

# Making Asylum Seekers More Vulnerable in South Africa: The Negative Effects of Hostile Asylum Policies on Livelihoods

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## ABSTRACT

In post-apartheid South Africa, migration policies and legislation have left critical issues such as social cohesion and integration unsolved. Furthermore, the inability to reconcile the national interest of maintaining borders' integrity with respecting moral and legal obligations has placed the asylum system under tremendous stress. Drawing from secondary sources, as well as qualitative interviews, this paper explores the development of new asylum policies aimed at curtailing asylum seekers' right to work in South Africa. The study's findings provide support for the conclusions of earlier research that highlights the consequences of hostile policies and practices for asylum seekers' livelihoods. The author argues that curtailments on asylum seekers' right to work will have many possible socio-economic ramifications. In the immediate term, the legislation seeks to inhibit asylum seekers from engaging in self-employment, while in the long run it may achieve the undesired effect of producing more precarious forms of livelihood.

## INTRODUCTION

In recent years, South Africa's migration policy has become increasingly geared towards heightened security and containment. In many respects, this development aligns with the globalization of migration control, reflecting a trend towards more restrictive policies and practices both in the Global South and the Global North. The rationale behind is that it is necessary for states to prevent undocumented economic migrants from reaching their territories. Furthermore, developed states believe it is imperative to remove perceived "pull factors," such as the right to seek employment, which are assumed to draw illegitimate asylum seekers<sup>1</sup>. This has given rise to policies that not only seek to "exclude asylum seekers territorially, but also socially and economically" (Mayblin, 2016:194).

In South Africa, such changes are reflected in the 2017 White Paper on International Migration for South Africa (the White Paper) which was issued to guide a comprehensive review of the country's immigration and asylum policy. In order to be implemented, policy provisions will require necessary legislative changes which the government aims at completing during its medium-term strategic framework (2019–2024). Within this context, the 2017 Refugees Amendment Act (the

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Amendment Act) comprises the first major change to South Africa's refugee policy since the 1998 Refugees Act (the Refugees Act) was passed twenty years ago. The Amendment Act was signed into law in December 2017, while its Regulations were published in the Government Gazette in December 2019. These Regulations introduced changes to the definition of a "dependant," conditions for the withdrawal of refugee status, banning of refugees from participation in political activities, and the determination of sectors within which asylum seekers are not permitted to work (Department of Home Affairs, 2019). But, above all, the Amendment Act establishes new measures to deter asylum seekers from entering the country by curtailing their economic rights and inhibiting their ability to seek protection. Central to these changes are new limitations on asylum seekers' right to work while awaiting final determination of their refugee claim, a process that currently takes years to complete (Kavuro, 2015; Schockaert, et al., 2020). These provisions are triggered as a result of the negative perception of immigrants in general, and asylum seekers in particular, amongst public officials and policy makers. This perception is exemplified by a statement by the former Deputy Minister of Home Affairs who stated, "many people who seek asylum in South Africa are actually economic migrants who use the asylum seeker process to avoid applying for a visa under the Immigration Act," thus emphasizing an intent to circumvent the law (Chohan, 2014).

The provisions of the Act are unclear when it comes to asylum seekers' right to self-employment but a restrictive reading could construe the Amendment Act as barring asylum seekers from engaging in any self-employment activities. Asylum seekers in South Africa face several challenges in accessing wage-earning employment, particularly in the formal sector, and are forced towards insecure jobs in the informal sectors of the economy. The documentation issued to both asylum seekers and refugees poses problems for those seeking formal employment and has been referred to as "disabling," as it is subject to tears and folds and is not recognized by employers and law enforcement officials (Belvedere, 2007:58). The disabling documentation, as well as the inconsistent access to and temporary nature of it, has effectively pushed asylum seekers to the margins of economic activity despite their entitlement to access labour markets is similar to citizens. Their condition of liminal legality exposes them to insecurity, vulnerability and a greater risk of social exclusion. Consequently, many are forced into "opting out" of state regulatory frameworks, creating parallel, informal structures for economic activity and protection (Kihato, 2007). Moreover, their involvement in informal activities and street trade is characterized by both a "lack of legal recognition and protection, extreme vulnerability and dependence on opaque institutional arrangements and ephemeral survival strategies" (Schierup, 2016:1060).

Numerous studies have sought to investigate the deterioration of asylum seekers' livelihoods in South Africa due to unfavourable policies and practices. Crush and Skinner (2017) concluded that measures to limit asylum seekers' right to work and logistic and administrative barriers, aim at making South Africa an undesirable destination for refugees. Similarly, Crush and McCordic (2017) argued that restrictive employment policies force asylum seekers to pursue a livelihood in the informal sector. Other studies (see, e.g. Hunter and Skinner, 2003; Kavuro, 2015; Peberdy, 2016, 2017; Crush et al., 2015, 2017a, 2017b; Gastrow, 2018) discussed at length the effects of contradictory policy environment on the exclusion of migrants from participation in both the formal and informal sectors of the economy. However, no empirical research has yet examined the possible socio-economic implications of the recently enacted Amendment Act for asylum seekers and their livelihoods. This research seeks to address this knowledge gap and to extend the literature on exclusionary asylum policy by suggesting that limitations of the right to work and self-employment may lead to further insecurity, marginalization and social exclusion.

This article is based on a review of existing literature, as well as qualitative interviews and focus group interviews. In July 2018, two focus group interviews were conducted in Cape Town to better understand views, experiences and perspectives of refugees and asylum seekers. The first focus group involved only female participants to better understand the specific social and economic

conditions of female asylum seekers, and how new legislative policies might affect women in particular. There was also a concern that women might not be as vocal in mixed-gender groups. The focus group was arranged with the assistance of the Somali Association of South Africa (SASA), a Somali refugee community group, and was held at their office in the Cape Town suburb of Bellville. It was attended by eight women (three from Somalia, three from Burundi and two from the Democratic Republic of the Congo), and Somali and Burundian participants assisted with interpretation. The second focus group – which included male and female participants – was arranged with the assistance of a local NGO, the Scalabrini Centre of Cape Town, and was held at their office in the city centre. It was attended by six participants (one from Somalia, one from Mozambique and four from the Democratic Republic of Congo). No assistance with interpretation was required, as all participants were fluent in English. The focus groups lasted approximately one and a half hours each and participants were compensated for their time. Focus groups were carried out with the informed consent of participants and on condition of anonymity. To protect participants against detention, deportation or any potential individual harm, and to remain focused on understanding how documented individuals have experienced the refugee system, no undocumented individuals participated in the study.

Between June and August 2018, five qualitative interviews with key stakeholders were also conducted in Cape Town and Musina, South Africa. Respondents included NGOs and community organizations providing assistance to asylum seekers and migrants. The author requested interviews with the Department of Home Affairs, the Chairperson of the Parliamentary Portfolio Committee on Home Affairs and the United Nations High Commissioner for Refugees (UNHCR) but did not receive any responses.

## THE PROTECTION FRAMEWORK UNDER THE REFUGEES ACT AND THE RIGHT TO WORK

The Refugees Act filled the void in refugee protection that existed during the apartheid era, when there was no mechanism for refugee protection. Refugees in South African territory during the apartheid era were treated as “illegal foreigners,” lacking a legal identity. The adoption of the Constitution in 1996 established a strong baseline of refugee protection by proclaiming that “South Africa belongs to all those who live in it,” extending protections to “everyone” regardless of legal status or nationality (Constitution of the Republic of South Africa, 1996). The 1951 Convention relating to the Status of Refugees (the 1951 Convention) and the 1969 Organization for African Unity Convention on the Specific Aspects of the Refugee Problems in Africa (the 1969 OAU Convention) were both acceded to without reservations in 1996 and 1995, respectively. Formal domestic legislative and policy development began shortly thereafter through a substantive consultation process and engagement with civil society, international refugee law experts and government officials (Klaaren et al., 2008). These consultations resulted in a draft Green Paper on International Migration published in 1997 that contained a chapter on refugee protection, advocating for a rights-based refugee protection framework separate from immigration matters (Department of Home Affairs, 1997).

During the legislative development process, two opposing approaches to refugee protection became evident, with civil society organizations lobbying for an inclusive, rights-based protection system, while officials from the DHA pursued a more restrictive, control-based approach (Belvedere, 2007). The resulting Refugees Act is a result of this tension, establishing a strong rights-based protection model but also a model where national sovereignty and administrative discretion feature prominently (Barutciski, 1998).

In implementation, immigration control has remained a constant theme, with Klaaren et al. (2008:56) describing refugee protection as having “always nested somewhat uncomfortably” within broader migration policy legislation. Thus, as opposed to a system of protection, the Refugees Act has been implemented and interpreted in a restrictive manner that is more in line with immigration imperatives, and this approach has become more pronounced over time (Fassin et al., 2017).

The urban refugee protection framework set out by the Refugees Act was described in 2007 as “one of the most advanced and progressive systems of protection in the world” by then United Nations High Commissioner Antonio Guterres (Rulashe, 2007). The framework grants refugees the right to work and study in the country, as well as access to basic health care. The Refugees Act specifies that it must be interpreted and applied with due regard to a range of human rights instruments, including the 1951 Convention, the 1969 OAU Convention, the Universal Declaration of Human Rights and “any other relevant convention or international agreement to which the Republic is party” (Government of South Africa, 1998).

In general terms, the Refugees Act, read with its accompanying Regulations (Department of Home Affairs, 2000), sets out an individualized determination system in which asylum seekers awaiting final determination enjoy many of the same rights as recognized refugees. Compared to encampment models found elsewhere on the continent, asylum seekers and refugees both enjoy freedom of movement and are encouraged to locally integrate into communities. The Refugees Act is in line with the UNHCR’s urban refugee policy, which acknowledges that cities in developing and middle-income countries are legitimate, and indeed likely, sites for refugees to find protection (UNHCR, 2009).

Five Refugee Reception Offices (RROs) were initially established in the country’s major urban centres of Johannesburg, Pretoria, Cape Town, Durban and Port Elizabeth, with an additional RRO established in Musina along the border with Zimbabwe in 2009. These RROs function as the lynchpin of the system and are the main point of contact between applicants and the state. It is at RROs that individuals lodge applications, receive asylum seeker permits, undergo interviews and receive permit renewals and other administrative assistance. The framework itself is minimalist in that the government does not provide direct welfare assistance and asylum seekers are largely expected to provide for themselves.

Throughout the asylum process, the asylum seeker retains the temporary permit, renewing it as required. The refugee status determination process is conducted by a Refugee Status Determination Officer (RSDO) who can either recognize refugee status or issue a negative decision. If the claim is rejected, the asylum seeker is permitted to appeal the decision to the Refugee Appeal Board (RAB) in the case of unfounded rejections, or to submit written representations to the Standing Committee for Refugee Affairs (SCRA) in the case of manifestly unfounded, fraudulent or abusive rejections. Should an applicant receive a final rejection, they can approach the High Court for judicial review proceedings or must leave the country. There is a possibility of individuals being detained and deported upon receipt of a final rejection, although the use of this practice has varied across RROs and time (Johnson, 2015).

The right to work is not automatically granted to asylum seekers under the Refugees Act and the conditions relating to work and study are to be determined by the SCRA. Initially, the SCRA determined that there would be a blanket prohibition on the right to work and study for the first 180 days after an asylum seeker lodged their application. If the application was not finalized within 180 days, the applicant could then apply for the right to work directly. This interpretation was found unlawful by the Supreme Court of Appeal (SCA), which held that the right to conduct work cannot be limited when it is the only “reasonable means” to sustain oneself.<sup>2</sup> Subsequent to this ruling, the SCRA has issued all asylum permits with the right to work and study. Dass et al. (2014) have suggested that this blanket endorsement of the right to work is due to the SCRA’s inability to formulate guidelines for officials or make determinations on a case-by-case basis. By contrast, section 27 of the Refugees Act specifically grants refugees the right to “seek employment”

in the country. However, this right is limited by the Private Security Industry Regulation Act (No. 56, 2001), which largely bars refugees – and asylum seekers – from working in the private security industry. The SCA has clarified that the Refugees Act does not limit asylum seekers and refugees to wage-earning employment and grants them the right to engage in self-employment as well.<sup>3</sup>

## RESTRICTING THE ECONOMIC RIGHTS OF ASYLUM SEEKERS – A CONTROVERSIAL ISSUE

Refugee protection emerged in South Africa during the early 1990s as a part of the country's embrace of the international human rights regime during the transition to democracy. It was formalized with the adoption of the Refugees Act, establishing a strong protection framework based on local integration. However, in practice, high demand, limited capacity and a restrictive interpretation of refugee protection have resulted in a number of challenges that have been exacerbated by the socio-economic challenges of the post-apartheid era, where high unemployment, poor service delivery and corruption have plagued governance and development. Amidst these socio-economic challenges, foreign nationals – asylum seekers and refugees included – have often been blamed as the cause of the many problems hindering development. This has occurred particularly in relation to employment opportunities, with outbreaks of xenophobic violence becoming a common feature of post-apartheid South Africa (Landau, 2012). As a means to address these issues, in line with the securitization of migration evident in the Global North, the government has embarked upon what it has termed a “paradigm shift” in migration and refugee policy, including the introduction of policies to deter asylum seekers and restrict access to rights and territory (Crush et al., 2017a).

Attempts to deter migration through limiting asylum seekers' freedom of movement and right to seek employment are not unique to South Africa but, in some ways, converge with those of many industrialized countries (Hassan, 2000; Gammeltoft-Hansen and Tan, 2017). In particular, this restrictive and control-oriented approach to migration management aims to favour security interests, reduce the risks associated with migration and limit the influx of irregular migrants, including “bo-gus”<sup>4</sup> asylum seekers.

For this purpose, many industrialized countries have established “reception centres” where applications for asylum are processed and asylum seekers receive initial support and accommodation. In 2015, so-called “hotspots centres” were created in Italy and Greece to assist frontline EU member states facing disproportionate migratory pressures at the bloc's external borders and stem irregular flows into the EU. Similarly, in Australia, asylum seekers who arrive by boats are transferred to “offshore processing centres” where they are confined until their refugee claims are processed (Nethery and Holman, 2016). In general, reception conditions, especially for vulnerable asylum seekers, remain a concern with many of them living in inhumane conditions in overcrowded facilities (Scherrer, 2019). Research (Da Lomba, 2006; Gammeltoft-Hansen, 2014) established that the denial of dignified living conditions is used by states as a deterrent against asylum seekers which exacerbate their existing vulnerabilities.

To guarantee a dignified treatment and standardized reception conditions for asylum seekers, in 2013, the European Union adopted the Reception Directive laying down minimum standards for the reception of applicants for international protection (recast).<sup>5</sup> These standards are meant to be sufficient “to ensure a dignified standard of living and comparable living conditions in all Member States.”<sup>6</sup> Amongst other aspects, the Reception Directive takes into consideration the issues of employment for asylum seekers and freedom of movement. Member states have to guarantee asylum seekers effective access to the labour market and self-sufficiency<sup>7</sup> by providing clear rules on the applicants' access to the labour market but can decide on specific conditions and can prioritize nationals and EU citizens. Most member states are in compliance with the provisions on

employment, allowing asylum seekers to work within a certain number of days after filing an application; although, in many cases, access to the labour market is restricted in practice due to numerous barriers (European Commission, 2018).

In South Africa, it seems evident that the government's plan to build what has been termed Asylum Processing Centres (APCs) is part and parcel of a policy to deter asylum seekers and remove their basic socio-economic rights. APCs, as envisaged in the White Paper, will be located in peripheral areas near the country's borders to profile and accommodate asylum seekers during their status determination process and speed up the return of failed asylum seekers (Government of South Africa, 2017). Poor living conditions and human rights violations at existing detention centres in South Africa have raised deep concerns amongst civil society organizations over the functioning of APCs. Lawyers for Human Rights has compared the establishment of APCs to the "facilities in remote areas on the US-Mexico border, where detained asylum seekers face obstacles to medical and psychological care, education and legal representation" (Lawyers for Human Rights and Legal Resource Centre, 2016:63). They further pointed out that "the remoteness of the proposed facilities would make it difficult for asylum seekers to have adequate legal assistance and that asylum seekers would face a greater chance of immediate deportation if they were rejected in their first interview" (ibid:63).

Confinement of asylum seekers in APCs is also likely to result in considerable financial costs to the state. This is because, in order that it does not infringe human rights commitments, the state will be responsible for meeting asylum seekers' physical, mental and medical needs. In this regard, research conducted in the UK (James and Mayblin, 2016, 2016) concluded that if asylum seekers were allowed to take unrestricted employment the government could save up to £233.5 million annually. This indicates that lifting the labour market restrictions for asylum seekers not only promotes self-reliance but has also a positive financial implication for the state.

According to the White Paper, asylum seekers in APCs would lose the right to work since "their basic needs will be catered for in the processing centres" (Department of Home Affairs, 2017). The question whether asylum seekers should have unrestricted rights to work remains the subject of a profound political controversy amongst industrialized countries some of which, in the past, have put a ban on work for asylum seekers. For example, in Australia, as a response to the increasing number of people arriving by boat, asylum seekers are denied the right to work and receive minimal financial support (Fleay and Hartley, 2016). Similarly, in the UK, asylum seekers are not allowed to work unless their claim has been outstanding for at least twelve months. Those allowed to work are restricted to jobs on the shortage occupation list "which presents a barrier to employment for the majority of asylum seekers" (James and Mayblin, 2016:7). Reduced access to work and the limited financial assistance provided by the state are factors that also contribute to poverty and marginalization of asylum seekers. In this regards, Lewis et al (2015:12) suggested that the "structured exclusion from work and welfare underpin precarious labour market positions" for asylum seekers in the UK, making them vulnerable to abuse and labour exploitation.

Ireland provides a further example of how contentious the issue of the right to work can be in the EU. The country had very strict provisions regulating the daily life of asylum seekers until the Reception Directive came into effect in May 2018. In 2000, in fact, Ireland adopted the Dispersal and Direct Provision Scheme (DP), according to which asylum seekers dispersed in reception centres across the territory were denied the right to work and were given a weekly allowance of €19.10 per week. Conceivably, the small weekly allowance and the denial of a formal right to work pushed asylum seekers to look for jobs in the informal economy. The application of DP on asylum seekers also resulted in feelings of loneliness, detachment and isolation from Irish society. In 2017, a Burmese asylum seeker, appealed to the Irish High Court after being denied permission to work as a chef for the reception centre that was hosting him. He expressed his distress and demoralization about being unable to work after being confined to a Direct Provision centre for eight years (Lally, 2018). On 30 May 2017, after several years of litigation, the Irish Supreme Court<sup>8</sup> declared

the denial of the right to work unconstitutional and the Irish government initiated the process to adhere to the Reception Directive.

In South Africa, limitations to the right to work could also be challenged in court. The Supreme Court of Appeal has, in fact, established that the right to work for asylum seekers – in the absence of any support state – is interwoven with the constitutional right to dignity<sup>9</sup>. A blanket prohibition against employment under these circumstances is again an invasion of human dignity that cannot be justified in terms of the Constitution.

In justifying policy restrictions governments have emphasized that lifting the labour market restrictions for asylum seekers would have a “pull-factor” effect (Brunovskis, 2017). However, a large body of UK studies (Day and White, 2002; Middleton, 2005; Keogh, 2013; Robinson and Sergott, 2002; Valenta et al., 2015; Mayblin, 2016; Mayblin and James, 2019) showed that there is no long-term correlation between labour market access and destination choice, and that asylum seekers do not prefer to reach countries where employment policies are more favourable. Furthermore, a study conducted by Hatton (2009:209) on the impact of asylum policies across fifteen European countries suggests that “policies that diminish the socio-economic conditions of asylum seekers evidently have little deterrent effect and they may even contribute to the subsequent deprivation that many asylum seekers experience.” Thus, restrictive measures which have proved ineffective in reducing the number of asylum applications may have a great impact on asylum seekers’ socio-economic status, contributing to livelihood insecurity and vulnerability.

## FINDINGS: PARTICIPANTS’ VIEWS ON INSECURE LIVELIHOODS

Our interviews point out that asylum seekers encounter numerous barriers which prevent them from accessing formal employment. These include a dysfunctional asylum documentation process, cultural and language differences, lack of recognition of overseas obtained qualifications, inability to register with professional councils and to open bank accounts<sup>10</sup>. In this regard, earlier studies (Kavuro, 2015; Crush et al., 2017b) have highlighted the legal and procedural challenges that impede asylum seekers’ access to formal employment.

Respondents indicated the brief duration of asylum permits and the long distance asylum seekers have to travel to keep up to date their documents as major barriers to wage-earning employment.<sup>11</sup> One of the interviewees described the sense of uncertainty in relation to documentation.

One of the barrier is the timeframe of the asylum permit. Let’s say they give you [a permit] for three months and you go to your employer to tell him that you need to travel to renew your paper. In the meantime, the employer needs to look after his business and doesn’t care about your permit.

(Focus group interview on 26 July 2018)

The closure of urban RROs, as a part of a policy to relocate reception facilities to the borders and thus limit access to cities and employment opportunities (Johnson and Carciotto, 2017) has been accompanied by a policy requiring those who lodge applications at other RROs to report back to that RRO for any administrative assistance. This means some asylum seekers may have to travel long distance, every three to six months, to extend their asylum seekers permits. The outcome is a situation of protracted temporariness where asylum seekers are placed in limbo and required to return to RROs repeatedly for permit renewals, thus perpetuating the endless capacity issues at these offices. During an interview a programme manager at a local NGO highlighted that employers in the hospitality and child care industries are extremely reluctant to hire asylum seekers due to the fact that they often need to take extra leave days to travel to other cities to renew their permits.<sup>12</sup>

The legality of the RROs closures has been challenged in the courts, with each being found unlawful, on both procedural and substantive grounds, and resulting in the SCA ordering the DHA to re-open these facilities for new applicants.<sup>13</sup> The accompanying policies restricting the freedom of movement have also been found unlawful in two judgments, affirming the right to freedom of movement within the protracted adjudication process.<sup>14</sup> The effects of the closures have been the creation of a large population of undocumented asylum seekers, or asylum seekers with expired permits, as well as increased demand at existing RROs.

Asylum seekers in South Africa rely on precarious and informal work to support themselves due to barriers of entry that the formal sector imposes, but also due to the lack of any state provided assistance during the asylum procedure (Schockaert et al., 2020). Some studies (Boyle, 1994; Hughes, 2006; Singh and De Noble, 2003; Travers, 2002) defined informal self-employment as a survivalist response of persons with problems in accessing formal employment. According to data from the 2017 Quarter Labour Force Survey (Statistics South Africa, 2019), approximately 40 per cent of employed foreign nationals were engaged in informal activities, while a 2015 survey revealed that, of 1,132 informal businesses in Cape Town and Johannesburg, 30 per cent were run by asylum seekers (Crush et al., 2017b).

One of our interviewees who works for a local NGO explained how informal economies offer relative ease of entry in particular for those migrant women who lack any documentation to work legally but have entrepreneurial skills.

When we see undocumented ladies we immediately assess them if they are entrepreneurs and if they are we know we can help them to self-sustain because they can go into the informal economy without a document. (Focus group interview on 19 July 2018)

A restrictive interpretation of the Amendment Act unveils an underlying intention of barring asylum seekers from accessing self-employment activities. As noted by Crush et al. (2017a) legal provisions restricting access to the informal sector are a clear manifestation of a policy direction intended to exclude non-south Africans from the informal economy. In their review of post-apartheid policy and practice, they concluded that refugees and asylum seekers encounter many obstacles in running their informal businesses in South African cities. Furthermore, in some instances, informal agreements between foreign national retailers associations and South Africans have prohibited foreign nationals from opening up new businesses in township neighbourhoods – despite refugees and asylum seekers being legally entitled to trade (Gastrow and Amit 2015). What both formal and informal governance strategies show is that political hostility towards the economic activities of foreign migrants (including refugees and asylum seekers) in South Africa has been on the increase for some time. Both local and national political actors have sought diverse ways to constrain foreign nationals' ability to make a living, particularly in the small business sector.

It is in this context that exclusionary policies and practices implemented at national, provincial and municipal levels, may lead to an increased destitution amongst those asylum seekers who depend on the informal sector for their survival. As admitted by one of the respondents who provides legal assistance to asylum seekers in Cape Town.

If you are struggling to get a job and can't create your own job, then I guess this would increase poverty and if you are an asylum seeker, I can't imagine how you will survive. People who are not legally allowed to work will continue to work for employers who will exploit them. So, I think it will lead to higher levels of exploitation for asylum seekers and higher levels of poverty. (Interview on July 2018)

Not having the right to work was the most recurrent concern of asylum seekers during the focus group interviews. A women expressed her fear of not being able to meet basic needs such as housing and food.



If there is no work there is no security. If you have a child how can you survive? How can you pay your rent, your food? Sometimes the family can support you only in the first month and then the second month they will tell we can no longer help you. (Focus group interview on 23 July 2018)

Employment is deemed fundamental in maintaining the dignity of asylum seekers and enabling self-sufficiency (Edwards, 2005). However, the progressive exclusion from both the formal and informal sectors is a serious threat to the sustainable livelihood of asylum seekers in South Africa and one of the main causes of social exclusion. Studies (Gerard, 2014; Phillimore and Goodson, 2006; McColl et al., 2008) concluded that reduced access to work prevents integration into host societies and has several consequences including further marginalization of asylum seekers. Furthermore, there is indication that “forbidding employment can affect the psychological well-being of asylum seekers because of a combination of inaction, poverty and social exclusion” (Hallas et al., 2007:288). This situation of extreme vulnerability is poignantly summarized by one of the interviewees.

If asylum seekers can't work for themselves I think it will be a disaster. There are thousands of asylum seekers who support their families and if they are banned from working they won't be able to survive. They would have to wait for relief grants or for somebody to give them food parcels but I don't know who's going to do that, it is not possible. (Focus group interview on 26 July 2018)

The Amendment Act prescribes that those asylum seekers who are able to support themselves or have access to financial support provided by friends or family would no longer have the automatic right to work. In this regard, the participants of one of the focus group interviews agreed that without the right to work they would only be able to receive limited assistance from family and friends.<sup>15</sup> Thus, in a context where asylum seekers are excluded from all wage-earning activities and cannot rely on public assistance or social contacts, it is realistic to expect asylum seekers to be forced to choose between working illegally, resorting to crime or being left destitute.

Denying asylum seekers the right to work may also result in asylum seekers turning to unauthorized employment with lower working conditions. A study conducted by Crawley et al. (2011:45) highlighted the vulnerability of destitute asylum seekers who cannot “sustain a livelihood solely through institutional and social resources.” Their study further concluded that the income generated by working illegally is limited and “just enough for a hand to mouth existence” (ibid: 47). As one of the interviewees highlighted in a focus group interview, restrictions on their right to work, could increase social risks, insecurity and also contribute to exacerbate feelings of anxiety and fear.

Because there is no signed contract employers can tell you at any moment they no longer need you. Even when you are on a train going to work they can tell you that today you don't have a shift. But you have a rent to pay and depend on this job [...] honestly, we don't live because of fear. I think we survive. This is not the kind of live that someone can live. (Focus group interview on 19 July 2018)

In relation to their uncertain future, another participant expressed a sense of feeling defeated and powerless.

If I am not allowed to work or to run a business, they should rather take me home and let me die there. (Focus group interview on 23 July 2018)

Similarly, the director of a Cape Town-based non-governmental organization, emphasized how the proposed legislation is likely to make people more vulnerable and to increase the number of undocumented asylum seekers.

This is a silly legislation. All it is going to do is to create raids on the obvious informal spots but they are never going to penetrate the surface and people are going to continue running their businesses without documents anyway. (Interview on 19 July 2018)

Despite all the concerns, interviewees were doubtful about the capacity of government to implement the provisions of the Amendment Act due to administrative and practical constraints. A respondent expressed his doubts on the condition requiring asylum seekers to provide the Department of Home Affairs with a letter of employment. The new legislation provides for asylum seekers to be able to work following an assessment process to establish whether they could support themselves in any way. If the right to work is endorsed asylum seekers must provide the Department of Home Affairs with a letter of employment by a “relevant employer.” Employers who fail to comply with the provisions of the Act or issue fraudulent letter of employment can receive a fine up to US\$1 200.<sup>16</sup>

It will never work. Home Affairs will be “sitting” on those letters and people will only get an answer after one year. I give you an example. The Refugees Act establishes that asylum applications should be processed within six months, but there are people who have applied in 2004 and after fourteen years nothing has been finalized. So even with those letters [from the employer] they will tell you “come back tomorrow, come back tomorrow” and at the end you will no longer have that job. (Focus group interview on 26 July 2018)

Some respondents also highlighted concerns about the possibility to monitor the informal sector to prevent asylum seekers from engaging in any informal or unauthorized activity.

How are they going to implement this idea that [asylum seekers] cannot start their own business? There is no way to implement it. This is an unimplementable piece of legislation. What are they going to do? They’ll go into your home and see that you have a box of clothes that you want to sell? [...] So I think what they’ll do is to have *ad hoc* [police] raids to identify informal business but then people will turn to more invisible businesses which are difficult to identify. (Focus group interview on 19 July 2018)

Another issue raised was that having the right to work and trade foster the ability to contribute to a host community. Therefore, limitations to the right to work would not only affect asylum seekers’ livelihoods and possibility to integrate but also local economies. One of the interviewees from Somalia described how popular discourses about the negative impact of foreign-owned businesses on the local economy were far away from the truth.

Informal businesses run by asylum seekers are not harmful to South African businesses because any new business that comes into a place is going to boost the economy of that place in a way. So the more businesses that exist, the more the economy picks up and the more the economy grows. Also businesses run by asylum seekers are a very small percentage if compared to businesses run by South Africans. (Interview on 26 July 2018)

Particularly in regards to the Somali interviewee, Gastrow and Amit (2013) study concluded that there is little empirical evidence showing that foreign-owned businesses are a treat to the local economies. Their research found that Somali businesses in South Africa have direct benefits to local communities, creating job opportunities and offering customers cheaper prices. They further concluded that foreign nationals engaged largely in regular business strategies (such as forming partnerships and partaking in price competition) and, in many ways, were more legally compliant than their South African counterparts. Similarly, Peberdy (2016) highlighted that informal migrant entrepreneurs interact with the formal economy by buying goods and contributing to the government fiscus. Her findings also suggest that migrant entrepreneurs in the city of Johannesburg do

not dominate the informal sector which remains largely a feature of South African businesses. This indicates that granting the right to work not only provides asylum seekers with the opportunity to support themselves and their families, but also makes a positive contribution to the economies of host communities.

## CONCLUSION

The development of South Africa's refugee policy illustrates that the curtailment of asylum seekers' right to work is part of a broader trend of limiting the rights and protections of asylum seekers. The government's justification for the ban of the right to work has been that an automatic right creates "incentives" that increase the number of economic migrants abusing the asylum system. While this change is predicated on the need to reduce "pull factors" and social tensions, a large body of evidence (Day and White, 2002; Middleton, 2005; Keogh, 2013; Robinson and Sergott, 2002; Valenta et al., 2015; Mayblin and James, 2019) reveals that there is no long-term correlation between labour market access and destination choice.

The examples presented in this paper have shown how the curtailment of asylum seekers' right to work could have a number of socio-economic impacts that go far beyond the lives and conditions of asylum seekers. Descriptions provided by some of the interviewees indicate that preventing asylum seekers from engaging in long-term self-employment may result in an increased prevarication of livelihoods, the proliferation of exploitative labour practices to the great advantage of native employers and social exclusion. This also reflects the ambiguities and contradictions experienced by asylum seekers in South Africa. On the one hand, the current legislative framework, the dysfunctional asylum system and the systematic barriers in accessing formal employment force them into the informal sector. On the other, policies and practices are attempting to push asylum seekers out of the informal sector.

This paper contributes towards a growing research that discuss the effects of contradictory policy environment on the exclusion of migrants from participation in both the formal and informal sectors of the economy (Hunter and Skinner, 2003; Kavuro, 2015; Peberdy, 2016; Crush et al., 2017a; Crush et al., 2017b; Gastrow, 2018). Many of the findings are consistent with those of other studies highlighting that restrictions on the right to work increase vulnerabilities and have negative consequences for the mental well-being of asylum seekers (Phillimore and Goodson, 2006; Hallas et al., 2007; McColl et al., 2008; Gerard, 2014; Mayblin, 2016). At the same time, this study points out the risk that those asylum seekers who cannot find jobs will be forced to choose between working illegally, resorting to crime or being left destitute. In this context, government's ambiguous policy is unlikely to achieve the desired outcome of deterring asylum seekers from entering the country and engaging in self-employment activities, but will rather produce more "illegality." Beside the desire to cater to perceived political needs, the economic and social benefits of inhibiting asylum seekers from working will be limited.

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## PEER REVIEW

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## NOTES

1. According to the United Nations, an *asylum seeker* is an individual seeking international protection and whose claim has not yet been finalized by the country in which he or she has submitted it. A *refugee* is person found to be at risk of persecution due to his race, religion, nationality, political opinion or membership of a particular social group. An *immigrant* or “long-term migrant” is a person who moves to a country other than that of his or her usual residence for a period of at least 12 months, while a *migrant* is a person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons.<sup>2</sup> *Minister of Home Affairs v Watchenuka* 2004 (4) SA 326 (SCA), paragraph 32.<sup>3</sup> *Somali Association of South Africa v Limpopo Department of Economic Development, Environment and Tourism* 2015 (1) SA 151 (SCA).<sup>4</sup> The term “bogus” refers to asylum seekers with an unfounded claim.<sup>5</sup> Hereafter the “Reception Directive.”<sup>6</sup> See point (7) of the Preamble in the Reception Directive.<sup>7</sup> See Article 15(2) of the Reception Directive.<sup>8</sup> *N.V.H vs Minister for Justice & Equality and others*.<sup>9</sup> *Minister of Home Affairs & Others V Watchenuka*<sup>10</sup>. Focus group interview on 19 July 2018<sup>11</sup>. Focus group interview on 19 July 2018<sup>12</sup>. Focus group interview on 19 July 2018<sup>13</sup>. In regards to Port Elizabeth RRO, see *Minister of Home Affairs and others v Somali Association of South Africa* (EC) 2015 (3) SA 545 (SCA); in regards to the Cape Town RRO, see *Scalabrini Centre, Cape Town and Others v Minister of Home Affairs and others* 2013 (3) SA 531 (WCC); (735/12, 360/13) [2013] ZASCA 134 (hereafter ‘Scalabrini I’); *Scalabrini Centre, Cape Town v Minister of Home Affairs and others* (1107/2016) [2017] ZASCA 126 (hereafter ‘Scalabrini II’)<sup>14</sup>. See *Abdulaahi and 205 others v The Director-General of the Department of Home Affairs and Others*, Unreported case (Case no 7705/13) (Western Cape High Court) and *Nbaya and others v Director-General of the Department of Home Affairs*, Unreported case (Case No 6534/15) (Western Cape High Court)<sup>15</sup>. Focus group interview on 23 July 2018<sup>16</sup>. Refugees Amendment Act, (No 11, 2017) Section 18 of the Act.

## REFERENCES

- Barutciski, M.  
1998 “The development of refugee law and policy in South Africa: A commentary on the 1997 green paper and 1998 White Paper/Draft Bill”, *International Journal of Refugee Law*, 10(4): 701–724.
- Belvedere, M.F.  
2007 “Insiders but outsiders: The struggle for the inclusion of asylum seekers and refugees in South Africa”, *Refuge: Canada’s Journal on Refugees*, 24(1): 57–70.
- Boyle, E.  
1994 “The rise of the reluctant entrepreneurs”, *International Small Business Journal*, 12(2): 63–69.
- Brunovskis, A.  
2017 Asylum, integration and irregular migration in Lithuania Policy and practice at the edge of the European Union (Fafo Report).

- Chohan, F.  
2014 “Deputy Minister of Home Affairs, Fatima Chohan’s speech on the 2014 Budget Vote debate in Parliament”, <https://pmg.org.za/hansard/18565/>, viewed on 22 June 2018.
- Constitution of the Republic of South Africa  
1996 See the Preamble and Chapter 2, Bill of Rights.
- Crawley, H., J. Hemmings and N. Price  
2011 Coping with destitution: Survival and livelihood strategies of refused asylum seekers living in the UK, Oxfam Research Report. Centre for Migration Policy Research (CMPR), Swansea University, Swansea, Wales.
- Crush, J., A. Chikanda and C. Skinner  
2015 *Mean streets: Migration, xenophobia and informality in South Africa*. Southern African Migration Programme (SAMP), Waterloo, Ontario: 1–287.
- Crush, J. and C. McCordic  
2017 “Comparing refugee and South African migrant enterprise in the urban informal sector”, *African Human Mobility Review*, 3(2): 820–853.
- Crush, J. and C. Skinner  
2017 *Rendering South Africa Undesirable: A Critique of Refugee and Informal Sector Policy*, vol No. 79, Southern African Migration Programme, Waterloo, Ontario.
- Crush, J., C. Skinner and M. Stulgaitis  
2017a “Benign neglect or active destruction? A critical analysis of refugee and informal sector policy and practice in South Africa”, *African Human Mobility Review*, 3(2): 751–782.
- Crush, J., G. Tawodzera, C. McCordic, et al.  
2017b *Refugee Entrepreneurial Economies in Urban South Africa*, vol No. 76. Southern African Migration Programme, Waterloo, Ontario.
- Da Lomba, S.  
2006 “The Threat of Destitution as a Deterrent Against Asylum Seeking in the European Union”, *Refuge: Canada’s Journal on Refugees*, 23(1), 81–93.
- Dass, D., K. Ramjathan-Keogh and F. Khan  
2014 “The socio-economic rights of refugees and asylum seekers in South Africa’ in F. Khan and T. Schreier (Eds), *Refugee Law in South Africa*, Juta & Co, Cape Town: 220–233.
- Day, K. and P. White  
2002 “Choice or circumstance: The UK as the location of asylum applications by Bosnian and Somali refugees”, *GeoJournal*, 56(1): 15–26.
- Department of Home Affairs  
1997 Draft Green Paper on International Migration, Government Gazette, vol. 383, no. 18033, 30 May 1997.  
2000 Regulations to the South African Refugees Act (Forms and Procedure) GN 366, GG 21075 (6 April 2000).  
2017 *White Paper on International Migration*, Government of South Africa.  
2019 Regulations to the South African Refugees Act No. R. 1707, GG 42932 (27 December 2019).
- Edwards, A.  
2005 “Human rights, refugees, and the right ‘to enjoy’ asylum”, *International Journal of Refugee Law*, 17(2): 293–330.
- European Commission  
2018 “Challenges in the Labour Market Integration of Asylum Seekers and Refugees”, <https://bit.ly/1UFSKaP>, viewed 30 August 2018.
- Fassin, D., M. Wilhelm-Solomon and A. Segatti  
2017 “Asylum as a form of life”, *Current Anthropology*, 58(2): 160–176.
- Fleay, C. and L. Hartley  
2016 “I feel like a beggar’: asylum seekers living in the Australian community without the right to work”, *Journal of International Migration and Integration*, 17(4): 1031–1048.
- Gammeltoft-Hansen, T.  
2014 “International refugee law and refugee policy: the case of deterrence policies”, *Journal of Refugee Studies*, 27(4): 574–595.

- Gammeltoft-Hansen, T. and N.F. Tan  
 2017 “The end of the deterrence paradigm? Future directions for global refugee policy”, *Journal on Migration and Human Security*, 5(1): 28–56.
- Gastrow, V.  
 2018 *Problematizing the Foreign Shop: Justifications for Restricting the Migrant Spaza Sector in South Africa*, vol No. 80, Southern African Migration Programme, Johannesburg.
- Gastrow, V. and R. Amit  
 2013 *Somalinomics: A Case Study on the Economic Dimensions of Somali Informal Trade in the Western Cape*, African Centre for Migration & Society report, Johannesburg.  
 2015 *Lawless Regulation: Government and Civil Society attempts at Regulating Somali Informal Trade in Cape Town*, African Centre for Migration & Society Report, University of the Witwatersrand, Johannesburg.
- Gerard, A.  
 2014 *The Securitization of Migration and Refugee Women*, Routledge.
- Government of South Africa  
 1998 .Refugees Act No. 130 of 1998, Pretoria.
- Hallas, P., A.R. Hansen, M.A. Staehr, et al.  
 2007 “Length of stay in asylum centres and mental health in asylum seekers: a retrospective study from Denmark”, *BMC Public Health*, 7(1): 1–6.
- Hassan, L.  
 2000 “Deterrence measures and the preservation of asylum in the United Kingdom and United States”, *Journal of refugee studies*, 13(2): 184–204.
- Hatton, T.J.  
 2009 “The rise and fall of asylum: What happened and why?”, *The Economic Journal*, 119(535): 183–213.
- Hughes, K.D.  
 2006 “Exploring motivation and success among Canadian women entrepreneurs”, *Journal of Small Business & Entrepreneurship*, 19(2): 107–120.
- Hunter, N. and C. Skinner  
 2003 “Foreign street traders working in inner city Durban: Local government policy challenges”, *Urban Forum*, 14(4): 301–319.
- James, P. and L. Mayblin  
 2016 “Restricting the economic rights of asylum seekers: cost implications”, Working Paper. Economic and Social Research Council, University of Warwick.
- Johnson, C.  
 2015 “Failed asylum seekers in South Africa: policy and practice”, *African Human Mobility Review*, 1 (2): 1–16.
- Johnson, C. and S. Carciotto  
 2017 “The State of the Asylum System in South Africa”. *States, the Law and Access to Refugee Protection Fortresses and Fairness*, Hart Publishing, Oxford: 167–190.
- Kavuro, C.  
 2015 “Refugees and asylum seekers: barriers to accessing South Africa’s labour market”, *Law, Democracy & Development*, 19: 232–260.
- Keogh, G.  
 2013 “Modelling asylum migration pull-force factors in the EU-15”, *The Economic and Social Review*, 44(3): 371–399.
- Kihato, C.  
 2007 “Governing the city? South Africa’s struggle to deal with urban immigrants after apartheid”, *African identities*, 5(2): 261–278.
- Klaaren, J., J. Handmaker and L.A. Hde la Hunt  
 2008 “Talking a new talk: a legislative history of the Refugees Act 130 of 1998”. In: Handmaker J, De la Hunt LA, Klaaren J, eds. *Advancing Refugee Protection in South Africa*, Berghahn Books, New York: 47-60.

- Lally, C.  
2018 .“Gardaí find illegal immigrants working at catering firm”, *The Irish Times*, <https://bit.ly/2BKuZwa>, viewed 24 August 2018.
- Landau, L.B.  
2012 *Exorcising the Demons Within: Xenophobia, Violence and Statecraft in Contemporary South Africa*, Wits University Press, Johannesburg.
- Legal Resource Centre (LRC) and Lawyers for Human Rights (LHR)  
2016 “Joint Submissions to the Department of Home Affairs in Respect of Green Paper on International migration in South Africa”, <https://bit.ly/3hkEamK>, viewed on 29 September 2018.
- Lewis, H., P. Dwyer, S. Hodkinson, et al.  
2015 “Hyper-precarious lives: Migrants, work and forced labour in the Global North”, *Progress Human Geography*, 39(5): 580–600.
- Mayblin, L.  
2016 “Troubling the exclusive privileges of citizenship: mobile solidarities, asylum seekers, and the right to work”, *Citizenship studies*, 20(2): 192–207.
- Mayblin, L. and P. James  
2019 “Asylum and refugee support in the UK: civil society filling the gaps?”, *Journal of Ethnic and Migration Studies*, 45(3): 375–394.
- McCull, H., K. McKenzie and K. Bhui  
2008 “Mental healthcare of asylum-seekers and refugees”, *Advances in Psychiatric Treatment*, 14(6): 452–459.
- Middleton, D.  
2005 **Why** asylum seekers seek refuge in particular destination countries: an exploration of key determinants, Global Comm. on”, *International Migration*.
- Nethery, A. and R. Holman  
2016 “Secrecy and human rights abuse in Australia’s offshore immigration detention centres”, *The International Journal of Human Rights*, 20(7): 1018–1038.
- Peberdy, S.  
2016 *International Migrants in Johannesburg’s Informal Economy*, vol No. 71, Southern African Migration Programme, Waterloo, Ontario.  
2017 *Competition or Co-operation? South African and Migrant Entrepreneurs in Johannesburg*, vol No. 75, Southern African Migration Programme, Waterloo, Ontario.
- Phillimore, J. and L. Goodson  
2006 “Problem or opportunity? Asylum seekers, refugees, employment and social exclusion in deprived urban areas”, *Urban Studies*, 43(10): 1715–1736.
- Robinson, V. and J. Segrott  
2002 *Understanding the Decision-making of Asylum Seekers*, Home Office, London.
- Rulashe, P.  
2007 “UNHCR chief commends Pretoria’s refugee policy, pledges cooperation”, <https://bit.ly/2QzhEcP>, viewed 20 September 2018.
- Scherrer, A.  
2019 **Detecting** and protecting victims of trafficking in hotspots, EPRS European Parliamentary Research Service.
- Schierup, C.U.  
2016 “Under the rainbow: migration, precarity and people power in post-apartheid South Africa”, *Critical Sociology*, 42(7–8): 1051–1068.
- Schockaert, L., E. Venables, M.T. Gil-Bazo, et al.  
2020 “Behind the scenes of South Africa’s asylum procedure: a qualitative study on long-term asylum-seekers from the democratic Republic of Congo”, *Refugee Survey Quarterly*, 39(1): 26–55.
- Singh, G. and A. DeNoble  
2003 “Early retirees as the next generation of entrepreneurs”, *Entrepreneurship Theory and Practice*, 27(3): 207–226.
- Statistics South Africa  
2019 .“Labour market outcomes of migrant populations in South Africa, 2012 and 2017”, <https://bit.ly/3gFsD19>, viewed on 28 June 2020.

Travers, A.

2002 “*Prospects for Enterprise: An Investigation into the Motivations of Workers in the Informal Economy*” *Evidence paper*, 2, Community Links, London.

United Nations High Commissioner for Refugees

2009 *UNHCR Policy on Refugee Protection and Solutions in Urban Areas*, UNHCR, Geneva.

Valenta, M., D. Zuparic-Iljic and T. Vidovic

2015 “The reluctant asylum-seekers: Migrants at the Southeastern frontiers of the European migration system”, *Refugee Survey Quarterly*, 34(3): 95–113.