Refugee status determination in southern Africa

Michael S Gallagher

Lack of access to legal counsel and lengthy delays in procedures continue to undermine refugee status determination procedures in southern Africa.

From 2002 to 2007 the number of refugees, asylum seekers and other persons of concern in the ten countries which constitute the geographical south of Africa has steadily declined. Voluntary repatriation to Angola, the Grand Lac countries and the Democratic Republic of Congo accounted for most of this decline. Moreover, as conditions of stability returned to former refugee producing countries in the region, there was a concomitant drop in the number of new asylum seekers.

In many of the countries in the region this has resulted in a sharp decline in the need for refugee status determination (RSD) procedures. However, two countries in the region – Angola and South Africa – continue to experience significant numbers of new asylum seekers each year. Angola received 1,471 new applications in 2007 while South Africa received 45,637, representing over 80% of all asylum applications in the region. Both countries have a significant backlog of pending asylum applications. Unlike regions in eastern and northern Africa where RSD is conducted by UNHCR, each of the countries in the region – with the exception of Swaziland where refugee status is determined jointly by the government and UNHCR – conducts its own RSD.

Legal limbo

Angola and South Africa present different models of refugee status determination but share two common traits. The first is that access to legal representation at the initial phases of the application process is severely limited, if not non-existent. The second, which may be partially a consequence of the first, is that asylum seekers in each country need to wait years before receiving a decision on their applications. In each country they exist in a quasi-legal limbo which leaves them prey to exploitation by nationals as well as by police and other government officials.

In Angola the asylum seeker completes an application for asylum and is subsequently interviewed by an immigration officer, receiving a receipt for the application which permits them to remain in Angola pending adjudication. Immigration then conducts some inquiry into the application and eventually issues a report. Crucially, asylum applicants are not represented at the initial determination; although some may receive assistance in filling in the application, they are not represented by counsel at the interview.

In theory the immigration report should be completed within 180 days – the duration of the validity of the asylum seeker’s receipt. The receipts are renewable, and generally it takes more than a year between the time of the initial interview and the completion of the report.

The report and the application are examined by COREDA, the Angolan Refugee Committee, comprising delegates from several Angolan ministries. A delegate from UNHCR attends these status determination meetings, with observer status. If the application is denied the asylum seeker has twenty days in which to lodge an appeal. The appeal, however, is heard by COREDA again and not by an independent appeals tribunal. Recently UNHCR has begun a pilot project which provides legal assistance to appellants as well as assistance in preparation of the initial application. If the appeal is denied, the unsuccessful asylum seeker is given six months to leave Angola. Similar status determination procedures are found in Zambia, Malawi and Zimbabwe. As in Angola, representation by counsel is almost unheard of in these procedures.

The process for refugee status determination in South Africa is quite different. The power to recognise a refugee is entirely delegated to the Department of Home Affairs. South Africa’s Refugees Act of 1998 stipulates that the Department’s status determination officers “may consult with and invite a UNHCR representative to furnish information on specified matters” but there is no provision for UNHCR observer status in the procedure apart from that which can be inferred from UNHCR’s general supervisory role with respect to the Convention. There is no provision for legal representation of the asylum seeker at this stage of the procedure. If an application is rejected as ‘manifestly unfounded’, it must be reviewed by the Standing Committee, a separate body set up by the Refugees Act. An application that is rejected as ‘unfounded’ rather than ‘manifestly unfounded’ may be appealed to the Appeal Board. Asylum seekers have a right to have legal assistance for their hearing before the appeals board but at their own expense.

In theory, the process of recognition of refugee status in South Africa should occur rapidly. In practice, asylum seekers may wait for months before being able even to start the process of status determination by completing the asylum application with a refugee reception officer. It may be years before the application is actually heard by a status determination officer. At the end of 2007, the backlog of cases in South Africa exceeded 170,000.

In southern Africa some legal aid assistance is now being provided by independent bodies, including the Legal Resource Foundation in Zambia and the University of Capetown’s legal clinic in South Africa, both of which are founding members of the Southern Refugee Legal Aid Network (SRLAN). Far more is needed. The provision of independent legal aid to asylum seekers...
in southern Africa needs to be addressed across the whole region if asylum seekers are to get a fair hearing whatever the process in the different countries.

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Refugee protection in Turkey

Rachel Levitan

The provision of independent legal representation for asylum seekers in Turkey is proving a vital component in improving refugee status determination procedures. Every year, thousands of people from over 40 countries come to Turkey seeking asylum. However, since Turkey imposes a ‘geographic limitation’ on the 1951 Refugee Convention, refugees from countries outside Europe are not eligible to receive international protection from the Turkish government. Instead, they must turn to UNHCR for protection. Refugees must also apply for ‘temporary asylum’ from the Turkish authorities for permission to remain in Turkey while UNHCR evaluates their claims. During that period, they are required to live in one of 30 ‘satellite cities’ throughout Turkey, and need police permission to travel outside the city. When their cases are decided, either they are granted refugee status and resettled in another country (such as the US, Canada or Australia) or their application is denied and they must leave Turkey.

The parallel UNHCR and government asylum procedures are complex, and many applicants wait for months or years for their applications to be processed. While they wait, their difficult and dangerous conditions push many to risk their lives in an attempt to enter Europe illegally. Those who are detained while trying to leave the country are particularly vulnerable to refoulement because of significant barriers to legal assistance.

While lawyers should in theory have access to the migrant detention facilities where refugees are held (known as ‘foreigners’ guesthouses’), not enough of them have training in refugee law or experience advocating for refugees. Moreover, the very limited state legal aid system does not cover legal assistance to refugees. Thus, the handful of qualified refugee lawyers either have to charge fees that most refugees cannot afford or they have to work for free – which inevitably limits the time and effort they can invest. Moreover, few Turkish lawyers are fluent in languages spoken by refugees and there is a dearth of available interpreters. As a result, few refugees held in detention ever get access to any kind of legal assistance. To compound matters, NGOs are generally barred from entering detention facilities altogether. Even UNHCR must often wait weeks for permission to enter detention facilities to interview asylum seekers. Neither UNHCR nor local NGOs are given access to asylum seekers held in ‘transit zones’ in Turkey’s airports.

Despite a government commitment to bring domestic asylum policy into compliance with European standards, Turkish legislators and policymakers have so far shown little willingness to implement a comprehensive asylum law that would be consistent with international standards. While plans move forward for the establishment of seven ‘reception centres’ for asylum seekers (a project funded by the European Commission and supported by Dutch and British government partners), progress has been very slow. In the meantime, instances of refoulement continue at an alarming rate and periodic riots erupt in the ‘foreigners’ guesthouses’ in protest at indefinite detention and substandard conditions.

Legal aid

In 2004, Helsinki Citizens’ Assembly - Turkey (HCA) established its Refugee Legal Aid Program to provide free legal assistance to refugees. Two years later the programme expanded and was renamed the Refugee Advocacy and Support Program (RASP). RASP continues to provide legal assistance to refugees (including those in detention) on both UNHCR and government asylum procedures. It also provides mental health counselling, conducts public legal education and training for local NGOs and lawyers, monitors government practice and engages in legal advocacy.2 In 2009, RASP is initiating a three-year refugee law training and mentoring programme for lawyers across the country.

HCA's legal services for UNHCR procedures include: preparing refugees for and representing them during interviews; conducting country of origin research; drafting legal submissions and testimonies; communicating with UNHCR regarding clients’ immediate protection concerns; and advocating for vulnerable clients.

Asylum seeker statistics

The number of asylum seekers in industrialised countries increased in 2008 for the second year running, according to provisional statistics compiled by UNHCR. The increase can partly be attributed to higher numbers of asylum applications by citizens of Afghanistan, Somalia and other countries experiencing turmoil or conflict. Although the number of Iraqi asylum seekers declined by 10% in 2008, Iraqis continued to be the largest nationality seeking asylum in the industrialised world.

The report, Asylum Levels and Trends in Industrialized Countries, 2008, compiled by UNHCR’s Field Information and Coordination Support Section, can be found on UNHCR’s website at: www.unhcr.org/statistics