

IS LEGAL STATUS ENOUGH?

LEGAL STATUS AND LIVELIHOOD OBSTACLES
FOR URBAN REFUGEES

Master of Arts in Law and Diplomacy Thesis

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Introduction

The word “refugee” generally conjures images of sprawling rural camps with grids of tents, families living in cramped quarters, and fences. When one contemplates refugee hosting areas, one generally does not think of Johannesburg, Cairo, Kampala, Nairobi, Khartoum, Dar es Salaam, and New Delhi. However, together these cities host hundreds of thousands of refugees. Each host government is unique regarding the degrees to which it accepts refugees into urban areas and allows them to be social and economic actors. In general, the norm in the Global South is one where refugees are confined to camps. Those who migrate to urban areas, either directly from their country of origin, through other countries, or from rural settlements, often do so in violation of the host country policy. Egypt and South Africa are unique in their lack of camp-confinement policies and their acceptance of refugees in urban areas.

The fact that some refugees have government permission reside in urban areas while others do not creates a system of legal and illegal urban refugees. Faced with limited or non-existent assistance, all of these refugees are left to their own resources in order to meet the basic needs of food and shelter and eventually move beyond a survivalist existence.

This paper examines the extent to which refugees living legally in urban areas throughout the Global South face the same livelihood challenges as refugees without legal status. The first chapter incorporates a legal human rights perspective in order to establish the different protection frameworks facing refugees with and without legal status. It analyzes the legal obligations of the host governments and the link between legal status and refugee rights in order to show that some rights are guaranteed only to

“legal” refugees. The second chapter then examines whether the livelihood obstacles facing urban refugees without legal status and those facing legal urban refugees flow from differences in their rights as determined by their legal status. The paper concludes with an assessment of the relative importance of legal status in promoting the livelihoods of urban refugees.

Legal Status, Refugee Rights and Urban Refugees

In order to analyze any relationship between legal status and refugee livelihoods for urban refugees, one must first clarify (1) who are urban refugees, (2) what factors determine whether they are legal or illegally residing in a state, and (3) what are their subsequent rights under domestic and international law? These questions are important for two principal reasons. First, current literature on urban refugees often does not explicitly define the population in question. “Urban refugees” is a term that has been used to label nearly all forced migrants in urban areas, without making a distinction between those recognized as refugees and those who have not been recognized as refugees. Second, the rights of refugees may impact their livelihood opportunities and obstacles, and these rights are in turn partially determined by whether or not an individual has been recognized as a refugee or not and if the individual has legal status in the eyes of the host government. This chapter therefore establishes the criteria for becoming a refugee, the rights entitled to refugees irrespective of their legal status, and the rights specific to refugees lawfully present in a state’s territory. This chapter also looks at the policies of countries hosting refugees. While refugees may be provided certain rights through international instruments, ultimately states themselves determine who receives refugee status and what rights these individuals may exercise. These rights (in particular regarding movement, employment, identity documents, detention and deportation) have a bearing on the livelihood opportunities for urban refugees, and, as this section will show, these rights are not equally protected by states to all persons meeting internationally accepted criteria of refugees. The chapter concludes with a definition of urban refugees

and a summation of their rights based on international standards, host country policies and the discussion on legal status.

Defining Refugees: International Conventions

The United Nations Convention Relating to the Status of Refugees (189 U.N.T.S. 150, entered into force April 22, 1954, hereinafter referred to as the “Refugee Convention”), as amended by the Protocol Relating to the Status of Refugees (U.N.T.S. 267, entered into force Oct. 4, 1967), defines the term “refugee” as any person who

Owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, unwilling to avail himself of the protection of that country (Art. 1(2)).

This definition, which focuses on individual persecution, was expanded by the Organization of African Unity (OAU) in 1969. The 1969 Convention Governing the Specific Aspects of the Refugee Problem in Africa¹ recognized the Refugee Convention definition and broadened it to include people fleeing conflict in their country of origin or nationality:

The term “refugee” shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside of his country of origin or nationality (Art. 1(2)).

¹ *Convention Governing the Specific Aspects of Refugee Problems in Africa*, 1001 U.N.T.S. 45, entered into force June 20, 1974.

The OAU Convention also laid the framework for the recognition of groups of refugees, rather than granting status solely on the basis of individual claims. This allows states to recognize refugees on a *prima facie* basis (Lawyers Committee for Human Rights 1995: 29). The trend among African states has been to use group recognition, primarily in cases where there are large numbers of refugees fleeing to rural camps or settlements (ibid.: 30). Despite the avenue for group determination provided through the OAU Convention, some countries in Africa (including Kenya, Sudan, Zambia and Zimbabwe) use the more narrow category of individual persecution to assess the merits of asylum seekers in urban areas and asylum seekers who passed through one or more countries before entering the destination country (ibid.: 22).

Defining Urban Refugees

Many individuals who fit squarely into the refugee definitions as laid out by the Refugee and OAU Conventions may not be recognized as refugees by host governments. While this paper acknowledges that such non-recognition or denial of refugee status has ramifications for the legal status and legal rights of refugees, it does not include recognition as a condition in the definition. It defines an “urban refugee” as an individual living in an urban area outside of his/her country of origin who meets the criteria put forth in the Refugee Convention or OAU Convention, even if the person has not been recognized by a host government. Included in this definition are asylum seekers, refugees with “closed files” (refugees who have been denied refugee status), refugees who have not applied for asylum, and refugees who have been granted refugee status. “Urban area” is defined as an area generally considered to be a city or town.

Legal Rights of Urban Refugees under Refugee Conventions

In addition to establishing definitions of the term “refugee,” the Refugee Convention and the OAU Convention also delineate a body of rights guaranteed to those people who meet the requirements for refugee status. States which have ratified these Conventions are obligated to protect these rights. There are also other international human rights instruments relevant to refugees, an important example being the International Covenant on Civil and Political Rights² (ICCPR). These international human rights treaties create minimum standards of rights applicable to all individuals, including refugees, whose act of fleeing their country of origin or nationality does not forfeit these basic rights (Helton 1990: 24). The rights at the center of this discussion will be *non-refoulement*, freedom of movement, the right to employment, and the right to identity documents, because they have a bearing on the legal status of refugees living in urban areas and their entitlement to pursue livelihoods.

Non-refoulement

The Refugee Convention and the OAU Convention contain articles establishing the obligation of *non-refoulement*.³ As Helton notes, *non-refoulement* is central to the very notion that people fleeing conflict or persecution are entitled to protection:

The principle that no refugee should be returned to any country where his or her life or freedom is endangered is perhaps the basis of all refugee protection (1990, citing Helton 1989 note 22: 39).

² *International Covenant on Civil and Political Rights*. 1966. G.A. res. 2200^a (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976.

³ Article 33(1) of the UN Convention and Article 2(3) of the OAU Convention

Many believe *non-refoulement* is a part of customary international law, meaning even states which have not ratified the refugee conventions are prohibited from expelling or turning away people seeking asylum (Fullerton 1999: 236).⁴

For refugees who flee to urban areas, the principle of *non-refoulement* means that states are obligated not to deport them to the country from which they fled. This is even true for refugees who enter the destination country illegally (ibid.). Article 31 of the Refugee Convention states that refugees whose presence is illegal may not be penalized, so long as they present themselves without delay to authorities and had come directly from the country where their life or freedom were threatened. While they are still protected from *refoulement* if they are in a country which has ratified the Refugee Convention, Protocol, or OAU Convention, these conditions do have ramifications for refugees in urban areas, some of whom do not present themselves to local authorities and/or have passed through another country *en route*.⁵ In addition, *non-refoulement* does not appear to mean that the state is not permitted to move the refugee to a designated settlement.

Freedom of movement

Freedom of movement is a fundamental human right guaranteed in the ICCPR, the Refugee Convention, and the African Charter on Human and People's Rights (OAU

⁴ For a principle to be established in customary law, two factors need to be met. The first is the presence of a relatively stable and constant practice that many states have consistently followed. The second requirement is that of *opinio juris*, meaning that states perceive their actions as adhering to a binding norm. (Fon and Parisi 2003: 3-4, See International Court of Justice Statute Article 38(1)). The discussion of whether *non-refoulement* actually meets these two criteria is beyond the scope of this paper.

⁵ Several works on urban refugees attest that many of these refugees do not present themselves to authorities because their presence in the city is clandestine. "What the Eye Refuses to See" (Kibreab) and *Fear in Bongoland* (Sommer) are two examples. The fact some urban refugees did not come directly to the destination country has also been documented in the case of South Africa in *The Politics of Space*.

Doc. CAB/LEG/67/3)(Lawyers Committee for Human Rights 1995: 98). Article 26 of the Refugee Convention states that

Each contracting state shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.

On the surface, this right appears to protect the actions of refugees who choose to reside in urban areas, though they face restrictions targeted to all non-nationals. However, some states entered reservations to this article.

Article 12 of the ICCPR also guarantees freedom of movement and the right to choose one's place of residence. However, this right is only guaranteed for those who are *lawfully present in the State*. This same stipulation is made in Article 26 of the Refugee Convention. This condition means that people fleeing conflict or persecution who are living without the permission of the host country are not necessarily guaranteed the right to choose where they live under either the Refugee Convention or the ICCPR.

The fact that freedom of movement is only guaranteed for forced migrants who are legally residing in the state presents a paradox for some refugees, because in many cases, their legal status is actually defined by whether or not they choose to live in designated areas. This creates a trade-off between access to entitlements and freedom of movement, which will be further explored in the discussions on host country policies and livelihood obstacles. Notably, states *do* possess the right to limit the freedom of movement of any person within their territories in order to protect public health and morals, national security, and the rights and freedoms of others (ICCPR Art. 12(3)).

The Right to Wage-Earning Employment and Self-Employment

The right to engage in wage-earning employment or self-employment plays an important role in the ability of refugees to pursue productive livelihoods. The Refugee Convention guarantees refugees “the most favorable treatment” possible, meaning that they must be treated as well as foreign nationals in similar circumstances, regarding their right to participate in wage-earning employment and self-employment (Art 17(1), 18). A dozen countries entered reservations to this article limiting their obligation to permit wage-earning employment by refugees.⁶ Migrants who do not meet the criteria of refugee are not guaranteed the right to seek employment.⁷ This restriction impacts the livelihood opportunities for refugees without secure legal status, as states may act on the assumption that they have no obligation to allow them to pursue wage-earning employment or self-employment.

The Right to Identity Documents

In order to work or travel (within or outside of the territory), an individual usually requires identity papers. The right to such documents is therefore tied to a refugee’s ability to exercise other rights in the Conventions. In addition, Fitzpatrick observes that “the right to recognition as a person before the law, another non-derogable right, is closely related to the right to possess necessary identity papers” (2002: 14). Article 27 of the Refugee Convention states that host governments must issue identity documents to

⁶ These countries are Angola, Austria, Botswana, Ethiopia, Iran, Latvia, Madagascar, Malawi, Mozambique, Papua New Guinea, Moldova, and Sierra Leone (Multilateral Treaties Deposited with Secretary General, <http://untreaty.un.org/>)

⁷ A possible exception is if the host country has ratified the International Covenant on Economic, Social and Cultural Rights. Article 6(1) states that “The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.”

refugees who do not have valid travel papers. Article 28 provides for the issuance of documents for traveling outside of the host country's territory. The OAU Convention only addresses the issuance of travel documents for the second circumstance and stipulates that these documents shall be issued to "refugees lawfully staying in their territories" (Article 6 (1)).

Refugee Status and Protection Under Other International Instruments

Importantly, rights specific to the Refugee Convention and the OAU Convention are only applicable to persons who meet their criteria of "refugee." A key question is whether these rights are guaranteed for migrants who meet the definition of a refugee, but who are not recognized, denied status, or do not apply for asylum. The Refugee Convention and the OAU Convention do not state that these rights are only for individuals who have been recognized by a host government. As with all international instruments, they require that contracting states protect the rights delineated to the individuals of concern to the Convention. The Conventions do in fact protect the rights of those people who meet the definition of "refugee" but who do not possess an official refugee or asylum seeker status. A state's denial or non-recognition of refugee status does not change whether or not a person has a legitimate entitlement to such status. One argument is that the failure of individuals to be able to exercise these rights is therefore a problem of effective implementation of the Conventions. Implementation is the area between the standards set by the Conventions and the conformity of these standards by

state parties (Packer 2004). Article 26 of the Vienna Convention on the Law of Treaties⁸ obligates states to give effect to these treaties in good faith.

The refugee rights established in the Conventions are only guaranteed to individuals who take flight to countries which have ratified them or otherwise incorporated their standards into national legislation. For refugees in states not party to the Conventions, other instruments of international human rights law protect their rights, as has already been noted regarding freedom of movement. The ICCPR, the International Covenant on Economic, Social and Cultural Rights,⁹ the Convention against Torture,¹⁰ and the Charter to the United Nations,¹¹ in addition to other treaties and declarations, together provide a wide body of rights applicable to all human beings. Refugees without secure legal status, and even people who do not meet the definition of “refugee,” are equally protected through these instruments.

Human rights law applies to all individuals by virtue of their humanity (Roxstrom and Gibney 2003: 39). Even if one were to make the argument that certain migrants are not refugees (i.e. those who fled a war-torn country because their economic opportunities had been suppressed because of the conflict, but not because their life or freedom was in danger) and therefore are not guaranteed the rights in the Refugee or OAU Convention, these individuals are still guaranteed rights under other instruments of international human rights law. In addition, international human rights law has become increasingly

⁸ *Vienna Convention on the Law of Treaties*. 1969. 1155 U.N.T.S. 331, entered into force January 27, 1980.

⁹ *International Covenant on Economic, Social and Cultural Rights*. 1966. G.A. res. 2200A (XXI), 21 U.N.GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S 3, entered into force January 3, 1976.

¹⁰ *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. G.A. res. 39/46, annex, 39 U.N. Gaor Supp. (No. 51) at 197, U.N. doc. a/39/51 (1984), entered into force June 26, 1987.

¹¹ *Charter of the United Nations*. June 26, 1945, 59 Stat. 1031, T.S. NO. 933, 3 Bevans 1153, entered into force Oct. 24, 1945.

sophisticated in terms of protection mechanisms. The ICCPR addresses many of the same rights delineated in the Refugee Convention. The former has been ratified by 151 states and the latter by 145.¹² Perhaps for these reasons the Lawyers Committee for Human Rights state that

When the standards of the UN Convention are considered in the light of international human rights law generally, it becomes apparent that the developments in the latter have come to largely obscure the distinction between nationals and aliens as a basis for protection (1995: 27).

The Charter to the United Nations applies to all members, which includes nearly every country in the world. In addition to detailing structural and procedural workings of the United Nations, the Charter also establishes some minimum standards of human rights. Article 55 states that the UN will promote higher standards of living, employment, and the universal observance of human rights for all people without distinction regarding race, sex, language or religion. This article on non-discrimination is followed by an article establishing that members are duty-bound to promote these rights, stating that “all members pledge themselves to take joint and separate action...for the achievement of the purposes set forth in Article 55” (Art. 56, *Charter of the United Nations*).

Host Country Policy and Refugee Rights

International instruments like the Refugee Convention and OAU Convention establish the criteria for who is and is not a refugee, as well as the rights guaranteed to refugees. States which ratify these instruments take on responsibilities regarding status

¹² 145 Countries in total have ratified either the 1951 UN Convention or the 1967 Protocol. 138 Countries have ratified both instruments. (www.unhcr.ch).

determination, incorporating refugee protection into legislation, providing identity documents, and ensuring general human rights (Parker 2002: 25). Roxstrom and Gibney point out that, while the United Nations High Commissioner for Refugees (UNHCR) was created to ensure the legal protection of refugees, states themselves are ultimately responsible for implementing refugee protection (2003: 43). Some scholars argue that host country actions are in fact more dependent on national interest than on obligations under international law (Betts 2003: 281, citing Surhke 1998). Host country policies are crucial in determining the extent to which refugees are able to exercise the rights granted to them through international instruments and their ability to pursue livelihoods in a manner that does not violate host country laws. This section therefore places particular emphasis on how refugee policies in many countries limit the rights to freedom of movement and employment. Host country policies also determine the legal status of refugees living in urban areas, as governments control status determination procedures and control where refugees legally may reside. Status determination and camp confinement policies impact why some urban refugees have secure legal status and others do not.

Refugee Status Determination

The previous section established the body of rights applicable to individuals who are fleeing persecution or conflict. States themselves have the right to determine who enters and exits their territories, though they have the responsibility not to turn away those seeking asylum. For a person to access the protection that the host country laws afford to refugees, they must first be recognized as a refugee by the host government. Status determination procedures therefore play perhaps the most major role in

establishing the legal status of refugees. In this context, “legal status” is determined by the host government and not solely by virtue of meeting the criteria in the Refugee Conventions.

Each state is supposed to create mechanisms in order to evaluate the claims of asylum seekers (Fullerton 1999: 239). Most governments in Africa use group recognition in order to recognize large numbers of refugees fleeing conflict. However, refugees in urban areas seeking asylum normally do so through individual status determination procedures (Alexander 1999: 284). In most cases, a government body is established in order to process asylum claims. In a few instances, UNHCR has stepped in to fill this role.

Host Government Responsibilities v. Refugee Rights

States party to the Refugee Convention have an obligation to enact legislation giving effect to the Convention and the general responsibility to guarantee the rights within it (Vienna Convention on the Law of Treaties Art. 26). However, the laws, policies and practices of host governments can serve to limit these rights.

There are several reasons why a refugee’s rights would not be protected by a host government. First, the refugee could be in the territory of a state that is not a member of the Convention and that does not have comprehensive legislation in place to protect the rights of refugees, as in the case of India. Second, some governments filed reservations to the articles guaranteeing the rights of employment, self-employment and freedom of movement. Third, the refugee’s presence may be clandestine. To be guaranteed the rights of freedom of movement and identity documents, refugees must be legally in the

territory. The rights of refugees under international human rights law, as determined by legal status and the instruments ratified by the host governments, is depicted in Table 1.

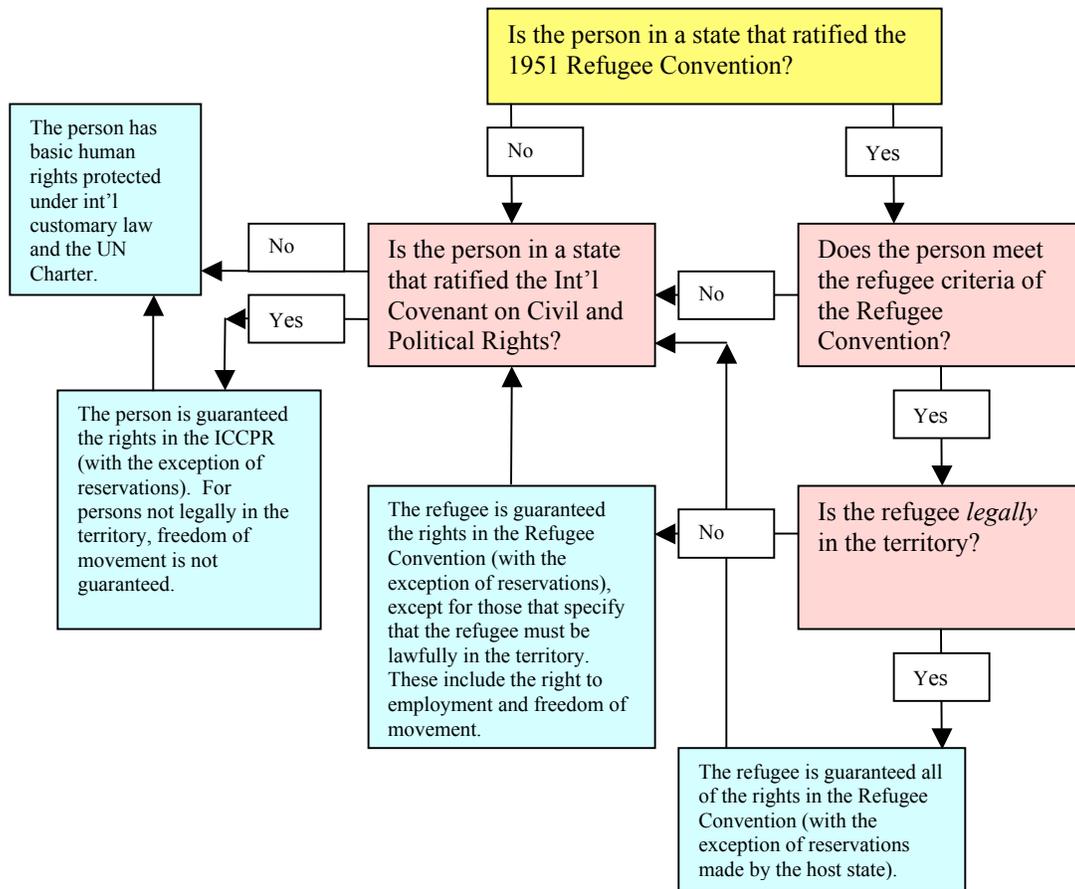


Table 1: Human Rights of a Person Fleeing Conflict or Persecution, as dependent on legal status and host country ratification of the Refugee Convention and ICCPR.

While countries have a responsibility not to turn away refugees, governments in Africa are becoming less open to accepting people fleeing conflict. Rutinwa sums up this phenomenon:

The reasons for Africa’s abandonment of the open door policy may be summarized as the pressure exerted on them by the sheer magnitude of the refugee problem, the impact of refugees on host communities, security concerns, the economic crisis...and the failure of the international community to provide adequate assistance to refugee hosting

countries....Another reason is the growing xenophobia in some countries coinciding with a democratization process in Africa which compels governments to take public opinion into account in the formulation of their refugee policies (1999: 15).

Host country responses are constructed in such a way as to discourage processes of integration (Kibreab 2003: 59). This goal can lead to policies that isolate refugees geographically or socially and economically. For example, refugees in Indochina were barred from employment and self-employment because “the government feared this would lead to their integration” (ibid.: 63, citing Pongsapitch and Chonwatana 1988: 45).

Limiting refugees’ right to employment is common among countries in the Global South. Most African countries have policies that are “vigorously nationalistic” (ibid.: 63, citing Brydon and Gould 1984: 4?). Even Zimbabwe’s policy, which is considered to be comprehensive in terms of its scope of rights, gives preference to nationals over refugees regarding access to employment (Lawyers Committee for Human Rights 1995: 38, 104). In the case of Liberian refugees in Cote d’Ivoire, the right of a refugee to work is tied to his or her state’s membership in ECOWAS, rather than his or her status as a refugee. Leaving the areas designated for refugees in order to pursue work would equal losing refugee status and any accompanying assistance (ibid.: 108).

States, regardless of whether they made reservations to the Article 26 of the Refugee Convention, often put policies in place that limit freedom of movement. Keeping refugees in designated settlements is another way that countries pursue the potentially overlapping goals of discouraging local integration and preventing refugees from migrating to cities. Kuhlman notes that African governments have routinely preferred organized settlements over integration as a response to refugee problems because they are easier to control and assist (1994: 122). The response also allows countries promptly to

repatriate refugees once circumstances have changed in their home country (Kibreab 1999: 400). Betts frames such restrictions on refugees in terms of national security interests:

If asylum seekers are perceived as a cost...containing their flow will be construed as a benefit. Such an attitude is central to the pervasively enshrined state-centric conceptions of 'national security,' in which security is considered to be 'the ability to control entry and exit so that the core values, institutions and processes of that system are not threatened' (2003: 277, citing Acharya and Dewitt 1995: 16).

In Cote d'Ivoire, Liberian refugees are confined to the *zone d'accueil*, which serves as a designated reception area (Lawyers Committee for Human Rights 49: 1995). South Africa and Egypt are rare among African countries in that they do not have camp confinement policies. Above all, policies that restrict refugees to camps, settlements or geographic areas clearly emphasize the desire for governments to promote the isolation of refugees rather than their integration. If these actions are truly necessary to preserve public health, order and morals, they do not violate freedom of movement as guaranteed by the ICCPR (Art. 12(3)).

Camp confinement policies have a direct bearing on the legal status of a refugee within a host government's territory. Sommers observes that refugees do not always go to camps: "when they become refugees, they face two dramatically different practical alternatives: living in organized settlements or camps, or pursuing what has come to be known as settling spontaneously" (2001: 348). The reality of self-settlement means that there are refugees living outside the conventional framework that host countries have established. Kuhlman cites various sources to estimate that as many as 80% of refugees in Africa were settled among local populations rather than living in camps. The act of

self-settling impacts their identities as refugees, at least concerning their legal status in the eyes of the host country. For this reason Sommers adds that “in legal terms, however, the local government usually gives them no alternative because virtually all refugees are ordered to live in camps or settlements” (ibid.).

The Government of Tanzania in August 2003 publicly reminded refugees that their legal status was contingent on their staying in refugees camps. The Deputy Minister of Home Affairs stated that refugees outside of camps would be “controlled by the Immigration Act No. 7 of 1995 and its subsequent regulations,” meaning that they would be deported (Xinhua News Agency 8/1/03).

While camp confinement policies are prevalent among African countries, Helton points out that the International Court of Justice referred to the Universal Declaration of Human Rights and the UN Charter as supporting the assertion that “it is a violation of international law to deprive persons of their freedom of movement and to confine them in conditions of hardship” (Helton 1994:25, citing *United States Diplomatic and Consular Staff in Tehran*, I.C.J Rep. (1980): 42). This decision implies that the act of placing people in squalid camps not only goes against the spirit of the refugee conventions but also constitutes a violation of other treaties.

The freedom of movement of refugees is also tied to their eligibility for refugee status in certain countries if the refugee did not come directly to the destination country. Fullerton observes that there is a pattern of states not granting residence permits to individuals who, while meeting the criteria of a refugee, passed through “a state in which they did not fear persecution” (199: 239). This policy permits states to turn away people seeking asylum (ibid.). Rutinwa concurs that many countries in Africa use this standard

(1999: 21). However, this is not universal criteria. In South Africa, for example, the policy was struck down in 2001 shortly after the government tried to implement it (Tuepker 2002: 413).

Urban Refugees and Their Legal Status

The previous section established that certain rights are dependent on the refugee being legally present in the territory. The term “urban refugees” encompasses individuals who have diverse circumstances regarding their destination countries and paths of migration. An urban refugee’s legal status depends primarily on the legal framework and status determination procedures of the host country. The refugee’s path of migration is important if the country has a policy to not grant status to individuals who did not come directly from their country of origin.

Legal Urban Refugees

This paper defines “legal urban refugees” as refugees or asylum seekers who are legally present in the territory and living in an urban area with the permission of the host government. This term only includes persons who have been recognized as refugees (or asylum seekers) by the host government. Examples include refugees and asylum seekers in Johannesburg and Cairo who have been issued refugee or asylum seeker documents.

Refugees with Insecure Legal Status

“Insecure legal status” is defined in this paper as the situation where a refugee’s presence is not considered legal by the host government, or the host government treats a group of people as refugees without granting them formal refugee status. These refugees might be considered illegal migrants by the host government. Legality may also depend

on where a refugee resides, even if this person has received refugee status. Therefore this term encompasses both refugees who have been recognized as refugees by the host government or UNHCR and those who have not. There are four main reasons why a refugee may have insecure legal status: (1) the state is not party to the Refugee or OAU Conventions; (2) the state does not legally recognize the status of the refugee through non-recognition, rejection of a valid claim for asylum, or revocation of refugee status; (3) the refugee leaves the designated refugee hosting area; or (4) the refugee does not apply for asylum.

First, a refugee may be “illegal” if he or she migrates to a country that is not party to the Refugee Convention or does not have a substantive legal framework to address the rights of refugees. While most countries in the world have ratified the Refugee Convention or Protocol, India presents an example of a refugee hosting country that has not. India also does not have laws that specifically address refugees, though pre-independence statutes concerning immigration are often applied to them (Vijayakumar 2000: 235). Many states that are party to the Conventions have not implemented domestic legislation to protect refugee rights. Fullerton states that, while humanitarian actions by these states have saved lives, their responses have “rarely resulted in legal protection.” She adds that “refugees in these countries often remain in limbo, unable to regularize their status and proceed with a normal life” (1999: 238).

Second, a country may not recognize people as refugees, even though they meet the definition and the state has a legal framework to address refugees. In some cases, a state may respond to a refugee crisis, but not in a manner that legalizes the status of refugees. This non-recognition is likely to be done on a group basis, as Senegal did in

1989 regarding tens of thousands Mauritians who had fled their country. These migrants were never granted refugee status but rather given a “receipt for a request for status” (Lawyers Committee for Human Rights 1995: 54). UNHCR describes the practice of “temporary protection,” which does not result in legal refugee status:

Some states have developed ‘temporary protection’ schemes under which assistance and protection against *refoulement* have been extended on a group basis, without either a determination of *prima facie* status for the group or individual status determinations for members of the group” (2003a: 315).

Because urban refugees who apply for asylum generally do so on a case-by-case basis, this legal loophole is likely more relevant to *prima facie* rural refugees than urban refugees.

A state may revoke refugee status if it determines that there has been a fundamental change in the circumstances that caused the flight (ibid: 308). Refugees who do not return because they feel their lives or freedom are still in danger would no longer have refugee status. Refugee status may also be revoked in a manner not in line with the Conventions. In Swaziland, for example, a Home Affairs minister withdrew the refugee status of 17 adults and 20 children following their refusal to repent for “storming” the Home Affairs office seeking resettlement (PANA 7/19/02).

A government may also not recognize a person as a refugee by rejecting their individual claim for asylum, even if it is valid. Fullerton points out that a major weakness of the Refugee Convention is that individuals who meet its criteria, but who are not granted refugee status by a ratifying state, do not have a process to appeal the decision (199: 231). Refugees who stay despite having “closed files” are seen as illegal immigrants (FMRSP 2003: 3).

In some states UNHCR has taken on status determination responsibilities. This is the case in Kenya, Egypt, India, Thailand, and Cambodia. However, the host government may not consistently recognize refugee status granted by UNHCR. The result can be competing claims regarding the legal status of refugees:

The consequences of a favorable status determination conducted by UNHCR are quite different from those whose decisions are made by host governments. If people are recognized as refugees by a government, they normally receive legal status in that country as well as other rights under the 1951 Convention. Recognition by UNHCR does not have the same outcome. In many countries, for example Thailand, a UNHCR-recognized refugee is still considered 'illegal' by the government, and durable solutions remain illusive (Alexander 1999: 285).

Events in Kenya present a similar example. The Human Rights Watch report *Hidden in Plain View* describes how in 1998 the status determination procedure was delegated from UNHCR to their implementing NGO partner. The Kenyan Government refused to recognize the letters of protection issued by the NGO, leaving refugees in a state of legal limbo (Parker 2002: 58).

In Indonesia, a government official's statement on the potential deportation of several foreigners highlights the fine line between the categories of "illegal immigrant" and "refugee," particularly when UNHCR is involved in status determination. He stated that "64 illegal immigrants have been sent to Jakarta [from elsewhere in Indonesia], and it appears that after going to the UNHCR they obtained refugee status" (Global News Wire 11/9/02). Their deportation was being urged by several politicians from Java.

The third principal reason why a refugee may have insecure legal status is if the refugee migrates to an area where the host country does not permit refugees to reside, such as a town or city. While freedom of movement is enshrined in the ICCPR, the granting of refugee status is often dependent on them not exercising this right:

Refugees may only be recognized as such while they remain in designated rural settlements or regions. Thus should they attempt to exercise their right to freedom of movement, they may lose their refugees status. They may even risk arrest and detention at the hands of security personnel (Lawyers Committee for Human Rights 1995: 41).

The Lawyers Committee for Human Rights also note that Liberian refugees who move outside of the *zone d'accueil* in Cote d'Ivoire can no long enjoy "any sort of refugee status" (ibid.: 49). Mozambican refugees in Zimbabwe in the late 1980s had to receive permission from a camp commander to leave the camp overnight. Leaving meant that the individual's refugee status was potentially null because of the government's camp-confinement policy (ibid.: 100). In other words, refugees may only be recognized and treated as such so long as they remain in camps or designated areas (ibid.: 98).

Finally, refugees may choose not to apply for status. Literature on urban refugees suggests that refugees living illegally in urban areas go to great lengths to conceal their existence from authorities.¹³ The report *Hidden in Plain View* give examples of refugees in Nairobi who did not present a claim for asylum because they were afraid of rejection (Parker 2002: 65). The concept of "hiding oneself" is central to Sommers's pieces on Burundian refugees in Dar es Salaam. Living among Tanzanians, these refugees employ

¹³ Also see Jonathon Bascom, "The New Nomads" (1995).

various strategies to downplay their refugee origins and minimize the risk of being “found out” by local Tanzanians and police (2001a: 98, 122-125). He notes that “most urban refugees reside in cities illegally, seeking to avoid any contact that may draw attention to their presence” (2001b: 354). Applying for asylum would undermine this goal.

Conclusion

This chapter established several points central to the paper. First, although the criteria for being a refugee is clearly spelled out in international instruments, many people who fit into the category are not recognized as refugees by the host government or are living outside of a designated area without state recognition. The resulting insecure legal status is often true for refugees in urban areas, as evidence indicates that many refugees living in cities are there without the permission of the host country.

Second, refugees with and without secure legal status are guaranteed human rights through other instruments and international customary law. The right of freedom of movement, guaranteed under the ICCPR and the Refugee Convention, appears to create a paradox for refugees. Host governments routinely restrict this right by keeping refugees confined in camps. Their decision not to reside in a camp can *ipso facto* deny refugees of their status and entitlements in countries that have camp-confinement policies. The right is only guaranteed to those legally in the territory, and their legality may be dependent on not exercising this right. Refugees who exercise the right to freedom of movement may lose their legal status of refugees in the eyes of the host country.

Finally, while the Refugee and OAU Conventions establish the rights that refugees are guaranteed, a refugee’s rights depend on the legal framework of their host

country. Certain Convention rights that promote the ability of refugees to pursue productive livelihoods are not equally guaranteed to refugees living illegally in cities, namely freedom of movement, right to employment, and the right to identity documents. However, even the rights of refugees with secure legal status may be restricted by host country policies. Host governments party to the Conventions may limit the rights of legal refugees through reservations and legislation that is not in line with the Conventions. Host governments may enact policies that blatantly go against the spirit and letter of the Conventions. At the same time, countries that do not have comprehensive legal frameworks or that are not parties to the Conventions may respond to refugee situations and even perhaps protect some refugee rights. Impeding the ability of refugees to exercise their rights to employment, education, identification, *non-refoulement*, and freedom of movement also hurts their ability to pursue productive livelihoods. The next section examines whether these obstacles are in fact less evident among legal urban refugees than those without legal status.

Legal Status and Livelihood Obstacles

The previous chapter establishes that refugees who migrate to urban areas face varying legal frameworks depending on the policies of their destination country and their paths of migration and that, consequently, they may have legal status as refugees or lack such status. The previous chapter also suggests that refugees with legal status would have an easier time pursuing livelihoods, because the key rights of employment, identity documents, and freedom of movement are guaranteed only to refugees legally in the territory. This chapter looks at livelihood obstacles for urban refugees with and without legal status in order to determine if this hypothesis appears to be the case. It begins by noting that there are certain obstacles intrinsic to their circumstance as forced migrants in developing countries that are not explicitly linked to their legal status. There are setbacks that generally face all refugees owing to the act of flight. In addition, constraints also confront people due to the economic situation of the host country. After briefly making a case for the existence of these obstacles, the chapter examines evidence of how the livelihood pursuits of refugees with insecure status have been impeded by formal exclusion from employment, detention, deportation, and lack of assistance. It then looks at the extent to which legal urban refugees confront these same constraints.

This chapter endeavors to compare the livelihood obstacles facing refugees in various cities. However, the comparison is one that is not done through examining research utilizing the same methodologies in each city. Such information would be highly valuable, but it does not exist at this time. The dearth of information available on urban refugees means that rarely has the urban refugee situation in a specific city been the subject of more than one article or book. Instead, each city description in this chapter

relies on information from only one or two sources: Khartoum (Kibreab), Kampala (HRW, Macchiavello), Nairobi (HRW), Dar es Salaam (Sommers), New Delhi (Obi and Crisp), Cairo (Al-Sharmani), and Johannesburg (*Human Displacement and the Politics of Space*). Some of the works have been published in refereed journals, and others are working papers. The samples in some of the research are restricted to one or two nationalities of refugees (as is the case with Kibreab, Al-Sharmani, and Sommers). Cross-city comparisons are therefore imperfect. However, they are still useful. The goal of the chapter is to establish general trends facing refugees in cities where they are legal and those where they are not, rather than to definitively decide that the opportunities of Burundi tailors in Dar es Salaam are less or greater than the those of Somali refugees in Cairo. Data from Khartoum, Kampala, Nairobi, Dar es Salaam and New Delhi are used for the section on refugees lacking legal status. The section on livelihood obstacles and legal refugees uses research primarily from Cairo and Johannesburg.

Obstacles Unrelated to Legal Status

Refugees—be they rural or urban, legal or without legal status—share in common certain constraints owing to the fact that they have been uprooted from the lives that they had established in their countries of origin. The act of displacement itself creates challenges impeding their pursuit of livelihoods in their destination countries, even before one looks at the rights and opportunities available to refugees owing to their legal or lack thereof:

When refugees flee, they incur immense losses in life-sustaining resources, including social support networks, neighbors, friends, relatives, cultivable and grazing lands, livestock, jobs, houses, and access to common property resources (Kibreab 2003: 57).

Doyle states succinctly that refugees are typically “separated from or have lost everything they own” (1998: 18). Refugees share in common the fact that they do not have access to the same resources as nationals due to the nature of their displacement. Obi and Crisp point out that refugees living in New Delhi do not have comparable networks of support as locals (2000: 7).

Refugees may also face constraints to participating in the host economy because of language barriers. Macchiavello notes that refugees that she interviewed in Kampala who did not speak English felt that the language barrier directly affected their chances of working in Kampala (2003: 14). She finds that host country language skills did appear to impact the ability of the refugees in the sample to achieve self-sufficiency (ibid.: 15).

Urban refugees face constraints that are inherent to the economies of their host countries. Rampant unemployment, poverty, and crime detrimentally affect the opportunities of nationals and non-nationals alike. Countries in the Global South, particularly in Sub-Saharan Africa, have very high unemployment rates, as demonstrated in Table 2.

Country	Un-employment Rates
Egypt	11% (2003)*
South Africa	30% (2003)*
Botswana	40% (2001)**
Zimbabwe	70% (2002)**
Kenya	40% (2001)**
Sudan	19% (2002)**
India	9% (2003)*

* Economist Intelligent Unit **CIA World Factbook

Table 2: Unemployment Rates in Sample Countries

Furthermore, like many of the nationals in the cities where they live, many refugees are entrenched in poverty. Vulnerabilities associated with all poor people

include poor nutrition and health problems that could further hinder their ability to pursue livelihoods.

Obstacles Facing Urban Refugees Lacking Legal Status

This section examines the livelihood obstacles facing refugees who do not have legal status. It looks at employment, detention, deportation/forced relocation, and lack of assistance and identity documents.

Wage-earning Employment and Self-Employment

The previous chapter established that states do not have the obligation to grant refugees without legal status the right to engage in employment or self-employment. As illegal migrants, they are formally excluded from the labor market and establishing business activities. The insecure legal status of illegal urban refugees limits their opportunities to promote their individual and collective welfare, as moving beyond a subsistence existence necessitates either securing employment or self-employment.

In order to find work, refugees must be able to access available jobs. Several barriers face refugees with insecure status, beyond high unemployment rates. One can be the unwillingness of nationals to employ them. In Kampala, where some refugees are allowed to reside and others live clandestinely, Macchiavello describes how local Ugandans fear negative consequences from hiring refugees (2003: 10-11). Employers may also prefer to hire nationals over non-nationals.

Relatively little is known about the livelihood strategies of urban refugees (Kibreab 1996: 132). Refugees living clandestinely in urban areas are rarely given any assistance. They are therefore surviving on their own resources, despite the fact that they

do not possess the right to employment and that host governments may expressly forbid it.

By virtue of the fact that “illegal” refugees are barred from formal employment and self-employment, it follows that they are active outside of the formal economic sector. Far from being specific to refugees, the burgeoning economic activity outside of the formal economy has been noted throughout the developing world. Data collected by Charmes for the ILO estimate that in Sub-Saharan Africa, 72% of all employment occurs in the informal sector (1997/2000). In Egypt and India these figures are 55% and 83% respectively. Nearly half of the people in Africa obtain incomes through self-employment (1990/2000). More than one-third of those refugees interviewed in Kampala operated their own small business (Macchiavello 2003: 14). The sample included both refugees living there legally (23%) and ones that did not have government permission to be living in the city (65%) (ibid: 5). Nearly two-thirds of those interviewed were employed or self-employed (ibid: 9). In New Delhi, though refugees are prohibited from establishing businesses, authorities often look the other way (Obi and Crisp 2000: 13). These cases offer evidence that legal status does not in and of itself determine the ability of a refugee to work or start a business.

Sommers describes the lives of Burundi tailors in Dar es Salaam whose livelihood activities are illegitimate because their very presence is illegal. These refugees “broke the law to live and work in Bongoland” (2001a: 114). Refugees living illegally in cities may take great pains to hide their presence from authorities. To the extent that minimizing their exposure also detracts from their economic opportunities, this “hiding” detracts from their ability to pursue livelihoods. However, Sommers points out that Tanzanian

authorities never really prevented refugees from pursuing economic activity—they only made it difficult to do (ibid.: 118).

These examples of economic activity by refugees living clandestinely in cities support the logical conclusion that, irrespective of government permission, refugees without legal status engage in economic activity in order to survive.

Detention

Several researchers have noted that refugees illegally residing in cities are particularly vulnerable to detention and harassment by local authorities. According to HRW, refugees in Nairobi are targets of arbitrary arrest (Parker 2002: 45). Crackdowns on refugees took place in September 1998, October 2001, February 2001, May 2002, and December 2002 (HRW 12/6/02). Kibreab outlines the harassment and detention of Ethiopian and Eritrean refugees in Khartoum in the 1970s and 80s (Kibreab 1996: 142). Refugees in Kampala have reported being arrested because they do not possess official documents (Macchiavello 2003: 9). Al-Sharmani notes that, while he was conducting research in Cairo, there were three occasions between September 2002 and April 2003 when Somali refugees—some of whom were recognized refugees and others who were not—were arrested and detained by Egyptian authorities (2003: 11). Notably, this latter example is one where authorities apparently did not make the distinction between refugees with legal status and those without.

In August 2003 HRW reported that Indonesian asylum seekers and at least one recognized refugee were arrested outside of the UNHCR office in Kuala Lumpur. Refugees recognized by UNHCR are not afforded protection under Malaysian law (HRW 8/29/03).

Deportation and Forced Relocation

Refugees living illegally in cities may be subject to deportation or relocation to a designated settlement by the host government. As unlawful migrants, even those who previously had access to the entitlements of refugee status in a camp setting may not have the right to freedom of movement by virtue of their illegal status. Some researchers have argued that the movement to a city is a calculated choice by refugees in order to make lives for themselves. Sommers states that the actions of urban refugees “are representative of a deliberate decision to live beyond official sanction or preference; a decision based on the careful assessment of risk and opportunity” (2001b: 350). In his in depth look at self-settling, Kuhlman cites anthropologist Art Hansen regarding the motivation of refugees in avoiding organized settlements. Hansen concluded that the unwillingness of refugees to live in designated settlements resulted from their desire to “maintain control over their own lives,” even at the potential cost of poorer standards of living outside of settlements (1994: 124, citing, Hansen 1981: 31). Whether refugees move for control, work opportunities, or because they have urban backgrounds, forced relocation wrecks what connections, resources and livelihoods that they may have established in their destination cities.

There are numerous examples of the deportation of refugees living in cities without government permission, many of which have been reported by various wire services. The government of Botswana stated in July 2003 that it had deported more than 26,000 Zimbabweans living there (Interpress Service 7/21/03). While most may have been fleeing their country’s deteriorating economic situation, it is also feasible that some also were escaping political persecution. In May 2003 the Ugandan government deported

24 aliens, some of whom were described by a government official as “refugees who should be in refugee camps in Kiryandongo and Oruchinga but they are in Kampala working” (Africa News 5/23/03). In September 2003 Djibouti deported more than two thousand Ethiopians despite the fact that they possessed work permits. Some of those not wanting to return to Ethiopia went to the Arawus refugee camp in Djibouti (Addis Tribune 9/12/03). A legal charge brought against refugees living clandestinely in Nairobi is “illegal entry” under Kenya’s Immigration Act. HRW reports that police readily admit to deporting refugees to their countries of origin without verifying that they will not face persecution upon return (Parker 2002: 50). Urban refugees living in Mauritania, who have been recognized by UNHCR but face a host country framework that does not incorporate any protective legislation, have faced deportations because of a lack of recognition or understanding by the Mauritanian government (Linstrom: 46).

In addition to deporting refugees, governments have also forcibly relocated urban refugees to camp settlements. In an extensive report on refugees in Tanzania, HRW describes how the government of Tanzania moved by force self-settled refugees (many who lived in villages as opposed to urban areas) to designated areas (HRW 1999:14).

Identity Documents

Lack of host country-issued identity documents is also a problem for refugees without legal status, but one that flows logically from a state’s perception that they are not legal migrants. The inability to show proper documents to officials is an indicator that they do not have government permission to be living there. In Senegal, Mauritanian refugees could face arrest if they were discovered away from the border zone without identity documents. They also may not be able to attend school examinations for the

same reason (Lawyers Committee for Human Rights 1995: 54). In another example of how legal status and freedom of movement are often incompatible, the Ivorian government would not provide identity cards that would allow refugees to travel outside of the *zone d'accueil* (ibid.: 50).

In India, the problem of documentation is associated with two factors, neither of which appears connected specifically to their insecure legal status. Refugees usually left their home countries without documentation. While documents can be accessed, most refugees are constrained by the fees associated with requiring these documents (Crisp and Obi 2000: 13).

Lack of Assistance

Refugees living clandestinely in cities do not have access to assistance as it is given in organized settlements. UNHCR does have a policy document regarding assisting refugees living in urban areas. At the thrust of the policy is the promotion of self-sufficiency, which would seemingly facilitate the pursuit of livelihoods. However, the policy presumes the legality of refugees (Obi and Crisp 2000: 14).

The lack of legal status may justify to UNHCR or assistance organizations their decision to minimize or withhold assistance for several reasons. First, there is the problem that investments in livelihoods could falter if refugees avoid making medium and long-term goals or if they are voluntarily or forcible relocated, both of which could occur because of their illegal status (Kibreab 1996: 170). Second, UNHCR programs may minimize assistance in order to placate host government fears of attracting more refugees to their cities. Kibreab states that successive governments in Sudan have not provided assistance to refugees in Khartoum (nor allowed assistance agencies to do so)

for fear of attracting more refugees to urban areas (ibid.: 171). Finally, respecting camp confinement policies makes providing assistance in urban areas problematic, as providing assistance may violate host country law or policy. (Buscher 2003: 2). The illegal status of many urban refugees creates a point of departure of justifying the provision of little or no assistance. As Sommers states, “relief agencies and host governments tend to operate according to where they think refugees should be, not according to where refugees want to be” (2001b: 353).

While India is not party to the Refugee Convention, UNHCR has been providing some assistance to urban refugees there. The 1997 Urban Refugee Policy resulted in assistance cuts. In New Delhi, the scaling down or cessation of assistance to individuals programs were buttressed with one-time grants. The goal was that refugees would use this lump sum to start income-generating activities. However, UNHCR workers in New Delhi claimed that there was a “total breakdown in the implementation of the policy of self-reliance” (Obi and Crisp 2000: 14).

Obstacles Facing Legal Urban Refugees

This section looks at whether the above obstacles apply to refugees living legally in urban areas. In theory, their legality represents a legitimate status in the eyes of the host government. Their legal status also gives them the rights to employment, self-employment and identification documents, along with the rights that are guaranteed to all refugees through the Refugee and OAU Conventions.

Wage-earning Employment and Self-employment

Barriers to employment can occur because of formal exclusion to the labor market or for other reasons, such as prevalent discrimination or the rejection of foreign diplomas and professional credentials. Some professionals, such as nurses and accountants, fled without certificates but cannot access recertification procedures.

As noted earlier, Egypt and South Africa are unique in Africa in their legal acceptance of refugees in urban areas. In Kampala, refugees living with government permission may work. Macchiavello reports that one obstacle to their employment is fear by Ugandans that hiring these refugees is not legal. Unlike South Africa, Egypt forbids the employment of refugees. Refugees and asylum seekers in Cairo that have been legally recognized do not have any more employment rights than those living there clandestinely. This exclusion from wage-earning employment and self-employment means that South Africa presents the only example in Africa where urban refugees across-the-board are allowed to work and start their own businesses.

In conversations with refugees in Johannesburg seeking assistance, many state that getting a job is “impossible.” They express frustrations with job availability and lack of access to South African employers. A few interviewees said that they had no problems finding a job and had used networks of other refugees they had known in their country of origin (2003). While these accounts are anecdotal, it is evident that many of the refugees living in Johannesburg are living only at the level of surviving. One need only walk in the neighborhoods of Hillbrow, Berea, and Yeoville, or speak with refugees seeking assistance at UNHCR’s implementing partner, in order to observe the rampant poverty facing these individuals.

In research conducted by the University of Witwatersrand, only 11% of refugees were employed full or part-time, while 29% engaged in self-employment activity. The total employment figures differed little from those of South Africans living in the same areas. However, the percent of those employed versus self-employed were reversed for South Africans. Possible explanations include lack of networks for employment, discrimination by employers, or a preference for self-employment. Those selling on the street may have run-ins with the police, which can result in the seizure of their assets

Lack of credit prevents Johannesburg's refugees from making potentially productive investments and creates a barrier to the crucial self-employment activities. Many refugees interviewed by the author in Johannesburg ran businesses in their country or origin and prefer to do the same in South Africa (2003). The inability to access formal or semi-formal sources of credit hinders their chances of starting or expanding small enterprises.

Detention

Several cases have been documented of legally recognized refugees being arbitrarily detained by authorities. Refugees with permission to be living in the city are sometimes rounded up alongside illegal urban refugees and other illegal migrants. In January 2003 HRW reported that refugees in Cairo possessing blue UNHCR identification cards were arrested, along with undocumented foreigners, in raids by the police. Refugees told HRW that the identification documents were useless (HRW 2/10/03). In November 2002 Kenyan officials cracked down on refugees living illegally in Nairobi. HRW reported that at least two of the refugees arrested had permission to be living Nairobi for security reasons (HRW 12/6/02).

Deportation

Several examples exist of the deportation of refugees who have been given refugee status by either the host government or UNHCR. The previous section referred to deportations in Cairo that included legal urban refugees and those without legal status. The South Africa government in the late 1980s and 1990s deported large numbers of illegal aliens, some of whom were actually refugees (Rutinwa 1999: 13). In August 2002, the government of Cambodia deported two Chinese nationals from Phnom Penh who had been recognized as refugees by UNHCR (Deutsche Press-Agentur 8/12/02). Cases of deportations of legal refugees are less prevalent than those of illegal migrants from refugee-producing countries, but examples do exist.

Identity Documents

Being able to prove their legal status impacts the interaction of refugees with authorities as well as their ability to access government services and employment. Most refugees in Johannesburg do not have South Africa-issued identification cards, due to the general failure of Home Affairs to supply the 13-digit Refugee Identification document provided for under the Refugee Act. This ID—possessed by a very small number of refugees—is crucial for opening a bank account, finding legal employment, and accessing government services. It is taken more seriously by employers than the photocopied permits that most refugees possess. Therefore, while refugees are legally living in the city, they most often do not have legitimate documentation to prove it (Van Garderen 2003).

In Cairo, refugees whose applications are still under consideration are not given documents to this effect. Asylum seekers are therefore unable to prove to authorities that

they have temporary permission to live in Cairo while their cases are being decided (HRW 2/10/03).

For the select refugees who have UNHCR permission to be living in Nairobi, lack of identification is not the problem. Instead, these refugees may run into difficulties with local authorities not recognizing UNHCR “blue cards.” There have even been reports of these documents being confiscated or destroyed. The problem of non-recognition of refugee documentation was also noted in conjunction with the detention of legal refugees in Cairo (HRW 2/10/03).

Lack of Assistance

The previous section noted that assisting illegal urban refugees is problematic in part because such programs contradict host governments’ policies of keeping refugees in camps and designated areas. This difficulty is not an issue for refugees living with the permission of the host government. However, they still receive only minimal assistance from UNHCR.

In South Africa, outside of protection and resettlement work, UNHCR assistance focuses on supplementing food, housing and education needs, primarily for newly arrived asylum seekers. This assistance is carried out through an implementing partner. The focus on the most vulnerable generally means that women, children and families receive some assistance, with men largely excluded beyond temporary housing (7 days) on arrival in Johannesburg and other major cities. Individuals already possessing refugee status generally do not meet the criteria for assistance because they have already been in the country for at least several months.

UNHCR supported a handful of microfinance endeavors for refugees in South Africa. A microfinance program in Johannesburg, carried out by the implementing partner, had funding pulled following low repayment rates and a lack of transparency. Similar programs in other South African cities eventually lost financial support as well. These efforts show a willingness to experiment with livelihood programs, even if only a small number of refugees benefited from the programs. One microfinance project continued with funding from a different source, dispersing small loans to approximately fifty refugees in 2002 and 2003. UNHCR declined to re-start funding for this program due to budget constraints.

In a report following a workshop on UNHCR's urban refugee policy, Buschner argues that the lack of assistance to urban refugees is linked to the perception that they are privileged in comparison to their rural counterparts:

There has been a 'premise of advantage' attached to urban refugees- an assumption that because they live in cities, they have access to money, opportunities, connections, etc. and hence are in less need of assistance than camp-based refugees. As a result they are underserved and/or there has been an inconsistent application of assistance (2003: 3).

Conclusion

Refugees fleeing to urban areas face several specific challenges to pursuing livelihoods. Some of these obstacles clearly exist irrespective of legal status. Rampant unemployment, loss of assets through flight, and the attractiveness of informal economic activity (which could increase the likelihood of run-ins with authorities), arguably equally affect legal refugees and those without legal status. This last point, engaging in informal market activity, may affect illegal urban refugees more so than legal ones because the

former do not have the right to engage in income-generation activities. By definition, any work that they do is outside the regulated economy and probably a direct violation of host country laws. The degree to which a state enforces restrictions varies from country to country.

This chapter looked at five livelihood obstacles beyond those that generally affect all refugees: barriers to employment, detention, deportation, lack of identity documents, and lack of assistance. One can say for certain that these obstacles are not unique to urban refugees living without government permission. Examples of the deportation and detention of legally recognized refugees, while less numerous than those of illegal urban refugees, do exist. In Kampala and Cairo, where some refugees live legally and others do not, authorities in several instances do not appear to have made this distinction. The problem of identity documents confronts legal urban refugees living in South Africa and Egypt. The failure of these government to provide identification that is accepted by authorities, employers, government agencies, and banks undermines any legal rights that may entitle refugees to access to social and economic networks. The failure of the UNHCR to provide assistance to urban refugees affects refugees living legally and illegally in cities. The question that this chapter does not answer is the *extent* to which legal mitigates these livelihood obstacles, even if it does not erase them. This issue will be addressed in the conclusion.

Conclusion

The question at the heart of this paper is the extent to which refugees living legally in urban areas face the same livelihood challenges as those without legal status. The first chapter established that the all refugees do not have equal rights under international law and through the legal framework of states. Through the Refugee and OAU Conventions, refugees living legally in urban areas have rights to employment, identity documents, and freedom of movement that are not guaranteed to those without such legal status. Many host governments tie entitlements of refugee status to the confinement of refugees to camps and other designated areas. Refugees in these states forfeit the privileges of legal refugee status or cannot acquire it in the first place if they migrate to urban areas. Each state is unique in its ratification of treaties and the degree to which international standards are present in national refugee legislation (if it even exists).

On a scale of the severity of livelihood obstacles, where does lack of legal status fall? The fact that legal refugees have more rights than illegal urban refugees, as well as the explicit protection of the host country, implies that legal urban refugees would have a much easier time pursuing livelihoods. However, numerous examples exist of the deportation, detention, and exclusion from employment and self-employment of legal urban refugees. Legal refugees in Johannesburg, Kampala and Cairo face alarming levels of poverty. There appears to be a paradox regarding the lives of urban refugees: why, when refugees living in cities have legal status and the greater body of rights that accompany this status, do they appear to confront the same as refugees who are illegal aliens in the eyes of the host government? Legal status is not enough. It does not

necessarily provide access to the rights guaranteed in the international treaties or to socio-economic opportunities.

Constraints applicable to all refugees by virtue of their flight and the economic climate of host countries may negate the importance of legal access to employment and identity documents. In an article on livelihood obstacles, Kibreab argues that the single largest barrier to pursuing productive livelihoods is the fact that refugees do not belong to spatially bound communities or state entities (2003). This constraint appears to be equally applicable to legal urban refugees and those without legal status. Discrimination and xenophobia may also not be particular to legal status, and citizens may not necessarily make the distinction between legal and illegal migrants. Rutinwa makes this point when she states that

The Deputy Minister for Home Affairs of South Africa, Lindiwe Sisulu, might have been speaking for the whole of Africa when she said: 'the social and economic mobility of large numbers of foreigner nationals when many citizens remain impoverished , criminal activity on the part of some, and the presence of refugees had resulted in little differentiation between immigrants, economic migrants, and refugees, by our citizens...prejudice and intolerance towards foreign nationals are rampant, with refugees being the most vulnerable. Foreign nationals are perceived as a *problem* that must be *dealt with*' (1999: 19, citing Sisulu 1998: 2-3).

The livelihood strategies of both legal and illegal refugees in urban areas may also involve engaging in activity that makes them more vulnerable to problems with authorities, such as informal economic activity. These activities could increase chances of arrest, deportation or seizure of assets.

Host governments party to the Conventions may limit the rights of legal urban refugees through reservations, fail to protect human rights, or enact policies that blatantly go against the spirit and letter of the Conventions. At the same time, countries that do not have comprehensive legal frameworks or that are not party to the Conventions may respond to refugee situations and even perhaps protect some refugee rights. India's courts have recognized that refugees deserve human rights guaranteed in the constitution despite the fact that it is not a member of the Refugee Convention nor does it have laws addressing refugees (Vijayakumar 2000). This juxtaposition grays the area of advantage separating legal urban refugees from those without legal status.

It leads to another explanation as to why urban refugees face the same basic livelihood obstacles: the failure of states to protect their rights guaranteed through international instruments. Many of the states looked at in this paper, in particular Kenya, Uganda, Sudan and Egypt, routinely violate the rights of their nationals.¹⁴ Refugees may be even more vulnerable because they are mistaken for illegal immigrants or simply targets for harassment or extortion by authorities. Their livelihood challenges are therefore part of a broader framework of inadequate human rights protection in these states. The distinction between "legal" and "illegal" refugees matters less in this context of human rights abuses against nationals as well as non-nationals.

Somewhat cynically put, international instruments establish an imagined paradigm at the global level that does not necessarily result in the promotion of refugee protection at the state level or the enjoyment of such rights at the individual level. This statement certainly applies to refugees in camps, who often live in squalid conditions,

¹⁴ Human Rights Watch documents human rights abuses by these countries. This information is available at www.hrw.org.

have limited or non-existent income-generation opportunities, and are deprived of their freedom of movement. Urban refugees are subject to human rights violations such as deportation and detention. They often not given state-issued identity documents or their UNHCR documents are not respected by authorities. All people who meet the internationally established criteria of refugee are entitled to protection. States need to be pressured to accede to the Conventions if they have not already, to establish legislation in line with the Conventions, and then to follow this legislation in order to implement the standards of protection to which all persons fleeing conflict and persecution—including those that flee to urban areas—are entitled. As the cases of Johannesburg, Cairo, and Kampala show, legal status is not enough. Addressing the livelihood obstacles that stem from socio-economic constraints, the act of flight, and general human rights abuses requires that UNHCR and assistance organizations recognize the root causes of the livelihood challenges facing refugees fleeing to urban areas. Working towards these goals gives hope that the standards of dignity for human beings put forth in the United Nations Charter and the Universal Declaration of Human Rights can be achieved for persons who, because of the horrors of war and political oppression, seek to rebuild in their lives in cities throughout the Global South.

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