

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 Zambia¹ and the University of Capetown's legal clinic² in South Africa, both of which are founding members of the Southern Refugee Legal Aid Network (SRLAN).³ 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.

Michael S Gallagher SJ (mgallaghersj@gmail.com) is Geneva Representative for the Jesuit Refugee Service (<http://www.jrs.net>). Until recently he was Regional Advocacy Officer for the Jesuit Refugee Service Southern African Region.

1. <http://www.lrf.org.zm>
2. <http://www.uct.ac.za/faculties/law/research/lawclinic/>
3. See <http://www.fahamu.org/srlan/> and http://www.rsdwatch.org/index_files/Page2171.htm

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