugee community. The key challenge this raises relates to accountability between NGOs and the refugee community. Although refugees complained that, 'you cannot sew for me if you don't know my size', efforts at ensuring accountability have more often than not lead to conflict and the destruction of the very forums established to ensure consultation and participation. These thorny relations have lead NGOs to shy away from employing refugees for often the organization will be accused of favouring one nationality over another or the organization fears that confidentiality could be compromised. In an environment of extreme unemployment, these tensions have lead to one possible area of employment where they certainly are experts, being eliminated for refugees. Issues of accountability are further eroded with NGOs being mainly accountable to their trustees, boards or funders and not the community being served.

Add to this mix is the scarcity of resources. UNHCR implementing partners are perceived to be more resourced than others in the sector. The competition for resources further inhibits coordination for as David Masongezi explained, 'there's not really cooperation. Everyone wants to pull the blanket on their side' (interview 13/10/04). Rev Rakoba of the SACC concurred, 'there is a problem with resources and people not wanting to be a part of coordinating mechanisms. They want to control and are trying to hoist their flags over the others. Coordination can become a battlefield where there is more fighting going on than coordination' (interview 20/10/04). The politics of countries, tribes and provinces within the community fuels insecurity and diminishes capacity and space for

advocacy. The outcomes can however be unexpected as described by Rev Rakoba of the SACC, 'an example of conflict is seen with the Congolese. Some came here during the time of Mobutu and the others came after Kabila's death. There was a conspicuous conflict between the Mobutu and Kabila groups. They came here and started fighting. The government also planted spies in the country. On the positive side, the Ethiopians and Eritrians left because of the conflict, but on the outside they work together. They are bound by religion.'

Fedde Groot of the UNHCR provides insight into these dynamics,

All of the networks have collapsed because there are too many agendas and there is animosity. Meetings with refugee communities become shouting matches with refugees name-calling and accusing organizations of being corrupt. There are agendas relating to funding, political agendas, individual agenda, evangelical agendas and those elbowing in for power in their own communities. All of this is very normal in society, but usually happens in a camoughlaged way, but in the refugee community, it is very naked. We have to consult with refugee communities, but it is difficult because there are few credible counterparts (interview 23/11/04).

The competition for resources affects the ability of CBOs to be effective service providers. Refugee CBOs are seen as having good ideas and being close to the community, but are limited by their lack of funding. Refugee CBOs appear to be largely organized along national lines. The Union of Refugee Women in Durban is one such organization running a crèche and doing sewing, craft making and other income generating activities. The Union did invite refugee women from other nationalities to join them, but the core members are all Rwandan. Other CBOs are seen as promoting individual or political agendas. Refugee women were described as particularly disorganized resulting in their voices not being heard and needs not being met.

Some respondents felt that refugee CBOs were organised as complaints mechanisms rather than solution providers. One NGO worker said, 'there are no strategies to deal

with problems. A leader is only elected to complain about problems.' This was confirmed by a refugee participant who said, ' there are no specific strategies. We have our monthly general meetings. When issues emerge, we co-opt members to workshop ideas.' Other factors also limit the ability of CBOs to make an impact. Stephen Smith of the Papillon Foundation highlighted one of the constraints, 'refugee CBOs and NGOs are trying to lobby the government, but are seen as inferior NGOs when they are driven by refugees' (interview 30/09/04). Internal factors play another role. A refugee respondent explained, 'refugees are concerned that there is no unified refugee committee, but who is going to start this committee? If I start it they will say that I am trying to make money.' Increasingly NGOs are working with religious leaders in an effort to avoid politicized organizations.

With survival being the priority of many in the community, mobilizing at all is a challenge. Many refugees and asylum seekers, particularly women, are unable to attend meetings for they work or sell in the day and care for families in the evenings. With high levels of xenophobia, others do not want to draw attention to themselves fearing being harassed or victimized. Dr Zonke Majodina, a commissioner at the South African Human Commission spoke of these constraints, 'people are traumatized and feel very vulnerable so they isolate themselves from the mainstream society. This makes South Africans feel justified in excluding them as well. We need to understand their situation. Even though some refugees know their rights they are never going to stand up for their rights because they are scared to stand up and identify themselves. The perception is that they are bringing trouble' (interview 26/11/04). The CASE survey explored the extent to which refugees and asylum seekers participated in community organisations. Whilst fifty six per cent participated in religious organisations, their participation in other organisations such as student organisations, school governing bodies, stokvels or others was minimal. The CASE survey concurred that applicants' negative perceptions of how they are viewed by South Africans deterred their participation in local community organisations (Belvedere 2003:171).

Refugee run CBOs largely lack a political voice, they lack platforms to express their views, they lack funding and they are not connected with South African structures. This

has resulted in many CBOs being reliant on more professionally run NGOs to assist in meeting their communities needs. There is therefore a level of functionality guiding the relationship between NGOs and CBOs. This reliance adds another layer to the dynamics. According to an NGO worker, 'there are NGOs that are properly run, but have a patronizing attitude to CBOs- an attitude that CBOs should be grateful'.

Most civil society organizations indicated that the response to their services was mixed. Stephen Smith, the Director of the Papillon Foundation in Johannesburg said the following, 'sometimes refugees come here and cry tears saying thank you for the service and then they go outside and want to throw stones. This is mostly the case where we do not supply what they want.' Fedde Groot of the UNHCR confirmed that working with refugees can be difficult, 'refugees are not only not thankful, but they can become aggressive, but it is like that everywhere. You encounter little gratitude.' This was affirmed in the CASE survey which found that most refugee and asylum seekers who had sought out assistance rated the quality of the assistance as poor. Their study found that refugees and asylum seekers were not clear about the criteria for assistance or were unwilling to understand the criteria (Belvedere 2003:193).

Civil society organisations find themselves working with a community that is often disappointed, aggressive, untruthful and frustrated. These organizations can in turn become an avenue for venting frustrations and anger. Amisi and Ballard (2005:14) argue that this is based on refugee experiences in their home countries where the state has for some time not been seen as a provider of rights and entitlements. In addition, refugees have largely had negative experiences in their contact with the state in South Africa and thus fear further contact. Those attempting to get assistance from state structures often faced further abuse. This was confirmed by a DRC refugee woman living in Johannesburg, 'I am not safe here. We just hide and lock the doors and now last week they took everything from our house. My husband went to the Jeppe police stations, but they wanted money to investigate the case so he said we just leave it' (interview 19/10/04).

Service providers spoke of great stress and the potential for burnout in the field. That many have been working in the sector for many years bears testimony to the commitment and compassion of staff members of some organizations. Adelia de Souza of the Bienvenue Shelter for women in Johannesburg spoke of these challenges,

Refugee people are very demanding because of that struggle to survive. You have to have a lot of compassion and patience. People are traumatized. They come from wars and they will grab what they can to survive. This background comes up when you are living alongside one another. When you know their stories, you understand why they are angry. One day you have your life and the next day you run away and do not know how you will survive.

Rose Gasherebuka of the Bon Esperence, a women's shelter in Cape Town, identified the lack of psychological services for refugees and asylum seekers as a gap. She said,

Even if we help refugees with food and this and that, there is something big like a psychological problem. We give, but the person is never satisfied. They need somewhere to be relieved from what they have experienced in their country of origin. We don't have somebody to sit with them and we do not have enough time to listen to them. It is not easy to be in exile. You find yourself with no one to talk to. Not many refugees travel with their families (interview 2/12/04).

Civil society activists recognize the additional trauma of navigating the asylum process in South Africa and often feel impotent in their ability to respond. Abeda Bhamjee, from the Wits Law Clinic, spoke of the difficulties in not being able to meet clients needs, 'we turn a lot of people away because our caseloads are full. It breaks my heart because at NGOs people can regain their dignity. They feel disregarded and discounted when they are sent away' (interview 5/10/04).

Despite these tensions and complexities, there are mechanisms working towards greater cooperation. The National Consortium on Refugee Affairs includes representatives from NGOs and refugee community based organizations across the country. They attempt to

ensure that information flows to all levels. The Coordinating Body of Refugee Communities is one of the few organizations in the country organizing people from different countries under the banner of common refugee issues. In Durban, after the previous forum violently collapsed, there is now a more efficient and coordinated approach. This was attributed to better funding and appropriately skilled people working in the field, in addition to the coordination mechanism being more fluid in the form of a service providers forum rather than a structured refugee forum. Cape Town organizations participate in an informal network to avoid duplication of services and shopping by their clients. Clarity on roles and expectations as well as strict adherence to procedures were seen as key to minimizing tensions. In Gauteng, formal networks and forums continue to flounder. Most organizations do however have contact with the NCRA or do work with one or two other partners.

The reliance on services provided by civil society organizations was highlighted when respondents were asked about recourse mechanisms followed by refugees and asylum seekers when their rights were violated. Despite having access to Chapter 9 institutions like the SAHRC, the Commission for Conciliation, Mediation and Arbitration (CCMA), the Gender Commission and others, most preferred to go to refugee service organization like LHR, the Jesuit Refugee Services (JRS), the Cape Town Refugee Centre or Refugee Pastoral Care. Thus, irrespective of the intracommunity tensions, interorganisational rivalry and competition for scarce resources, services being offered to refugees and asylum are being used. According to Joyce Tlou, 'at the end of the day, despite the tensions, there is sometimes the grudging realization that we need each other.'

Cox (2001:32) suggests that a strategy to combat marginalisation is to build a sense of solidarity through establishing group structures. He describes how socially marginalized people are excluded from the regular productive systems within society and are viewed as problematic consumers of social benefits. Mbembe (in Greenstein 2003:10) adds that the mere existence of structures and associations is not what matters, 'but their ability to articulate, autonomously and publicly, an idea of general interest.' In light of the above-mentioned trends and tensions, it is unlikely that the refugee community will be able to build a broad based alliance to advocate for their needs and concerns at this

time. This is not to suggest that refugees are not organised or are passive in addressing their own concerns. The formation of associations, political parties, networks, religious groupings, women's organizations, unions, coordinating bodies, formal organizations and business links all point to varying degrees of organization. What is lacking is a unified voice to articulate overarching refugee concerns. Amisi and Ballard (2005:2) made similar findings. They argue, 'the structural category of 'refugees' fails to translate into a political identity or basis of organization.' They suggest that formations in response to marginalisation should be seen as fulfilling a range of functions to include political, social, economic and cultural. They found that, 'economic marginality is, therefore, not the primary 'sub identity' which forms the basis for these networks.' (Amisi and Ballard, 2005:16)

With refugee organizations fractured and splintered and with the reliance on formal NGOs as intermediaries, a corporatist approach is more likely to emerge whereby greater coordination and cooperation between government and civil society can be negotiated. Dr Zonke Majodina proposed the formation of a refugee council emulating the British Refugee Council. This council would bring together government, civil society and international organizations working with refugees.

## **Conclusion**

Although refugees and asylum seekers are largely reliant on NGOs for service provision and legal protection, most refugee activists promote the integration of refugees into the governments' social welfare system. Abeda Bhamjee spoke of the need to contextualise refugee protection, 'it is important to reflect on the current insecurity and instability for refugees and asylum seekers that has a domino effect on all aspects of their lives. Our system is based on the assumption that urban refugees would be self-sufficient. This is based on a European model and yet refugees arrive in South Africa to a 40% unemployment rate.' This calls for the reassessment of the sustainability and protection ability of the UNHCRs urban refugee policy and call for government intervention to ensure that South Africa's obligations to refugees are fulfilled.

When it comes to refugee organizations, a number of contradictory trends are evident. Firstly, despite refugees facing common issues, the community is plagued by internal conflict limiting their ability to mobilize and advocate for these concerns. Refugees largely identify themselves by nationality, linguistic, provincial or ethnic affiliations and these cleavages inhibit their ability to mobilize around common refugee concerns. This makes them more reliant on more formal NGOs to act as intermediaries on their behalf. Secondly, for many refugees, fears of xenophobia and drawing attention to themselves have resulted in their retreating into small pockets within their own community. These efforts at ensuring invisibility have the unintended consequence of heightening their visibility by contributing to South Africans identifying with them in group categories that perpetuate social and economic exclusion. The third trend is that of refugee and asylum seekers targeting NGOs and the UNHCR as the site of protest action rather than the government. Civil society organizations have limited powers to address issues of just administrative action, access to socio-economic rights and opportunities for self reliance. This frees the governments to ignore the needs of this community and not be held accountable for the lack of services to address them.

Despite these complexities, there have been some gains achieved through the strategies adopted by civil society organizations to enforce socio-economic rights. Four strategies are identified in this paper as being adopted by civil society organizations in attempts to enforce socio-economic rights. These include civil society organisations engaging in service provision to provide temporary relief to refugees and asylum seekers; lobbying and advocacy interventions; legal challenges and intracommunity support. There is little emphasis placed on protest actions or increasing linkages with other civil society organizations advocating for the expansion of rights for South Africans. Efforts at enforcing socio-economic rights are largely aimed at enforcing the limited socio-economic rights expounded in current legislation and particularly the right to just administrative action, rather than expanding rights to refugees and asylum seekers. Successes have included increased access to schools for refugee children and increasing possibilities of access to some social welfare grants. Considering that the chances of unifying the refugee community appear slim, it may be strategic for refugee CBOs and NGOs to consider greater networking and alliance building with progressive

organizations beyond the refugee sector such as trade unions, other faith based organizations and NGOs and CBOs serving South Africans. Another option to pursue in attempts to harness a response from 'below' may be mobilizing around specific community struggles and then demobilizing once the goal is achieved. Without mobilization from 'below' gains for refugees will be driven by well intentioned refugee NGO interventions, legal interventions and possibly future corporatist arrangements. The spaces for direct refugee participation to shape the processes and policies flowing from this would be minimal.

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## **Methodology**

The research was qualitative in nature and was undertaken through 25 indepth interviews with representatives from relevant organizations. In addition, informal interviews were held. Participant observation techniques were utilized and included participation in networking meetings, attending organizational meetings and public meetings and events. Some of the participants agreed to an interview on the provision that they remain anonymous. Anonymous quotes are used in the text where the respondent feared identification or harassment.

## **Interviews**

1. Joyce Tlou, National Consortium on Refugee Affairs, 22/09/04
2. Jacob van Garderen, Lawyers for Human Rights, Pretoria 22/09/04
3. Stephen Smith, Papillon Foundation, 30/09/04
4. Uli Albrecht, Johannesburg Refugee Network, 5/10/04
5. Abeda Bhamjee, Wits Law Clinic, 5/10/04
6. Dosso Ndessomin, Coordinating Body of Refugee Communities, 6/10/04
7. David Masongezi, Berea Children's Centre, 13/10/04
8. Adelia de Souza, Bienvenue Shelter, 19/10/04
9. Rev Rakoba, South African Council of Churches, 20/10/04
10. Dr Molebogo Machele, Department of Home Affairs, 22/10/04
11. Sheldon Magardie, Legal Resource Centre, 27/10/04
12. Refugee, Refugee Pastoral Care, 1/11/04
13. Yasmin Raja, Mennonite Central Committee, 1/11/04
14. Taryn Powys, Lawyers for Human Rights, Durban
15. Jean Pierre Kalala, Planned Parenthood Association of South Africa, 5/11/04
16. Mpho Tutubala, Nicky Probert and Thabile Maphosa, Jesuit Refugee Services 15/11/04
17. Joe Molifi, Department of Social Development, 23/11/04
18. Fedde Groot, UNHCR, 23/11/04
19. Dr Zonke Majodina, SAHRC, 26/11/04
20. Dr Emmanuel Ngenzi, Refugee Ministries Centre, 26/11/04
21. Estelle Neethling, South African Red Cross Society, 30/11/04
22. Refugee, Cape Town Refugee Centre, 30/11/04
23. Rose Gasherebuka, Bon Esperance, 2/12/04
25. Refugee, Scalabrini Brothers, 3/12/04

## **Informal Interviews**

1. Jonathan Klaaren, Wits Law School, 6/10/04
2. Angolan Refugee Woman, 19/10/04
3. DRC Refugee Woman, 19/10/04
4. Rwandan Refugee Woman 5/11/04
5. Richard Ballard, University of KwaZulu Natal, 4/11/04
6. DRC Refugee Man, 30/11/04
7. Sudanese Refugee Man, 3/12/04