

## **LOCAL INTEGRATION AS A DURABLE SOLUTION FOR REFUGEES IN SOUTH AFRICA**

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### **Abstract**

Local integration is an important durable solution for refugees. It is an economic, socio-cultural and legal process. Refugees can have access to education, the right to seek employment, engage in economic activities and freedom of movement. Local integration assists refugees to acquire permanent resident permits and citizenship in the country of their asylum. Local integration is an economic process whereby refugees acquire rights and entitlements that allow them to establish a sustainable livelihood and be self-reliant. On social level, refugees live among local populations, in harmony without any discrimination. Due to the protracted conflicts in various states, refugees cannot be voluntarily repatriated. Furthermore, a few number of refugees succeed in getting resettlement in third countries. There is a quest to implement local integration for refugees so that they acquire legal, economic and social rights that will assist them to make a meaningful contribution in various sectors of the host country.

**Keywords:** Refugees, Asylum Seekers, Permanent residence, Naturalisation and Citizenship

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### **1. Introduction**

Local integration is an important durable solution for refugees. It “allows refugees to integrate into their countries of first asylum” (Weissbrodt, 2008). Local integration is an economic, socio-cultural and legal process. First, it is a legal process, whereby refugees are granted a progressive wider range of rights and entitlements by the host state (Crisp, 2004). According to the 1951 Convention Relating to the Status of Refugees (Refugee Convention), they include, for example, the right to seek employment, to engage in other income generating

activities, to enjoy freedom of movement and to have access to public services such as education. The process whereby refugees gain and accumulate rights may lead to the acquisition of permanent residence as well as citizenship in the country of asylum (Crisp, 2004). Weissbrodt argues that, “if the legal aspect of local integration is to occur fully, refugees must ultimately be granted naturalization in order to receive the full protection of the host country” (Weissbrodt, 2008). Second, local integration is an economic process whereby, in acquiring the rights and entitlements, “refugees also improve their potential to establish sustainable livelihood, to attain a growing degree of self-reliance and to become progressively less reliant on state aid or humanitarian assistance” (Crisp, 2004). If refugees are prevented to work or participate in the local economy, they cannot be considered to be locally integrated. As a result, they may consistently live in poorest conditions. Third, local integration is a social process, enabling refugees to live amongst or alongside the host population, without fear of systematic discrimination, intimidation or exploitation by the authorities or people of the asylum country (Crisp, 2004). Therefore, it is a process that involves both refugees and the host population. They live together in the spirit of brotherhood and promote harmony among themselves.

Refugees’ problem is a global challenge. Individuals leave their homes due to political persecution or instability and seek asylum in other countries. Currently, there are more than 40 million uprooted people around the world and around 10 million of them are refugees of special concern to the United Nations High Commissioner for Refugees (UNHCR) (World Refugee Day, 2010). Refugees expect to go back to their native countries once they are stable and safe. However, “with conflict continuing or escalating in many countries, finding new homes and allowing people to resort their lives is increasingly difficult” (World Refugee Day, 2010). A few number of refugees is resettled in third countries. Refugees who cannot be voluntarily repatriated or resettled experience challenges in the host countries. When refugees have stayed in a host country for many years, there is a quest for them to be locally integrated. Local integration allows those refugees who cannot or do not wish to repatriate the possibility to enjoy the freedoms and livelihood they would have in their home countries (Low, 2005). She argues that integration can benefit refugee-hosting community as well as refugees. Countries have to create measures to implement local integration as a durable solution for protracted refugees. This research will discuss the international aspects on local

integration, reception of refugees in South Africa, legal integration, economic integration and socio-economic integration of refugees in South Africa.

## **2. Internatioanal Aspects of Local Integration**

Refugee Convention encourages states to facilitate the assimilation and naturalisation of refugees. It stimulates them to “make every effort to expedite naturalisation proceedings and to reduce as far as possible the charges and costs of such proceedings” (Refugee Convention). The international law has provided that refugees may live in their country of asylum for several years. For this reason, it has acknowledged that states should make policies to facilitate refugees to acquire full protection of the host country by being naturalised. This process is not available in many African states as they anticipate that refugees will voluntarily repatriate once the opportunity occurs or their country of origin becomes safe. Therefore, African host states are not able to integrate the refugees that they have received on their territory.

Refugee Convention recognised that the grant of refugee status or asylum may place undue heavy burdens on certain countries, and that a satisfactory solution of refugee problems cannot thus be achieved without international cooperation (Merheb *et al*, 2006). For this reason some countries have enacted immigration laws that enable them to resettle refugees on their territory each year. For instance, “in Australia, Canada, New Zealand and the United States refugee resettlement constitutes an intrinsic component of the national immigration programme” (Weissbrodt, 2008). Individuals who benefit from the resettlement programmes are either refugees selected by the UNHCR as part of an agreed quota or persons selected on the basis of national criteria by the host country. Only few states have a willingness to integrate refugees that are in need of resettlement in their territory. In order to increase the number of individuals who benefit from resettlement programmes, there is a need to “cooperate with resettlement countries and UNHCR in implementing refugee resettlement both as an instrument of protection and as a durable solution, and use resettlement as a meaningful instrument of international solidarity and responsibility sharing” (Riera & Casey, 2004). States need to create and implement resettlement opportunities to assist refugees. This can contribute to the burden sharing of the challenges caused by refugees in the host states. However, resettlement programmes are available to an insignificant number of refugees and there is a need to insist on implementing and promoting local integration of refugees into their host countries.

### **3. Reception of Refugees in South Africa**

South Africa is a party to the 1951 United Nations Convention Relating to the Status of Refugees and its 1967 Protocol as well as the 1969 Organisation of African Unity Convention Governing Specific Aspects of Refugee Problems in Africa. To domesticate these international conventions, South Africa has enacted Refugees Act 130 of 1998. In its section 3, the Refugees Act provides that, a person qualifies as a refugee if that person –

- (a) Owing to a well-founded fear of being persecuted by reason of his or her race, tribe, religion, nationality, political opinion or membership of a particular social group, is outside the country of his or her nationality and is unable or unwilling to avail himself or herself of the protection of that country, or, not having a nationality and being outside the country of his or her former habitual residence is unable or, owing to such fear, unwilling to return to it; or
- (b) Owing to external aggression, occupation, foreign domination or event seriously disturbing or disrupting public order in either a part or the whole of his or her country of origin or nationality, is compelled to leave his or her place of habitual residence in order to seek refuge elsewhere; or
- (c) Is a dependent of a person contemplated in paragraph (a) or (b).

South Africa has also committed to uphold the Declaration adopted at the World Conference

Against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban in 2001. The Declaration contains principles 53 and 54 that relate to the protection of refugees and asylum seekers in the host country.

Every person who wishes to apply for asylum must apply in person to a Refugee Reception Officer (officer) at any Refugee Reception Office (RRO) (Refugees Act, s. 21). The officer has a duty to ascertain that the application is properly completed and must assist the applicant where necessary in this regard. He or she may conduct an inquiry to verify the information furnished by the applicant. Thereafter the officer must submit the application to a Refugee Status Determination Officer (RSDO) to decide the application. According to section 22 of the Refugees Act, the officer must issue an asylum seeker permit to the applicant to allow him or her to sojourn temporarily in the Republic. The asylum seeker permit contains conditions that enable the holder to live, work, study and function in South Africa prior to the determination of his or her status.

Section 24 of the Refugees Act provides for the decision regarding the application for asylum. Upon receiving an application for asylum, the RSDO may request any information or clarification he or she deems necessary from the applicant or refugee reception officer. He or she may also consult with and invite an UNHCR representative to furnish information on a specific matter (s 24 (2) of the Refugees Act). At the conclusion of the hearing, the RSDO must grant asylum; or reject the application as manifestly unfounded, abusive or fraudulent; or reject the application as unfounded; or refer any question of law to the Standing Committee (s 24 (3) (a) – (d) of Refugees Act). If the application for asylum is rejected, the applicant has right to appeal to Refugee Appeal Board (RAB). The RAB can grant or reject the appeal. If the RAB rejects the appeal, the applicant can approach the High Court to review the decision of the RAB. The applicant may appear before the RAB to provide any other necessary information. Once the applicant satisfies the relevant authorities that he or she qualifies for refugee status, he or she will be granted asylum and the person is deemed to be a refugee. The refugee status is valid for four years and must be extended or renewed when it expires.

Section 27 of the Refugees Act provides for the protection and general rights of refugees. They are entitled to a formal written recognition of refugee status, legal protection including the rights set out in the Bill of Rights of the Constitution and remain in the Republic. They are entitled to apply for an immigration permit, an identity document, a South African travel document, seek employment and the same basic health services and basic primary education which the inhabitants of the Republic receive from time to time. However, the application for asylum is a protracted procedure and applicants have to endure unreasonable delays and many challenges. For instance, *Harerimana* and *Bolanga* cases demonstrate the challenges that refugees face to access legal documentations.

In *Harerimana v Chairperson, Refugee Appeal Board and Others* (Harerimana, 2014), the Burundian applicant arrived in South Africa in May 2007 and was 18 years old. He applied for asylum in Johannesburg. On 2 August 2008 he had to re-apply for asylum as he was told that his initial application had been cancelled. On 5 August 2008, the RSDO rejected his claim as unfounded. He appealed against this decision to the RAB. The appeal was heard on 11 September 2008 where the RAB sat alone in the presence of an interpreter (Harerimana, 2014). On 2 August 2012, almost four years after the initial interview and five years after the applicant had first applied for refugee status and asylum, he was notified that his claim for refugee status and asylum had been unsuccessful. The applicant sought to review

and set aside the decision of RAB dismissing his appeal and the decision of the RSDO dismissing his claim for asylum. Furthermore, the applicant sought a declaration that he is a refugee entitled to asylum in South Africa and further directing the RSDO to issue to the applicant written recognition of his refugee status in terms of section 27(a) of the Refugees Act. Davis J held that the RAB was iniquate at the time of the appeal hearing and this invalidated its later decision to dismiss the appeal which had to be set aside (Harerimana, 2014). The RAB set alone with the presence of an interpreter. This was contrary to the refugee law which required the majority decision to be taken. Furthermore, the decision of the RSDO was not rational as it was based on the incorrect law (section 3(a) instead of section 3(b) of the Refugees Act (Harerimana, 2014).

The Promotion of Administrative Justice Act (PAJA, 2000) provides that in proceedings for judicial review the court may grant any order that is just and equitable, including an order setting aside the administrative action and in exceptional cases substituting the administrative action. In *University of Western Cape and Others v Members of Executive Committee for Health and Social Services and Others* (University of Western Cape, 1998), the court carefully considered the concept of ‘exceptional circumstances’. Hlope J provided guidelines to determine whether a case was sufficiently exceptional for a court to substitute its own decision for that of the designated tribunal or body. They include:

- (i) Where the end result is a foregone conclusion and it would be a waste of time to order the body to reconsider the matter;
- (ii) A further delay would cause unjustifiable prejudice to the applicant; and
- (iii) The functionary or tribunal has exhibited bias or incompetence of such a degree that it would be unfair to require the applicant to submit to the same jurisdiction again. (University of Western Cape, 1998; Theron, 1976 & Hoexter, 2012)

Furthermore, in *Tantoush v Refugee Appeal Board and Others* (Tantoush, 2008), Murphy J held that “not only must it (the Appeal Board) be impartial in its decision making, it must also be structurally independent”. The court found that the respondents were not impartial as they had opposed the application to review their decision to reject the asylum claim and dismiss the appeal.

Davis J reviewed and set aside the decision of the RSDO to reject the application for asylum and the decision of the RAB to dismiss the appeal against the decision of the RSDO. The court declared the applicant to be a refugee entitled to asylum

in the Republic of South Africa and directed the RSDO to issue the applicant written recognition of refugee status within 10 days of the date of the order.

In *CB Bolanga v Refugee Status Determination Officer and Others* (Balonga, 2015), there was an unreasonable delay in the application for asylum. The applicant was from the Democratic Republic of Congo and arrived in South Africa on 25 January 2005 with his wife and two years old son. On 27 January 2005, he lodged an application for asylum with the Refugee Reception Office (RRO) in Durban. Almost 2 years later, his application was rejected and the decision was communicated to him on 20 November 2006. He appealed against the decision and his appeal was heard by the RAB on 20 November 2007. After more than 4 years since the appeal was heard, the RAB dismissed the appeal and communicated the decision to the applicant on 11 January 2011.

The applicant approached the High Court to review and set aside the decisions of the RSDO and the RAB in May 2012. The application was opposed by the third respondent (Minister of Home Affairs) only. The court found that the RAB had used incorrect test in assessing the application for asylum. The correct test was whether there was a “reasonable possibility of persecution” which had to be considered in all the circumstances of the case (Balonga, 2015 & Tantoush, 2008). The court found that the exceptional circumstances did exist to justify the substitution of its decision to that of the administrator (Balonga, 2015). In *UWC v MEC for Health and Social Services*, Hlope J held that “the courts have also not hesitated to substitute their own decision for that of a functionary where further delay would cause unjustifiable prejudice to the applicant” (University of Western Cape, 1998). Penzhorn AJ reviewed and set aside both the decisions of the RSDO rejecting the application for asylum and RAB dismissing the appeal. The court declared the applicant to be a refugee entitle to asylum in the Republic of South Africa and directed the third respondent to issue to the applicant written recognition of refugee status within 10 days of the date of the order.

The above two cases demonstrate that refugees and asylum seekers face challenges to access refugee entitlements and rights in South Africa. There are unreasonable delays in the asylum application procedures. Furthermore some of the Refugee Reception Offices have been closed down and they are subject to litigation in South African courts (*Scalabrini Centre & Others v Minister of Home Affairs*, 2013; *Minister of Home Affairs v Scalabrini Centre*, 2013; *Somali Association of South Africa v Minister of Home Affairs*, 2013 & *Minister of Home Affairs v Somali Association of South Africa*, 2015). In 2011, there were six

Refugee Reception Offices in the entire South Africa: Johannesburg, Pretoria, Cape Town, Durban, Musina and Port Elizabeth. However, “three of those six – Johannesburg, Cape Town and Port Elizabeth – have been closed either completely or to new applications by the Department of Home Affairs (DHA)” (*Minister of Home Affairs v Somali Association of South Africa*, 2015). The closure of these three Refugee Reception Offices have created great challenges among refugee communities. Pannan JA had directed the Home Affairs to restore by 1 July 2015 the refugee reception services of the Port Elizabeth Refugee Reception Centre to allow the new applicants for asylum to lodge their applications. Home Affairs had appealed to the Constitutional Court but its application was dismissed (Evans, 2016). Since 9 February 2016, the Port Elizabeth Refugee Reception Office is not open to new asylum seekers (Chirume, 2016). The refusal to receive new asylum seekers amounts to contempt of court and Home Affairs must uphold the rule of law. It is recommended that Home Affairs should also re-open the Refugee Reception Centres in Johannesburg and Cape Town. This can alleviate some of the challenges that refugees face in accessing Home Affairs services and facilities.

#### **4. Legal Integration of Refugees in South Africa**

Asylum seekers and refugees receive temporary documents from Home Affairs to legalise their sojourn in South Africa. These documents are constantly renewed several times. There is a limited provision for refugees to submit applications for permanent residence permits in terms of the Immigration Act (Katz, 2005 & Immigration Act, s 27 (d)). Refugees Act provides that a refugee “is entitled to apply for an immigration permit after five years’ continuous residence in the Republic from the date on which he or she was granted asylum” (Kavuro, 2015). However, the Standing Committee has to certify that he or she will be a refugee indefinitely. In *Ruyobeza and Another v Minister of Home Affairs and Others* (Ruyobeza, 2003), the court held that, despite the fact that the first applicant lacked a section 27 (c) certificate (certificate from the standing committee), it was clear from the evidence that he would probably remain a refugee indefinitely. The court directed the second respondent to receive an application from the first applicant for an immigration permit, alternatively a permanent residence permit, and to deal with such application in accordance with the relevant Act, despite the absence of a certificate under section 27 (c) of the Refugees Act (Ruyobeza, 2003). This matter went to court due to unreasonable delays in asylum procedures.

Kleinsmidt and Manicom, 2010 still confirm that “there are long delays in asylum procedures and the case often cited is insufficient staff and inadequate equipment.” The government needs to increase its Home Affairs staff members and acquire adequate facilities to ensure that refugees receive their documents within a reasonable time.

There is no specific legislation that allows refugees to acquire citizenship in South Africa. However, individuals who hold permanent resident permits can apply for a certificate of naturalisation and become South African citizens if they fulfil the requirements enumerated in sections 4 and 5 of the South African Citizenship Act, 1995. Some of the requirements to apply for South African citizenship include a police clearance from the country of origin and proof that the native state allows or disapproves dual citizenship. Refugees face challenges to acquire these documents as they have fled persecution from their countries. It is ironic and improper to require former refugees to seek documents from the government of their native states. It is submitted that National Parliament should amend the South African Citizenship Act to allow refugees to apply for a certificate of naturalisation. This can assist to achieve a total integration of refugees as they can become citizens and acquire rights, privileges and obligations as South African citizens. The amendment can state that “A refugee can apply for a certificate of naturalisation and become a South African citizen if he or she has been living in the Republic of South Africa for a continuous period of 5 years after he or she has been granted a refugee status”. This proposed amendment can solve the challenges of protracted refugees that exist in South Africa.

### **5. Economic Integration of Refugees in South Africa**

Economic integration assists refugees to satisfy their livelihood by earning an income. Refugees Act provides that a refugee “is entitled to seek employment and to the same basic health services and basic education which the inhabitants of the Republic receive from time to time” (Refugees Act, 1998). The right to seek employment is one of the fundamental right that allows individuals to satisfy their basic needs. Refugees and asylum seekers can be able to acquire food and shelter once they are employed. Education is also a basic human right that allows children to prepare for their future and live a meaningful life. As children acquire education, they are able to positively contribute to the development of the society and country where they are located. However, refugees and asylum seekers face challenges to access the right to education and work in the host state.

### **5.1 Right to education**

The article 22 of the UN Refugee Convention provides that “The Contracting States shall accord to refugees the same treatment as is accorded to national with respect to elementary education”. The right to education is enshrined in the South African Constitution by section 29. It provides that “everyone has the right – (a) to a basic education, including adult basic education; and (b) to further education, which the state, through reasonable measures, must make progressively available and accessible” (Constitution, 1996). Refugees face challenges to access basic education in South Africa. For instance, children or their guardians must furnish documentations to school administrators in order to access education (Sprenn & Vally, 2012). Some of the refugee children do not have their school transcripts or certificates when they arrive in South Africa as they did not plan to flee. Registering a learner with a refugee permit is also a challenge due to the fact that they require the birth certificate. These are the barriers to access basic education for refugees and asylum seekers.

Sometimes the government implement policies that exclude asylum seekers from accessing the right to basic education. In *Minister of Home Affairs v Wachenuka and Another* (Wachenuka, 2004), the prohibition for asylum seekers to study for the first 180 days residence in South Africa was challenges. Nugent JA held that the general prohibition against study for asylum seekers was unlawful. The freedom to study was also inherent in human dignity, for without it a person was deprived of the potential for human fulfilment (Wachenuka, 2004). The court opined that the constitution guaranteed everyone the right to a basic education, including adult education, and to further education. That right could also be limited in terms of section 36 of the constitution. However, where the person concerned was a child who was lawfully in the country to seek asylum, there was no justification for limiting that right so as to deprive him or her of the opportunity for human fulfilment at a critical period (Wachenuka, 2004). The general prohibition that did not allow asylum seekers to study in appropriate circumstance was unlawful. Since this judgment, asylum seekers could have access to basic education.

Refugees and asylum seekers also face financial challenges to pay for school fees for their education. Most of the parents or guardians are destitute and are unable to finance their children to study. There are provisions for school fees exemptions, but most of the parents are unaware about this procedure (Sprenn & Vally, 2012). The principals or administrators need to have a duty to assist destitute learners to

apply for school fees exemptions. This can enable learners to pursue their study without much problems. Refugees who access tertiary education face enormous challenges. They are “somewhere between an international student and a South African national” (Spren & Vally, 2012). There is limited assistance in terms of bursaries or loans for South African citizens only. For refugees to be accommodated in further education, there is a need to provide limited financial assistance such as loans or bursaries. This can assist refugees to acquire high education and make a contribution to the development of the host country.

## **5.2 The right to work**

The right to work is one of the fundamental rights that allow individuals to acquire and maintain their self-esteem. They can be able to fulfil their basic needs in the society. Although this right is reserved for refugees and asylum seekers, they face daily challenges when they try to acquire employment. This is highlighted by some of the selected jurisprudence in South Africa. In *Wachenuka* case, the applicants challenged the prohibition of work and study for asylum seekers for the first 180 days residence in South Africa. The court held that such prohibition violated the right to human dignity enshrined in the Constitution. It recognised that the freedom to engage in productive work was an important component of human dignity. Furthermore, asylum seekers relied on the employment as the only reasonable means to support themselves. The prohibition of employment imposed a restriction upon an individual’s ability to live without a positive humiliation and degradation. The court acknowledged that South Africa did not offer any state support to applicants for asylum. Therefore “a person who exercises his or her right to apply for asylum, but who is destitute, will have no alternative but to turn to crime, or to begging, or to foraging” (Wachenuka, 2014). Although any right in the Bill of Rights could be subject to limitation clause, the court found that there was no justification to restrict the right to employment for asylum seekers.

International law accepts that every sovereign nation has the inherent power to forbid the entrance of foreigners, or to admit them only in such cases and upon such conditions as it may prescribe (Wachenuka, 2004; Nishimura, 1892 & Olivier, 1993). It is for that reason that the right to choose a trade, occupation or profession may be regulated by law (Constitution, 1996). This provision allows parliament to regulate some professions in a manner that excludes refugees and asylum seekers. Some of the employment services require the candidate to be a

South African citizen or a permanent resident in the country. Such professions technically exclude refugees and asylum seekers. Therefore, they are prevented to use their skills and knowledge to benefit themselves and develop the host state.

In *Union of Refugee Women and Others v Director: Private Security Industry Regulatory Authority and Others* (Union of Refugee Women, 2007), the applicants challenged the constitutionality of section 23 (1) (a) of the Private Security Industry Regulation Act, 2001 on the ground that the section discriminated against them on the basis of their refugee status and consequently infringed their right to equality enshrined in section 9 of the Constitution of the Republic of South Africa. Section 23 (1) of the Private Security Industry Regulation Act requires a natural person (applicant) who wants to be registered as a security service provider, to be a citizen of or have a permanent resident status in South Africa. The court held that the differentiation in section 23 (1) (a) between citizens and permanent residents, on the one hand, and all foreigners, including refugees, on the other, was rationally connected to a legitimate government purpose, namely, limiting eligibility for registration to people whose trustworthiness could be objectively verified. Assuming such differentiation was a discrimination, it was not unfair since the activity for which the applicants sought constitutional protection -the right to choose a vocation- did not fall within a sphere of activity protected by a constitutional right available to refugees and other foreigners (Union of Refugee Women, 2007).

There was a provision for applicants, who did not satisfy the prescribed requirements, to be registered as security service providers. Section 23 (6) of Private Security Industry Regulation Act conferred upon the authority the discretion to register any applicant as a security service provider, on 'good cause' shown and on grounds which were not in conflict with the purpose of the Act and the objects of the authority. The court acknowledged that there was the apparent lack of information and assistance provided by the authority to refugee applicants in relations to their exemption applications (Union of Refugee Women, 2007). However, the least the authority could do was to inform refugee applicants about the various categories of security activities, and the possibility and procedure for exemption applications.

The court held that, for good cause for the purpose of exemption in terms of section 23 (6) to exist, it depended on the particular circumstances of each case. Important considerations included the personal circumstances of the applicant seeking employment in the private security industry; the length of his or her stay

in the country as a refugee, the character of the work applied for, whether the applicant had previously worked in a similar or comparable industry and whether he or she had earned the requisite trust in other ways. In the exercise of its discretion under section 23 (6), the authority had to show a reasonable measure of flexibility. It was fair, in the circumstances, to afford the applicants an opportunity to apply for exemption in terms of section 23 (6) (Union of Refugee Women, 2007).

Finally the court dismissed the appeal and held that section 23 (1) (a) of the Act was constitutional and valid. The respondents were to ensure that all applicants for exemption in terms of section 23 (6) of the Act were made aware of the nature of the information that had to be furnished in such applications (Union of Refugee Women, 2007). Refugees have no other alternatives but to apply for exemption in terms of section 23 (6) if they want to be registered as security service providers. This has a severe impact on the challenges that refugees face to earn a living and satisfy their basic needs. Other professions, such as attorney (Attorneys Act, 1979) and advocate (Advocates Act, 1964), are also restricted to citizens and permanent residence permit holders, therefore technically excluding refugees.

In *Ndikumdavyi v Valkenberg Hospital & Others* (Ndikumdavyi, 2012), the applicant was a refugee from Burundi and had obtained a degree in nursing from the University of Western Cape. He was offered a permanent post by the first respondent. After three weeks, the Hospital withdrew his permanent employment offer when it realised that his refugee status would expire in six months. Rabkin-Naicker J found that the dismissal was procedurally unfair and awarded the applicant compensation equivalent to 12 months remuneration of his salary (Ndikumdavyi, 2012). This case demonstrates that some skilled refugees are unable to use their skills and make a positive contribution to the society. Handmaker, 2001 argues that some of the migrants who come to South Africa are highly skilled. If they are allowed to work, they can contribute to the development of the South African economy.

Refugees have right to open their own business and be self-employed to ensure their survival. However, this right has been scrutinised by the courts in *Somali Association of South Africa v Limpopo Department of Economic Development* (Somali Association of South Africa, 2015). In this case, the municipal officials and the police closed down the tuck and spaza shops belonging to Somalis and Ethiopians asylum seekers and refugees as they did not possess valid permits to operate businesses. The Supreme Court of Appeals (per Navsa ADP) held that

there was no blanket prohibition on refugees and asylum seekers to self-employment (Somali Association of South Africa, 2015 & de Jager, 2015).

Furthermore, the refugees and asylum seekers had a right to self-employment where they had no other means to support themselves. This was in relation to the constitutional right to dignity. There was no restrictions to grant permits or licences to asylum seekers and refugees to operate businesses. Therefore, the court declared that asylum seekers and refugees had the right to apply for and renew licences and permits in terms of the legislation and land-use scheme involved; and that the closure of businesses run by asylum seekers and refugees holding valid permits were unlawful (Somali Association of South Africa, 2015). Refugees and asylum seekers can run their own businesses and facilitate the well-being of the communities where they live. However, there is some unwillingness among officials to fully integrate refugees in South Africa. Some policies intent to encourage refugees and asylum seekers to leave South African shores.

Due to the protracted nature of the conflicts which have forced refugees to leave their homeland, a large proportion of world's refugees are destined to remain in their country of asylum for very long periods of time (Crisp, 2004). Protracted refugees make economic contribution to the host state. They discover business opportunities and start small businesses that serve or benefit the local community. When refugees are "self-settled amongst the host community, they provide economic inputs in the form of new technologies and skills, entrepreneurship or needed labour" (Jacobsen, 2001). However, refugees are prohibited to be employed in certain jobs. Some professions are excluded or restricted to refugees and they may be prevented from developing their human potential or ability to make a positive contribution to the economy and society of the host country which has granted them asylum. It is submitted that refugees should be allowed to use their skills and do all jobs except those political posts reserved for citizens only. This will assist refugees to be fully economically integrated in their host state.

## **6. Socio-Cultural Integration of Refugees in South Africa**

Several refugees are unable to return home due to different reasons. In certain circumstances, "this may be because they have established close economic or social links to their country of asylum" (Jacobsen, 2001). Furthermore, it may also be because the circumstances which forced them into exile were so traumatic that they cannot bear the thought of going back to their country of origin. In South

Africa, Refugees Act recognises this possibility. It states that cessation clause “does not apply to a refugee who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself or herself of the protection of the country of nationality” (Refugees Act, 1998). According to article 1 C (5) of the 1951 Refugee Convention, a refugee should not be expected to return home, if because of reasons (arising out of previous persecution) that person has a need to remain in the country of asylum.

The international community should recognise that a comprehensive approach is required, which adequately addresses the situation of people who are unable and who may never be able to return to their country of origin (Crisp, 2004). Refugees who have the desire, the potential or the need to become locally integrated should be enabled to do so by means of appropriate legal and social assistance measures. In South Africa, refugees have access to social grants, including child grant, disability grant and old age grant (Social Assistance Act, 2004 & Social Assistance for Refugees). This is a significant development in social integration of refugees in South Africa. However, some South African citizens practice xenophobia against foreigners, including refugees and asylum seekers. There is a need to educate South African communities to live in harmony with all foreigners wherever they are and in various activities. Jacobsen argues that “local integration benefits the host country when it augments development by boosting the productivity of the host community” (Jacobsen, 2001). In this way, refugees may get sufficient opportunities to positively contribute to the social development of the host country especially after a long period of residence in the asylum country.

## **7. Conclusion and Recommendations**

Local integration of refugees is necessary as a durable solution to solve the challenges of protracted refugees. International refugee law promotes local integration to enable refugees to acquire entitlements and several rights so that they can live in dignity in the host states. South Africa is part of the international community and has enacted Refugees Act to receive and accommodate refugees on its territory. Refugees have rights to apply for asylum seeker and refugee status permits to legalise their sojourn in South Africa. They can also apply for permanent resident permits after five years’ continuous residence in South Africa since they have obtained the refugee status. However, they need first to be certified, by the Standing Committee, that they will be refugees indefinitely. There is no provision for refugees to apply for naturalisation. Economic

integration for refugees is also crucial in South Africa. Refugees and asylum seekers have rights to work and study. However, some works, such as security officer, attorneys and advocates, are only reserved for permanent residents and citizens. Refugees have access to healthcare services that inhabitants of country are entitled to and receive various social grants. This is a significant development in refugee law in South Africa. However, xenophobia, exercised by few citizens, is a challenge for refugees to be socially integrated within local communities.

It is recommended for the National Parliament to amend Citizenship Act and make a provision for refugees to apply for naturalisation after five years of continuous residence in South Africa with refugee status. Furthermore, refugees that have necessary qualifications should be allowed to do all jobs except political posts reserved for citizens only. To alleviate xenophobia, it is submitted that the government should educate South African citizens to live in harmony with refugees, asylum seekers and other foreign nationals lawfully present in the Republic of South Africa. If the government implements these recommendations, the refugees' situation will improve and they will be able to contribute to or promote the well-being of South Africa in various areas. Once refugees become naturalised, they are fully integrated in the host country and able to exercise their rights, including political rights as if they were in their home country.

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