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Through the publication of original research, policy discussions and evidence-based research papers, AHMR provides a comprehensive forum devoted exclusively to the analysis of current migration trends, migration patterns and some of the most important migration-related issues.

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SIHMA Physical address
47, Commercial St, 8001 Cape Town – South Africa
Tel. 0027 021 461 4741
Email: ahmr@sihma.org.za
Webpage: www.sihma.org.za

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Editorial

Professor Mulugeta F. Dinbabo
Editor-in-Chief, African Human Mobility Review (AHMR)
University of the Western Cape
Email: editor@sihma.org.za

This issue consists of a book review and five articles that promote the practice of original research and policy discussions. It provides a comprehensive forum devoted exclusively to the analysis of contemporaneous trends, migration patterns, and some of the most important migration-related issues in sub-Saharan Africa.

Daniel Tevera presents a critical and scholarly evaluation of a book entitled *Migration in West Africa*, edited by Joseph Kofi Teye. Tevera observes that the authors deepen the readers' knowledge on the socio-economic effects, patterns, and causes of both internal and cross-border migration in West Africa. He acknowledges that the book is an important work that academics of African migration should find useful, particularly in comprehending the dynamics, causes, and effects of migration in West Africa. Through the presentation of micro-empirical case studies from several nations, it offers thorough information on a number of topics pertaining to the migration-development nexus in West Africa, including environmental displacement, return migration, and remittances.

The first article by Geraldine Asiwome Ampah and Leander Kandilige is entitled *Gaps and Challenges in Ghana's Implementation of the Mechanisms for Cooperation and Referral of Trafficking in Persons (TIP) Victims*. This paper uses Ghana as a case study to analyze efforts by national authorities to eliminate trafficking in persons. Using a qualitative method of research that involved semi-structured interviews with representatives of government ministries, departments, and agencies, as well as civil society organizations (CSOs) and development partners, this research draws on the conceptualization of institutional collaboration. The results of this study highlight the challenges to an effective criminal justice response to trafficking in persons in Ghana, which include inadequate political will, poor resourcing and training of agencies, and lack of information about trafficking in persons. The authors provide policy recommendations based on the findings, including the adoption of coordinated actions among legislators, security forces, and the judicial system to arrest and prosecute traffickers.

The second article by Cristiano d'Orsi is entitled *One Step Forward, Half Step Back: Still a Long Way to Go to End Statelessness in Madagascar*. The author discusses the unresolved plight of statelessness in Madagascar and sheds light on the problematic situation of the Karana people, who still suffer from discrimination in the country. The study also examines gender discrimination in nationality law. In the

final recommendations, the author urges specific actions to be taken with regard to incorporation policies, including granting Malagasy citizenship to Karana children to reduce social tensions and improve integration.

The third article by Meron Okbandrias is entitled *Protection of the Rights of Ethiopian and DRC Refugees and Asylum Seekers: Examining the Role of South African NGOs (2005–2017)*. This paper investigates the challenges of NGOs working in the area of refugee rights, in an environment characterized by anti-immigrant sentiments and restrictive policies curtailing access to the asylum regime. The researcher employed a qualitative approach to scrutinize the role of NGOs working with Ethiopian and Congolese asylum seekers and refugees in three major cities of South Africa. The article provides an in-depth analysis of the effectiveness of NGOs in advocacy and the protection agenda, including facilitating access to social services, humanitarian assistance, and litigation services. The author concludes that in spite of their remarkable success in advocating for and protecting the rights of refugees and asylum seekers, NGOs cannot cover the void created by shortcomings in the implementation of legislation.

The fourth article by Christine Semambo Sempebwa is entitled *Higher Education Policy and Access for South Sudanese Refugees from the Bidi Bidi Settlement, Uganda*. This study presents findings from an exploratory study on higher-education policy and implementation and its influence on South Sudanese refugees from the Bidi Bidi settlement in Uganda. The outcomes of this study suggest that higher-education policy formulation for refugees and host communities is largely state driven and top-down, leaving limited space for information and feedback provided by students and higher-education institutions. Moreover, higher-education policies are not fully integrated in the Education Response Plan (ERP) for refugees and host communities, with implications for student access and resilience.

The fifth article by Mandipa Machacha is entitled *Realizing the Right to Dignity of Zimbabwean Migrant Women in Botswana: A Practical Approach*. This study analyzes the situation and specific challenges faced by Zimbabwean migrant women in Botswana in accessing healthcare and decent employment opportunities and then presents possible solutions based on the "Migration with Dignity Framework." The author argues that, to create an environment in which the basic needs of migrant women are met, an effective provision of services and strong policies to address the root causes of discrimination and violence against migrant women are of fundamental importance.

I would like to thank all Board Members, editors, reviewers, authors, and readers for their continued engagement. Finally, I am confident that this edition of the *African Human Mobility Review* provides a significant resource for scholars, practitioners, and students.

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Book review

Teye, Joseph Kofi (ed.), 2022

Migration in West Africa

Cham, Switzerland: Springer, 265 pages
IMISCOE Research Series
ISSN: 2364-4087 ISSN 2364-4095 (electronic)
ISBN: 978-3-030-99238-5 ISBN 978-3-030-97322-3 (eBook)
https://doi.org/10.1007/978-3-030-97322-3

A recent book edited by Joseph Kofi Teye titled *Migration in West Africa* discusses cross-border movements by regular and irregular migrants in search of economic opportunities and to maintain social relationships. This four-part volume consisting of 13 chapters discusses migration patterns, drivers, and socio-economic impacts of internal and cross-border migration in West Africa. While the authors are at pains to show that migration, in particular and mobility, in general, are part of the fabric of life in West Africa, they dismiss the media discourses that convey images of millions of West Africans migrating to the European "El Dorado" and other destinations such as the Maghreb and Southern Africa. The authors argue that contrary to the narratives suggesting an exodus of Africans to the Global North, intra-regional migration is the dominant process in West Africa.

Part I consists of four chapters that discuss the changing patterns and governance of migration within and from the region. The chapters combine empirical findings with theoretical reflections to develop compelling migration-development narratives that make the book relevant to readers outside West Africa. For instance, while migration from labor-surplus areas to labor-scarce destinations is often explained from an economic perspective, several authors challenge such orthodox conceptualizations of drivers of migration by arguing how non-economic drivers (e.g., culture, social networks, and religion) also influence migration decisions.

Chapter 1 by Joseph Kofi Teye covers migration trends, patterns, and drivers within and from West Africa and reveals how state formation processes and political administration shaped current mobility patterns and social transformation during the pre-colonial and colonial periods. Teye refers to West Africa as a "sub-region" that experiences mixed migration flows and high levels of intra-regional migration, including labor and forced displacement.

In Chapter 2, Faisal Garba and Thomas Yeboah explore several critical challenges in implementing the Economic Community of West African States (ECOWAS) Protocol, whose aims are to promote the free movement of persons and

regional integration. These aims have been hampered by the rampant extortion and harassment of migrants at border crossings and a general lack of coherence on cross-border mobility between the member states' national legislation and the ECOWAS Protocols.

Chapter 3 by Priya Deshingkar and Doudou Dièye Gueye provides a gendered analysis of human smuggling from Senegal to the Global North. Using the impoverished Kolda region of Senegal as a case study, the chapter provides valuable insights into gender-religious belief systems and their intersection with irregular migration and human smuggling processes.

In Chapter 4, Mary Boatemaa Setrana and Nauja Kleist argue that family relations are central to the gendered dynamics of migration and remittance flows in West Africa. The chapter posits that the feminization of migration is linked to the broader social changes occurring in the sub-region.

The three chapters presented in Part II focus on environmental and forced migration. In Chapter 5, Joseph Kofi Teye and Ebenezer G.A. Nikoi discuss migration as a response strategy to extreme weather events. They present interesting case studies on how floods, drought, and rainfall variability have been migration and displacement triggers in several parts of West Africa. The authors argue that most displaced survivors of extreme weather events relocate to nearby regions to continue their lives without undergoing major livelihood adjustments.

In Chapter 6, Heaven Crawley and Veronica Fynn Bruey discuss the struggles of Liberian refugees living in protracted displacement and poverty in Ghana to secure national and international protection. Chapter 7 presents an examination by Leander Kandilige and Geraldine Asiwome Ampah of the peculiar protection vulnerabilities experienced by voluntary migrants in times of crisis because of a lack of access to national protection mechanisms during crises. The authors conclude that existing generic national disaster management agencies are inadequate in providing specific support for voluntary migrants during disasters, and they call for a mechanism dedicated to protecting the rights of voluntary migrants during crises.

The three chapters in Part III focus on labor migration, diaspora, and development. In Chapter 8, Olayinka Akanle and Olayinka Damilola Ola-Lawson contribute to the debates on the link between labor migration and socio-economic development in Nigeria. In Chapter 9, Tebkieta Alexandra Tapsoba and Dabiré Bonayi Hubert examine the trends in the flow and development impacts of remittances in Burkina Faso. They argue that although households that receive regular remittances are economically better-off than those that do not, most of the cash remittances are spent on consumer goods and are not invested in productive sectors. In Chapter 10, Nohoua Traoré and Gertrude Dzifa Torvikey contribute to the knowledge of the historical migration trajectories by situating the development of the cash-crop economy within the history of labor migrations into Côte d'Ivoire and the crises that ensued as a result, by highlighting the different waves of migration into Côte d'Ivoire.

Part IV focuses on return migration. In Chapter 11, Amanda Bisong outlines how the return process contributes to vulnerability and continued precarity in returnees in Benin City, Edo State, Nigeria. She argues that poorly implemented return programs have worsened the vulnerabilities of migrants instead of promoting migrant integration. A significant contribution of this chapter is its exposition of the role of local institutions in the reintegration of returnees by helping them cope with the vulnerabilities they are exposed to in their places of origin.

Chapter 12, authored by Joseph Mensah, Joseph Kofi Teye, and Mary Boatemaa Setrana, elucidates the interconnections between immigrant integration, transnationalism, and return intentions, focusing primarily on Ghanaian and Senegalese migrants in the Global North. From this analysis, it is evident that although many migrants settle and integrate into their destination countries, they remain connected to their homelands through various transnational engagements. The authors argue that migrants often sustain simultaneous connectivity to both ends of the migration cycle, not because they are unable or unwilling to integrate, but because they use this connectivity to facilitate their livelihoods in the origin and destination countries.

In Chapter 13, Joseph Kofi Teye presents the main conclusions. First, that diaspora remittances and investments in West African countries have the potential to contribute significantly to socio-economic development in West African countries. Second, although several policies and programs have been implemented to strengthen mechanisms for protecting current and returned migrants, the existing state-led frameworks for protecting vulnerable refugees and labor migrants remain ineffective and are not comprehensive. Third, despite a general lack of programs to enhance the developmental impacts of financial remittances, West African countries have the potential to contribute significantly to socio-economic development in these countries.

Migration in West Africa is a valuable volume that African migration scholars should find helpful, especially from the point of view of understanding the causes, dynamics, and implications of migration in West Africa. The edited volume draws out several policy lessons based on the experiences of West African states. Importantly, its nuanced reflections on both national and regional migration policy and programming, provide a refreshing contribution to the ongoing debate on African migration. Hopefully, there will be a second edition, and this would give the authors an opportunity to elaborate on some of the interesting but insufficiently addressed debates around transit migration within West Africa, human trafficking, and cross-border migration corridors. Also, the general lack of recent country-specific data on immigration would need more attention.

This book is written in a very accessible way, and it provides comprehensive information on several issues related to the migration-development nexus (e.g., environmental displacement, return migration, and remittances) in West Africa by presenting micro-empirical case studies from several countries. Scholars interested

in historical analyses of migration flows and the legal instruments governing the ECOWAS Protocol on the free movement of persons will find this book particularly helpful. This edited volume is a welcome addition to the literature on African migration.

Prof Daniel Tevera, University of the Western Cape, South Africa

Gaps and Challenges in Ghana's Implementation of the Mechanisms for Cooperation and Referral of Trafficking in Persons (TIP) Victims

Geraldine Asiwome Ampah[1] and Leander Kandilige[2]

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Abstract

Trafficking in persons (TIP) is a global scourge. In Africa, however, it is most prevalent in West and Central Africa. This paper uses Ghana as a case study to examine efforts to curb this menace at the national level. Drawing on the concept of institutional collaboration, interviews conducted among key stakeholders, and a review of policy documents, we found that the major challenges and gaps faced by institutions working to implement mechanisms for cooperation include disparities in definition of terminologies, financial and logistical constraints, underutilization of online reporting systems, inadequate partner collaborations, a gap in the development of operational guidelines and the drafting of training manuals, operational challenges, and high staff turnover. Despite these challenges, we conclude that there has been significant improvement in coordination activities in Ghana among the various institutional actors, led by the Human Trafficking Secretariat. The relevance of this study lies in the fact that it allows for a critical mapping and appreciation of the challenges that developing countries face in tackling TIP, which then gives meaning to global northern-prescribed international ranking systems (the tier system), which are otherwise meaningless within the global southern context.

Keywords: trafficking in persons (TIP), gaps, challenges, mechanisms, cooperation, Ghana

[1] Department of Sociology, University of Ghana, Ghana. Corresponding author ✉ gadiku@ug.edu.gh
[2] Centre for Migration Studies, University of Ghana, Ghana ✉ lkandilige@ug.edu.gh

INTRODUCTION

The surreptitious nature of trafficking in persons (TIP) makes it not only a dangerous activity but something that should be eschewed at all cost (Pati, 2013). TIP is a transnational criminal activity since it transcends national borders (Kangaspunta et al., 2018). Though TIP is a widespread practice globally, within the African continent, it is predominant in West and Central Africa (Darko, 2018). The conducive global economy makes it easy for sexual exploitation, forced labor, domestic servitude, and other forms of oppression to thrive (Bouché and Bailey, 2020). TIP flourishes because of the unequal power relations that exist between the perpetrators and the victims. These perpetrators – recruiters, intermediaries, counterfeiters, transporters, employers, brothel operators, and even friends and family members who are trusted – force victims to live perilously (Bouchard and Konarski, 2014).

The majority of TIP victims are women and children, with women and young girls constituting 70 percent of TIP victims (Bouché and Bailey, 2020). Bouché and Bailey (2020) point out that migrants are more likely to be trafficked when they are found in marginalized and underprivileged situations and need financial support. Similarly, children from impoverished countries are the majority of the victims of trafficking. South Asia, Central America, the Caribbean, and West Africa have a greater percentage of their children living in abject poverty. Half of the detected victims of human trafficking in low-income countries are children and the majority of them are employed as forced laborers (Bouché and Bailey, 2020).

While TIP is increasing, efforts by national authorities to tackle this menace are also on the rise. There are attempts to detect, prevent, and prosecute wrongdoers when they are caught. Nearly every country currently has legislation in place criminalizing human trafficking (Kangaspunta et al., 2018; Obokata, 2019). States have a principal obligation to combat human trafficking (Kangaspunta et al., 2018; Obokata, 2019; Bouché and Bailey, 2020). There are three responsibilities that the African Charter on Human and People's Rights, formulated in 1981, places on member states in the fight against TIP. States devise laws to prevent and indict persons involved in all forms of trafficking in persons. States are under further obligations to implement measures to safeguard the protection of victims of TIP, as enshrined in Articles 6 and 7 of the Charter. Finally, governments are mandated to stop all forms of TIP. Countries of origin and destination of trafficking victims are required to work together to facilitate the implementation of the preventive mechanisms to trafficking in persons (Obokata, 2019).

There are, however, institutional gaps and challenges that hinder preventive mechanisms to trafficking in persons in Ghana. What are these gaps and challenges that make the implementation of national mechanisms for cooperation and referral of TIP difficult? The difficulty with implementation of the preventive mechanisms further creates weak security conditions that enable trafficking in persons to thrive. We explore the gaps and challenges in the implementation of the national mechanisms for cooperation and referral of TIP victims and proffer

some recommendations to build the institutional framework for a more effective response to the incidence of TIP.

The next section outlines our theoretical approach. We focus on the concept of institutional collaboration, and we discuss how institutional collaboration can be useful in achieving the aims of organizations that collaborate. We then describe the methodology adopted to collect the data that forms the basis for our analysis and recommendations. We discuss the factors that influence TIP. This is followed by a dissection of the challenges in the implementation of the national mechanisms for cooperation regarding TIP victims and propose some recommendations to build the organizational framework for a more effective response to the incidence of TIP.

TRAFFICKING IN PERSONS: THE GHANAIAN CASE

According to the National Plan of Action for the Elimination of Human Trafficking in Ghana – 2017-2021, the major form of human trafficking in Ghana is child trafficking for domestic and labor purposes. These children are forced to work in various sectors of the underground economy including but not limited to street hawking, fishing, artisanal gold mining, agriculture, begging, stone quarrying, domestic service, and pottering (Republic of Ghana, 2017a). Most young girls are also trafficked into sex work. Though sex trafficking exists nationally, it is very prevalent in the Volta Region and it is growing in the Western Region of Ghana (US Department of State, 2020). Child trafficking victims come from impoverished backgrounds, and they are young children between the ages of 5 and 16 (ECOWAS, 2018).

Other forms of trafficking in persons in Ghana include trafficking for organ harvest and trafficking for labor exploitation. A smaller but still significant portion of the human trafficking happens for sexual reasons (Darko, 2018). Sex trafficking victims are mostly women and young girls who are pressured into prostitution and sex tourism. Trafficking for organ harvest is the most underreported human trafficking activity (Darko, 2018). It involves human trafficking with the aim of removing certain organs. It also includes transplant tourism where patients travel abroad in search of a transplant with a paid donor, which is mostly illegal (Darko, 2018). Labor exploitation trafficked victims move to a destination area to work, but they are deceived about the actual terms of conditions of the job by their traffickers. The victims are compelled to work in very difficult conditions for little or sometimes no salaries (Darko, 2018). Women and children who are trafficked for labor exploitation purposes are sometimes sexually exploited as well.

According to the US State Department's Ghana Trafficking in Persons Report (2022), the Ghanaian government reported identifying and referring 727 trafficking victims to services in 2021. This was a significant increase over the previous year where 391 victims were identified and referred. Human trafficking victims recorded in 2021 included 657 victims of labor trafficking, 64 victims of sex trafficking, and six victims where the form of exploitation was unknown. Most of the identified victims were children (578), and a majority were Ghanaian nationals (577). Out of

the 150 foreign national victims, the majority were Nigerians, followed by Burkinabe, and Ivorians. Nongovernmental organizations (NGOs) identified an additional 94 trafficking victims, including 87 labor trafficking victims and seven sex trafficking victims, compared with 108 victims in 2020 (US Department of State, 2022).

Ghana is considered both a destination and an origin country for human trafficking victims. According to the US State Department's Ghana Trafficking in Persons Report (2020), women and girls migrating from Vietnam, China, and several West African countries are subjected to sex trafficking in Ghana. Citizens from other West African countries are subjected to forced labor exploitation in Ghana in the agricultural and domestic services. Ghana is also a transit point for West Africans subjected to sex trafficking in Europe, especially in Italy and Germany (US Department of State, 2020).

The Ghanaian government has taken steps to advance policies, programs and legislation aimed at curtailing the trafficking in persons menace. One of these initiatives is the enactment of the 2005 Human Trafficking Act (Republic of Ghana, 2005) that provides a legal framework for preventing human trafficking by seeking to stop and suppress trafficking, penalize persons found to be complicit and start interventions to encourage the protection and well-being of victims. This law makes human trafficking a second-degree crime. The establishment of the Anti-Human Trafficking Unit (AHTU) of the Ghana Police Service in 2008 is another important initiative. This unit conducts investigations into allegations of human trafficking and seeks to prosecute offenders. The Anti-Human Smuggling and Trafficking in Persons (AHSTIP) unit of the Ghanaian Immigration Service was also set up in 2012 to investigate and arrest human trafficking and smuggling offenders, while also building the capacity of immigration officials to detect cases of trafficking and smuggling.

In June 2015, a four-year joint initiative, the Child Protection Compact (CPC) partnership, aimed at addressing child trafficking in Ghana was signed between the governments of Ghana and the United States of America. This initiative aimed at strengthening the government's capacity to identify child trafficking cases, care for and reintegrate victims, effectively investigate and prosecute traffickers, and prevent trafficking from occurring (Westat, 2016). Also, there are a number of NGOs and international organizations working in the fight against human trafficking. Free the Slaves, Partners in Community Development, International Needs Ghana, Sewa Foundation, International Justice Mission, Challenging Heights, International Organization for Migration (IOM), and International Labour Organization (ILO) are just a few of the organizations working in this area, particularly in the prevention, rescue, care, shelter, and rehabilitation of victims.

Given the prevalence of human trafficking activities in Ghana and efforts aimed at curbing this scourge, this paper explores in detail the institutional collaborative efforts made by various national agencies to curb this menace. There are, however, institutional gaps and challenges that hinder preventive mechanisms to trafficking

in persons. What are these gaps and challenges that hinder the implementation of national mechanisms for cooperation and referral of TIP?

CONCEPTUALISING INSTITUTIONAL COLLABORATION

This research draws on the conceptualization of institutional collaboration to make sense of the difficulties that Ghanaian national anti-trafficking organizations face in their fight against TIP. Institutional or organizational collaboration, according to Bryson et al. (2006: 44) is cross-sectoral and involves "the linking or sharing of information, resources, activities, and capabilities by organizations in two or more sectors to achieve jointly an outcome that could not be achieved by organizations in one sector separately." The pooling of varied assets, including information, resources, activities, and capabilities is instrumental to achieving the end goal.

While explaining what goes into collaborative public management, O'Leary and Bingham (2007: 7) indicate that institutional cooperation can be regarded as:

> … a concept that describes the process of facilitating and operating in multi-organizational arrangements to solve problems that cannot be solved or easily solved by single organizations. Collaborative means to co-labour, to co-operate to achieve common goals, working across boundaries in multisector relationships. Cooperation is based on the value of reciprocity.

Reciprocity is of paramount importance if institutional relationships are to be successful. No collaborator in the process should feel shortchanged. There should be a sense of fairness, a sense of give and take in the process of collaboration.

It should also be noted that the extent of cooperation between institutions can range from lax engagement such as mere exchange of information to comprehensive synergistic collaboration (Keast et al., 2009). A distinction can be made across a range of collaborations, from a loose connection for sharing information, expertise and mutual assistance; to coordination, where partners work in closer relationships to alignment of resources and effort toward agreed shared goals and collaboration, characterized by strong and highly interdependent relationships through which partners make systemic changes to the ways they work, developing integrated strategies and sharing a collective purpose (Keast et al., 2009). Multi-agency collaboration entails people working across organizational precincts, but from this categorization such precincts can vary, from simple knowledge precincts in the case of cooperation to full collaboration across boundaries of mission, resources, capacity, responsibility, accountability, and geographical space (Kettl, 2006).

Cooperation among institutions is considered a significant strategy that can be used to overcome turbulence and complexity regarding certain situations (Gray and Wood, 1991). Institutional collaborations have the potential capacity for solving societal problems (Gray and Wood, 1991). Working collaboratively has become the ideal canon for innovation and value addition when it comes to the delivery of public

services (Rigg and O'Mahony, 2013). Nevertheless, this is not always rosy; the reality can be complicated, and value addition may be missing (Rigg and O'Mahony, 2013). Of what importance is institutional collaboration then?

Huxham (1996) offers some answers. He argues that institutional collaboration becomes important when leaders of organizations realize that it will produce a cooperative advantage that will deliver better results for the clients or citizens, which would not have been met had the institution worked on its own. This has been dubbed by some scholars, such as Sullivan and Skelcher (2002), as the optimistic view of collaboration. The pessimistic view, on the other hand, recognizes that compulsion may be the most important key to collaboration, as institutions insist that working together is important for their own selfish interests (for example, to attract funding and investment), even if there is little evidence that it will be successful (Barringer and Harrison, 2000). Huxham and Vangen (2005: 2) also discuss the disadvantages of inter-organizational cooperation, highlighting what they term "collaborative inertia," as a space filled with frustrations where instead of success, there is slow progress and that most organizations fizzle out without accomplishing anything. Rigg and O'Mahony, (2013) refer to this situation as collaborative frustration.

Collaborative frustration occurs when the institutional cooperation fails to achieve results. In other words, when the multi-agency collaboration is not working, it leads to organizational frustration (Rigg and O'Mahony, 2013). Having applied the concept of institutional collaboration to the public sector in a Western country setting (see O'Leary and Bingham, 2007; Rigg and O'Mahony, 2013), we expand the literature by applying it to a cross-sectoral scenario in a global south context. We also focus on the menace of human trafficking, which demands institutional collaboration if it is to be curtailed and lives saved.

RESEARCH METHODS

This research is part of a bigger research project conducted to understand the operations of human traffickers in Ghana. To answer our research question, we relied on a qualitative research design. We used semi-structured interviews and interviewed representatives of Ghanaian government ministries, departments and agencies as well as officials representing civil society organizations (CSOs), NGOs, development partners, and Economic Community of West African States (ECOWAS) officials in charge of TIP issues. Additionally, we reviewed several policy documents. As noted by Akcam et al. (2019), the intricacies of qualitative research comprise a mishmash of interconnected methods, such as reviewing literature, conducting semi-structured interviews, organizing focus-group discussions, and engaging in participant observation. We employed a qualitative research design because we wanted to gain in-depth knowledge about the gaps and challenges in the implementation of the national mechanisms for cooperation and referral of TIP victims.

We engaged key officials at government ministries, departments, and agencies responsible for policy making, oversight and the implementation of policies and

mechanisms for cooperation and referral of TIP victims. We also engaged both local and international nongovernmental institutions such as CSOs and development partners that carry out activities including research, information campaigns, rescue of victims, family tracing, reintegration of victims with families, and prosecution of perpetrators. We adopted the purposive and snowball sampling technique. This sampling approach is important because trafficking is a niche area and only those who are directly engaged with the different aspects of trafficking can meaningfully comment on the mechanisms for cooperation and referral of TIP victims.

Table 1: Institutions and interviewees

Type of institution	Number interviewed
Government ministries	3
Government departments and agencies	4
United Nations Institutions/ Agencies	2
International Organisations/ NGOs	4
National NGOs and Civil Society Organisations	6

Source: Ministry of Education (2019), Ghana.

We conducted the fieldwork between March and May 2021 with a focus on Accra, Ghana's capital, and the regional offices of CSOs and government departments, especially in regions that report a large incidence of trafficking cases. We selected Accra because it hosts the head offices of all government ministries, departments and agencies. Furthermore, we conducted sub-regional interviews virtually and did a desk review of relevant national policy documents. The research team conducted all the interviews in English and then transcribed them. We employed reflexive thematic coding and analysis technique to analyze the qualitative data. As suggested by Kandilige et al. (2022) regarding reflexive thematic coding and analysis technique, we closely reviewed all the transcribed material, which enabled us to familiarize ourselves with the texts. We coded the words and phrases to chunks of the textual data; we were therefore able to reduce and distill the content of the data. We coded iteratively by revising, reorganizing and relating the coded interview data to questions that were asked during data collection. We then analyzed the data using thematic analysis. This approach involved identifying and grouping closely related codes,

expressions, ideas, and patterns that emerged from the qualitative data. This enabled us to derive the key themes for analysis and do the write up.

We obtained written consent by following a detailed disclosure of the rationale for the research and sharing of an information sheet containing all the relevant materials on the research objectives. For confidentiality reasons, we kept consent forms and interview transcripts separate, at all times, so as not to link interviewees with their responses. We reiterated to research participants that participation in the research (i.e., interviews) was voluntary and that withdrawal from the interviews would not lead to any sanctions. The research team conducted some interviews virtually via the Zoom platform due to residual restrictions from the COVID-19 pandemic. Virtual interviews present both opportunities and challenges. The virtual approach minimized possible risks of infection, reduced travel time to regional locations, and allowed for flexibility in scheduling interviews outside working hours. Potential challenges included the lack of full attention, poor internet connection, and difficulty with gauging body language. To mediate these challenges, we scheduled interviews for off-peak times and conducted these with video cameras of both interviewer and interviewee on. Where possible, researchers conducted interviews face-to-face in locations where participants could speak freely without interruptions or the risk of being overheard by others. We observed all COVID-19 protocols in order not to endanger the health of participants and researchers. We anonymized the data in order to protect the identity of research participants, except for those who gave us permission to identify their official positions.

FACTORS THAT INFLUENCE TRAFFICKING IN PERSONS

Multiple factors inform the prevalence of trafficking in persons in Ghana. The most cited factor is poverty. The inability of families and households to afford the cost of their daily sustenance has compelled some families to become susceptible to labor exploitation and trafficking. However, some practitioners in the field of anti-trafficking services reject the poverty discourses as an excuse by parents:

> I don't want to say poverty because that is just an excuse. I know poor people who still stay with their children and give them their best. Greed or selfishness are the key drivers. (Interview, Accra, 22 March 2021).

There are families who are literally unable to feed their children and therefore adopt the "giving away", "loaning" or "sale" of some of their children as a coping or family adaptive strategy. These scenarios are more common among communities where large family sizes are celebrated. Within the Winneba communities in the Central Region of Ghana, for instance, women who give birth to ten children are celebrated as heroines. As one interviewee notes:

> They actually have a tradition whereby a woman is celebrated when she gives birth to ten children. They throw a party for the woman and present her with a goat in recognition. So, this culture encourages some women to give birth to lots of kids, but they are not able to take care of the kids. (Interview, Winneba, 24 March 2021).

In line with the themes of poverty and family size, another official corroborates accounts of the sale of children as a desperate coping strategy:

> We do also have some families who decide to get rid of some of the children because they are too many; they believe that the departure of the child will be one less mouth to feed. (Interview, Accra, 23 March 2021).

Factors, including poverty, have resulted in the exploitation of children who find themselves in such situations (Sertich and Heemskerk, 2011). In addition, Ghana is finding it difficult to deal with trafficking in persons, especially child trafficking, because of some benign cultural practices. In Ghana, it is common practice for parents to willingly send out some children to live with external kin apparently as a way of strengthening the bonds of kinship and child development. This practice of fostering is being abused with recent transformations in the structure of the Ghanaian family. Traffickers also hide under the guise of this culturally appreciated practice to ply their nefarious trade (interview with the head of a CSO, 30 March 2021). Transformations in the Ghanaian labor market coupled with poverty have led to migration or relocation of parents and leaving behind children in vulnerable situations but apposite for trafficking (Atuguba, 2005; CIA, 2011). The cultural practice of child fosterage has resulted in graphic cases of sexual violations of some children. For instance, a state prosecutor noted:

> There used to be one woman who lived at "Chorkor" [Accra] and what she did was that very young children were sent to her to foster; but she abused them to the extent that some were too young and could not be penetrated. What she did was to smear oil on a bottle and insert it in the private parts of these girls just so to open them up to be able to engage in sexual acts. (Interview, Accra, 23 March 2021).

Ignorance on the part of parents coupled with deceit by traffickers also exacerbate the incidence of trafficking in Ghana. Some parents "willingly" give their children to extended family members and recruiters who promise to train, educate and socialize these children. Lack of awareness of the actual treatment of victims upon arrival portrays such parents as inadvertently acquiescing to the subjugation of their children in trafficking situations. As noted by a key informant:

> We have some families who will deliberately negotiate the sale of their child. Then we also have a category of families that are outrightly deceived and they are not aware of what they are signing up for. (Interview, Accra, 22 March 2021).

Our key informant interviews also suggest that closely aligned with ignorance as a factor influencing trafficking in persons are illiteracy, lack of exposure, and poor parenting skills. The low level of education of parents of victims as well as a lack of travel exposure make them gullible to fables on opportunities that are available to their children. In addition, poor or weak parenting skills could also account for the incidence of trafficking. Some parents hold on to old-fashioned modes of parenting and tend to transpose their own experiences of childhood on to their children. This mindset reinforces and perpetuates exploitation and trafficking of victims. In addition, modern means of communication have equally facilitated the opportunities for unscrupulous actors to recruit victims anonymously or with the use of several aliases. Online recruitment and the use of social media as a platform for trafficking activities have both heightened the vulnerabilities of victims and made attempts by law enforcement agencies to arrest and prosecute perpetrators more difficult (interview with the head of the AHTU, Ghana Police Service, Accra, 31 March 2021). Accounts, from interviews within Ghana, suggest that recruiters and traffickers simply destroy SIM cards of fictitiously registered mobile phone accounts once an investigation is launched into their activities by law-enforcement agencies. Grooming of victims on WhatsApp and Facebook is said to be common in Ghana and the ability to shield one's true identity on these platforms drives the further incidence of trafficking.

Moreover, inadequate political will, poor resourcing of agencies responsible for anti- trafficking activities, and weak implementation of existing legislation have all been cited as frustrating the holistic fight against trafficking in Ghana. Though the arrest, prosecution, and conviction statistics have all improved significantly since 2017/2018, there is the analysis that improvement in performance, for instance, from Tier Two Watchlist status to Tier Two, is driven by external pressures and resources and not sufficiently by the national political will. International obligations have informed some concerted actions, but these actions need to occur for the national good rather than as a satisfaction of an externally instituted ranking scheme. Poor resourcing of agencies has also compromised their ability to function optimally in the detection, arrest, prosecution, and conviction of perpetrators and the protection, rehabilitation, and reintegration of victims. Political interference during arrests and the prosecution of suspected perpetrators have undermined the deterrent effect of such actions by anti-trafficking stakeholders. Blatant interference by politically exposed individuals as well as other influential persons from religious and traditional authorities fuel impudence among traffickers. As recounted by the head of the Human Trafficking Secretariat:

> Interference also needs to be reduced from all angles, because we have had instances where when you arrest culprits, pastors will come and beg, chiefs, politicians, other members will come and beg. It hinders progress; people always think that when they do wrong, they can run to their pastors. (Interview, Ada, 18 March 2021).

In addition, uneven appreciation of the elements of trafficking by some members of the judiciary sometimes results in either acquittals or unusually lenient sentences, thus failing to capture the severity of the crime of trafficking. This assertion is strongly supported by two accounts – one of the head of the AHTU of the Ghana Police Service and another of the leader of a prominent NGO:

> There was a 14-year-old boy who drowned in Yeji. He was about to enter senior high school but got drowned after being trafficked. The case was tried in Central Region's high court and the judge gave the accused person a one-month conviction. That is very sad because the child died out of trafficking. In one case in Tamale, they gave the accused person two weeks. All these convictions are from the high court. For the circuit court, we get the convictions for five years, seven years. In the Volta Region, we got 34 years for a couple who trafficked some children. (Interview with head of the AHTU of the Ghana Police Service, Accra, 31 March 2021).

> But, some of the judges have been selected and trained on prosecuting cases of trafficking but others are not. They are not well informed about the cases of trafficking. Sometimes, you go before a judge and s/he will say that "Oh, when we were young, we all did those things." They see this as a normal Ghanaian practice, and this is because they are not well-informed. They don't know the elements we look out for to establish trafficking and they don't seem to understand the kind of ordeal that the victims go through. Also, we normally want a lengthy sentence, which means that you have to go beyond a district court. There are logistics and funding issues associated with this. (Interview with the leader of a prominent NGO, Accra, 25 March 2021).

The issue of inadequate compensation of victims by anti-trafficking agencies compared with inducement by members of the trafficking rings is inimical to the ability of enforcement officers to successfully prosecute cases of trafficking. Traffickers are able to offer out-of-court settlements directly to the victim's family, which sometimes constitutes five to ten times the amount state agencies are able to compensate families with after a successful conviction. This trend leads to victims' families refusing to cooperate with prosecutors during trials of traffickers. As the head of the AHTU of the Ghana Police Service recounts:

> The parents of this child did not want to cooperate with us for the prosecution because the accused visited them and was prepared to compensate them. We pleaded with them to support us to prosecute so that we can save and protect other children. We were to give them 2,000 Cedis and the accused person was prepared to give them over 10,000 Cedis. We were in court for two years and that was the outcome [one-month sentence]. (Interview, Accra, 31 March 2021).

Moreover, there was a ten-year time lag between the passing of the Human Trafficking Act (Republic of Ghana, 2005) and the Legislative Instrument (in 2015), which is supposed to give directions on prosecutions and the procedures involved. Our review of the legal documents revealed that this delay had a negative impact on the ability of prosecutors and judges to secure convictions. This setback is captured succinctly in the comments of the leader of a prominent NGO in the field of anti-trafficking in Ghana:

> Ghana has the Human Trafficking Act, 2005 but it was not until 2015 when the legislative instrument was passed. So, we had a law without any guidance on how to prosecute anyone. So, because of that we were not having a lot of convictions of human trafficking. This was because it was a new field, and the judges were not trained and the lawyers were not conversant with it. For every law, it is the legislative instrument that shows the areas one can prosecute under and how to go about it. Since we never had that, this affected our data on convictions. You will see that from 2018, Ghana started prosecuting a lot more cases of trafficking. This started from 2017. So, when the police come across cases of trafficking, there is the temptation to stick to their comfort zone and they tend to rely on other laws. Because the guidance on trafficking was not clear, police automatically relied on the Children's Act for cases that involved children. This is because this Act has provisions against child abuse. So, if even a child was in a slavery or exploitation situation, because the prosecutor was ill-informed about the trafficking law, he will be convinced that a crime had been committed, but they would want to avoid the risk of going with the Trafficking Act and failing. So, because they would not want the perpetrator to go scot free, they will rather prosecute under the Children's Act. This, however, leads to shorter jail terms compared with if prosecutors had used the Trafficking Act. The Trafficking Act attracts a minimum of five years and a maximum of 20 to 25 years jail terms. Ghana was blamed for not doing anything to combat trafficking, which is not accurate. We were doing a lot, but we were prosecuting under the wrong law. (Interview, Accra, 23 March 2021).

The factors influencing TIP are numerous. It is therefore imperative that the approach to curb it be multi-faceted and involve various organizations and institutions.

GAPS, CHALLENGES AND RECOMMENDATIONS IN THE IMPLEMENTATION OF THE NATIONAL MECHANISMS FOR COOPERATION AND REFERRAL OF TRAFFICKING IN PERSONS (TIP) VICTIMS IN GHANA

Though we focus on the gaps and challenges regarding implementing the various mechanisms, we also provide recommendations on how to improve institutional cooperation and coordination to end TIP. For trafficking in persons to end, there is a need for cooperation among various institutions and organizations. Ghana has also signed documents of cooperation with other countries and institutions responsible for the control and ending of TIP. Ghana has been successful in the implementation of most aspects of the anti-human trafficking regulations. Much progress has been achieved in the development of measures to prevent trafficking in persons and prosecution but protection for victims is still a challenge (Sertich and Heemskerk, 2011). Since the 2018 progress that Ghana made from Tier 2 Watch List to Tier 2 of the United States Trafficking in Persons Report, the country has stalled in the 2020 report, due to challenges mainly regarding protection for victims of TIP (US Department of State, 2020). The tier ranking system is based on verifiable evidence of steps to prevent trafficking, arrest and prosecute perpetrators, and to rehabilitate and protect victims of TIP. Generally, attempts have been made to eliminate this abhorrent activity but more needs to be done for significant gains to be recorded.

There has been a significant improvement in coordination activities among the various actors, led by the Human Trafficking Secretariat at the Ministry of Gender, Children and Social Protection in Accra. These improvements stem from the approaches identified in both the National Plan of Action for the Elimination of Human Trafficking in Ghana – 2017-2021 (Republic of Ghana, 2017a) and the National Plan of Action for the Elimination of the Worst Forms of Child Labour in Ghana – 2017-2021 (Republic of Ghana, 2017b). The key goals of the National Plan of Action for the Elimination of Human Trafficking in Ghana are to "strengthen Ghana's capabilities along the holistic '4 Ps' strategy, that is: the prevention of TIP; protection of TIP victims; prosecution of TIP offenders; and partnerships with stakeholders to combat TIP" (Republic of Ghana, 2017a). This is meant to enable the country to respond to human trafficking in a manner that is comprehensive, coordinated, effective, timely, and consistent with international standards. The main objective of the National Plan of Action for the Elimination of the Worst Forms of Child Labour is to "reduce the worst forms of child labour to the barest minimum (<10%), by 2021 while laying strong social, policy and institutional foundations for the elimination and prevention of all forms of child labour in the longer term" (Republic of Ghana, 2017b). However, one of the challenges faced with regards to the implementation of various mechanisms to prevent TIP is that the Secretariat is based in Accra without direct regional representation. There are also human resources and infrastructural needs facing the Secretariat that are hindering the optimal discharge of its duties. In order to be more effective, there should be regional offices of the Secretariat in all

16 regions, especially the vulnerable regions. This will make it easier to protect and prevent TIP and also to prosecute perpetrators.

Another challenge with regards to the implementation of various mechanisms to prevent TIP is funding. While the Human Trafficking Secretariat is allocated minimal funding to coordinate all national activities on trafficking, the two other anti-human trafficking units – at the Ghana Police Service and Ghana Immigration Service – do not have specific and earmarked budgets to operate with. As such, the two units tend to rely heavily on financial and logistical support from NGOs (especially international NGOs). There is an acute lack of appropriate vehicles for rescues and the transportation of victims and perpetrators. These bottlenecks tend to slow down operations and to limit the scope of operations that place, since these two units are essential during rescues of victims. An officer of a development partner noted:

> For instance, there is some funding that is being managed by the Human Trafficking Secretariat at the Ministry of Gender but this money is not being given to the police or immigration. So, immigration and the police do not have a specific budget to operate with. They rather tend to get a lot of support from the NGOs to do rescues, but it is difficult internally to run their operations because they don't have the budget. Since the NGOs cannot do rescues with the police, we pay for their involvement. Something needs to change, where each unit runs things from their angle but each of them should have a dedicated operations budget to work with. This takes away the worry of thinking about which cars to use and how they are going to buy fuel to carry out rescues. The immigration and EOCO [Economic and Organised Crime Office] do not have anti-human trafficking cars. It is only the police that has some cars in some regions. They need cars that are appropriate for transporting victims and perpetrators. (Interview, Accra, 24 March 2021).

In addition, Article 20 of the Human Trafficking Act (Republic of Ghana, 2005) made provision for the establishment of the Human Trafficking Fund. The objectives of the fund are to: meet the basic material support of victims of trafficking; provide skills training for victims of trafficking; trace the families of victims of trafficking; deal with any matter connected with the rescue, rehabilitation and reintegration of victims of trafficking in their best interest and for the training and capacity building to persons connected with the rescue, rehabilitation and reintegration of victims. Notwithstanding the crucial role of this fund in the effort to curb the menace of trafficking in persons, the 2020 Report on Trafficking in Persons in Ghana bemoaned the poor commitment on the part of the Ghanaian government to use the allocation of funds to the Human Trafficking Fund (HTF) (US Department of State, 2020). This challenge, coupled with resource constraints, culminated in a lack of adequate support to personnel working in the enforcement of the anti-trafficking law and this

continued to hinder investigations, prosecutions, and protection efforts. Funding is often provided by NGOs and development partners, and it is tied to specific projects and with specific implementation periods. The end of external funding regimes risk undoing progress chalked. Ensuring that there is enough funds to run the operations of anti-trafficking organizations should be of topmost priority to reduce the glaring collaborative frustration that Rigg and O'Mahony (2013) have identified elsewhere. There should be commitment on the part of government to use funds set aside for combating the anti-trafficking menace judiciously.

The government did not expend funds allocated to the HTF to address the lack of sufficient protection services for adult male and child trafficking victims, and it did not take steps to improve protections for Ghanaian migrant workers before departing and while abroad, particularly to the Gulf States. This failure is corroborated by Sertich and Heemskerk (2011) in their assessment of the implementation of the 2005 Human Trafficking Act. The culture of migration is commonplace among the youth, but some embark on irregular migration, which makes them susceptible to being trafficked. The failure of government in addressing some unprofessional attitudes of officials is also a concern, as indicated in successive reports. Corruption assumes the form of some anti-trafficking officials rather facilitating trafficking activities. However, there is the need to properly remunerate, support and motivate officials who work in this field because it is a tedious and emotionally demanding job. Besides, the Government of Ghana is yet to amend the 2015 implementing regulations for the 2005 Ghana Anti-Trafficking Act to remove the option of a fine in lieu of imprisonment in cases where the trafficker is a parent or guardian of the child victim. This caveat has been abused to commute custodial sentences mostly to fines and this defeats the deterrent effect when wealthy kingpins who fund trafficking activities easily pay off fines on behalf of convicted mid-level traffickers. The amendment of the 2015 implementation regulation for the 2005 Ghana Anti-Trafficking Act is very important. There is a need to attach urgency to this amendment so that it is not abused by the system to slap light punishment on the wrists of perpetrators.

In addition, there is a lack of reliable and real-time data on the extent of the severity of human trafficking. There is an urgent need for a comprehensive survey data on trafficking that will properly inform policy making. The reliance on small and targeted qualitative studies conducted by NGOs is insufficient to generalize on the actual scale of trafficking in persons in Ghana. As emphasized by an NGO official, it is difficult to capture the true severity of trafficking without a broader and comprehensive survey data collection:

> We need a lot of work on that! The whole system needs to be overhauled. As a country, we don't seem to appreciate the severity of trafficking even though we know the severity of child labor. This is because the Ghana Living Standards survey will always do an assessment of child labor. There is no national survey in terms of child trafficking, so we are all speculating on the prevalence and

> severity of it based on our level of exposure. For example, Free the Slaves has conducted a number of studies and these studies are purely qualitative and they are meant to inform programs and they are not academic studies. The general problem with qualitative studies is with inability to generalize. It is only useful for the geographical area or even just the community the study was done on. This is not even representative of the whole region, not to talk of the country. We know that ILO, IOM and Challenging Heights have all done some studies. These nongovernmental agencies do these studies based on their own interest within the communities that they operate in or where they are going to have an intervention. This way, when they are carrying out an end of project evaluation, they can compare the situation to what they found in their initial studies. That is just about how useful these studies are. (Interview, Accra, 23 March 2021).

To truly assess the severity of human trafficking, it is important that steps are taken to facilitate the collection of reliable and real-time data. There should be a national survey to collect data on the practice and to truly assess the extent of the practice so the appropriate remedies can be proffered.

Furthermore, another major gap that needs to be filled urgently when it comes to the implementation of various mechanisms to prevent TIP is the ability to bridge the definitional disparities of the terminologies used by the various actors. As such, a commonly cited gap in the implementation of human trafficking policies in Ghana is related to the definition of what constitutes human trafficking, as stipulated in the Human Trafficking Act (Republic of Ghana, 2005). As suggested by Sertich and Heemskerk (2011), inadequate clarity on what constitutes trafficking impacts on the campaign against the practice, and investigation and prosecution of perpetrators of human trafficking. Also, the interchangeable use of different terms poses a challenge. While some actors use "trafficking in persons", others use "human trafficking", yet others use "servitude or slave-like captivities", while others use "modern-day slavery", among others. These multiple references have the effect of confusing practitioners in their attempts to make determinations on trafficking cases, collection of data, and prosecution of perpetrators. Some prominent law-enforcement officials cannot define the difference between child labor and trafficking. The gaps in knowledge lead to perpetrators being prosecuted under more familiar laws, such as the Domestic Violence Law or the Children's Act. These convenient prosecutions yield shorter sentences and also reduce the statistics of the country in terms of reported and prosecuted trafficking cases. For the avoidance of doubt, clear definition of the menace is important in order to properly tackle it. Attention needs to be paid to this and appropriately addressed.

The non-effective use of an online reporting platform system by officials is another challenge encountered during the implementation of various mechanisms to prevent TIP. With support from the IOM and other NGO partners, the Human

Trafficking Secretariat developed an online reporting system called Trafficking in Persons Information System (TIPIS), which is supposed to capture all cases of trafficking across the country and be accessible to anyone online. The data to be collected are on reported cases, rescues, prosecutions, and convictions. However, empirical research shows that officials at the district and regional offices are not utilizing the system regularly, consistently, and correctly. A prime example was given by the head of one of the prominent NGOs:

> Unfortunately, the district officers are not doing it [using the system]. We know this because last year we rescued about 80 to 100 children and we did this with the police and social welfare. But during the collation, some of the districts we rescued children from reported zero cases! (Interview, Accra, 23 March 2021).

A way to address this is to provide training for officials to be able to use this platform. Some of the funds allocated to fighting TIP can be channeled to training personnel to be conversant with the online reporting platform.

The way the court systems have been set up also negatively affects the implementation of various mechanisms to prevent TIP. The current court systems tend to handicap the police officers who prosecute cases of trafficking. Police officers can only prosecute at the circuit courts, but state prosecutors do so at the high courts. Any attempt to secure a longer jail sentence against offenders will require prosecuting the case at the high court where officials are, incidentally, not as conversant with the technicalities around trafficking and they do not have a full appreciation for the elements that constitute trafficking. There is also the issue of interference in the prosecution processes by perpetrators offering inducements to victims to dissuade them from cooperating with prosecutors. Communication and coordination between the police and the judiciary are important if they are to effectively deal with the perpetrators. Technicalities around trafficking should be explained to the court system and the operations of the court system should be explained to the police to foster synergistic operations.

While Ghana has a detailed Standard Operating Procedure (SOP) that was developed under the CPC, but equally applicable to adult victims, practitioners perceive this document as being too voluminous. There is, therefore, the need to possibly segment the document into user-friendly thematic chapters or the production of an abridged version of the SOP as a quick reference document while in the field. In addition, regular periodic training is required to be conducted to build the capacities of the major stakeholders from government, civil society, NGOs, and international partners. Such training should include simulation exercises among actors in the field of trafficking.

There has been an appreciable improvement in collaboration among different agencies in Ghana, but there also still exists some competition for control, dubbed "turf wars", among key agencies. This mostly unhealthy competition exposes the

entire system to vulnerabilities that are exploited by traffickers and their criminal networks. Some officers belonging to sensitive investigative and prosecutorial agencies are compromised, which tends to facilitate the ability of traffickers to operate without being prosecuted. On other occasions, there is external pressure applied from the political class on security agencies to terminate prosecutions. This assertion is corroborated by what one official from an NGO had to say:

> So, we rescue the children and those who are supposed to deal with the case let perpetrators go unpunished. Also, much as we complain about the police, who puts pressure on the police to let the perpetrator go? Our lawmakers who discuss the issues are the same people who will quickly intervene and say that, "I am a member of parliament, so please drop the case." When the pressure comes on us this way, sometimes the NGOs that are working to protect the victims rather become the enemies of society. (Interview, Accra, 24 March 2021).

There should be an understanding that the victims are the priority, irrespective of who is involved. With this understanding, agencies and organizations charged with ensuring the safety of the vulnerable in society will focus on the victims and disregard the competition for control.

There are also practical operational challenges among stakeholders in anti-human trafficking activities. The police, the Department of Social Welfare, and NGO officials lack the necessary equipment and logistics to carry out rescues in a safe manner, especially on the Volta Lake. In addition, there is an internal contradiction in the roles of NGOs in affected communities. On the one hand, NGOs are actively involved in community sensitization programs while on the other hand, they are involved in rescues and providing information leading to prosecutions. This dual role compromises their ability to operate as neutral arbiters and forms a reputation of NGOs, among community members, as police informants rather than educators. Sensitization is critical to the long-term prevention of trafficking activities and it is more effective than relying solely on the use of punitive measures. Moreover, NGOs report a high incidence of re-trafficking of children who have been previously rescued by them. They attribute this to an inadequate understanding of the underlying factors that informed the trafficking in the first instance, inadequate monitoring, and the relentless approaches used by traffickers, as relayed by this NGO official:

> We are not proud to mention the numbers we rescue because most of them end up being re-trafficked due to lack of proper support and monitoring. As a team, we monitor how many children we rescue, and we evaluate our work and how positive the reintegration has been. Practically, it is difficult because even if we rescue the victims and then cater for them for six months, go through rehabilitation processes and then reunite them with their families,

> with support from government and other NGOs, we still fail. This is because I believe there is no proper analysis of why the children were trafficked in the first place. They tend to be re-trafficked after one year or a year and a half. This means that the statistics that you collected come to nothing. The traffickers are very adaptable – when they see that there is a focus on one area, then they move to another. The traffickers are constantly trying to find loopholes in the law to exploit. (Interview, Accra, 24 March 2021).

Provision of the necessary equipment and logistics is crucial to carry out rescues in a safe manner and this is an imperative. Also, NGOs should focus on their specific core mandate to prevent the conflict that ensues because of the duality of functions.

The private sector is a key stakeholder in the fight against trafficking, since most trafficking incidents in Ghana take the form of economic exploitation. There is, therefore, the need to engage the private sector to rid all supply chains of the use of trafficked victims. In line with this, there is the need for state officials to foster good working relations among all stakeholders, since trafficking activities require real-time interventions both for rescues and victim care. A combination of formal and informal approaches and making time to actually understand the dynamics on the ground will increase the likelihood of success. Another dimension of the role of non-state actors is in the provision of shelter facilities. While the law stipulates rescue, shelter, rehabilitate, and reintegrate as key tenets, there is an acute shortage of government shelters, especially for adult victims. This necessitates a closer collaboration between non-state shelter providers and state agencies.

Another challenge to the management of trafficking in Ghana is the high staff turnover from specialized agencies. The Human Trafficking Secretariat collaborates with development partners such as the IOM, Expertise France, and NGOs to carry out training and capacity-building activities among practitioners but there is a high attrition rate, which leads to loss of expertise. This reality requires the introduction of internal mechanisms to foster group learning (e.g., training of trainer sessions) and retention of institutional memory. There is also the need for development partners to take into consideration the local priorities, approaches, and cultural context when they propose an intervention agenda. An imposition of foreign standards and methodologies is likely to be ineffectual, as contextual environments shape the outcomes of well-intentioned interventions. Moreover, the lack of language proficiency among staff inhibits their ability to provide adequate support to victims who are from non-English-speaking countries. As the head of the Human Trafficking Secretariat noted:

> Another one is the language barrier. In the recent rescues we did, the children were speaking French; my shelter staff cannot speak French, so the only thing they could do was [use] sign language. We have rescued Vietnamese, but we cannot speak their language. (Interview, Ada, 18 March 2021).

This challenge highlights the need to invest in interpretation services that are either provided by language departments at tertiary institutions or by freelance professionals.

Some of the challenges in relation to development partner collaborations, development of operational guidelines, and drafting of training manuals have been partly addressed. In June 2015, the Government of Ghana and the Government of the United States of America signed the first-ever CPC partnership – a multi-year plan aimed at bolstering current efforts of the Government of Ghana and Ghanaian civil society to address child sex trafficking and forced child labor within Ghana and facilitates the award of up to US$5 million in US foreign assistance. The IOM Ghana also provides comprehensive support to the Government of Ghana in combating human trafficking. Within the CPC framework, the IOM Ghana is implementing a project in cooperation with the US Office to Monitor and Combat Trafficking in Persons (J/TIP Office) to support the Government of Ghana to establish a more holistic approach to significantly reduce child trafficking. The project also seeks to enhance and render more effective the efforts to prevent child trafficking, prosecute and convict child traffickers, and improve the quality of protection services for child victims. Specifically, the IOM has developed victim-centered Standard Operating Procedures to Combat Human Trafficking in Ghana with an Emphasis on Child Trafficking (IOM, 2017) and has built the capacity of the stakeholders (Ghana Police Service, Department of Social Welfare, Community Development, labour officers, Ghana Immigration Service, Attorney General's Office, etc.) to identify, report, and assist in the rescue and investigation of TIP cases and to prosecute perpetrators. In 2017 IOM developed two training-of-trainers (ToT) curricula for the Ghana Police Service on the scourge of trafficking in persons in Ghana, with an emphasis on child trafficking.

CONCLUSION

Former Secretary-General of the United Nations, Ban Ki-Moon (2013) issued a profound statement: "Migration is an expression of the human aspiration for dignity, safety and the better future. It is part of the social fabric, part of our very make up as a human family." Anything that is therefore undignified, harms and dims the future of people and should be eschewed. TIP is not only abominable, but also unconscionable. Therefore, everything must be done to ensure that it ceases. That is why cooperation among the various institutions charged with preventing TIP is imperative. Though progress has been made in some areas, there are still numerous challenges and gaps in the collaborative efforts. This research has highlighted some of them to include resource constraints, weak capacity of some stakeholders, limited knowledge by judicial services officials about the elements of trafficking, corruption, unhelpful "turf wars" among security agencies, political interference, confusing terminologies, and differences in institutional frameworks across West Africa, among others.

We conclude that, using Ghana as a case study, developing countries that have similar characteristics as Ghana need to adopt more concerted and collaborative efforts on the part of various institutions to dialogue and properly engage to minimize what Rigg and O'Mahony (2013) refer to as collaborative frustrations. Also, we conclude that TIP is a complex and messy crime that involves multiple layers of entangled webs of persons, institutions, resources, legal frameworks, and power dynamics. As such, we conceptualize institutional collaborations as the most appropriate lens through which a coherent approach to tackling the menace of TIP, especially in developing country contexts, could be achieved. In line with these conclusions, the designated organizations cannot afford to be lackadaisical about their role in curbing the menace that is TIP. There must be some intentionality about the way they operate, and they must ensure that they are on the same page with other key stakeholders in this fight. Leaders and ordinary people who work in these organizations must be committed to the fight and it must show in their work. Their aims should be the same and the strategy to tackle the problem should also be coordinated and they should play to the strengths of the various organizations in the fight against TIP. This means that the laws must work, the security forces should be able to arrest perpetrators, and the courts must prosecute and apply long custodial sentences when traffickers are convicted.

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One Step Forward, Half Step Back: Still a Long Way to Go to End Statelessness in Madagascar

Cristiano d'Orsi[1]

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Abstract

This work sheds light on the still unresolved plight of statelessness in Madagascar, a country that has a long history of stateless communities, above all among the Karana people, of Indian origin and Muslim religion. In spite of several important steps undertaken to eradicate statelessness in the country (see, for example, the adoption of the 2016 Law on Nationality that partially amended the 1960 Code on Nationality), the path for the complete eradication of statelessness in the country still seems quite long. This is because of the lack of will by local authorities who seem to ignore the conditions of thousands of people, born and bred in Madagascar who, apparently for no specific reason, still do not hold Malagasy citizenship, causing them to be deprived of several basic rights that citizens are normally entitled to. In this respect, the fact that Madagascar is still not a party to several important international legal instruments adopted to eradicate statelessness, does not facilitate the situation of the thousands of stateless people in Madagascar.

Keywords: statelessness, Madagascar, Karana people, women, children

[1] South African Research Chair in International Law (SARCIL), University of Johannesburg, South Africa. ✉ cd6jx@virginia.edu

INTRODUCTION

According to Article 1(1) of the Convention Relating to the Status of Stateless Persons (CSSP), a stateless person is "a person who is not considered as a national by any State under the operation of its law" (UNGA, 1954). Ewumbue Monono (2021: 43) suggests that "statelessness" is

> [t]he condition in which an individual has no formal, legal or protective relationship with any recognised state, no matter their emotional national identification. In other words, statelessness is a condition where an individual has no nationality. It can also describe the situation where an individual claims the nationality of a "State," but that "State" is not internationally recognised. Statelessness can also be a situation where a person has lost their nationality for security reasons or other grounds associated with fraud. Finally, it can be a situation involving deprivation of nationality through the discriminatory laws of a state, resulting in lack of "effective nationality" due to structural and administrative causes.

Statelessness happens for a number of reasons. These reasons include gaps in citizenship laws, including the application of rules for children born outside the country of nationality of their parents (Manby, 2017: 14-19). In this regard, Manby explains: "The continuing discretion given to states in national laws – as well as the reality of global migration, conflict, and changing borders – means that it is increasingly possible for people to fall between the gaps and end up stateless" (2017: 17). In addition, these reasons also include gender-based discrimination in transmission of nationality to children and spouses; discrimination based on race or ethnicity; the attribution of nationality when sovereignty over a territory changes (the rules on state succession); and the arbitrary denial or deprivation of nationality (UNHCR, undated).

Statelessness can also be the result of policies that aim to exclude people deemed to be outsiders (because of ethnicity or religion), in spite of their ties to a particular country. In Africa, this has often been tied to succession of states, as in relation to people of Eritrean descent in Ethiopia (Open Society Justice Initiative, undated: 2), or in Côte d'Ivoire, where the status of pre-independence migrants of Burkinabé and other descent remains contested (Adjami, 2016: 3-4).

In this article, I analyze the causes of statelessness in the case of Madagascar, with a particular focus on discrimination based both on gender and on ethnicity, especially as applied in the context of the attribution of nationality when Madagascar gained independence from France. The exact number of stateless people in Madagascar is unknown, although the United Nations High Commissioner for Refugees (UNHCR) suggests a figure of 100,000 in a country with 24 million inhabitants (Petrova, 2015).

This article is structured as follows: after analyzing the recent legal and policy developments in Madagascar to remove gender-based discrimination, I investigate

the problematic situation of the Karana people, who still suffer from discrimination in the country. I also consider the efforts to address statelessness. Finally, I consider what is required to eradicate statelessness in Madagascar and the likelihood of its success.

HISTORY OF CITIZENSHIP LAW IN MADAGASCAR

Madagascar's original nationality laws, like many others in Africa, were a product of its colonial history (Manby, 2018: 39-41). The island was a French colony from 1896 to 1960 (History World, undated). In 1960, Madagascar became independent and the new state adopted a law by which citizenship was transmitted on the basis of descent, with no rights to citizenship based on birth in the territory, except in the case of abandoned children who were presumed to be Malagasy, with some restrictions, as noted below – Ordonnance no 60-064, 1960 that instituted the Nationality Code (Republic of Madagascar, 1960). The new laws were discriminatory along both gender and ethnic lines.

Before the adoption of the last modifications in 2017, the Malagasy Nationality Code had been changed several times in the past, always highlighting two main aspects of the country – its cultural diversity and its national identity (Razafiarison et al., 2022: 6). For example, Law No. 61-052 of 1961 (Article 24(1)) introduced several modifications to the 1960 Ordonnance. Modifications were about the acquisition of nationality, extending to two years the term by which the government can oppose the acquisition of Malagasy nationality by marriage, introducing reasons of indignity and physical or mental incapacity (Republic of Madagascar, 1961). Additionally, by modifying Article 50(4) and (5) of the 1960 Ordonnance, the 1973 Ordonnance No. 73-049 determines that a Malagasy citizen will lose their nationality if condemned, in Madagascar or abroad, for any crime considered as such by Malagasy law and by which they had been condemned to at least five years of detention. Moreover, once the nationality has been withdrawn, the former Malagasy citizen may appeal this decision. Article 28(2) states that if the first application for reinstatement of citizenship is rejected, a new application can only be submitted two years after the rejection (Republic of Madagascar, 1973). Furthermore, Law No. 95-021 of 1995 added a fourth paragraph to Article 38 of the Nationality Code that introduced a variable term (from five to ten years) that the naturalized person is required to wait before fully benefiting from the civil and political rights as a Malagasy citizen (Republic of Madagascar, 1995). Paragraph 38(4) was abrogated by Law No. 2003-027 of 2003 to permit the participation of naturalized persons in the economic development of Madagascar (Republic of Madagascar, 2003).

The Code on Nationality, as amended, distinguishes between those who are considered Malagasy at birth – called attribution of Malagasy citizenship – versus those who have to follow an administrative process, referred to as acquisition of Malagasy citizenship. Title I of the Code on Nationality defines those who are

attributed Malagasy citizenship at birth. Title II sets out the rules for acquisition of citizenship, by declaration, by marriage, or by naturalization.

GENDER-BASED DISCRIMINATION

One of the most common causes of statelessness in Africa, and particularly in Madagascar, is gender-based discrimination. In this regard, Manby (2011: 8) states:

> Gender discrimination is one of the commonest causes of statelessness, especially in the case of children who cannot obtain their mother's nationality because of gender discrimination and who cannot otherwise acquire the nationality of the State of birth or of their father (for example, because the child was born out of wedlock, the inadequacy of civil registration procedures or other challenges). Nonetheless, gender discrimination was until recently the norm in citizenship laws across the world; some of the older international treaties on nationality law in fact assumed that gender discrimination would be applied, while trying to minimise statelessness that could result. In Africa at independence and until recently, most countries discriminated because of gender in granting citizenship. Female citizens were not able to pass on their citizenship to their children, if the child's father was not also a citizen, nor to their foreign spouses.

In Africa, this comes in various forms, for example, when women cannot pass on their nationality to their spouses (this is the case in 25 countries on the continent, as a study commissioned by the African Commission on Human and Peoples' Rights (ACHPR) has shown) or when children are denied their mother's (and father's) nationality. This last circumstance often happens when a child is born out of wedlock. In this regard, the ACHPR (2015: 27) has affirmed:

> Sometimes, the administration has discretionary powers in that area. For example, in many countries, foreign wives are entitled to their husband's nationality, but only on condition that the public authorities are not opposed to the decision. In certain countries, such as Botswana, Egypt, Liberia and Zambia, non-national husbands of wives who are nationals must meet the general conditions stipulated by the law on naturalisation to acquire the nationality; in others, the acquisition of nationality is on easier terms than other foreigners but still discretionary, such as in Malawi and Nigeria.

There are generally five circumstances where inequality in nationality law may lead to statelessness: (a) when the father is stateless; (b) when the father is unknown; (c) when the father is not married to the mother of the child at the time of birth; (d) when the nationality law of the father does not allow him to confer his citizenship to the child; for example, this happens when the child is born abroad; and (e) when

the father is unable to take administrative steps to confer his nationality to the child; for example, when the father is dead or unwilling to take any administrative action to confer his nationality to the child in the case where the father has abandoned the family (Ujvari, 2017: 107).

This article now considers whether the 2017 reforms have removed these potential causes of statelessness in Madagascar. On 25 January 2017, Malagasy authorities promulgated Law No. 2016-38, amending several articles of the Nationality Code and guaranteeing the equal right of citizens, regardless of their gender, to confer their nationality on their children (Republic of Madagascar, 2017). Later, in July 2020, the Malagasy Senate unanimously adopted draft Law No. 001/2019 that aimed to tackle the persistent forms of discrimination and to provide for concrete solutions to eliminate statelessness in Madagascar by 2024 (Republic of Madagascar, 2020). Finally, in 2021, the National Assembly introduced a new draft law, No. 001/2021 PL with the objective of reformulating the Code on Nationality (Republic of Madagascar, 2021). Yet, through a disparaging campaign, a group of opposition parliamentarians reported the debate on this draft law sine die (Razafiarison et al., 2022: 14-15).

Through all these initiatives, Madagascar became the first country in Africa, since the 2014 UNHCR Global Action Plan to End Statelessness's conception (UNHCR, 2014), to afford women the same right as men to pass on their nationality to their children, irrespective of marital status. In the words of the UNHCR (2017a): "The nationality reform is an encouraging and important step in preventing and reducing statelessness. UNHCR will continue our support to the Government of Madagascar, its Parliament and civil society actors to implement the law." Yet Madagascar is, in fact, one of the slowest to have adopted these reforms, with most of the other African countries having done so before 2014.

The fight to reform the nationality law has been a protracted effort first promoted by women's rights activists, including the Madagascar-based organization, Focus Development. This fight has been led by individuals, who collectively made an intensive effort to heighten awareness of the significant harm caused by discriminatory nationality laws and the need for reform. Mobilization in Madagascar had also been reinforced by calls for reform by international human rights bodies, including the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) (Women's Refugee Commission, 2017).

According to Article 9, a combination of Articles 17(1) and 18(1) of the French Code on Nationality (Razafiarison et al., 2022: 5, footnote 32) and amending the correspondent Article 9 of the original 1960 Code on Nationality, a child is Malagasy if both parents are Malagasy. It is noteworthy that, according to the recommendations by institutional organs, this article is considered retroactive, allowing Malagasy women to transfer their nationality to their children born before the enforcement of the 2017 reform (Razafiarison et al., 2022: 7-8). Regarding this law, however, Manby (2018: 14) concludes:

> The nationality code adopted in Madagascar included explicitly discriminatory transitional provisions … The law did not include a provision for the automatic attribution of nationality to the second generation born in the country, whether before or after independence, a departure from the norm for the territories of French West and Central Africa …

However, retaining the validity of Article 22 and Article 47 of the Nationality Code, the amended nationality law (Republic of Madagascar, 2017) still does not permit Malagasy women to confer their nationality to their non-national spouses (as Malagasy men can). In this regard, Article 20 of the Nationality Code continues to provide that a child born out of wedlock who is legitimized during their minority, acquires nationality only if the father is a national. This provision, based on descent for those born after independence, continues to discriminate based on birth in or out of wedlock.

In addition, the general provision of the law on adoption provides for the right of an adoptive child to acquire nationality by declaration, if resident in Madagascar for five years, without discrimination based on the gender of the adopting parent (Article 17). Yet the procedure can be the object of government opposition based on a number of grounds, including lack of integration and mental or physical incapacity (Article 18). However, the Nationality Code additionally still provides for automatic acquisition of nationality through a "légitimation adoptive" if the adopting father is a national (Article 21). Yet, there is no definition of "légitimation adoptive" and the interpretation of this article is not entirely clear, given the overlap with Article 17 (on adoption generally) (Manby, 2018: 32, footnote 115). Conversely, Madagascar provides for the withdrawal of nationality of a child if one parent acquires another nationality and the other does not remain a national, with gender discrimination within the provision (Article 48).

It is also worth noting that in Madagascar – sole among the states belonging to the Southern African Development Community (SADC) – a person has the right to obtain from a court a certificate of nationality that is proof of that status unless overturned by another court (Article 87). Madagascar also incorporates the civil law concept of "apparent status" – a person's nationality can be treated as established, and a nationality certificate issued by a court, if they have always been treated as a national, in the absence of proof to the contrary (Article 81).

Moreover, all declarations of nationality must be registered with the Ministry of Justice; otherwise, they will not be considered valid (Article 58). However, all declarations of nationality can be contested by all interested parties (Article 61(2)). Finally, another provision showing the attempt by Malagasy authorities to eliminate gender discrimination concerns the deprivation of nationality, now considered as a personal act, and it does not concern the wife and children of the man whose nationality has been revoked, as it applied before the 2017 reform of the National Code (Article 52) (Republic of Madagascar, 2017).

DISCRIMINATION AGAINST THE KARANA PEOPLE

Historically, Madagascar is a country of immigration (Rabary-Rakotondravony and Rakotonanahary, 2015). The most significant wave of migration from India to Madagascar took place during the latter half of the nineteenth century, when seafaring trade on the Indian Ocean became more competitive and many people from India settled in Madagascar, especially on the western coast (UNHCR, 2017b). Although the laws adopted for the attribution of citizenship at independence did not explicitly discriminate on the basis of race or ethnicity in the acquisition of citizenship by descent, they were applied in such a way that individuals were often denied citizenship documents by authorities who claimed that their names did not "sound" Malagasy. In this regard, Harrington (2017: 498) explains:

> Many of the arguments used by those opposed to enacting reforms are quite similar to arguments used in debates regarding immigration policy and expanding access to citizenship more generally. For example, many opposed to reforms express fears regarding the loss of jobs, especially to foreign men, as well as anxiety over potential loss of political power.

This was especially the case for the Karana people or those with Comorian origins (d'Orsi, 2017). The Karana people, a minority of about 20,000 persons of Indo-Pakistani origin, have lived in Madagascar for over a century (Aikomus, 2017). On the basis of geographic-ethnic discrimination, the Karana people were generally not given citizenship when Madagascar won independence from France in 1960 because they were not considered to be ethnically Malagasy (UNHCR, 2017b: 14).

Racial and ethnic discrimination was, however, present in the provision of the law on foundlings, and remains so within the 2017 reforms. Moreover, new Article 11 explains that: "1) It is Malagasy if the infant born in Madagascar from unknown parents presuming that at least one of the two parents is from Madagascar […] 4) The infant found in Madagascar is presumed having born there until otherwise proven." In this regard, Manby notes, "the law retains the previous restriction of protection to those children where, according to new Article 11(2), "one can presume that at least one parent is Malagasy," based on the name, physical characteristics, and other aspects of the child's environment, opening the door to arbitrary discrimination" (Manby, 2018: 22).

The majority of the Karana people were born in Madagascar and they have spent their entire lives on the island. According to Mahajan (2020),

> Madagascar also has pockets of minorities, of whom the most visible and successful are the Indians, who came across the Indian Ocean as traders and settled here 150 years ago. Yet the Indians today are defined by a problem: despite their deep ties to Madagascar, most of them are not – and cannot become – citizens.

Most Karana people live in urban areas, including the capital, Antananarivo, and the city of Mahajanga on the northwest coast. The fact that the Karana people are predominantly Muslim, in a country where more than 70% of the population is Christian (US Department of State, 2022: 1) has contributed to a perception of them as outsiders. The Karana people for generations have been very successful in business and many have become wealthy compared to the rest of the Malagasy population (Razafiarison et al., 2022: 4, 16). This success has further perpetuated the cultural isolation of the Karana people in Madagascar and in some instances has resulted in targeted attacks against Karana communities (Razafiarison et al., 2022: 16). Preventing the Karana people from accessing citizenship disincentivizes some of the wealthiest in the country from investing in its growth (McInerney, 2014: 183). Moreover, the Karana people are less likely to seek citizenship in the country through marital paths than in the broader Muslim community.

The Karana people have traditionally married within their own communities, and the children of these marriages thus inherit statelessness. As more people who are stateless have children, the population of individuals in the country who do not have access to Malagasy citizenship grows. In this circumstance, the only mechanism for escaping from this cycle is to join in matrimony with a Malagasy person. In this way, the children of the marriage can be provided a path to citizenship through the Malagasy spouse (McInerney, 2014: 187). However, within the Karana communities there are diverse marriage rules based on socio-religious groups. The most liberal rules are those of the Sunni Muslims, who can get married within their own community and also within other Muslim Malagasy communities. Some Sunni Muslim men have married non-Muslim women and have produced mixed Indo-Malagasy children, who are not identified as either Indian or Karana, and are recognized as Malagasy citizens (McInerney, 2014: 188).

One question that arises in relation to the status of the Karana people as stateless people, is their possible claim to Indian citizenship. The majority of the Karana people had their origins in Gujarat, on the borders between India and Pakistan, but largely fall in what became India at the partition of the territory between India and Pakistan at independence in August 1947. They are of mixed Hindu and Islamic religions – the majority are Muslims from the Gujarat district of Pakistan, while in the Indian Gujarat, the majority of the population are Hindus (Republic of India, 2011). Within a year of Madagascar's independence in 1960, India established an embassy in Antananarivo, which started taking care of the people of Indian origin. However, India afforded Indian citizenship only to those Hindus who desired it. As for the Muslims, only a small number of them were recognized as Indian citizens; the majority of them were denied Indian citizenship. Consequently, many people of Indian origin in Madagascar were left stateless (Pirbay, 2007: 282-283).

France, the former colonial power, also did not acknowledge those people who had originated from a British territory. According to existing French laws, all inhabitants who were born in Madagascar under French rule were recognized as

French citizens. Indeed, the 1946 Constitution of the French Fourth Republic made Madagascar a territoire d'outre-mer (overseas territory) within the French Union (Republic of France, 1946). The Constitution accorded full citizenship to all Malagasy parallel with that enjoyed by citizens in France (Republic of France, 1946: Article 80).

Moreover, French authorities disregarded the Karana people when transferring sovereignty to the Malagasy people. It is reasonable to believe that French "advisers" helped with the drafting of the text of the new Malagasy law on citizenship given that Malagasy legislators referred to the Ordonnance No. 45-2447 of the French Nationality Code (Republic of France, 1945), "borrowing" several articles from it. Examples are the articles concerning the acquisition of nationality by adoption or the loss of nationality (Razafiarison et al., 2022: 5).

However, in Madagascar, apart from the Karana people, there is an unknown number of people belonging to other ethnic groups who are stateless (Aikomus, 2017). The fact that some other minority communities are still labeled as "Karana Sinoa" (the Sinoa are descendants of Chinese immigrants) reinforces their stigmatization. While not deliberate, individual actions toward the minority communities exacerbate the challenges of statelessness (Rakotonindrina, 2012).

INTERNATIONAL LAW AND THE ROLE OF HUMAN RIGHTS TREATY BODIES

It is unfortunate that the 1999 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) itself does not challenge these issues. In Article 6 (h) ("Marriage"), it stipulates that, "A woman and a man shall have equal rights, with respect to the nationality of their children except where this is contrary to a provision in national legislation …" (AU, 1999). The specification provided by the last part of the article shows that, in this domain, African countries appropriate the right to have the last word to decide which child is entitled to acquire nationality and which child is not (Davis, 2009: 964-965). Madagascar has not yet signed the Maputo Protocol.

However, Madagascar ratified the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) on 17 March 1989. Article 9 of this convention provides for equal rights for men and women in nationality, and stipulates as follows:

> 1) States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.
>
> 2) States Parties shall grant women equal rights with men with respect to the nationality of their children (UNGA, 1979).

Legislation is thus required to eliminate gender and marital status from the determination of citizenship (Southard, 1996: 36-37). CEDAW's substantive equality provisions provide theoretical and normative tools to challenge traditionalist, cultural, and religious patriarchy and exploitation of women that still occur in many African countries, Madagascar included (Raday, 2012: 530).

In this regard, it is interesting to note that in the first report Madagascar submitted to CEDAW (1979), the representative of this country who, incidentally, was also a woman (Ms Rajaonson) affirmed that, in respect of Article 9, there were no inequalities in matters of nationality in the country (CEDAW, 1994: para 7).

In response, the Chairperson of the Committee (Ms Tallawy) noted that the Malagasy National Code provided that children born of a foreign father could claim the nationality of their Malagasy mother exclusively once reaching the age of majority. It therefore seemed to her that if the parents of such a child were divorced before the latter attained the age of majority, the child would be denied the right to Malagasy citizenship (CEDAW, 1994: para 30). Additionally, in 2008 the CEDAW committee urged Madagascar to amend the Nationality Code, consistent with CEDAW's Article 9 (CEDAW, 2008: para 25). Precedent paragraph 24 reads as follows:

> While noting that the State party has adopted Law No. 2008-017, which authorizes the ratification of the Convention on the Nationality of Married Women and is aimed at rectifying the inequality of rights between women and men with respect to nationality, the Committee notes with concern that the Nationality Code does not comply with Article 9 of the Convention in that it does not allow a Malagasy woman married to a foreigner to transmit her nationality to her husband or children on the same basis as a Malagasy man married to a foreigner.

This recommendation was reiterated in 2014, when the CEDAW committee also provided suggestions on the changes in the "draft" of the Nationality Code – changes that were officially adopted two years later (CEDAW, 2014: paras 4-8). The committee was also concerned that 20% of births in the country remained unregistered, increasing the risk of statelessness, and about the difficulties faced by women in ensuring the registration of their children (CEDAW, 2015: para 26). That is why the CEDAW committee recommended expediting birth registration of all children by simplifying the birth registration procedure. Additionally, the committee recommended ensuring the retroactive application of the law in discussion so that all persons in Madagascar who were stateless due to the discriminatory law were granted nationality (CEDAW, 2015: para 27(b)).

Furthermore, Madagascar adopted both the 1989 United Nations Convention on the Rights of the Child (CRC) (UNGA, 1989) – ratified on 19 March 1991, and the 1990 African Charter on the Rights and Welfare of the Child (ACRWC) (AU, 1990) – ratified on 30 March 2005. These two legal instruments agree on every child's

right to a nationality. Article 7(1) of the CRC states, "The child … shall have … the right to acquire a nationality," and Article 6(3) of the ACRWC stipulates, "Every child has the right to acquire a nationality." Along these lines, Article 6 (4) of the ACRWC further stipulates:

> States Parties to the present Charter shall undertake to ensure that their Constitutional legislation recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws.

The CRC, in the wake of similar guidelines provided by the CEDAW, urged Madagascar to amend its law on nationality to provide legal protections against statelessness at birth and to allow children adopted by a mother from Madagascar and a foreign father to gain the Malagasy nationality (CRC, 2020: para 20(b)). Madagascar is yet to ratify both the 1954 Convention Relating to the Status of Stateless Persons (CSSP) and the 1961 Convention on the Reduction of Statelessness (CRS) (UNGA, 1961). In this regard, Ujvari (2017: 111) explains:

> According to Article 1 of the 1961 Convention on Reduction of Statelessness, a contracting state shall grant its nationality to a person born on its territory who would otherwise be stateless, and according to Article 4, a contracting state shall grant nationality to a person, not born in the territory of a contracting state, who would otherwise be stateless, if the nationality of one of his parents at the time of the person's birth was that of that state.

The ratification of the two above legal instruments has also been recommended to Madagascar by other governments, as documented by the Human Rights Council (HRC, 2019a: paras 122(3) and 122(9));[2] this would tie Madagascar to internationally recognized standards of protection. These conventions also provide guidelines for states, with respect to policies that ought to be adopted to minimize statelessness (Kohn, 2011).

Madagascar's nationality law also has not taken all the steps to remove discrimination against women. For example, Malagasy women are still denied the right to confer nationality on spouses, a right that is reserved for Malagasy men. In this regard, in the Concluding Observations on the Fourth Periodic Report of Madagascar, the UN Human Rights Committee (2017: para 19) appreciated the 2016 reform of the Malagasy Nationality Code but remained concerned that women were

[2] Para 122(3) reads: "Namibia urges Madagascar to ratify the United Nations statelessness conventions"; para 122(4) reads: "Ukraine urges Madagascar to accede to the Convention on the Reduction of Statelessness"; para 122(9) reads: "Cote d'Ivoire urges Madagascar to consider ratifying the Protocol relating to the Status of Refugees and acceding to the Convention on the Reduction of Statelessness" (UNGA, 1961).

still not able to transmit their nationality to a foreign or stateless spouse or to their adoptive children.

Furthermore, the Human Rights Committee (2017: para 19) advised the Malagasy Government to implement measures to expedite the revision of all relevant legislation to ensure equality between men and women, including in the areas of nationality. On the other hand, the Human Rights Committee (2017: para 43) found regrettable that Madagascar has yet to take any steps to establish an office for stateless persons. Finally, the Human Rights Committee was concerned that, owing to the still restrictive effect of the rules on nationality, several persons, like the Karana people, and children born in Madagascar remain stateless. As such, the Human Rights Committee (2017: para 47) urged the relevant Malagasy authorities to ensure that the country's laws and regulations on nationality address all problems of statelessness. Against this backdrop, Madagascar has not yet set up procedures for identifying stateless persons (HRC, 2019b: para 113). Ironically, Article 6(2) of the Malagasy Constitution plainly stipulates:

> All individuals are equal before the law and enjoy the same fundamental freedoms protected by the law without discrimination founded on gender, the level of instruction, wealth, origin, religious belief or opinion (Republic of Madagascar, 2010).

An analysis of the national report submitted by Madagascar to the HRC in 2019 clearly shows the four priority areas of the general state policy: combating trafficking in persons, irregular migration and forced labor; combating gender-based violence; national statistics; and older persons. It is evident that the elimination of statelessness in the country is not a priority of the Malagasy authorities (HRC, 2019a: paras 163-169).

IMPACTS OF STATELESSNESS

Apart from a sense of identity, belonging to a state is crucial to a person's ability to access education and healthcare and fully participate in political processes. Without a nationality, individuals do not have the right to vote or the unrestricted right to enter and live in a country under international law. Stateless people, therefore, end up without any residence status or, worse, in prolonged detention.

Like stateless people worldwide, stateless Karana people in Madagascar are often unable to access formal education and opportunities for employment, leaving them with little hope of escaping a situation of extreme poverty (UNHCR, 2017b: 14). Frustration with temporary residency permits, changing documentation requirements, and exorbitant fees are consistently expressed in conversations with the Karana people. Although they are issued with genuine Malagasy passports for a fee to travel abroad for medical treatment, these documents are confiscated

upon return. However, most stateless Karana people are unable to afford such travel documents (UNHCR, 2017b: 17).

Although stateless people globally face challenges in accessing key rights and services, there is abundant evidence indicating that women in Africa face major challenges in accessing those rights and services because of gender discrimination and inequalities. Consequently, stateless people's lived reality is worse than that of citizens, particularly in terms of income levels and access to healthcare. In this scenario, the gendered impact is significant, given that women have less access to education than men and are generally paid less than men, while bearing greater home and childcare responsibilities (Beninger and Manjoo, 2022: 27). Moreover, research indicates that stateless women are particularly vulnerable to violence – both domestic violence and sexual exploitation and trafficking (HRC, 2013: para. 53).

PROSPECTS FOR FURTHER REFORM

An urgent issue directly linked to the gender and ethnic discrimination remains the conditions of stateless children in Madagascar. Against this backdrop, in 2016 and 2017, the Ministry of Justice, in partnership with the UNHCR, held public consultations at the provincial level and carried out awareness-raising activities. The report highlights that the Malagasy Government is aware that any child born to stateless parents will not have a nationality, with the exception if the child's parents were born in Madagascar. Unfortunately, it is not clear if the public consultations have had a positive outcome or not (CRC, 2022: para 62).

Since 2019, the country conceived, but not implemented yet, a Plan National d'Action pour la Réduction et l'Elimination de l'Apatridie à Madagascar (PNAREA: a national plan of action to reduce and eliminate statelessness in the country). That is why the plan has not been published, yet (Razafiarison et al., 2022: 16).

In June 2020 the Malagasy Senate approved an amendment to the Code on Nationality introducing a new definition of "Malagasy nationals" encompassing everyone who was born or arrived in Madagascar before 1960 and to their descendants (Madagasikara, 2019; Citizen Rights in Africa Initiative, 2020; Randriamanga, 2020). Nevertheless, to date (June 2023), there is no news that this amendment has been concretely incorporated in the Code on Nationality.

One other way to address the situation of stateless persons in Madagascar would be to facilitate naturalization, as provided for by Article 32 of the 1954 Convention Relating to the Status of Stateless Persons. Article 27 of the Nationality Code stipulates that naturalization may be granted to aliens fulfilling certain conditions, including discretionary factors such as being in good physical condition, being of good moral character, and assimilated into Malagasy society. Unfortunately, over the years, the naturalization process proved to be ineffective, presenting a serious problem for those who are stateless and for non-Malagasy foreigners hoping to access citizenship (McInerney, 2014: 187). Since its independence (June 1960), only 1,599 foreigners have been naturalized in Madagascar and between 1989 and 2020 out of 194 assessed

applications only six naturalizations have been granted (Rakotoarivonjy, 2022). In practice, therefore, these groups are unable to access naturalization and even those who are hypothetically eligible for nationality face complications in acquiring documentation and proof of citizenship because of discriminatory administrative practices (Mbiyozo, 2019: 16). This inaction is mostly due to electoral reasons: given the bad reputation of Karana people among Malagasy, political parties do not want to lose consensus being too "generous" toward the Karana people, granting them Malagasy nationality (Razafiarison et al., 2022: 18).

CONCLUSION

As the UNHCR (2015: 23) affirmed, "[s]tateless children … are not asking for special treatment. They are only asking for equal treatment, the chance to have the same opportunities as other children. It is our responsibility to give them this chance." Incidentally, I agree with Worster (2019) who argues that there is sufficient state practice with opinio juris to establish an obligation on states to secure nationality, by granting their own nationality if necessary, to otherwise stateless children born in their territory. In this regard, the author explains:

> [W]e can find that states must grant nationality to stateless children born in their territory, though two exceptions might still be permissible under the law. The first is when a state requires some kind of non-burdensome, non-discretionary nationality application, as this practice is evidenced in many cases. The second is a situation where the state of birth can definitively secure de jure nationality for the child from another state, as this option has been affirmed as compliance with the human right to a nationality (Worster, 2019: 237-238)

The reform of the nationality law in Africa generally serves to create – in most states – some basic rights to nationality deriving from birth and residence as a child in that country (Manby, 2020: 8). There are still many improvements to be made in order to extirpate statelessness in Madagascar. This country is still not a party to legal pillars for the abolition of statelessness.

Most recommendations from the international community place full responsibility for ending statelessness on the government. Yet, civil society has the temerity to sometimes reinforce barriers faced by stateless persons, including through community actions tending to marginalize, and often completely exclude, minorities from society. That is why civil society should strive to remove those barriers.

Among the proposed solutions to end the stateless conditions of the Karana people, Pirbay (2007: 284) proposes that if Malagasy authorities hesitate to confer Malagasy nationality to Karana children, India should then intervene, having the "moral obligation" to protect its stateless children in Madagascar, as a simple gesture of "basic humanity." However, the best alternative remains giving Malagasy

citizenship to the Karana people. Giving the Karana people a viable path to citizenship would help to ease some of the social tensions and foster integration. Granting them citizenship would also align these business leaders with the growth of Madagascar and encourage them to invest in the nation and its future. As Madagascar develops, access to citizenship will come to the forefront of the political agenda (McInerney, 2014: 183).

In this regard, there are attempts by the competent authorities in Madagascar to still improve the Code of Nationality. This does not mean that the legislator wants to grant Malagasy nationality to foreigners more easily but to solve the most urgent problems linked to statelessness in the country. Interestingly, it is believed in the collective imagination that the Karana people (and the Chinese) without Malagasy nationality are rich enough and does not need to be granted another nationality (Rakotoarivonjy, 2022). Importantly, human rights apply to all persons notwithstanding nationality or immigration status, including stateless persons. Additionally, the principle of equality and non-discrimination prohibits any discrimination based on the lack of nationality status (UNHCR, 2012: para 21).

The UNHCR also reminds that the fact that Karana people are in their "own country," in line with what is envisaged by Article 12(4) of the International Covenant on Civil and Political Rights (UNGA, 1966),[3] imposes a political and moral imperative on the State to facilitate their full integration into the society of Madagascar (UNHCR, 2012: para 45). Madagascar is a party to ICCPR since 21 June 1971.

The light at the end of the tunnel is still far and treacherous. Yet, given the slow but constant progresses that Malagasy authorities are making in this domain, I am confident that through the continuous good will of the concerned authorities, Madagascar could end the plight of stateless persons in a relatively brief period, giving dignity to all the human beings living on that island. Nevertheless, while national authorities and the Malagasy population seem to be sensitive and empathetic to end the statelessness derived from gender discrimination, the same cannot be said about the people from Indo-Pakistani and Chinese origin. In Madagascar, women's empowerment in the last decades has become a priority for the authorities (Ramamonjisoa, 1993; Fencl, 2005; Gaye 2020) while non-citizens still suffer various forms of discrimination (US Department of State, 2022: 21-22). From all the considerations in this work, it is evident that Malagasy women are considered in the country as "100% Malagasy" and as such, openings to implement their rights in transmitting Malagasy nationality are clear. Conversely, communities of foreign origin living in Madagascar are still commonly believed, for several reasons (cultural, religious) to be "alien" to the country and, as such, I think that the situation of stateless Karana people will take longer to be solved compared to the situation of gender discrimination.

[3] Article 12(4) of the ICCPR stipulates as follows: "No one shall be arbitrarily deprived of the right to enter his own country" (UNGA, 1966).

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Protection of the Rights of Ethiopian and DRC Refugees and Asylum Seekers: Examining the Role of South African NGOs (2005–2017)

Meron Okbandrias[1]

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Abstract

The South African asylum system has gone through a dynamic change over the last twenty years and NGOs have been a permanent feature of the system starting from the crafting of the Refugees Act. Over the last decade, the flow of asylum seekers has slowed, but the country still hosts a significant number of African and Asian asylum seekers and refugees. As a result of the many factors, asylum seekers and refugees face a multitude of challenges. Some of the challenges include inefficient public service, a corrupt system, xenophobia, and other challenges. NGOs have championed the rights of asylum seekers and refugees. This paper looks at the work that has been done by NGOs working in the protection of the rights of asylum seekers and refugees from 2005 to 2017, utilizing the case study of the 40 Ethiopian and 37 Democratic Republic of the Congo nationals residing in Johannesburg and Durban through interviews. The researcher collected additional primary data from selected NGOs and analyzed both data sets through descriptive statistics. The findings indicate that NGOs have their areas of speciality, and their roles has changed over the course of the 12 years from being cooperative with state actors to mostly a combative role to ensure and protect the rights of asylum seekers and refugees. Their effectiveness has also been impacted as a result, and litigation has not always been effective. Asylum seekers and refugees find NGOs effective to a certain extent, but a significant number of them are not aware of NGOs or the work they do.

Keywords: Ethiopia, Democratic Republic of the Congo, refugees, asylum seekers, NGOs, South Africa, rights

[1] School of Government, University of the Western Cape, South Africa. ✉ mokbandrias@uwc.ac.za

INTRODUCTION

There is no doubt that the issues surrounding asylum seekers and refugees in a twenty-first-century context (more especially within South Africa) are extremely relevant considering the dynamic nature of this area in international relations and the steady flow of migrants into the country. In the last 25 years, and in particular after the country's democratic transition, this field has seen major legislative changes and faced many challenges. Of particular concern are the continuous incidences of xenophobia in their covert and overt forms, especially the 2008 and 2015 xenophobic attacks. The Department of Home Affairs (DHA), plagued by chronic corruption, is mismanaging the process of implementing the country's Refugees Act (No. 130 of 1998), with some asylum seekers stuck in the process for over 10 years.

Despite the constitutional and legislative protection guaranteeing the rights of asylum seekers and refugees, government assurance, a robust judicial system, and civil society activism, it remains a hugely challenging environment. For instance, the South African government's Coronavirus Disease 2019 (COVID-19) control efforts, which included a national lockdown, exacerbated the country's systemic discrimination against asylum seekers and refugees. It is well-demonstrated in the South African government's failure to include this disadvantaged group in economic-, poverty-, and hunger-reduction programs, which caused these individuals to develop poor coping mechanisms, resulting in mental health disorders and secondary-health problems (Mukumbang et al., 2020). These challenges can be explained and articulated on many levels. On the one hand, there is the continuing challenge to the universally guaranteed rights of refugees and asylum seekers, especially in South Africa (United Nations, 2011; Kavuro, 2016). On the other hand, there are structural socio-economic factors that become real or perceived reasons for begrudging migrants, especially those from the rest of Africa (Ngwenya et al., 2018; UNCTAD, 2018; Bjarnesen and Turner, 2020).

The question of why one should focus on the rights of refugees and asylum seekers in a study, when there are many other marginalized sectors of South African society, is a critical one. After all, South Africans suffer with similar problems like accessing social services and other problems. However, it becomes necessary to engage in a study around this community given that the ability of refugees and asylum seekers to claim substantive rights while residing in South Africa is limited, despite the national legislative framework granting them certain rights (Kavuro, 2016; Nicholson and Kumin, 2017; Mukumbang et al., 2020; Moyo and Botha, 2022; Rugunanan and Xulu-Gama, 2022). This state of affairs poses a unique challenge for non-governmental organizations (NGOs) advocating for their rights and monitoring the implementation of policies and processes that are meant to benefit them.

This research explores whether NGOs in the refugee sector assist refugees and asylum seekers in South Africa to claim their rights in a substantive manner. Furthermore, it examines how effective the NGOs are in accessing their rights according to South African and international law.

ROLE OF NGOS IN PROTECTING THE RIGHTS OF REFUGEES AND ASYLUM SEEKERS

According to Cameron (2000), NGOs as civil-society institutions negotiate with market and state agents to ensure their sustainability and in so doing, increase the certainty of livelihoods for the most vulnerable. In this instance, the most vulnerable are refugees and asylum seekers. NGOs undertake three roles: as implementers, catalysts, and partners (Lewis, 2006). In South Africa, the civic-state engagement can be categorized in three ways (Handmaker, 2009):

- Participatory engagement: Civic societies, such as Lawyers for Human Rights (LHR), participated in the government-driven process of drafting refugee policy. This (sometimes confrontational) cooperation occurred from 1996 to 1998 and culminated in the drafting of the 1998 Refugees Act. It was a two-track process in which civil society discussions fed into the government-led process. The LHR brought its legal and civic expertise in human rights protection to the discussion and the drafting of the legislation.
- Cooperative interaction: There are instances when international and local civil society engage with the South African government; for example, in efforts to regularize the residential status of Mozambican refugees. South Africa hosted hundreds of thousands of Mozambican refugees, some of whom were repatriated with the help of the United Nations High Commissioner for Refugees (UNHCR), while others were deported or remained in the country without legal documentation. During 1999 and 2000, civil society made a significant contribution to legalizing their stay.
- Confrontational engagement: Civic advocacy holds the state accountable by taking legal action to challenge the state's decisions and to ensure that the government complies with constitutional and administrative law. The state has previously been challenged by many NGOs on refugees and asylum seekers' access to social services, fair procedure in status determination, and unfair detention and deportation. Confrontational civic advocacy has also been directed at non-state actors. A case in point was the confrontational advocacy against financial institutions regarding refugees and asylum seekers' access to banking.

Since the establishment of the UNHCR in 1950, there has been an acute awareness and focus on the rights of refugees as a specific category of vulnerable people. However, there is no historical evidence of the presence of NGOs specifically dealing with refugees, before the existence of the UNHCR and its predecessor, the International Refugee Organization (IRO). The international protection of the majority of the world's refugees has traditionally been in the domain of the UNHCR. Since the 1980s, NGOs with a refugee protection and assistance mandate started to emerge. That was partly because of their dissatisfaction with the role of the UNHCR,

which was magnified in the mid-1990s during the genocide in Zaire, Tanzania, and Rwanda. According to Van Mierop (2004):

Humanitarian NGOs publicly questioned how UNHCR could execute its mandate in such a situation. Several of them published reports or made public statements in which they denounced violations of the rights of Rwandan refugees, and there were even a few NGOs that left the camps in Tanzania and Zaire.

Since the end of the 1990s, the role of NGOs in South Africa has increased from participation in the drafting of the Refugees Act of 1998 to litigation on behalf of asylum seekers and refugees (Nicholson and Kumin, 2017). The role of NGOs has never been more magnified than during the xenophobic attacks of 2008 and 2015 (Maharaj, 2009; Robins, 2009; Mantzaris and Ngcamu, 2021). To understand the dynamics of xenophobia in South Africa, we need to consider the economic and social processes that result in uneven capital accumulation patterns within and between the local Black populations and African immigrants, as outlined in Amisi et al. (2011). Xenophobia arises under conditions of economic stresses (Amisi et al., 2011). South Africa has been experiencing some of the world's worst economic disorders and inequality since the end of apartheid and is currently ranked as the world's most unequal country (Chutel and Kopf, 2018; Beaubien, 2019;). This was brought about by rising inequality, measured by the country's increasing Gini coefficients (from .66 in 1994 to .70 in 2008), resulting in far higher unemployment (from 16% in 1994 to 20% in 2010) and worsening urban poverty (Frye et al., 2011). During those severe economic periods, the locals struggled to sell their products within a strong competitive environment; thus, they jealously protected production processes. In 2008 and in 2015, the world watched in horror as South Africans turned against immigrants from other parts of the continent, killing, raping, and leaving tens of thousands homeless (Everatt, 2011; Nwakunor and Nwanne, 2018; Mantzaris and Ngcamu, 2021).

In response to the xenophobic violence, civil society organizations (CSOs) played a critical role in organizing resources and influencing public opinion, while state agencies seemed unable to respond to this crisis, either at scale or at appropriate speed. According to Everatt (2011), civil society appeared with flexible, innovative, and creative structures to reinforce social justice networks for immigrants. The immediate response from various NGOs when the violence began in May 2008 was their call for more civic "education," usually about human rights, the plight of refugees, and the role that neighboring societies played in hosting South African exiles during the apartheid era (Amit, 2011). There is an absence of more considerable government and political enthusiasm in relation to the protection of refugees' rights in the South African landscape. Nevertheless, there has been a high degree of civil society empathy for the conditions refugees find themselves in, within the context of social rights in South Africa (Misago et al., 2015).

The South African government has chosen to deny reality to avoid dealing with an uncomfortable truth. According to Crush (2008), the South African constitution

has been extensively praised as being among the most progressive and inclusive in the world in protecting citizens' rights. However, it is clear that these rights do not extend to everyone living in the boundaries of the nation-state. Two sets of rights are deliberately reserved for South African citizens: (a) the right to vote; (b) the right to engage in freedom of trade, occupation, and profession (Crush, 2001); the latter has been successfully challenged in court. One thus assumes that all other rights should be extended to "all persons" in the country.

For that reason, the role of civil society organizations in relation to refugee rights has been substantial. Noteworthy are the UNHCR and other donors who sponsored national NGOs that acted as a lobby groups for refugees, supported each individual case, and attempted to oppose xenophobia through various channels (Amisi et al., 2011). Civil society also supported a variety of NGOs and service providers with temporary accommodation and basic food supplies for refugees, to protect their right to dignity. The constitution also states that all persons in the country have the right to shelter and access to food. However, there were challenges in attempts to bring together service providers and refugee communities, especially as this related to the power of South African-dominated NGOs, which did not serve the interests of refugees' rights.

The Refugees Act of 1998 states that refugees are allowed to seek employment and to have access to education. However, in this piece of legislation, nothing is explicitly said about refugees' rights to access other basic services such as housing, water, sanitation, and safety (Palmary, 2002; Solomon and Haigh, 2009). This resulted in many of these rights being met through service delivery by civil society. The role of civil society in protecting refugees' rights is not adequately acknowledged either by the Refugees Act or in any policy documents. Nevertheless, civil society continues to play a major role in protecting, lobbying and advocating for refugees' rights (Milner and Klassen, 2020). The refugee regime in South Africa has undergone significant changes in the last six years, notably its transition in terms of the different legislation that govern the regime, and the public and political elites' focus on this regime. As a result, the extent and nature of NGOs that work actively in this area, have also changed.

The focus and urgency that gripped this sector after the 2008 and 2015 xenophobic attacks have subsided but were replaced by a degree of apathy, despite the occasional flare-ups of xenophobic attacks. Recently, the activities of the vigilante group, Operation Dudula and the provocative utterances by politicians exacerbated xenophobic feelings (Myeni, 2022). In the prevailing environment, the UNHCR continues to be a funder and agenda setter, working in conjunction with those NGOs that assist asylum seekers and refugees (Nicholson and Kumin, 2017).

METHODOLOGY

The researcher employed a qualitative research method to gather data from the two principal sources – refugees and asylum seekers, and NGOs. In the case of the former,

this study focused on Ethiopians and Congolese in three cities in South Africa – Johannesburg, Durban, and Cape Town. The researcher conducted structured in-depth interviews with 40 asylum seekers and refugees from Ethiopia and 37 from the Democratic Republic of the Congo (DRC) to gain a holistic view of their challenges and their interactions with refugee-related NGOs. The study used the snowball sampling technique for all participants.

The researcher derived the second set of data from the interviews conducted with three managers of the NGOs identified for this study – Lawyers for Human Rights (LHR), Refugee Social Services (RSS), and Scalabrini Centre (SC). The researcher identified the three NGOs because of their focus on specific aspects of refugee protection. LHR focuses on advocacy and engagement and serves as a last-resort litigation to protect refugee rights; it has a track record in establishing jurisprudence in refugee law in South Africa. The RSS works on social assistance in the form of material assistance, specifically in access to shelter, education, health, and skills development. The SC plays a similar role in Cape Town and has provided interpretation services for the DHA for about three years; it has also provided refugees with paralegal experience in helping their respective communities in different cities.

The researcher used a case study approach. Zainal (2007) points out that case studies help researchers to access a population where it is difficult to get an adequate sample and analyze data at a micro level in examining social issues. However, a case study can lend itself to generalizing on the basis of concluding from a small sample. This concern might apply to both data sources – refugees and asylum seekers, and NGOs. The two nationalities identified, despite the small sample size, constitute two of the nationalities with the highest number of refugees and asylum seekers in South Africa. The three NGOs are comparatively well known for operating in the refugee sector.

The researcher deemed it fitting that the experiences of asylum seekers, refugees and refugee-related NGOs and their perceptions of the relevant human rights issues can best be recorded and understood, by using a qualitative research methodology. The researcher used the triangulation method by gathering data from different stakeholders from the refugee human rights regime. Regarding asylum seekers and refugees, the data analysis considers to what extent they interact with refugee-related NGOs in their respective cities.

RESULTS

The researcher strove to access respondents with different vocational backgrounds and endeavored to attain a balanced gender (see Table 1) and age mix. Almost 50% of respondents from both countries were asylum seekers, and 50% were refugees. Most of the Ethiopians were self-employed traders; their main livelihood was selling bedding and clothing to township inhabitants. Some were street hawkers, while others owned small business establishments like clothing and spaza shops. A few Ethiopian participants were students. On the other hand, the data indicates that

Congolese participants worked primarily in car guarding, while some worked in security services. There were also participants who were studying and working in other areas.

Table 1: Gender distribution of respondents

	Male		Female	
	Ethiopia	**DRC**	**Ethiopia**	**DRC**
Durban	9	8	5	5
JHB	8	7	5	5
Cape Town	8	7	5	5
TOTAL	**25**	**22**	**15**	**15**

Source: Author's own compilation

As Table 1 indicates, females constituted 40%–45% of respondents, and there is almost equal distribution of respondents across the three cities.

Table 2: Educational qualifications of respondents

Educational qualification	ETHIOPIA	DRC
Grades 0–7	12	4
Grades 8–12	23	26
Tertiary education	5	7
TOTAL	**40**	**37**

Source: Author's own compilation

Table 2 indicates that about 21% of respondents attained a school qualification up to Grade 7, about 64% attained a high school qualification, and nearly 16% had tertiary educational qualifications. The DRC respondents had higher academic qualifications compared to the Ethiopians. As depicted in Table 3, most Ethiopians (over 50%) were traders, while only 27% of the DRC respondents were traders. Interestingly, the DRC respondents' vocations were almost evenly spread in all categories. Nearly 30% of respondents indicated that they had a second income source.

Table 3: Vocation of respondents

Vocation	Ethiopia		DRC	
	Male	Female	Male	Female
Professionals	4	2	4	2
Traders	16	5	3	2
Hired work in the informal economy	2	4	7	5
Students (most students do some kind of work to support themselves)	3	2	5	3
Stay-at-home parent		2		3
TOTAL	**25**	**15**	**19**	**15**

Source: Author's own compilation

The structured interview for the refugees and asylum contained 25 questions. Apart from the demographic information, only three questions were relevant to the topic of this study. These questions were:

- Did you have any difficulty accessing documents like permits, social and financial services (health, social welfare, education, and banking services)?
- To what extent are you familiar with NGOs that assist refugees and their services?
- What services have you received from NGOs (if any)?

DISCUSSION

Asylum seekers and refugees in international law

The last 400 years saw a greater awareness of human rights in Western countries and the world. In the previous 100 years, there was an effort to internalize international liberal rights instruments within the nation-state, as it is the building block of the global system and law. In addition, there was a move to ensure the rights of other nationalities within the nation-state. Ultimately, the liberal rights theories gave rise to the recognition of their rights outside their nation-states. However, this discourse needs to consider the ideas regarding sovereignty and citizenship in nation-states, the subjective interpretation of rights, administrative justice, and political and social forces that determine the implementation of refugee systems. Even NGOs' work in protecting refugees and asylum seekers is located in this context.

Rights cannot be considered outside the context of their implementation. "A State is a legal and political organization with the power to require obedience and loyalty from its citizens" (Seton-Watson, 1977: 36) whereas a nation is a "named

human population sharing a historic territory, common myths and historical memories, public culture, a common economy and legal rights and duties for all members" (Smith, 1991: 41). The idea of sovereignty is based on international law. By virtue of sovereignty and their obligations to their subjects, nation-states abide by local and international laws. Nation-states negotiate and sign treaties based on the legitimacy of their sovereignty. Refugees and asylum seekers, therefore, present a problematic reality that the nation-state cannot ignore.

Sovereignty presupposes a solid concept of self-determination with a clear distinction between those who belong and those who do not. It has, however, both a civic foundation, originating from people's self-rule as citizens, and a universal foundation – the universal recognition of people's right to sovereignty. In respect of refugees, however, these two concepts collide because stateless people reveal, qua their existence, the fiction of the right to sovereignty. For a state, this means, on the one hand, that it has an obligation to recognize the refugees' universal right to sovereignty, because the state itself is based on this recognition; but on the other, it can do so only under its sovereign powers, which by definition are limited to citizens. With regard to refugees, a state has to be both a sovereign and a non-sovereign power at the same time, thereby undermining its legitimacy.

The somewhat unique situation of refugees, and especially asylum seekers, creates a problem for the law, since laws are an expression of a nation's will through its elected officials. What is politically unacceptable, despite liberal human right principles, becomes a problem to execute judicially. The current flood of asylum seekers in Europe, and the perception that it has increased incidents of terrorism, creates a unique situation in which politics cannot be reconciled with European laws. NGOs have to operate in such an environment.

In the case of South Africa, the lack of political and public support for large populations of asylum seekers and refugees manifested in xenophobic violence, challenges in accessing social services, and the ruling party's move toward restricting asylum-seeker rights by closing Refugee Reception Offices (RROs) and changing regulations to restrict access to documentation. What used to be a cooperative state where NGOs had a say, became a move toward restricting refugees and asylum seekers.

This raises the issue of the obligation of the state to refugees, and its practical application of obligations. Though the refugee mourns the destruction of the family home, the disintegration of cultural practices, and the loss of communal ties, there is one loss that, according to Hannah Arendt (1973), remains unrecognized: that, as a political being, in a practical sense the refugee ultimately loses the right to have rights. The right to have rights is not so much concerned with substantive rights, such as the abovementioned basic needs, but rather the assumption "that no law exists for [the refugee] … that nobody wants to ever oppress them" (Arendt, 1973). The refugee becomes existentially transparent. As a political being, the refugee ultimately loses the right to have rights.

There are two reasons why migrants, refugees, and asylum seekers lose the right to have rights. Firstly, by virtue of being the "other," they will not be considered "fit" to have rights. This is reflected not only in laws but also in attitudes, behavior, and practice of people in general. Arendt (1973) points out how Jews, by being a separate unit that formed the "other," became targets. Secondly, Arendt explains that migrants, refugees, and asylum seekers are seen as present without function. In fact, they are seen as parasitic. This perception is partially true in Scandinavian countries, because of their welfare systems. Some citizens are also dependent on social power but unlike the refugees, they have political rights. Arendt (1973) argues that the Jews in Western Europe at the beginning of the twentieth century lost the power they had,[2] and wealth without political power was seen as useless and contemptible. Ultimately, presence without function is perceived as useless and parasitic. The reality reveals itself in the case of migrants and refugees whose contribution in economic terms to host countries is tremendous. However, the contribution of the "other" is perceived as not so significant in the political arena, in comparison with that of citizens.

Defenders of refugees and asylum seekers against exclusionary policies mostly invoke liberal universalist arguments to defend refugee rights. Liberal universalist theories are those that give equal moral weight to the welfare of all individuals, regardless of nationality (Boswell, 2017). Liberal universalism provides an accessible and cogent grounding for theories of duties to non-nationals. Liberal universalism's assumptions about the moral equality of human beings pervade moral and political discourse in liberal democratic societies. It is, therefore, not surprising that theories of liberal universalism hold a virtual monopoly in arguments for admitting greater numbers of refugees, and more generally, for the recognition of moral duties beyond borders (Boswell, 2017).

However, as social and economic challenges grow, liberal ideas are tested. In addition, as asylum seekers and refugees consistently interact cheek by jowl with locals in poverty-stricken areas, tensions grow.

Refugees' and asylum seekers' experience with NGOs

The data shows that almost 85% of the respondents had heard of NGOs assisting refugees, either during a particular crisis – such as xenophobia – or in accessing services. Of all respondents, 60% identified the NGOs clearly and only 40% had interacted with the three NGOs that participated in this study. One of the Congolese respondents asserted:

> I know a lot about RSS. Because of my work, we send a lot of refugees to RSS to get assistance in housing, education, and skills. They are very helpful. I also know of LHR. They help refugees who have a problem with their papers. They

[2] For centuries, Jews were moneylenders as well as advisors later on, to kings and governments. The rise of the nation-state and the subsequent dependence on tax and credit from the nobility without political clout rendered most Jews powerless. In addition, their lack of strong nationality to any sovereignty contributed to their lack of political clout. Few Jewish families, like the Rothschilds, managed to acquire political power.

> used to be active. Sometimes they help but most times they don't. I don't know of other NGOs. There are also churches that help refugees.

There is a significant difference in the extent to which the DRC and Ethiopian refugees and asylum seekers interacted with NGOs. Only 30% of Ethiopian participants interacted with the NGOs in any meaningful way. They were more likely to depend on familial and community resources. This trend is supported by the data extracted from the NGOs, which indicated that Ethiopian refugees constituted a minority of the communities they serve.

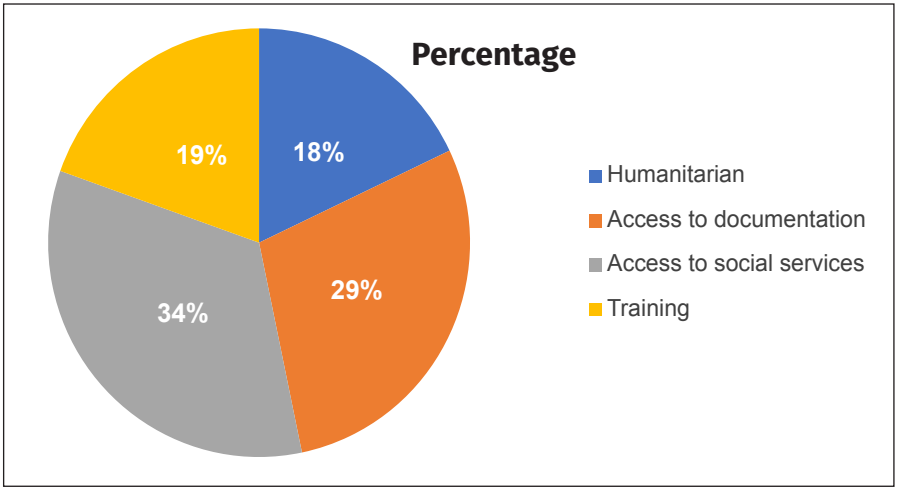
Conversely, almost 70% of the DRC refugees and asylum seekers reported receiving some kind of assistance, including humanitarian assistance, access to documentation, and access to social services like education, health, and banking. The humanitarian services are limited in scope: support in times of crisis; three months' financial support to newcomers; and limited language and skills training. However, during the study period, NGOs frequently provided help in accessing documentation. In addition, access to social services is a fairly common service provided by the three NGOs under study. Among the DRC respondents, 38% reported that they received NGO assistance when they had challenges in enrolling their children in school or were refused services in banks and health facilities. However, 15% of DRC respondents were frustrated because they could not get help from NGOs.

On the other hand, only 20% of Ethiopian respondents reported receiving assistance from NGOs. These services were restricted to seeking assistance to access documentation. This service notwithstanding, they expressed their negative perceptions of NGOs' ability to solve their problems. One Ethiopian asylum seeker lamented:

> I don't seek help from NGOs often. I went to LHR because I was told they help people with documentation problems. I have been told I can't renew my asylum-seeker permit because it has been renewed 10 times. It is not my fault that they have not finalized my case in the appeal board. LHR wrote me a letter. The officer in DHA saw it and just put it away. It is really frustrating that the NGOs don't have influence.

Figure 1 indicates the kind of services refugees and asylum seekers accessed. It is important to some respondents to access multiple services.

Figure 1: Services accessed by respondents – by percentage



Source: Author's own compilation

It is evident that NGOs in the study (and others) are visible and refugees and asylum seekers know they are accessible. According to the respondents, the NGOs' effectiveness is limited in helping them access services and documentation at an individual level, despite their efforts.

Assessment of the effectiveness of NGOs in the advocacy and protection agenda

The contribution of NGOs in advocating for and protecting refugees and asylum seekers has had a varied history in South Africa. NGOs such as the LHR contributed to the formulation of the Refugees Act (Masuku and Rama, 2020). Considering their comprehensive protection of the rights of refugees and asylum seekers, their contribution to the process has been stellar. However, since circumstances have changed significantly, it warrants a comprehensive analysis of this contribution.

The past 15 years have witnessed several developments:

- a significant increase in the numbers of asylum seekers in South Africa (Moyo et al., 2021 et. al);
- the increasingly combative relationship between the DHA and NGOs;
- the closure of three Refugee Reception Offices (RROs) (Majola, 2022); and
- the occurrence of major xenophobic attacks (Dahir, 2019; HRW, 2020).

What makes the NGOs' work of advocacy and protection more important is the absence of the UNHCR. In other countries, in the absence of a policy for the integration of refugees into the local population, the UNHCR steps in to provide advocacy and protection. In South Africa, the role of the UNHCR is that of an enabler

– it lobbies for better legislation and implementation of the country's Refugees Act. The UNHCR collaborates with South African NGOs to engage with asylum seekers and refugees, as protection is more productive when one works at the grassroots level and in close liaison with those who need it.

The data and the literature have shown that NGOs have been effective in some respects. They have made it possible for refugees to access social grants (Fajth et al., 2019). The RSS director indicated that her organization was instrumental in enabling refugees to access social grants:

> We didn't take that one up to court. We were the ones that were instrumental in taking up the case, why refugee pensioners, those in pensionable age, are not allowed to get a pension. When the case was about to go to court, then the regulation changed.

A combination of litigation and consultation with different stakeholders has brought about certain results. Asylum seekers' right to access employment is an example of this achievement. The three NGOs cited the case studies that they used to negotiate the access of refugees and asylum seekers to education, health services, and other social services. Besides, they constantly work in realizing access to documentation; because a document is a key to other services. Despite these gains, refugee- and asylum-seeker protection is on the back foot. Their rights and ease of access to services are generally worsening, especially when it comes to the DHA, as is the case worldwide (WHO, 2022).

In addition to the DHA's closure of RROs, it has drafted a bill to complicate asylum seekers' entry into and stay in South Africa (Polzer Ngwato, 2010; 2013). Refugees and asylum seekers are also restricted to accessing financial services at only one bank (First National Bank) despite a court decision to the contrary and the existence of an online verification system (Bureau of Democracy, Human Rights and Labor, 2020). Moreover, the access is erratic and depends on the validity of their asylum permit (sometimes granted for a month) or refugee permit. Ultimately, advocacy and protection have become confrontational. In reality, NGOs are in a peripheral niche that gives them a place to make an input but they have relatively little power to push through the protection agenda.

NGOs are much more effective when they deal with cooperative actors. The three participating NGOs explained that their relationship is largely cooperative and it only works if there is cooperation. However, the relationship is not always cooperative. The LHR's head of Refugee and Migrant Rights Programme explained:

> The relationship with the Department of Home Affairs is both good and bad. There is a part of Home Affairs that is willing to cooperate. It is a body which is made up of a number of people. There are certain people within Home Affairs that we have a very, very productive working relationship with. We can

> refer cases for easy dispute resolution and that sort of thing. At other times, we are forced to litigate against Home Affairs because they would be sort of unwavering on a point, which we thought was not negotiable. The relationship with Home Affairs is complicated. It is generally … one where we prefer to be engaging, mediating, and negotiating with them. And that is the first port of call. But our second port of call would be to litigate if it becomes necessary.

In fact, the three NGOs have the same kind of relationship with the DHA. However, in general terms, the South African government's approach to refugees and asylum seekers has been rather negative. Handmaker (2009: 156) states that the ability of civil society to hold the government accountable is "structurally conditioned" and "actively informed by specific historical events." This indicates the potential of legal and other forms of civic advocacy to hold states accountable through cooperatives or confrontational interactions within the framework of both national and international institutions. They are especially effective when they have wide public support or when their particular agenda has strong public support.

To put this in perspective, one has to revisit the civic and state environment just after the democratic transition in 1994. With the drafting of the constitution and the dispensation of rights during the mid-1990s, there was an explosion of human rights awareness. In the post-apartheid South African era of identity-based and individual rights, the issue of refugee rights found great sympathy. In such an environment, where civil society was acknowledged as a partner in the anti-apartheid struggle, the civic-state relationship was very good (Gumede, 2018; Levy et al., 2021; FreedomHouse, 2022). As a result, civil society was instrumental in translating the international human rights instruments to local ones in the form of legislation – not only in South Africa, but across the globe (Viljoen, 2009).

Increasingly, however, in the sphere of policymaking, CSOs that could be co-opted, participated, while others were sidelined. As Schneider (2002) and Jansen (2002) critically outline, in the hollow cooperative policymaking processes in the spheres of macroeconomics, AIDS and education, the ANC-led government has increasingly become hawkish at the expense of public and civil-society participation. Therefore, the transition from a cooperative to a combative relationship between government and civil society was inevitable. Although there was cooperation among civic and state actors in some areas, we have seen a multitude of court challenges on the grounds of individual and group rights and administrative-justice issues.

According to the University of Cape Town (UCT) Refugee Case Law Reader, 96 cases were brought against the DHA from 1996 to 2013 with some cases featuring in the three upper courts (UCT, 2013). This number could come down to almost 75 cases in the High Court. As a result, the legal expenditure of the DHA mushroomed to R46.3 million in the 2011/12 financial year, double the previous year's expenditure. To put this into perspective:

> Of the R1.34 billion in pending legal claims against it [DHA] (as of March 2013), claims against Immigration Affairs amounted to R503.3 million, which is 37.5 per cent of the total. The majority of the claims arose from "unlawful" arrests and detention of illegal foreigners as well as damages (Mthembu-Salter et al., 2014).

With the increase in litigation, the defiance of the DHA has increased. There is no goodwill on the part of the DHA to abide by the decisions of the courts, as was seen in the RRO closure cases. Therefore, litigation as an advocacy and protection tool has to be questioned.

Effectiveness of litigation

There is no doubt that litigation and other advocacy and protection tools have served NGOs well, as judgments in 90% of the cases mentioned above were in favor of NGOs and those they represented. As mentioned above, civil society gets frustrated trying to effect change either through consultation or other forms of advocacy. Society therefore turns to public-interest lawyers to hold government accountable. However, since rights are contested in most cases and are situated in a complex set of social and political environments, they need to be realized in cooperation with all stakeholders. It is clear from the interviews conducted with the three participating NGOs that they do not relish the partly adversarial relationship with the DHA. However, they feel that, in some cases, it is effective, as indicated in the quote above. The head of advocacy of Scalabrini Centre, elaborates their experience of litigation and its results:

> You know, in our refugee office closure case, the Supreme Court of Appeal found it unlawful, based on consultation. So, they didn't consult with us people who are directly affected. Home Affairs said, "Well, we can't consult with asylum seekers because they are not in the country," and the Supreme Court said, "Well, obviously the NGOs and you consulted with them on certain things before anyway." So, it is an odd reason … We tried to bring everybody in. SCMS or Wits University was there. UCT, ourselves [SC], LRC, and a multitude of other smaller organizations and everybody who was there was against the closure of the office … in the judgment you can easily see the DHA's approach to kind of duck and weave through the whole consultation process. These closure cases are based a lot on technical grounds.

The above quote is an indication of the difficult relationship that NGOs have with the DHA. As a result, NGOs need to assess if litigation, in the long run, is productive. In light of weak public support and lack of political will, litigation is rather counterproductive. This particular issue predates the adversarial nature of the relationship between the DHA and civil society. Amit (2011: 17) argues:

> Many of the legislative and constitutional protections for asylum seekers and refugees have not been implemented because they are embedded in an environment of weak political and public support, combined with bureaucratic mismanagement and inefficiency.

This mindset of many South Africans and their representatives in government means that international and national migrant rights, obligations, and the values associated with them, are not even on the list of priorities. NGOs operate in an environment that, even if it is not hateful, is characterized by a sense of disinterest or frustration on the part of government and the wider public. Though the courts have proven their independence and mettle, they cannot effectively force government to comply with its constitutional mandate. NGOs therefore need to seek socio-political networks that support their advocacy and protection agenda (Abanyam and Mnorom, 2020; Abiddin et al., 2022). This is problematic, as the rights of asylum seekers increasingly come under attack (Masuku, 2020; Mukumbang et al., 2020).

Effectiveness of facilitating access to social services and humanitarian assistance

The NGOs, the RSS and the SC provide numerous social services: the RSS provides counseling, language lessons, and other potential income-generating skills training. It provides limited humanitarian assistance in cases of people who could not afford to pay rent or their children's school fees for a few months. The SC engages in similar activities but reaches more people and has a wider application. The SC cooperates with the Department of Education (DoE) and the Department of Health (DoH) to find employment for refugee teachers and nurses, respectively. However, the LHR offers limited social welfare assistance.

As previously discussed, NGOs addressed this problem by approaching these departments, or in extreme cases, by litigating in terms of access to services. NGOs have made significant gains but with one exception: they have been unable to make significant progress with regard to asylum seekers, and sometimes refugees, being unable to open bank accounts at most major banks (International Development Association, 2021). LHR has attempted to address this issue through litigation, with limited success.

In the sphere of humanitarian assistance, faith-based organizations and churches have shouldered these responsibilities, with only limited help from the government in times of crisis. The Central Methodist Church in Johannesburg opened its doors to Zimbabweans and other asylum seekers and refugees during the 2008 and subsequent violent xenophobic attacks (Andrews, 2009; Bompani, 2013; Joseph, 2015; Makunike, 2021). The church was a place of refuge and humanitarian assistance (Pausigere, 2013). The UNHCR (2014) underlines this role in its 2014 report. Even though the SC and the RSS have faith-based origins, they have not contributed much. The NGOs' personnel repeatedly stress that they are resource constrained as far as being able to provide humanitarian relief is concerned (UNHCR, 2014).

As discussed above, the effectiveness of the three participating NGOs differs when measured across different criteria. For instance, advocacy was much more successful in the past. Changes in effectiveness reflect the changing role of these NGOs. Despite playing a role in drafting refugee policy in the 1990s and 2000s, NGOs have become confrontational, since they have lost their voice in influencing policy. NGOs have been effective in monitoring implementation and access to documentation. However, as a result of increasingly restrictive government policy, they are now not as effective in this regard. NGOs have been largely successful in facilitating access to social services, as discussed above. In summary, their effectiveness is declining overall, and their role is changing. This is partly a result of the context they are operating in.

This study reiterates that the South African Refugees Act and the Constitution are not based on a normative belief in the fundamental human rights of the wider society. Race and ethnicity-based politics, together with political mobilization, are clear indications of this. Therefore, rights are based on membership of a national group. Within the national group, there is further apportioning of rights based on race and ethnicity. For instance, Black South Africans claim more rights based on historical injustice. Affirmative action is an example of this. This is not to say it is wrong, but it reflects the national psyche. Civil society does not have enough traction to effectively advocate for and protect the rights of asylum seekers and refugees because there is no widespread public support. As a result, the government, taking its cue from the sentiments of the wider public, has increasingly tightened the asylum system. This reflects a wider international trend regarding asylum seekers and refugees. South Africa is hardly an exception in this regard.

The analysis of both data sources and the literature indicates that access to RROs has been severely curtailed by the DHA's closure of three RROs. In many court submissions, the DHA claimed that asylum seekers do not have rights. This is contrary to the word and the spirit of the Refugees Act. In a court case that challenged the DHA's argument of the absence of rights for asylum seekers, Judge Dennis Davis expressed his concern when a state advocate said: "These people have no rights," and the judge said the closure of RROs violated the rights of a particularly vulnerable group of people.[3]

Furthermore, the socio-economic conditions that gave rise to the huge wealth gap in South Africa make it difficult for asylum seekers and refugees to claim socio-economic rights. As data sources indicate, asylum seekers and refugees encounter xenophobic attitudes when they live and work closer to where there is competition for resources (Maharaj, 2009; Desai, 2010; White and Rispel, 2021). Their spaza shops were targeted during xenophobic attacks and service delivery protests, partly as a result of migrant workers being perceived as having taken over the spaza shop trade in informal settlements and in peri-urban areas where the poor live (IOM, 2013;

[3] *Scalabrini Centre Cape Town v Minister of Home Affairs and Others (11681/2012) [2012] ZAWCHC 147; (25 July 2012).*

Monson, 2015). The perception of the local poor that migrants are doing better than the locals translates into a loss of public support for asylum seekers and migrants.

Besides the many stereotypes, there are, however, criticisms of the asylum system that should be taken seriously. There is a belief that most asylum seekers are economic migrants (Crawley and Skleparis, 2017; Castelli, 2018; d'Albis et al., 2018; Maxmen, 2018). In addition, there are fraudulent asylum applications like the cases of the Consortium for Refugees and Migrants in South Africa (CoRMSA) v the President of the Republic;[4] of (known criminal) Radovan Krejcir; and of Lukombo v Minister of Home Affairs and Others.[5] However, it is the implementation of the Refugees Act and related immigration policies of the country that is responsible for creating the gaps that allow for the system to be abused. Both data sources confirm that corruption has severely affected the effectiveness of the institution of the DHA and compromises the rights of asylum seekers and refugees.

CONCLUSION

All in all, civil societies and NGOs play a significant role in advocating for and protecting the rights of refugees and asylum seekers. In other countries – in the absence of a local refugee policy – the UNHCR steps in to advocate for and protect refugees and asylum seekers. In fact, most African countries do not consider this their responsibility, despite ratifying the 1951 Refugee Convention. They leave it to the UNHCR to administer the asylum system in their countries.

In South Africa, there is a very liberal refugee policy and legislation. Therefore, the UNHCR is effectively on the periphery and has only diplomatic status. Despite the NGOs advocating for and protecting refugees and asylum seekers, they cannot fill the vacuum that is left by shortfalls in the implementation of the Refugees Act. That is the primary responsibility of the government. Thus, the limited capacity of NGOs should be recognized.

Despite their limited capacity, either through cooperation, consultation, or litigation, NGOs have made important gains. Some of their achievements are: the liberal elements within the Refugees Act; the right of asylum seekers to work and study; access to social grants; access to health; access to education and banking; and access to documentation. These achievements were made despite the government's continuing unwillingness to improve access to documentation, xenophobia, corruption, an inefficient public service, and a lack of political will. These challenges persist. The tactics and strategies employed by NGOs have been fruitful to some existent. However, the continued use of litigation as a tool is proving to be problematic.

[4] *CoRMSA v the President of the Republic of South Africa and Others, Case No. 30123/11*. CoRMSA argued that the Rwandan general, Faustin Kayumba Nyamwasa does not deserve refugee status. However, CoRMSA lost this case; subsequent attempts to overturn the decision to give him a refugee status by the DHA were unsuccessful. Mr. Nyamwasa is wanted for war crimes in Spain and France. He also survived an assassination attempt, allegedly by the Rwandan government while he was in South Africa.

[5] *Lukombo v Minister of Home Affairs and Others (2013/13552) [2013] ZAGPJHC 142 (13 June 2013)*. Mr. Lukombo applied for asylum three times, under different names.

In addition, there seems to be a disconnection between what refugees and asylum seekers perceive and the actual work that NGOs do. NGOs lack visibility on the ground and some refugee- and asylum-seeker communities do not know about them. What refugees know about the NGOs is acquired through their networks. It is unfair to expect NGOs to advertise their services, as this adds to their operating costs. However, they can work with migrant community-based organizations to better inform communities of their work.

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Higher Education Policy and Access for South Sudanese Refugees from the Bidi Bidi Settlement, Uganda

Christine Semambo Sempebwao[1]

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Abstract

Globally, refugee-hosting states are required to have a higher education (HE) policy that incorporates refugees, in order to raise refugees' HE access to 15% by 2030. This paper explores the influence of HE policy formulation and implementation on refugee access and resilience among South Sudanese from the Bidi Bidi settlement in Uganda. The study adopted a qualitative approach, an exploratory case study design, and an advocacy world view. The researcher collected data from 27 participants – 12 undergraduates from two private Ugandan universities, 13 government and non-governmental organization (NGO) officials, two officials from public and private universities – all involved in refugee education. Additionally, the researcher obtained data through a literature review, in-depth interviews with key informants and students, and a focus group discussion. The findings reveal that in principle, HE policy formulation in Uganda is incorporated in the development of the Education Response Plan (ERP) for refugees and host communities, through a multi-stakeholder approach. However, neither students nor higher education institutions (HEIs) were part of the ERP formulation process. The HE policy formulation process in Uganda traverses a value chain with intersecting complexities. These include: supra-state and national policy, refugee demographics, preferences for basic education and emergency interventions, negative perceptions of HE returns, hostility and refugee exclusion, and students' personal challenges. Relatedly, support for refugees is largely provided by HEIs and NGOs, using silo, independent guidelines. Ultimately, the findings indicate that the HE policy formulation and implementation do not address the intersecting complexities adequately, with implications for student access and resilience. This study identifies areas that could inform HE policy formulation and implementation, and enhance refugee access and resilience, especially in light of the United Nations High Commissioner for Refugees' (UNHCR) 15by30 Roadmap.

Keywords: refugees, tertiary education, admission, resilience, Uganda

[1] College of Education and External Studies, East African School of Higher Education, Makerere University, Uganda.
✉ csemambosempebwa@gmail.com

INTRODUCTION

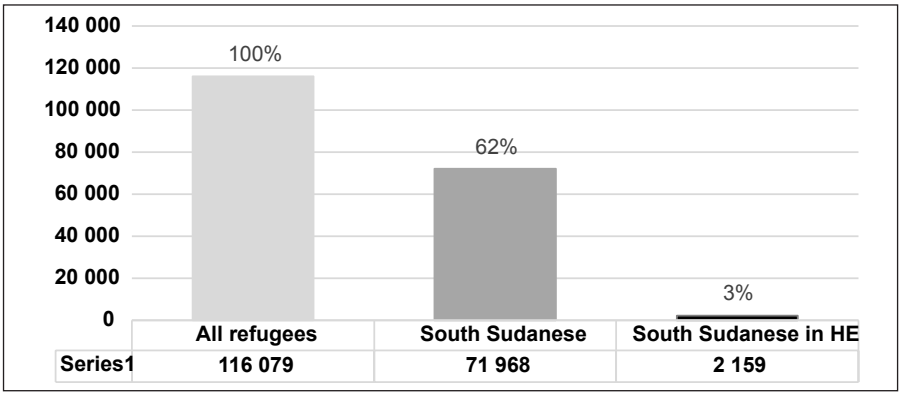
Globally, states are required to ensure equitable quality education opportunities for both refugees and host communities. as underscored by the 2018 Comprehensive Refugee Response Framework (CRRF) and Agenda 2030 for Sustainable Development (Crawford and O'Callaghan, 2019). Relatedly, consensus on the importance of higher education (HE) for refugees as a human right and the foundation for peace and sustainable development, has been exemplified through several global and regional conventions and efforts (Dryden-Peterson, 2016; UNESCO, 2019). Furthermore, in its Strategy for Refugee Inclusion, the UNHCR (2019a: 15) states:

> Access to inclusive and equitable quality education in national systems creates conditions in which children and youth can learn, thrive and develop their potential, build individual and collective resilience, experience and negotiate peaceful coexistence, and contribute to their societies.

Thus, by global unanimity, countries of re/settlement are required to incorporate refugee-inclusive and receptive policy for all levels of education, including HE, into their education systems (Addaney, 2017; Carciotto and Ferraro, 2020). This is aimed at increasing refugee HE enrolment to 15% by 2030, along with the attendant dividends (Dryden-Peterson, 2016). Additionally, along with the state and other key stakeholders, refugees should be involved in the policy-formulation and implementation process (Thomas, 2017). However, despite these best efforts, there are big gaps in equitable, quality HE between refugees and their non-refugee peers (UNHCR, 2019a).

Including refugees in Uganda's HE policy and systems, is accepted as the best option to expand HE access and resilience for refugee students (Uganda MoES, 2017; Crawford and O'Callaghan, 2019; UNHCR, 2021). This is especially critical at a time when Uganda is host to the largest refugee population in Africa – 1,582,892 as at January 2022, with the majority (962,360, i.e., 61%) from South Sudan, with a propensity to a protracted situation (UNHCR, 2022a; 2022b). Of the 962,360 South Sudanese, 246,310 (25.6%) reside in the Bidi Bidi settlement, where young people aged 18–34, within which the study population falls, as at January 2022 made up 26.4% (65,103) of the total settlement's refugee population. Of these, 54.6% (35,598) were female, while 45.4% (29,505) were male (UNHCR, 2022b). As indicated in Figure 1, of an estimated 71,968 South Sudanese refugees of HE-going age (18–24) hosted in Uganda, only an estimated 2,159 (3%) have access to HE (Uganda MoES, 2018; Global Platform for Syrian Students, 2020). Yet the UNHCR (2018b) notes that in 2018/2019, refugees from the Bidi Bidi settlement got only 11 scholarships through the scholarship program managed by the Uganda Ministry of Education and Sports (MoES) and its partners and these were decreased to seven slots in 2019 (UNHCR, 2019c).

Figure 1 South Sudanese refugees of HE going age (18-24) in Uganda as at 2020



Note. This figure was generated using information from Global Platform for Syrian Students (2020) and Uganda Ministry of Education and Sports (2018).

Source: Author's own compilation

Background and contextualization

State obligations to incorporate refugee HE into national education systems and yield equitable benefits for refugees and nationals, became key after World War I, as codified through the Convention of 1933. State parties were asked to grant refugees access to universities. In Britain, France, and the United States, this university education was largely to build a resilient population to rebuild Europe and foster tolerance and unity (Metzger, 2017; Brewis et al., 2020). Currently, under Agenda 2030 with the tagline of leaving no one behind, the UNHCR's Global Education Strategy (GES) 2012–2016 calls for equitable, integrated HE for refugees as a global priority (Global Platform for Syrian Students, 2020). This global call to incorporate HE for refugees in national plans and policies aims to increase refugee access to quality HE that nurtures resilience and self-reliance and fosters peace and sustainable development (Dryden-Peterson, 2016; UNHCR, 2019a; World Bank, 2021).

Africa continues to grapple with huge numbers of refugees in protracted situations, where at least 25,000 refugees from the same country have been living in exile for more than five consecutive years (UNHCR, 2020). Relatedly, many refugees in protracted situations are not accessing higher education (Baker et al., 2019). With the rollout of the CRRF in sub-Saharan Africa (SSA), Chad, Djibouti, Ethiopia, Kenya, Rwanda, Somalia, Tanzania, Uganda, and Zambia committed to incorporating HE for refugees into their national systems, engaging a broad range of stakeholders (Thomas, 2017; UNHCR, 2018d; Crawford and O'Callaghan, 2019; World Bank, 2021). In Uganda, this commitment is exemplified through the Education Response Plan (ERP) 2018–2021, whose underlying principle is that all refugees access quality education at all levels (Uganda MoES, 2017; 2018). While

Uganda has taken steps toward including refugees into its national systems, there is still more to learn about HE policy formulation and implementation, especially in light of the Tertiary Education 15by30 Agenda (UNHCR, 2021).

Uganda MoES (2017) and (2018) aver that Uganda assented that including refugees into HE policy in its national education system, is the best option toward mitigating issues of marginalization and discrimination, ultimately increasing refugee HE enrolment and resilience. Congruently, Uganda's commitment to incorporating refugees into its HE policy is cemented through its assenting to certain international and regional instruments and frameworks (UNHCR, 2018b; Crawford and O'Callaghan, 2019). Relatedly, Uganda's Refugee Act 2006 and the Refugee Regulations 2010 decree that refugees should have access to the same public services as nationals, including education (Uganda MoES, 2018). Additionally, the core principle of the ERP 2018–2021, which is designed within the context of the Education Sector Strategic Plan (ESSP) 2017–2020, is to ensure that all refugees have access to good quality education at all levels (Uganda MoES, 2017; 2018).

However, inclusion of refugees in HE policy and Uganda's national education system continues to be understated and peripheral (Kimoga et al., 2015; Dryden-Peterson, 2016; Uganda MoES, 2017; Baker et al., 2019). Relatedly, Uganda's ESSP 2017–2020 and its ERP 2018–2021 both relegate HE for refugees to the fringes of policy formulation, excluding it from the strength, weaknesses, opportunities, and threats (SWOT) of the ESSP and situation analysis of the ERP, two key education documents. This suggests that many stakeholders, including higher education institutions (HEIs) and refugees, who have varied guidelines and experiences regarding refugee HE access and resilience, missed out on contributing through the situation analysis, meaning that their views on HE were totally disregarded. Relatedly, HE for refugees does not feature in the Uganda MoES 2020 Education and Sports Sector Review (ESSR), which could have provided another opportunity to share divergent perceptions and enriching experiences (Uganda MoES, 2020). Overall, this exclusion of HEIs, refugees, and possibly other non-state actors, in planning for and discussing progress on HE for refugees, raises concerns. It alludes to HE policy formulation in Uganda being exclusionary and shutting out diverse knowledge, when it comes to refugees. This has implications for HE policy implementation, in an environment where implementation is already fragmented and effected in silos.

Even though the ESSP 2017–2020 does mention in general terms provision of education to refugees under objective one, section xii, it does not single out HE for refugees. Additionally, while Uganda's ERP 2018–2021 in section 2 does mention that the structure of education in Uganda is defined by four levels of education – including tertiary and university education – it does not include refugee HE under its strategic objectives, outcomes, and activities under sections 5.1 and 5.2. In their assessment of the first two years of the CRRF, the UNHCR alludes to the gaps in the provision of HE for refugees, by only overtly recognizing Uganda's achievements in the area of basic education. The UNHCR report further notes that refugee enrolment

rates still lag behind those of national averages (UNHCR, 2018d). Therefore, in line with the global call to improve refugee access and resilience, drawing upon the diverse experience and perceptions of 27 participants, this paper reports findings from an exploratory study on HE policy and implementation and its influence on refugee access to HE and resilience for South Sudanese refugees, from the Bidi Bidi settlement in Uganda. It hopes that the findings herein will leverage advocacy, planning, and further research in the area of refugee HE access, given that access contributes to resilience and enhances normalcy in the lives of refugee students.

In this paper, a refugee is defined as a person who meets definitions and requirements spelled out under the 1951 Convention and Protocol Relating to the Status of Refugees, the 1969 Organisation of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa, and specifically those in Uganda's 2006 Refugees Act. The 2006 Act refers to a refugee as, "a person who having qualified to be granted refugee status, has been granted refugee status, or is a member of class of persons declared to be refugees" (Republic of Uganda, 2006, Part I Section 2). HE in this paper refers to post-secondary or tertiary education, including academic, vocational, or technical streams, delivered at a public or private university (Republic of Uganda, 2001; UNHCR, 2019a). Relatedly, access here is admission into post-secondary education institutions through a selective and equal-opportunity admissions process, (including any support and affirmative action) in line with a country's set minimum entry requirements (UNESCO, 2019; Global Platform for Syrian Students, 2020). Part of the rationale for access is resilience, which is defined herein as the individual's ability to adapt to the refugee situation and resume learning and other life-sustaining activities, with minimal dysfunctional behaviour, within a host state (UNESCO, 2014). With the UNHCR's call to increase access and foster and enhance resilience, it has become increasingly important for host countries to formulate and operationalize, policy – referred to here as a statement of intent developed by policy actors to guide delivery of equitable, quality HE for refugees, through a human-rights oriented, multi-stakeholder approach (UNHCR, 2018b; 2019b).

LITERATURE REVIEW AND THEORETICAL UNDERPINNING

Studies about policy related to refugee HE are predominantly situated in the Global North (Baker et al., 2019). The few studies from Africa are mainly situated in the seven countries that rolled out the CRRF (Maringe et al., 2017; Thomas, 2017; Crawford and O'Callaghan, 2019; Tamrat and Habtemariam, 2020). In this regard, Maringe et al. (2017) and Tamrat and Habtemariam (2020) call for future research on refugee HE in Africa, citing the relative absence of similar studies regarding various aspects of refugee education in general, and HE in particular. The literature review was aligned to the overall study purpose to explore how HE policy influences HE access and resilience for South Sudanese from the Bidi Bidi settlement in Uganda. The literature review was further guided by the two specific study objectives: (a) to

explore how HE policy formulation influences HE access and resilience of South Sudanese refugees from the Bidi Bidi settlement in Uganda; and (b) to explore how HE policy implementation influences HE access and resilience of South Sudanese refugees from the Bidi Bidi settlement in Uganda.

Formulation of HE policy related to HE for refugees

Policy related to refugee HE emanates from the global level, and the United Nations (UN) set the basic standards for policy practice (formulation, implementation, and evaluation), based on international human rights law (Hall, 2015; Hathaway, 2018). In Europe and Africa, regional commitments and initiatives are in place to guide states in developing integration policies. However, the final say on how to integrate refugees into national policy and plans, as well as those pertaining to access to all levels of education, including HE, rests with the individual states, and this sometimes comes with challenges (Hall, 2015; Addaney, 2017; Maringe et al., 2017; Baker et al., 2019). Additionally, global policy is non-binding at state level, and states have their own internal dynamics that influence policy formulation and ultimately implementation (Donald, 2014; Hathaway, 2018). Policy formulation is often top-down, even in countries that strive to achieve a transactional approach (Thomas 2017; Stoeber, 2019). Response plans of all seven countries that rolled out the CRRF in Africa indicate that their formulation was largely top-down, with mainly national-level government stakeholders (Thomas, 2017; Carciotto and Ferraro, 2020; Tamrat and Habtemariam, 2020). Relatedly, the respective response plans have very little on HE for refugees (Ethiopia Federal Ministry of Education, 2016; Uganda MoES, 2017; 2018; Kenya Ministry of Education, 2018; Rwanda Ministry of Education, 2018; UNHCR, 2018a; 2018b; 2018c; 2019a).

Implementation of HE policy related to HE for refugees

In Europe, HE practice is largely centralized through the state, with little to no funding for refugees (Stoeber, 2019). However, across countries in Europe, some NGOs and HEIs support refugee access and resilience (Grüttner et al., 2018). Beyond scholarships and waivers that directly support access, access and resilience are supported through language courses, sports and cultural activities, counselling and health support, child care, direct grants and loans, tax breaks, family allowances, as well as in-kind measures, for instance, (reduced rate) accommodation (Dereli, 2018; Grüttner et al., 2018; Stoeber, 2019; Jungblut et al., 2020). However, support by non-state actors is usually small in scale, in silos, ad hoc, and with little strategic or leadership support. Additionally, in HEIs, evidence cited is anecdotal; thus, interventions lack appropriate evaluation and sustainability measures (Stoeber, 2019).

In SSA, the literature on HE policy implementation and its influence on access and resilience is scanty, including in the seven countries that rolled out the

CRRF. Some of the available literature indicates that in Chad, the government requires universities to offer refugees equal terms of access and tuition as nationals (Carciotto and Ferraro, 2020). However, Carciotto and Ferraro (2020) do not give further information on refugee access and resilience at universities. While Ethiopia's and Zambia's response plans push for inclusion, admission, and rights of refugees at tertiary level, there is no detail regarding practical implementation of policy in these countries (Carciotto and Ferraro, 2020). Relatedly, in the Republic of South Africa, refugees are treated like international students and are excluded from accessing state resources, without allocation of any alternative funding (Maringe et al., 2017). In some universities, institutional bursaries and scholarships are available but competitive; thus, this insufficient funding affects refugee access and has implications for resilience (Maringe et al., 2017). Many refugees in South Africa are from non-English-speaking countries, but universities generally do not see it as their responsibility to teach students English, the language of teaching and learning.

Influence of HE policy on access and resilience

The most practical HE policy influence happens at state level, addressing institutional requirements, financial difficulties, socio-cultural and other factors, which may interfere with access and resilience (Maringe et al., 2017; Grüttner et al., 2018). Even then, there is the tendency to stereotype and homogenize refugees, despite their diverse experiences, circumstances, and challenges. Thus, refugees, especially the most vulnerable, continue to slip through the cracks, missing out on HE access (Détourbe and Goastellec, 2018; Naidoo, 2019; Stoeber, 2019. However, the few studies based on SSA, specifically Uganda, that were reviewed, do not have an in-depth analysis of policy formulation, implementation, and influence on access and resilience, within the period of Agenda 2030. This paper therefore seeks to augment the prevailing discourse by exploring the phenomenon of HE policy and its influence on access and resilience of refugees, in line with the study purpose and objectives.

This paper adopts the intersectionality theory, also at times referred to as intersectionality, which was first introduced by Kimberlé Crenshaw (1989) to interrogate societal oppressions among Black women from ethnic minorities. It has since evolved beyond gender, non-white women, and national level analysis to analyzing various relations of exclusion and privilege in other disciplines, including education and policymaking. As Rice et al. (2019: 7) note, "critical scholars across disciplines and theoretical perspectives have embraced intersectionality … as a theory ... for tackling social analysis." Additionally, it explores how exclusion and privilege are shaped by the intersectional and interlocking institutional systems and processes operating within and across national boundaries (Gyoh, 2018). Gyoh (2018) further notes that intersectionality theory deals with increasingly complex multifarious environments that intersect, shape, and influence human subjectivity and dis/advantage.

Intersectionality recognizes that marginalized, vulnerable groups, like the South Sudanese refugees in Uganda, are not homogeneous victims and can actively be part of the process of interrogating dis/advantages during formulation and implementation of policy (Ekpiken and Ifere, 2015). Relatedly, intersectionality underscores the conception that phenomena cannot be analytically understood from a single perspective but from distinctive, multiple understandings of reality (Gyoh, 2018). This theory resonates well with the study objectives and methodology and has the potential to unravel the nuances of HE policy formulation and implementation for refugees (Dereli, 2018; Baker et al., 2019). This paper uses intersectionality theory to get a deeper understanding of the intersections of connected systems, structures, factors, processes, and practices that inform HE policy formulation and implementation and ultimately access and resilience of South Sudanese refugees, from the Bidi Bidi settlement in Uganda.

METHODOLOGY

Guided by the study purpose and specific objectives, the study adopted a participatory advocacy world view that resonates with the intersectionality theory, and holds that research inquiry needs to be intertwined with politics and a political agenda and should speak to important social issues of the day, in this case equitable quality HE access as well as resilience for refugees. Relatedly, the study was guided by the belief that reality is subjective and there is no single reality, and all individuals have their own unique interpretations of reality (Creswell, 2013). The focus was on interpreting the different subjective accounts given by participants, based on their individual lived experiences (Creswell, 2013). I took into consideration my positionality as a Black, female Ugandan national with an extensive background in the education and sustainable development sectors. As a development worker and policy advocate, I have worked in refugee settlements across Uganda, often getting views and inputs from the community members. I have also had the opportunity to work closely with HEIs and government, mainly around policy advocacy, geared toward reforms in the education sector. In my work, I have read about and applied intersectionality as part of my development planning lens, but did not have the opportunity to see it applied to policy formulation and implementation. As a person who spent several years in Kenya after my husband's family was displaced by the Ugandan bush war, I know that refugees can suffer multiple and intersecting disadvantages. This study was therefore deemed important toward exploring the use of intersectionality and refugees' lived experiences to explore policy processes and outcomes. Hopefully, as advanced by Creswell (2013), the study will contribute to an agenda of change, to improve refugees' HE access and resilience.

In line with Creswell (2013) and Yin (2014), the study used the exploratory case study design, with the Bidi Bidi settlement as a single case and the phenomenon of HE policy formulation and practice and its influence on access and resilience as a unit of analysis. This design provided the opportunity to gain insight into the

complex contemporary phenomenon of HE policy and its influence on access to HE and resilience for refugees. As suggested by Njie and Asimiran (2014) and Rashid et al. (2019), the study was anchored in real-life scenarios, within the context of the Bidi Bidi settlement that hosts the largest number of refugees from South Sudan in Uganda. Based on Yin's (2014) work, the study was situated within the specific period 2016–2022, where Agenda 2030 begins and within which Uganda's ERP (2018–2021) is situated.

To ensure holistic coverage of the stakeholders, the study enlisted participants at national, district, and settlement levels, under categories of government, HEIs and students. It used purposive and random sampling techniques in selecting the participants, as outlined in Table 1. The sampling units were government ministries, agencies, and departments; NGOs and HEIs that were stakeholders in the HE of South Sudanese students from the Bidi Bidi settlement (See Table 1). In deciding the sample size, I took into consideration that 12–15 participants are recommended to provide multiple perspectives of the case phenomenon, while using additional data sources to support the findings (Creswell, 2013; Yin, 2014).

Table 1: Sampling Matrix showing unit, reason for inclusion and number of participants

Sampling Unit	Reason for including unit	Participants
Ministry of Education and Sports	Ensures the policy environment is conducive. Coordinates implementation of the ERP.	4
Office of the Prime Minister (OPM)	Leads the government-led application of the CRRF which is facilitated by UNHCR and involves various state, non-state actors and refugees.	3
Education in Emergencies (EiE) Working Group	Brings together stakeholders that deliver education in emergencies.	1
Finn Church Aid (FCA)	Lead Education Partner in Bidi Bidi settlement. Has extensive experience working with refugees.	1
Windle International	Manages DAFI scholarship in Uganda. Has extensive experience working with refugees.	1
Jesuit Refugee Service	Provides refugee education including HE. Has extensive experience working with refugees.	2
Caritas	Provides refugee education in Bidi Bidi. Has extensive experience working with refugees.	1
Ndejje University	Private university with refugee students from Bidi Bidi.	5
Nkumba University	Private university with refugee students from Bidi Bidi.	8
Makerere University	Public university with refugee students from Bidi Bidi.	1
Total		**27**

S=Student GKI=Government key informant NGKI=non-governmental key informant HEIKI=HEI key informant

Source: Author's own compilation

I collected data through multiple methods, including the review of documents and records relevant to the study, semi-structured interviews with key informants and students, and a focus group discussion with students, in order to enlist diverse perspectives and a nuanced understanding, at the same time enabling triangulation, and enhancing credibility and transferability (Korstjens and Moser, 2017). I obtained a letter of introduction from the College of Education and External Studies, East African School of Higher Education Studies and Development, Makerere University and conducted interviews from June to September 2022.

Data analysis

In keeping with Creswell (2013), the study applied priori and emergent thematic coding. Initially I identified seven topic codes aligned with the study purpose and questions. By the end of the line-by-line analysis, I had expanded the initial seven codes into 14 codes. In addition to the manual line-by-line analysis and generated codes and memos, I applied NVivo 12 analysis. Since NVivo clusters participants and their viewpoints under codes, it became easy to identify similarities and differences within themes.

Limitations

The human factor is both the greatest strength and the fundamental weakness of qualitative inquiry and analysis and can make data subjective. This limitation was offset through extensive within and across category and level analysis. Document reviews offered additional information, especially from the global, regional, and national levels. Limitations notwithstanding, interviews were important in giving the finer individual experiences not captured in the documents.

Ethical considerations

I obtained clearance from the AIDS Support Organization (TASO), the research ethics committee (REC) with reference number TASO-2021-69, the Uganda National Council of Science and Technology (UNCST) with reference number SS1186ES, and the Office of the Prime Minister (OPM). To ensure confidentiality and anonymity, I assigned each participant a category, as shown in Table 1. I added a serial number for each participant and added a different letter – N, D, and S, denoting national, district, or settlement – for key informants (KIs). I also added FGD or IDI for students, to denote focus group discussion or in-depth interview, respectively. Before enrolment into the study, I informed the eligible participants about the aims of the study, the potential length of the interview, and their discretion to participate or withdraw at

any time during the study. I assured participants that all information obtained from them would be kept confidential. Finally, I obtained verbal and written informed consent from each participant.

FINDINGS

HE policy formulation and associative factors

Government participants at national level were of the view that national HE policy must be aligned with supra-national legal frameworks, since refugee issues transcend national borders, and Uganda has no substantive, comprehensive policy that addressed refugee HE (GKIN3; GKIN1; GKIN2). They also felt that national legal instruments put in place to protect refugees must be in the best interests of both refugees and nationals (GKIN3; GKID2; GKID3). At national level, the OPM takes the overall lead on all refugee matters, working with sector line ministries (GKIN3). The MoES takes the lead regarding the formulation of policy related to education for refugees at all levels, and working with the UNHCR, partners, and refugee-led organizations. These stakeholders gave inputs through discussions, for example through the Education in Emergencies (EiE) Working Group (NGKIN1; GKIN5).

> As the EiE Working Group, at national level we align all activities with the Education Sector Strategic Plan (ESSP) and the goal of leave no one behind. We work as MoES, implementing partners, and local NGOs to develop the theory of change and activities (GKIN5).

However, other participants (GKID3; GKIN5; NGKIN2) noted that HE is hardly mentioned in all three objectives of the ERP. Participants GKIN1 and NGKIN2 respectively noted that there is no special unit at the ERP Secretariat that handles HE and that for most refugee settlements, there is no budget line for HE.

The views of HEI participants regarding participation in HE policy were divergent from those of most participants. HEIKIN1 and HEIKIN2 said they were not aware of any national policy regarding HE for refugees, and had not been involved in the development of the ERP, despite handling refugee students on a day-to-day basis. At district and settlement levels, most government and NGO actors said they were involved in policy formulation for refugee education. GKID1 said that the district political and technical wings were part of the ERP formulation process, through a taskforce and steering committee that included representatives from partners and the OPM (GKID1; NGKIN2; NGKIS1). However, owing to most refugees being women and children, at district level, the emphasis was on primary education, along with secondary and accelerated learning. As a result, HE is not well funded (GKIN1; GKIN5; NGKIN2). Relatedly, there were submissions that donors preferred funding emergency interventions as they had quick returns (GKIN1; GKIN3). Furthermore, GKIN2 and GKIN3 noted that donor cycles were uneven and they viewed HE as a

long-term venture with mainly benefits for the individual. All respondents noted that there are communication avenues at settlement level through which refugees can channel their issues, citing refugee welfare council (RWC) meetings, inter-agency meetings, and the refugee engagement forum (REF) that liaise with the CRRF secretariat. Participant NGKIS2 noted that sometimes people who implement, are not interviewed. However, students also said they were not involved in the ERP consultation and formulation process.

HE policy implementation in the Bidi Bidi settlement and in the HEIs

With no concrete provisions for refugee HE in the ERP and the ESSP, NGOs and HEIs have their own policies that guide HE implementation and support access and resilience. NGKIS3 noted:

> In Bidi Bidi, we support university students with training in peace-building, nation-building, and leadership, without ethnic segregation. We also support them to form clubs to raise awareness on the importance of education. Some students are taken on as interns and have worked as role models during school-awareness seminars. We also offer them career guidance and invite them to relevant local seminars.

NGKIS 3 further noted that, "During the COVID-19 lockdown, we enlisted university students to teach their siblings in their homes." The awareness-raising and mentoring outreaches were corroborated by students who said they go out and sensitize students and communities across all zones in Bidi Bidi and in other refugee settlements like Rhino Camp (SFGD2; SFGD5; SFGD7; SIDI1; SIDI4). NGKIN2 noted that all these activities avail students with platforms to discuss issues, share ideas and build joint resilience and a sense of responsibility.

HE policy formulation and practice and its influence on access and resilience

Overall, students said that policy enables access to HE because refugees are given the same opportunities as nationals. They also said that, owing to the integration approach, which allows refugees to live in open settlements as opposed to fenced camps; they generally interact with and co-exist peacefully with the host communities. Interacting with host communities around the settlement helps students to build resilience by positively adjusting to life as refugees, which they carry to the HEIs and it helps them to settle down and engage in HEI leadership, academic, and extracurricular activities. There are HE scholarship calls, for example, those from Finn Church Aid, Windle International, and Muni University that target only refugees (GKID2; NGKIN2). There is also a bridging program by Cavendish University in partnership with InterAid that enrolls a few refugee students (GKIN5). Relatedly, SIDI1 reported:

> Sometimes they will advertise scholarships for those who have finished diplomas. In my case, I completed O-level, then I did a certificate course. After that, I did a diploma course. That is why the university admitted me directly on a degree course without me going through A-level.

At the scholarship admission stage, there is some affirmative action through additional points if one has done some community work. "I was a member of the water management committee and this was considered during admission" (SIID1). However, although refugee girls and learners with disabilities are eligible for affirmative action, they do not always fill allotted slots (GKIN5; HEIKIN1; NGKIN2; SFGD4). One NGO participant therefore suggested that, "It would be good to have more affirmative action for all refugees regarding accessing loans and assessing entry points" (NGKIN2). GKID2 pointed out that, "Students also get information, communication, and technology (ICT) training, as well as career guidance and counseling. So that once they are awarded a scholarship, they don't drop out."

In terms of access, all three HEIs included in the study, have some structured support, as corroborated by both administrators and students. HEIKIN1 noted that international students pay in dollars and the dropout rate of South Sudanese students is high. The university, however, makes special provision for refugees. "Once OPM writes to us, and we have proof of refugee status and settlement, we waive international fees for refugees and they pay as nationals in local currency" (HEIKIN1). HEIKIN2 said, "When it comes to tuition and accommodation fees, refugees are charged at the same rate as nationals." Other support cited includes partnerships with NGOs, like Windle International, Canadian World University Services, and MasterCard Foundation, as well as embassies that offer comprehensive scholarships, which include intensive pre-university orientation, pocket money, medical cover, and psychosocial and life skills support, and a specific HEI staff, as well as an NGO focal point person, to specifically follow up on the scholars (GKID2; GKIN2; HEIKIN1; HEIKIN2; NGKIS4; SIDI1; SIDI2; SFGD1). However, scholarships that follow partner preferences may, for example, focus only on girls (NGKIN2). Additionally, HEIKIN1 noted that within their individual guidelines, HEIs offer a general orientation program for all students, psychosocial support, cultural exposure, and networking through students' associations, intra- and inter-university cultural and sports galas, among others. However, HEIKIN1 added that females rarely seek assistance directly: "In fact, if a female student has an issue, it is the male who comes and tells us that my sister has a, b, c, d; she needs help." Overall, respondents reported that during implementation and at graduation and beyond, it is evident that HE makes students more resilient and helps them in HEI and post-HEI life (HEIKI1; NGKIN2; SFGD7). NGKIN1 said:

> Recently we had a meeting with the students whom we support at university. Their discussion with us showed that they are focusing on peace-building. The

stories which they were telling us were, "When we are done with education, we wish to change our nation." We also noted that they now select their student leaders based on merit and do not segregate potential leaders based on ethnicity or clans.

Enablers and challenges that intersect with HE policy formulation and implementation

As enablers, many participants mentioned scholarships, HEI, and partner support in the settlement. Students specifically mentioned peace and security, scholarships, good grades (at senior 4 and 6), good health, and serving in community as key enablers. Additionally, they mentioned the desire to break family cycles of no or low education, change mind-sets and inspire others, and dreams of one day returning home and rebuilding South Sudan. Students also noted that the HEI environment enabled them to regain trust and socialize better, owing to the HEI ethics, academic group discussions, students' associations, and sports and cultural galas (SIDI1; SIDI3).

On challenges that intersect with policy formulation and implementation, participants mentioned mainly culture, religious factors, and mind-sets that continue to affect HE access, especially for the girl-child (GKIN2; GKIN4; GKIN5). Ethnic violence, between refugees or hosts and refugees, sometimes flares up in both settlements and HEIs (HEIKIN1; SFGD7, SIDI1; SIDI2; SIDI3; SIDI4). Food, water, sanitation, and hygiene (WASH), lighting, health facilities, and family challenges in settlements are areas that affect resilience (GKIN3; SFGD7, SIDI1; SIDI2; SIDI3; SIDI4). There is no university in the settlement and refugee students cannot commute, yet accommodation and other costs are expensive. On World Refugee Day 2022, refugees said very few organizations offer scholarships, and publicity of opportunities is low (DKIN2; GKID2; NGKIS1; NGKIS2). Relatedly, the process of accrediting and equating papers is expensive and a hindrance to access (GKID3; GKIN3; NGKIN2). NGKIS1 summed it up well when they said there is need to have a national study to properly assess refugee enrolment and all factors affecting it in Uganda.

Students added that they find the scholarship application process challenging, given that they have to work within stipulated deadlines, yet they have limited resources, and there are costs involved. Online application and virtual interviews were introduced owing to COVID-19 but not all students have smart phones, or can access internet or data. Students also compete for scholarships with those from good schools in Kampala (GKID2; SIID1). Many qualify, but there are very few scholarships and no district quotas or general affirmative action, so many drop out (GKIN1; SIDI4; SFGD2). Scholarship calls are not in tandem with the calendar of public universities, which means that admission is mostly to private universities (GKIN2). Many refugee students are above the age of 30, mature, with children and baby-sitters and they need additional support, which may not always be offered (HEIKIN1; GKIN2). Additionally, sometimes funds are remitted late (SIDI1). While

students said that they found life at the HEIs generally good, they cited challenges including lecturers who are not always supportive, and difficulty adjusting to new diets, social life, and dress codes. Furthermore, security, especially for girls, is a challenge, since there is the misconception that South Sudanese have a lot of money (SIDI1; SFGD5). During practical in-community placements, students who interact with communities e.g., those studying agriculture, face challenges with language/communication. The students further noted that sometimes challenges back home in the settlement interfere with life at the HEI. For instance, sometimes family members reach out and ask the students to contribute toward food and basic needs for younger siblings (SIDI2; SFGD3). Regarding long-term resilience in the form of employment, all students decried discrimination, saying, "We are only employed as volunteers or classroom assistants." This was corroborated by NGO and government respondents, who said refugees cannot be registered as teachers because registration requires a national identification number. Therefore, it is mainly NGOs that employ refugees (GKID3; GKIN1; NGKIN2; NGKIN3).

DISCUSSION

How does HE policy formulation influence access and resilience for refugees?

The current study revealed that Uganda recognizes and is committed to refugee rights in education, including HE and in this regard is signatory to several international and regional human rights instruments. Findings further indicate that in principle, in Uganda, HE policy formulation for refugees and host communities is part of the ERP development process, which is largely top-down and state-driven. It involves multiple stakeholders drawn from government, UN agencies, and NGO partners, but with explicit exclusion of HEIs and refugee students throughout the policy-formulation value chain. This is despite findings indicating that HEIs and students have invaluable views and information that could feed into the situational analysis of the ERP, and the opportunities and threats of the ESSP. This information could be useful in filling the gaps in the respective situational and SWOT analyses with regard to HE, thus enriching these two key education documents. Relatedly, the findings indicate that the views of HEIs and students would be of immense value to the HE policy formulation given that it traverses several tiers and interacts with a number of factors. From the study, it is evident that the views and perspectives of HEIs and students can give deeper insight into some of these factors. These include: in-settlement and family challenges; issues of gender and inclusion; cultural and ethnic norms; host community hostility and exclusion; limited scholarship opportunities; pre- and post-admission challenges; and existing coping mechanisms, support systems, and enablers that influence refugee HE access and resilience. Given that the refugee students are the rights holders and beneficiaries of the resultant HE policy, it is important that their diverse and unique experiences are used to inform this

important process that is ultimately aimed at increasing refugee students' HE access and attendant resilience.

The need to employ a multi-stakeholder approach that captures diverse views and perspectives, including those of the vulnerable, such as refugees, who are often represented by the "privileged," resonates with other studies and the intersectionality theory (Crenshaw, 1989). Similarly, there are studies that maintain that in light of the refugee vulnerabilities, poor social protection, as well refugee contexts, any refugee intervention requires varied stakeholder involvement, including that of refugees, that considers the diverse experiences, concerns, and needs (Baker et al., 2019; Naidoo, 2019). Diverse views and perspectives would also help minimize the over-generalization or simplification of local realities that may inform policy formulation, as evidenced by its slight mention in the ERP, without situation-analysis objectives or activities.

The study further revealed that even with the involvement of the government, the UNHCR, and development partners in the ERP policy formulation process, owing to complex factors, in Uganda, HE was slowly pushed to the fringes, with no objectives and activities in the ERP. The government participants and the NGO partners attributed this to factors such as: large numbers of refugees of ECCE and primary school going age; HE being expensive and less appealing to donors as opposed to emergency interventions and basic education; no HEI institutions; and poor and inconsistent donor support for HE. Nevertheless, while they acknowledge these factors that are disabling to HE policy and ultimately refugee access and resilience, there was no strong indication of making a compelling case for including HE more substantively in the ERP, or any mitigation measures to step up resources for HE for refugees. On the other hand, some of the government respondents maintained that for now, HE refugee access can be guided by the supra-national policy documents, which also have guidelines for resilience but do not answer the key question of how HE for refugees will get the much-needed resources. Perhaps this is not a question for Uganda only, given that several studies, for instance, Baker et al. (2019) reveal that owing to socio-economic factors, protracted situations, donor preferences, and other complexities, both global and national policy tend to relegate refugee education, specifically HE, to the fringes, with ramifications for access and resilience.

How HE policy implementation influences access and resilience for refugees

The current study revealed that in Uganda, higher education policy practice is largely fragmented with no generic strategic guidelines or leadership. Relatedly, policy practice takes place primarily in the settlement and the HEIs, largely through individual NGOs, HEIs, and the students, with little or no support from the state. The little support from the government is in the form of waivers, where refugees are charged university dues as nationals. Even then, these waivers are only attainable in some public universities and private universities. Additionally, NGOs and HEIs have their own guidelines within which they manage pre-admission and post-admission

processes and support. As part of their support, the NGOs provide comprehensive scholarship packages, and like HEIs, often proactively engage students through participatory student-centered activities, which largely use "one size fits all" approaches, which cannot adequately cater for all personal factors as well as social and economic circumstances mentioned by the students. These factors include inadequate food and other family challenges, parental neglect, timidity, trust issues, dietary constraints, and child support, among others.

This study further showed that despite the best intentions of the NGOs and HEIs, this fragmented, often generic support has implications for student access and resilience. This is largely because support is limited to only a few, as is the case with the bridging programs. Scholarships offered are also limited, yet scholarships were cited among the main enablers to refugee HE access, owing to their comprehensive nature (e.g., stipends, ICT and psycho-social support, leadership and exposure, medical cover, and internships). Their comprehensive nature was also seen as contributing to enabling students settle in and build the much-needed resilience to continue with HE in a host country. While various participants from across groups and levels concurred that the existing scholarship support was inadequate, there were no specific strategies to close this gap within their contexts and the broader national context. This yet again raised concerns especially in light of the Tertiary Education 15by30 Agenda.

Other factors raised as challenges to access and resilience have root causes that require interventions beyond those offered by the HEIs and NGOs. Among these factors are: cases of host community hostility, peaceful co-existence, equating of academic papers, inadequate food rations, WASH and health provision, in-settlement shelter and living conditions, and exclusion of refugees from the job market. However, from the findings, there is some indication that some of the current HEI and NGO interventions can be used as demonstrable models for replicating and scaling good practices like training in peace-building and promoting cultural networking and peaceful co-existence through various student-centered activities. Studies from the United Kingdom, Europe, and Australia, including this one, show that HEIs and NGOs are the ones that offer most support toward HE access and resilience, again through their autonomous policies and guidelines with limited reach (Détourbe and Goastellec, 2018; Naidoo, 2019; Stoeber, 2019). Nevertheless, there are, however, some studies that show that states can have strong policies that support refugee HE access, as is the case in Belgium and Turkey (Dereli, 2018; Jungblut et al., 2020). Furthermore, the study revealed that on the whole, HE policy practice was supportive, despite being delivered amid challenges, largely arising from situational factors both within the settlements and HEIs.

CONCLUSION AND RECOMMENDATIONS

The study aimed to explore how HE policy formulation and implementation influence HE access and resilience for South Sudanese from the Bidi Bidi settlement

in Uganda. The findings of the study confirmed that while Uganda committed to including equitable refugee education at all levels into its education policy and plans, there is no substantive, comprehensive policy that incorporates and guides HE access and resilience for refugees. Furthermore, the findings show that there are several disabling factors along the HE policy-formulation value chain. Additionally, the study findings indicate that while some of the disabling factors are known to the government and its NGO partners, the views and perspectives of HEIs and refugee students were not sought regarding these and any other factors, during the development of the ERP and ESSP. As a result, without the input of the rights holders and some of the key duty bearers, HE for refugees has no SWOT and situational analyses in the ERP and ESSP, respectively, and is only fleetingly mentioned in the ERP and ESSP without any objectives or activities.

With no set national objectives and activities, most HE interventions and support for refugees are delivered within the autonomous HEI and NGO policies, strategies, and systems. While the findings indicate that these fragmented interventions have a positive influence on refugee access and resilience, there is no indication of how they are synchronized in order to contribute to the realization of the 15by2030 target. The study has thus shown that the HE policy-formulation process and implementation can influence access and resilience with no major disparities for males and females. However, it also shows the need for more research in this area, especially with regard to: (a) the factors within the policy environment; (b) the various stakeholder views and perspectives; and (c) the need to develop comprehensive HE guidelines, objectives, and activities for refugees and host communities within the ERP or a separate policy document. Future research could therefore consider the above three areas with a view to inform the development of a comprehensive HE policy that will guide implementation and help to measure progress of both state and non-state actors in the bid to contribute to the UNHCR target of 15% refugee HE access by 2030.

The study adds to the discourse on how refugee access and resilience can be increased through HE policy formulation and implementation that intentionally include refugees, as the rights holders and HEIs as key HE duty bearers. The current study can leverage further studies in this area at a time when there is a global call to raise refugee higher education access and to leave no one behind. This is especially important for South Sudanese refugees living in protracted situations in the Bidi Bidi settlement in Uganda.

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Realizing the Right to Dignity of Zimbabwean Migrant Women in Botswana: A Practical Approach

Mandipa Goitsemang Machacha[1]

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Abstract

This article delves into the multifaceted human rights challenges confronting migrant women in Botswana, with a particular focus on women from Zimbabwe. The exploration reveals pervasive gender-specific barriers hampering these women's access to essential healthcare and decent employment opportunities. Additionally, it sheds light on their heightened susceptibility to gender-based violence, exploitation, and discriminatory practices in the workplace, all of which collectively infringe upon their fundamental right to dignity. Central to the argument is the imperative to safeguard and uphold the right to dignity for Zimbabwean migrant women. This necessitates the establishment of an environment that not only guarantees access to basic human needs but also fosters a space free from fear and abuse. The article advocates for the implementation of a "Migration with Dignity Framework" in Botswana. This proposed framework emphasizes the critical importance of gender-sensitive policies, robust access to justice mechanisms, non-discrimination initiatives, and the assurance of healthcare, secure working conditions, and adequate housing.

Keywords: migration, gender, human rights violations, discrimination

[1] Centre for Human Rights, University of Pretoria, South Africa. Email ✉ mandipa.machacha@gmail.com

INTRODUCTION

"Migration is an exercise of dignity-seeking"
—Crépeau and Samaddar (2011)

Zimbabwe, once known as the breadbasket of southern Africa (OHCHR, 2019), has faced significant political and economic difficulties in recent times, forcing many women to relocate in search of better prospects. These challenges stem from the country's long history of political turmoil, including the 2017 military coup that ousted former president Robert Mugabe. An atmosphere of fear and insecurity has therefore been created for women who are susceptible to violence and abuse in crisis situations. In addition, the country's hyperinflation and high rate of unemployment have led to widespread poverty and suffering. This situation particularly affects women who are often at the forefront of economic hardship (UN, 2021).

Statistics from 2018 indicate that an estimated 3 to 4 million Zimbabweans, regardless of race, ethnicity, political affiliation, and gender, have undergone phases of both voluntary and forced migration from their country of birth (Chikanda and Crush, 2018). After South Africa, Botswana hosts the largest number of Zimbabwean migrants, due largely to its close proximity and the country's reputation as a stable, prosperous, and peaceful country. In 2017 alone, 807,332 Zimbabweans entered Botswana, with circular migration patterns contributing to multiple entries throughout the year (Government of Botswana, 2017). Despite the desperate conditions under which migrant women flee from Zimbabwe, they face a range of challenges in Botswana. This includes discrimination in the form of xenophobia from both state and non-state actors (Campbell and Crush, 2015) and limited access to basic services and decent employment opportunities (Mutenheri, 2019). The literature also confirms that they experience gender-based violence (Matose et al., 2022), as well as a lack of legal protection and difficulties in accessing healthcare (Moroka and Tshimanga, 2009). In addition, their status as migrants often renders them vulnerable to immigration-related mistreatment, such as arbitrary deportation and detention (Galvin, 2018). They may also face social isolation and a lack of support networks (Campbell and Crush, 2012).

In cases such as these, it is crucial for states to uphold the rights of women as part of their obligation to respect, protect and fulfill the human rights of all who reside within their borders. The right to dignity is a fundamental human right that applies to all individuals, regardless of their race, gender, religion, or migration status. Despite this, migrant women in particular often face unique challenges and forms of discrimination that threaten their dignity and undermine their basic human rights. It is therefore important to examine the intersection of migration and dignity and the ways in which the right to dignity can be safeguarded for migrant women.

In this way, the Migration with Dignity Framework (Daly et al., 2021) offers practical solutions to the challenges faced by migrants and provides guidance for governments, policymakers, and non-governmental organizations on how to ease

the transition of migrants into new surroundings, enhance their well-being, and protect their rights. This article critically assesses the circumstances of Zimbabwean migrant women in Botswana concerning their right to dignity and advocates for the urgent implementation of the Migration with Dignity Framework to address their challenges effectively.

METHODOLOGY

The study adopts a qualitative and desk-based methodology, employing an extensive literature review to investigate the human rights challenges confronting migrant women in Botswana, with a specific focus on individuals from Zimbabwe. The qualitative approach facilitates an in-depth analysis, while the desk-based research involves a comprehensive review of relevant literature, including academic articles, reports, and legal frameworks. It prioritizes four interconnected themes – healthcare access, employment conditions, gender-based violence, and discrimination. The synthesis of findings contributes to a holistic understanding of the fundamental right to dignity for migrant women in Botswana. The methodology employs an iterative analysis approach, refining themes and identifying patterns throughout the review process, aiming to provide a coherent exploration of the identified human rights challenges and their implications for the preservation and violation of human dignity in the context of Zimbabwean migrant women in Botswana.

MIGRATION IS A GENDERED EXPERIENCE

Migration is a complex and multi-layered process that affects individuals and communities in various ways. It is therefore important to acknowledge from the outset that migration is not a gender-neutral experience, and that women and men often face different challenges, risks, and opportunities in the context of migration. In this sense, migration can be considered a gendered experience (UN Women, n.d.).

Firstly, migrant women are often more vulnerable to exploitation and abuse during the migration process. In many situations, migrant women are commonly subjected to human trafficking, forced labor, and sexual violence, especially if they are not adequately protected by the laws of the destination country (IOM, 2009). Moreover, migrant women often work in low-skilled, low-paid, and insecure jobs such as domestic work, care work, and sex work, which renders them more vulnerable to exploitation and abuse in the workplace (Flynn, 2016).

Secondly, migration can have a significant impact on the family and on women's gender roles. Women who migrate are often the primary caretakers of their families and migration can disrupt these roles. This leads to a lack of care for children, elderly family members, and other dependents (Gamburd, 2000). It can also result in an increased burden of care work for women who stay behind, as well as increased stress and hardship for women who migrate and are unable to fulfill their care-related responsibilities (De Jong, 2000).

Thirdly, migration can have a significant impact on the health and well-being of women (Adanu and Johnson, 2009). Women who migrate are often exposed to new and potentially harmful environments, such as poor housing conditions, inadequate nutrition, and limited access to healthcare services (Rizwan et al., 2022). Moreover, migrant women are often unable to access health services due to a lack of medical insurance or legal status. This can result in a range of health problems, including sexually transmitted infections (Careaga, 2009), reproductive health issues (Chawhanda et al., 2022), and mental health problems (Delara, 2016).

It must, however, be noted that there is a great deal of research that confirms that migration can be a potentially beneficial experience for women (Kenny and O'Donnell, 2016). This relocation can at times offer economic advancement and financial stability, improved access to education and job opportunities, personal growth through exposure to new cultures and people, and a decrease in gender-based violence, as they escape harmful situations (Bachan, 2018). However, migrant women still often face numerous obstacles and discrimination due to the intersections of their multiple identities and social dynamics, such as race, ethnicity, language, class, religion, and gender. This intersectionality means that it is challenging for these women to receive support, protection, and opportunities in host countries. This further complicates their already difficult experiences (Domaas, 2021).

GENDERED DRIVERS OF MIGRATION FROM ZIMBABWE: LEAVING "UNDIGNIFYING" CONDITIONS BEHIND

It is in the context of the gendered nature of migration that leading literature suggests that the challenges causing people to leave Zimbabwe have affected women more than men, particularly in terms of poverty, health, education, and economic opportunities. For instance, whereas poverty remains a significant challenge for all in Zimbabwe, a longitudinal study on poverty in the country found that women-headed households are more likely to experience multi-dimensional poverty than male-headed ones (Benhura and Mhariwa, 2021). In this regard, researchers found that 16.8% of male-headed households in Zimbabwe were multi-dimensionally poor, whereas 17.3% of female-headed households experienced multi-dimensional poverty in the same year. In later years, this situation worsened for women, as in 2017 the results were 13.3% and 19% respectively, with female-headed households facing greater multi-dimensional poverty than male ones.

In Zimbabwe, women also face a disproportionate burden of poor health. For instance, according to the United Nations Population Fund (UNFPA, n.d.), the maternal mortality rate is high, with 363 deaths per 100,000 live births (UNFPA, n.d.). In addition, in 2020, whereas the rate of HIV infection among adults was found to be 12.9% – equivalent to about 1.23 million adults in Zimbabwe who are living with the virus – the study showed that women had a higher rate of HIV infection

when compared to men, with 15.3% of women being infected compared to 10.2% of men (US Embassy, 2020).

In terms of literacy, in 2016, Zimbabwe reported the highest adult literacy rate (96%) in the Southern African Development Community (SADC) region. However, when examining the data by gender, it revealed a significant gender gap, with women constituting 60% of the illiterate adult population (MEWC, n.d.).

A study by Nyagadza et al. (2022) found that Zimbabwean women face difficulties in getting formal jobs. In 1999, the Labor Participation Rate (LPR) in Zimbabwe was 69.8% for both men and women. However, women made up only 90% of the men's participation rate. The study showed that women tended to work more in informal jobs, making up only 22.3% of those in paid employment in 1999. This percentage increased only slightly to 23.9% in 2002. The study also highlighted that women had limited representation in higher-level job sectors like legislators, senior officials, and managers, holding only 18% of these positions.

Given the gender-specific difficulties faced in Zimbabwe, it is not surprising that Zimbabwean women are frequently on the move. In contrast to the overall female migration rate of 15% in the SADC region, women constitute a significant 44% of the migrant population departing from Zimbabwe (Dodson et al., 2008).

DIGNITY AND MIGRATION

The concept of dignity holds a central position in human rights discussions, serving not only as a fundamental right but also as the bedrock for other rights (Steinmann, 2016). As noted by the International Court of Justice (ICJ), "Human dignity hovers over our laws like a guardian angel; it underlies every norm of a just legal system and provides an ultimate justification for every legal rule" (Zareef v. State, 2021).

The significance of dignity is underscored in key human rights documents, including the Universal Declaration of Human Rights (UDHR) (UN, 1948), emphasizing that all individuals are born free and equal in dignity and rights. The Banjul Charter (OAU, 1981), a pivotal African human rights document, similarly stresses the right to respect and recognition of dignity. Numerous human rights instruments, such as the International Convention Against Racial Discrimination (ICERD) (UN, 1965) and the Convention Against All Forms of Discrimination Against Women (CEDAW) (UN, 1979), also highlight dignity in their preambles, emphasizing its foundational role for other rights.

Scholars interpret dignity in two key dimensions: as the intrinsic value of every human being, as articulated in the UDHR, and as the conditions necessary for a dignified life, encompassing access to education, freedom of movement, food, and equality. Dignity, as emphasized by Steinmann (2016), legalizes the recognition and respect of humanity, closely aligning with the African concept of *Botho*/ubuntu, signifying humanness or personhood in Bantu languages (Rapatsa and Makgato, 2016).

In the context of migration, the UN Special Rapporteur on the human rights of migrants, François Crépeau aptly assert that "dignity has no nationality" (UN, 2011). This highlights that dignity is not contingent on citizenship and remains an intrinsic part of an individual's being regardless of their location or the actions of authorities. As a symbol of equality, dignity demands that migrants receive equal treatment and regard, irrespective of their citizenship status, emphasizing equal rights to quality of life, access to services, and security.

Crépeau and Samaddar (2011) further argue that migration is often a "dignity-seeking exercise" prompted by undignified conditions in migrants' home countries, such as poverty, violence, limited opportunities, and discrimination. Understanding migrants' rights necessitates recognizing that all individuals, regardless of circumstances, are entitled to dignity.

However, migration can have a profound impact on an individual's sense of self-worth and their ability to lead a dignified life. It can either empower individuals with new opportunities and freedoms or strip them of their dignity through discrimination, exploitation, and a lack of basic human rights. Migrants may face dangers, vulnerability to trafficking, and violation of their basic human rights during their journey, leading to feelings of powerlessness and loss of dignity.

In their new host countries, migrants may encounter challenges such as discrimination, xenophobia, difficulties in finding employment and housing, and limited access to basic services. The inability to provide for themselves and their families can contribute to stress and further undermine their sense of dignity.

Yet migration can also be a pathway to empowerment and the restoration of dignity. By escaping oppressive situations and poverty, migrants can access new opportunities, improving their quality of life. This can result in increased self-esteem and a greater sense of control over their lives, contributing to a restoration of dignity.

MIGRANT WOMEN'S RIGHT TO DIGNITY UNDER INTERNATIONAL LAW

Migrant women's inherent right to dignity is recognized by various international legal standards and conventions. Article 1 of the UDHR (UN, 1948) states that "all human beings are born free and equal in dignity and rights." This principle is further reinforced by article 3 of the UDHR that declares that "everyone has the right to life, liberty, and security of person." These provisions establish the foundation for the protection of the dignity of all individuals, including migrant women.

The International Covenant on Civil and Political Rights (ICCPR) also affirms the right to dignity for all individuals, including migrant women. Article 7 of the ICCPR prohibits "torture or cruel, inhuman, or degrading treatment or punishment" (UN, 1996). This includes acts of sexual violence, exploitation, and abuse which are often experienced by migrant women, affronting their dignity.

In addition, CEDAW provides specific protections for women's rights and dignity. In recognizing the specific vulnerabilities faced by migrant women, the CEDAW Committee – the body that oversees the implementation of the convention –

has drafted two general recommendations delineating the rights of migrant women in particular. The committee in both General Recommendation 26 on Migrant Women Workers and General Recommendation 38 on Trafficking in Women and Girls in the Context of Global Migration underscores the importance of the dignity as essential to recognizing the human rights of migrant women. These recommendations require states to take all appropriate measures to curb the exploitation of women, including in the context of migration. This involves introducing measures to prevent trafficking, forced labor, and sexual exploitation (UN, 2008, 2020).

Furthermore, the Banjul Charter and its Women's Protocol (the Maputo Protocol) both recognize the importance of protecting the rights and dignity of African migrant women. Article 5 of the charter requires states to guarantee the protection of the fundamental rights of *all* individuals, including the right to dignity and freedom from exploitation. Article 3 of the Maputo Protocol additionally states:

> Every woman shall have the right to dignity inherent in a human being and to the recognition and protection of her human and legal rights … [and obliges African states to] … adopt and implement appropriate measures to prohibit any exploitation or degradation of women (AU, 2003).

MIGRANT WOMEN'S RIGHT TO DIGNITY UNDER THE BOTSWANA DOMESTIC LEGAL SYSTEM

Botho and dignity

Botho is a Setswana and African cultural concept[2] that refers to a set of values, behaviors and attitudes that promote respect for oneself and others. It is a concept that is deeply rooted in African culture and is seen as central to the development of healthy relationships and social harmony (Samkange and Samkange, 1980; Dolamo, 2013; Gareegope, n.d.). This cultural concept emphasizes the importance of balancing individual rights with collective responsibilities and seeks to promote the well-being of the individual and the community as a whole. *Botho* encompasses a wide range of values, including honesty, responsibility, compassion, and generosity. In Botswana, *Botho* is present not only in unwritten customs and practices but is also codified in the country's development plans, such as Vison 2016 (Government of Botswana, 1996) and Vision 2036 (Government of Botswana, 2016).

Dignity and *Botho* are closely related concepts that are complementary to each other. *Botho* is considered a key component of human dignity, as it promotes values and behaviors that enhance the self-worth and respect of individuals. At the same time, dignity, which recognizes the inherent worth and value of an individual, regardless of their circumstances or background – can be regarded as a cornerstone of *Botho*, as it incorporates the values of community, respect for others, and provides

[2] Known as *ubuntu* in South Africa, *ujamaa* in Tanzania, *uhuru* in Kenya, *consciencism* in Ghana, *humanism* in Zambia, *negritude* in Senegal, and *hunhu* in Zimbabwe.

a foundation for the development of strong relationships and social unity. In this way, *Botho* recognizes that human dignity is a keystone of personal and social well-being and seeks to promote this value in all aspects of life.

Botho, as a principle, can serve as a guide to the treatment of migrants. Sebola (2019) states that the ubuntu (*Botho*) philosophy places emphasis on a human being as a being who should be treated with humanity and dignity in all matters. Furthermore, Sebola (2019) argues that:

> The manner in which African countries seem to have neglected the African life view (ubuntu) makes them fail to treat their African fellows with the dignity they deserve (my emphasis).

The application of the dignity approach in the context of gendered migration, specifically for Zimbabwean migrants in Botswana, holds significant implications. By considering how the human dignity approach aligns with the *Botho* principle, Botswana gains a nuanced understanding of how migrants should be treated with humanity and dignity within its cultural context.

The Constitution of Botswana and dignity

The Constitution of Botswana (Government of Botswana, 1966) was enacted in 1966 and has since been amended several times to reflect the changing needs of the country. While the Botswana Constitution does not explicitly mention the right to dignity, its inherent protection can be deduced through Section 3(c) of the Constitution. This section emphasizes that every person in Botswana is entitled to fundamental rights and freedoms, which include the right to life, liberty, security of the person, and protection of the law; freedom of conscience, expression, assembly, and association; as well as protection for privacy, home, property, and safeguarding against property deprivation without compensation. The inclusivity of this provision implies the recognition and safeguarding of an individual's dignity. By ensuring an individual's right to privacy, security, and protection from arbitrary deprivation, Section 3(c) implicitly upholds the inherent dignity of all in the country's borders, and implies that even though the term "dignity" is not explicitly mentioned, the Constitution inherently preserves and respects the fundamental value of human dignity through its broad framework of rights and protections.

The courts in Botswana and dignity

Recently, courts in Botswana have started relying on arguments based on human dignity in cases concerning basic human rights, such as equal protection. The courts in Botswana have used the right to dignity to interpret, among other things, the rights of indigenous peoples of access to water and rights to privacy of LGBTQIA+ persons.

Mosetlhanyane v Attorney-General of Botswana

This 2011 case involved a group of Basarwa (indigenous San peoples) who were challenging the government's decision to refuse to allow them to recommission – at their own expense – a borehole in their community, thereby thwarting their right to clean, safe, drinking water. As part of their submission, the applicants argued that their fundamental right to have access to water was linked to their right to human dignity. This was important because access to a reliable source of water was bound to significantly improve both their physical and mental state of health, particularly of the young, the elderly, and the infirm, all of whom are citizens of Botswana whose well-being should have been of concern to the government.

They pointed out that people in the reserve were suffering from multiple health issues, including constipation, headaches, and dizziness, due to their lack of energy and sleep. Without adequate food and water, mothers were unable to feed their children and they could not even clean themselves. That was further exacerbated by the fact that the government was actively providing water for animals in the reserve, but not for the applicants. That made them feel lowly and degraded as their need for water was not respected and their human dignity was disregarded (Applicants' Submissions, para. 80; Applicants' Submissions, paras. 83–84).

Letsweletse Motshidiemang v. the Attorney-General (LEGABIBO as amicus curiae)

This 2019 case was brought by a gay man who challenged the provisions of the Botswana Penal Code, which criminalized same-sex sexual intercourse (Botswana Penal Code, sec. 164, 167), on the grounds that they infringed his right to dignity and liberty and to be free from discrimination. The High Court in this case upheld the views expressed in the previous *Rammoge* (2016) and *ND* (2017) cases that all individuals, including those in the LGBTQIA+ community are entitled to have their dignity respected. The court stated that protection of dignity is the foundation of all other rights, and the state has a duty to promote human rights, tolerance, acceptance, and diversity.

The court recognized that the individual's gender identity and sexual orientation are central to their right to dignity, and that denying them the right to express themself in a way they feel comfortable, violates their dignity and self-worth. The laws criminalizing consensual same-sex sexual acts have a negative impact on an individual's right to dignity, as they affect their self-respect and well-being (Esterhuizen, 2019). Reiterating that, the Court of Appeal in *Rammoge* stated that dignity is the cornerstone of all other rights in the Constitution and that denying someone their humanity is a denial of their dignity and the protection of their dignity.

The courts in Botswana, through cases like *Mosetlhanyane* and *Letsweletse Motshidiemang*, have recognized the centrality of dignity. These rulings established that denial of access to essential resources, like water, and the criminalization of

consensual same-sex relationships violate individuals' dignity, forming the bedrock for other rights.

The legal discourse on dignity sets the stage for understanding the challenges faced by Zimbabwean migrant women in Botswana. The connection lies in recognizing that the denial of essential resources, legal rights, and equal treatment, as established by the courts, directly impacts the lived experiences of migrant women, providing a framework to explore their specific struggles and vulnerabilities.

ZIMBABWEAN MIGRANT WOMEN IN BOTSWANA AND THEIR RIGHT TO DIGNITY

This section examines the literature on the lived experiences of Zimbabwean migrants that threaten to afront their right to dignity. It examines the situation of migrant women in relation to their security of persons, their access to healthcare and decent economic opportunities, and how this has an impact on their right to dignity. This section cites only a few poignant examples and is not inclusive of all the issues facing migrant women in Botswana.

Zimbabwean migrant women in Botswana are at risk of sexual exploitation, gender-based violence and trafficking in transit

International law recognizes the right to security of persons as a fundamental human right (UN, 1966). which is protected by various international treaties and conventions.[3] This right to security of persons is defined as the right of every individual to be free from fear and to live in safety. This includes protection from physical harm, as well as from psychological and emotional abuse, acts of violence such as murder, assault, and rape, and other forms of abuse such as domestic violence and human trafficking (UN, 2014).

The right to security of persons is closely tied to the right to dignity, as it encompasses the idea that every person should be protected from physical harm, threat, and intimidation and should be able to live their lives without fear of violence or abuse. In this way, the right to security of persons is essential for the preservation of human dignity, as it ensures that individuals can exercise their other rights and freedoms without fear of harm or retaliation.

According to the Human Rights Committee, the right to security of persons extends to various vulnerable groups, including migrant women who are particularly vulnerable during their irregular migration journeys. Despite this, research has shown that migrant women in irregular situations commonly encounter violations of their right to security of persons, such as sexual assault, psychological abuse, and physical violence.

[3] Universal Declaration of Human Rights (UDHR), art. 3; International Covenant on Civil and Political Rights (ICCPR), art. 9; American Convention on Human Rights, art. 5; African Charter on Human and Peoples' Rights, art. 5; European Convention on Human Rights, art. 5; Inter-American Convention to Prevent and Punish Torture, art. 5; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), art. 2; International Convention for the Protection of All Persons from Enforced Disappearance, art. 9; Rome Statute of the International Criminal Court, art. 7(1)(d).

A study by Matose et al. (2022) on the vulnerabilities of irregular female migrants at Plumtree border post in Zimbabwe found that migrant women were at a disproportionate risk of robbery and violence, including sexual assault and rape by armed robbers and men. The study also documented instances of psychological and emotional abuse, such as being called derogatory names and being subjected to gender-based violence. These findings indicate that migrant women in Botswana face grave human rights violations due to their intersecting vulnerabilities related to their gender and irregular status.

Zimbabwean women face challenges in legally entering Botswana due to strict immigration policies, leaving them susceptible to human trafficking (Borgen Project, 2021). Enablers, such as *malaichas* and *gumagumas*, who assist with illegal border crossings, have been identified as both smugglers and traffickers. Zimbabwean women are often promised job opportunities but end up falling victim to trafficking. There have also been cases of girl children being trafficked with the cooperation of their families to become domestic workers in Botswana (Chakamba, n.d.). The United States *Trafficking in Persons Report for 2021* states that the Government of Botswana initiated three trafficking investigations, all involving Zimbabwean traffickers exploiting Zimbabweans in labor and sex trafficking (US Department of State, 2021). The 2022 US report highlighted that the authorities in Botswana have inadequate procedures for identifying and addressing trafficking cases involving migrants, especially women who are at a greater risk of trafficking (US Department of State, 2022). In this regard, this report considers trafficking in persons to be a "gender-based phenomenon" with an estimated 79% of all detected victims of trafficking being women and children, whereas the human traffickers themselves are "overwhelmingly male."

This glaring insufficiency underscores the urgent need for comprehensive measures to safeguard the dignity and rights of Zimbabwean migrant women in Botswana, ensuring their protection from such egregious violations.

Zimbabwean migrant women of a reproductive age with specific health needs

The Constitution of Botswana (Government of Botswana, 1966) and the Public Health Act (Government of Botswana, 2013) do not explicitly mention the right to health. However, the right to health for migrants can be inferred from provisions in the Constitution's Bill of Rights on the right to life, the right to dignity, protection from cruel and degrading treatment, and protection from discrimination, as the Bill of Rights applies to everyone residing in the country, regardless of citizenship.

The right to health is a fundamental aspect of human dignity, as it provides individuals with the necessary resources and conditions to lead fulfilling and productive lives. This right is not only about access to basic medical care, but also encompasses the broader aspects of physical and mental well-being, such as clean water, nutritious food, safe working conditions, and a healthy environment. Therefore, when people are unable to access the resources and services needed to

maintain good health, it undermines not only their individual dignity but also their adequate standard of living. Thus, the right to health helps to protect and promote the inherent dignity of every person. It recognizes that good health is a fundamental aspect of human life necessary for a person to lead a dignified existence.

Despite this, a study by Moroka and Tshimanga (2009) showed that Zimbabwean cross-border migrants in Botswana – mainly women – face barriers in accessing healthcare services. The study concluded that many undocumented migrants do not have access to health services, which can lead to increased health risks and vulnerabilities. It is in this context that the National Strategic Plan to Reduce Human Rights-Related Barriers to HIV and TB Services: Botswana 2020–2025 found that only 27% of non-citizens living with HIV in Botswana are receiving antiretroviral (ARV) therapy, which represents one-third of the average national coverage rate. Barriers to accessing HIV services include legal and policy barriers, immigration detention conditions, stigma, and discrimination.

A study of six southern African countries also indicated that inequalities exist in the use of sexual and reproductive health services between migrants and non-migrants. Migrants face barriers such as the fear of deportation, financial constraints, a lack of health information, language barriers, and discrimination by service providers. A study by Keitshokile et al. (2014) confirmed that migrants in Botswana have limited access to maternal healthcare services, putting them at higher risk of maternal morbidity and mortality, which violates their right to health and life.

This underscores the imperative to address these barriers comprehensively, ensuring that the right to health is effectively upheld for all individuals, regardless of their migration status.

Zimbabwean migrant women in Botswana in precarious low-wage labor in the informal economy

The right to decent work is a basic human right recognized by various international organizations, including the International Labor Organization (ILO)[4] and the Banjul Charter. Decent work refers to the opportunity for all individuals to work in conditions that are safe and secure and provide fair remuneration for their efforts – a fundamental human right essential for realizing their right to dignity. This right is also enshrined in the UDHR (UN, 1948), which recognizes that everyone has the right to work, to free choice of employment, to just and favorable conditions of work, and to protection against unemployment.

The realization of the right to decent work is critical for the realization of the right to dignity. Decent work provides individuals with the opportunity to participate

[4] International law prescribes that the following eight fundamental conventions, all of which have been ratified by Botswana, apply to migrants, regardless of migration status: Worst Forms of Child Labour Convention, 1999 (No. 182); Minimum Age Convention, 1973 (No. 138); Discrimination (Employment and Occupation) Convention, 1958 (No. 111); Equal Remuneration Convention, 1951 (No. 100); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Abolition of Forced Labour Convention, 1957 (No. 105); Forced Labour Convention, 1930 (No. 29).

in the economy, which is essential for their social and economic well-being. It enables individuals to earn a living and support themselves and their families – fundamental to human dignity. Decent work also contributes to the development of human capabilities and promotes self-esteem and self-worth. It empowers individuals to use their skills and talents, and to contribute to the growth and development of their communities. It also provides a sense of purpose and meaning to individuals' lives, which is crucial for their psychological and emotional well-being.

Furthermore, decent work helps to reduce inequalities and discrimination in the workplace. It ensures that everyone has access to the same opportunities and is treated fairly and equally, regardless of their race, gender, or other personal characteristics. This promotes social cohesion and a sense of community, which is critical for the realization of human dignity.

However, for migrants this right is limited in many countries, including Botswana. In Botswana, foreign workers are required to obtain an employment visa to work in any sector; however, many Zimbabwean migrant women face difficulties in obtaining the proper documentation. This is due to a combination of factors, such as the high demand for Zimbabwean migrant workers, who are often regarded as "undemanding and docile," (Mutenheri, 2019) and the bureaucratic processes involved in obtaining proper documentation.

As a result of these difficulties, many migrant workers are forced to sign "quasi-legal" contracts that often impinge on both their labor rights and their rights as residents in the country. This reduces their bargaining power with employers and leaves them vulnerable to exploitative work conditions. Zimbabwean migrant workers have reported being forced to work long hours without a wage increase, which is contrary international labor laws. In addition, they fear being reported to authorities or losing their jobs, which puts them in a vulnerable position relative to their employer (Mutenheri, 2019).

The issue of Zimbabwean migrant workers in Botswana is particularly relevant in the context of domestic work. Zimbabwean women are conspicuous as domestic workers in Botswana, especially as more and more Batswana women in the country are entering the formal sector and require domestic workers to take care of their households. Some skilled Zimbabwean women may take up domestic work as a means of survival, and this often leads to them being underemployed.

Regulations contained in the Botswana Employment Act (Government of Botswana, 1982) restrict domestic work to citizens of the country, which means that non-Batswana individuals, including Zimbabwean women, are irregularly employed. Given that domestic work is traditionally very feminized, this provision ultimately has a disproportionate impact on migrant women in particular. This irregular situation has been found to open up the possibility of exploitation by some families who abuse their domestic workers and subject them to servitude – a severe form of labor exploitation. This is well documented in Botswana by various organizations, despite the fact that article 8 of the ICCPR (UN, 1996) prohibits slavery or servitude.

A 2022 treaty body report by the Committee on the Elimination of Racism noted that some Zimbabwean women who migrated to Botswana voluntarily were subjected to involuntary domestic servitude by their employers (OHCHR, 2022). Families sometimes employed domestic workers without proper work permits, failed to pay adequate wages, and restricted or controlled the movement of their employees. Another study detailed that Zimbabwean women cannot report sexual abuse they suffer at the hands of their employers because they fear detention and deportation for violating immigration and labor laws (Baputaki, 2007).

This underscores the urgent need to address the rights and working conditions of Zimbabwean migrant women in Botswana to safeguard their right to decent work and, consequently, their right to dignity.

MIGRATION WITH DIGNITY FRAMEWORK: *BOTHO* IN MIGRATION

International law establishes a framework for safeguarding the human rights of migrants, offering guidelines through treaties and standards. However, the effective implementation of these standards can be challenging without precise clarification from treaty bodies. Addressing this gap, the Dignity and Migration Framework (UNDP, 2021) provides a comprehensive solution by offering explicit guidance on the practical application of these human rights provisions.

Developed by Daly et al. (2021), the Migration with Dignity Framework represents an innovative and human-centric approach to migration. It places a significant emphasis on the paramount importance of dignity throughout the migration process, aiming to ensure that migrants are treated with respect and provided the necessary support to maintain their human dignity.

The Migration with Dignity Framework was developed to benefit migrants, addressing the unique challenges and vulnerabilities encountered during their migration experiences. This framework places a particular focus on the dignity of migrant women, acknowledging the distinct challenges they face and providing targeted support.

In contrast to broad international legislation, the Migration with Dignity Framework stands out as a practical and nuanced guide for the implementation of human rights provisions. While international laws set overarching standards, the framework provides clear, context-specific guidance, ensuring a more effective and tailored approach to the protection of migrants' rights.

An added advantage is that compared to domestic laws, which may vary significantly across countries, the Migration with Dignity Framework offers a unified and universal approach rooted in the values of *Botho*. By prioritizing critical needs, ensuring safety, and facilitating access to essential services, the framework seeks to promote a compassionate and just migration policy and practice. The framework therefore serves as a bridge between international standards and practical application, tailored specifically for the well-being and dignity of migrants, and especially women, while aligning with the cultural values of *Botho*.

The framework is based on a set of core principles that focus on the rights and well-being of migrants. These principles include the right to freedom of movement, right to security of persons, right to equality and non-discrimination, and right to basic quality of life, among other rights. In summary, the key components of this framework include:

- the right to equal worth, including access to benefits, services, and legal protections;
- the right to a reasonable quality of life, including rights related to employment, housing, and food;
- the right to access legal services; and
- civil and political rights, including freedom of speech, religion, assembly, and political participation.

By integrating these principles into migration policies and practices, the framework aims to create a more just and humane migration system that upholds the dignity of all migrants, including women.

The first principle of the framework is movement, which recognizes the right of all individuals to choose when to leave and when to return. This principle consists of four parts: the freedom to leave one's country of origin, the freedom to return, admission to a foreign country, and freedom of movement within the country of origin or destination. For migrant women, this means being able to migrate safely and make informed decisions about their migration without fear of exploitation or violence. The authors emphasize that freedom of movement is crucial to human dignity and that immigration policies should be designed and implemented with respect for each person's inherent and equal worth.

The second principle is security, which aims to protect migrants, including women, from sexual violence, trafficking, slavery, forced labor, and abusive detention. Zimbabwean migrant women in Botswana are particularly vulnerable to these forms of exploitation, which can have long-lasting physical, emotional, and psychological effects. The framework seeks to prevent and respond to gender-based violence and exploitation, emphasizing that a person's security is linked to their dignity.

The third principle is equality, which recognizes the right of all individuals to be treated without discrimination based on gender, nationality, or legal status. Zimbabwean migrant women face discrimination and marginalization in Botswana, which limits their access to services and employment opportunities. The framework proposes that such discrimination is a violation of dignity, as equality is intrinsic to the idea of human dignity.

The fourth principle is the right to a reasonable quality of life, which recognizes the right of all individuals to access decent employment, housing, and food. While housing and food were not discussed in the case study, it can be inferred that migrants face challenges in accessing these rights. The framework emphasizes that states must

provide migrants with access to basic needs, including employment and housing protections, as they are necessary conditions for a dignified life.

The fifth principle is access to services, which recognizes the right of all individuals to have access to legal services and justice. The authors stress the importance of access to legal services, particularly for migrants who do not have the right to vote and must rely on the judiciary to claim and protect their rights. States must ensure that migrants have access to legal services so they can protect themselves.

The sixth principle is civil and political rights, which recognizes the right of all individuals to freedom of speech, religion, assembly, and political participation. Migrant women often face restrictions on these rights, limiting their ability to advocate for themselves and their communities. The framework highlights the need for migrants, including women, to access these rights so they can speak for themselves in their countries of destination.

PRACTICAL APPROACHES

Botswana can use the framework to protect migrant women's rights by implementing the following practical measures:

- Developing gender-sensitive policies and laws: Botswana should ensure that its migration policies and laws are gender-sensitive, considering the specific challenges and vulnerabilities faced by migrant women.
- Providing access to justice: Botswana should provide migrant women with access to fair and impartial legal processes, including access to legal representation and the ability to report abuse and exploitation.
- Protecting against discrimination: Botswana should take steps to prevent and address discrimination against migrant women, including education and training programs for law-enforcement officials, employers, and service providers.
- Ensuring access to healthcare: Botswana should provide migrant women with access to affordable and quality healthcare services, including reproductive-health services in order to address their specific health needs.
- Supporting safe and dignified working conditions: Botswana should work to ensure that migrant women have access to safe and dignified working conditions, including protection from exploitation and abuse, and access to fair wages and benefits.
- Providing safe and accessible housing: Botswana should ensure that migrant women have access to safe and accessible housing, including emergency shelters for victims of violence and exploitation.

CONCLUSION

The migration experience in Botswana can be a difficult and challenging one for all migrants; however, for migrant women, these difficulties are often exacerbated because migration is a gendered experience. The unique challenges faced by women, in comparison to their male counterparts, highlight the need for a nuanced and gender-sensitive approach when addressing the needs and rights of migrants in Botswana. Whether it is access to healthcare or employment opportunities, migrant women often face additional obstacles that can further complicate their already challenging experiences. The reality is that migration is a complex and multifaceted issue, and it is essential to understand how gender influences and shapes the experiences of migrants in order to develop effective and equitable policies and programs.

Migrant women from Zimbabwe are particularly vulnerable and they often face a range of challenges related to their migration status. For example, they may be subjected to gender-based violence, exploitation, and discrimination in the workplace. They may also experience difficulties in accessing basic services such as healthcare, due to their status as migrants.

In light of these challenges, it is crucial that the right to dignity of Zimbabwean migrant women be upheld and protected. This means ensuring that they have access to basic human needs, such as food, shelter, and healthcare. It also means creating an environment in which they can live free from fear and exploitation and where they are treated with respect and dignity. This can be achieved through a range of measures, including the provision of legal and social services, and the development of policies that address the root causes of discrimination and violence against migrant women.

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