Refugee Status Determination and Rights in Southern and East Africa

International workshop report

16–17 November 2010, Kampala, Uganda

December 2010

Refugee Studies Centre
Oxford Department of International Development
University of Oxford

Report of Refugee Studies Centre Workshop on Refugee Status Determination and Rights in Southern and East Africa

Overview of the Workshop

On 16 and 17 November 2010, Dr Alice Edwards of the University of Oxford's Refugee Studies Centre convened a workshop discussion on the state of refugee status determination (RSD) and refugee rights in southern and east Africa. The event, which was held in Kampala, Uganda, was coordinated by Oxford research student Marina Sharpe, with the assistance of the Kampala-based International Refugee Rights Initiative (IRRI), and generously funded by the Commonwealth Foundation and the United Kingdom's Department for International Development.

The workshop included practitioners and researchers working on issues of RSD and/or refugee rights from Kenya, Malawi, Mozambique, South Africa, Tanzania, Uganda, the United Kingdom and Zambia. The United Nations High Commissioner for Refugees (UNHCR) was also represented. The workshop's aims were to promote the sharing of knowledge, experiences and insights with a view to building capacity around refugee rights across the region. It also constituted the first step in discussions around the development of a collaborative research project, to be co-led by the Universities of Oxford and the Witwatersrand, on some of the major themes that emerged from the workshop discussions.

The workshop was introduced by Dr Edwards, drawing on a number of concepts and gaps in research on refugee protection in sub-Saharan Africa.[1] The first gap identified is that the meaning and content of many of the terms in the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa (1969 Convention) remain unclearly or poorly defined and are often subject more to generalisations about their broad and generous spirit than the actual content, wording or drafting history of the 1969 Convention. Second, and related to the first gap, there is limited written guidance from any source on the scope and interpretation of the 1969 Convention; this is especially stark when compared with other regions. Third, individual RSD conducted by governments is predicted to increase owing to the passage of new asylum laws and the establishment of new asylum procedures; the particular interest of UNHCR in handing over responsibility to states as the primary duty-bearers for refugee protection; recognition that 30 per cent of African refugees are living in urban areas leading to their more likely subjection to RSD as a means of limiting or improving their access to humanitarian assistance and rights; and the use of RSD to differentiate between individuals traveling in mixed migration flows. She further highlighted that the process

[1] These factors were drawn from her 2006 article on refugee status determination in Africa: Alice Edwards, 'Refugee Status Determination in Africa' (2006) 14 African Journal of International and Comparative Law 204.

of handing over responsibility for RSD from UNHCR to governments had been little studied.

The first day of the workshop focused on presentations based on papers – which will soon be available on the Refugee Studies Centre's website[2] – submitted by practitioners from Kenya, Malawi, South Africa, Tanzania, Uganda and Zambia. Each spoke about the laws, policies, procedures, practices and challenges relating to RSD and refugee rights in his or her home country, followed by chaired discussions. The six country presentations were followed by a UNHCR presentation on its role in RSD in Africa.

Day Two consisted of two sessions of thematic presentations followed by two chaired working group discussions, one for practitioners, the other for researchers (detailed below). Dr Barbara Harrell-Bond also presented the Southern Refugee Legal Aid Network (SRLAN) to the practitioners and described how it might assist with their work.

This report summarises the workshop proceedings as well as next steps. It is not necessarily a full or up-to-date account of the laws, policies and practices in the states referred to. It presents only a snapshot of information provided and discussed and reflects participants' personal views and experiences as expressed at the workshop.

[2] www.rsc.ox.ac.uk.

Day 1

1. Refugee Status Determination

(a) Changing Patterns of Refugee Status Determination
The workshop was particularly interested in and was designed around countries in which the government had assumed full or partial responsibility for RSD from UNHCR. The transition from UNHCR mandate RSD to government-led RSD is a critical aspect of the current state of refugee protection in Africa. In five of the six countries discussed on day one, it is the government that conducts RSD (the exception is Kenya).

Malawi assumed responsibility for RSD from UNHCR in 2006; South Africa has conducted RSD since 2000 further to the adoption of its first refugee law in 1998; Tanzania began conducting RSD in 1998, prior to which it operated an open door policy based on *prima facie* refugee status; Uganda has long operated a *prima facie* status determination system, although since 2007 it has been conducting individual assessments; and Zambia assumed responsibility for RSD from UNHCR in 1993. Each country applies the refugee definitions contained in both the 1951 Convention relating to the Status of Refugees (1951 Convention) and the 1969 Convention. The particulars of the process in each country are outlined in the papers submitted by each presenter, which, as mentioned above, will soon be available on-line. Only in Kenya is RSD still carried out by UNHCR pursuant to its mandate. However, with the 2006 adoption of Kenya's Refugees Act, the handover process has begun, although many of the institutions and procedures contemplated by the new Act are yet to be established.

The method of recognising refugee status has also evolved in the period during which states have been conducting RSD. Refugees in many parts of Africa were, until recently, largely recognised on a *prima facie* or group basis pursuant to the 1969 Convention's broad refugee definition. Of the five countries that carry out RSD, only South Africa has never granted *prima facie* status. Among the four countries that have employed *prima facie* status determination in the past, three (Malawi, Tanzania and Uganda) now carry out status determination on the basis of individual, rather than group, assessments. Uganda, for example, stopped granting *prima facie* status in 2007. Zambia now has a dual system of status determination, depending on whether the refugee applies for status in the capital Lusaka or in one of the provinces. RSD in the provinces is based on the 1969 Convention; provincial refugees whose status is not recognised on a *prima facie* basis under the 1969 Convention proceed to Lusaka for a more rigorous screening process under the 1951 Convention. All refugees who apply for status in Lusaka have their case determined under the 1951 Convention. Thus Zambia is the only country of

those studied where *prima facie* RSD is still used,[3] and even there it is employed in parallel with individual RSD.

(b) Procedural Irregularities in Individual Refugee Status Determination
Many procedural irregularities were highlighted in respect of individual RSD processes. These included the lack of oral hearings – in Malawi, Tanzania and Uganda, the 'national eligibility committees' (NECs) that determine refugee status make their decisions entirely on the basis of a paper application file prepared by an administrative or police officer who has interviewed the refugee in question but who has no role in the decision-making process.[4] Also lacking are translation and interpretation services (and in this regard, written notification of decisions are not available in multiple languages, and not in the refugee's language) and access to legal aid and advice.[5] Participants also highlighted delays in receiving decisions (e.g., in Uganda this could be as long as two years, in Malawi the backlog of cases means the waiting period is one year). Rates of recognition vary significantly across the region, from a 97 per cent recognition rate in Uganda to 92 per cent rejection rate at first instance in South Africa.

The lack of judicial review of rejected asylum applications was a particular problem. Under the domestic refugee laws of Malawi, Tanzania and Uganda, an asylum seeker whose application for refugee status has been rejected may appeal to an administrative appeals body – which in the case of Uganda is effectively the same body that heard the initial status application – but there is no automatic possibility for appeal to the courts of rejected cases. The regulations to operationalise Uganda's Refugees Act, which were just published this year, provide for judicial review, but the procedure has yet to be implemented. In South Africa and Zambia rejected refugees may apply for judicial review of an administrative decision, but in South Africa this is rare due to the costs involved and in Zambia a refugee case has never been appealed to the High Court. In Kenya, where RSD is still conducted by UNHCR, appeals are heard by another UNHCR RSD officer other than the one who decided the case at first instance.

(c) The question of gender
A notable feature of certain of the new refugee acts (in Kenya and Uganda, described below in more detail) is the inclusion of gender as a ground of persecution, which goes beyond the five explicit grounds of persecution under the 1951 Convention while matching interpretative developments at international law that have recognised 'gender' as a basis for establishing 'membership of a particular social group'. Adding gender as a

[3] In their feedback on this report, UNHCR noted that Somali refugees originating from south-central Somalia continue to be recognised on a *prima facie* basis in both Kenya and Uganda.
[4] In their feedback on this report, UNHCR noted that refugees in Malawi have an effective opportunity to present their claims to the government's RSD unit, with interpretation provided by refugee/community interpreters.
[5] In their feedback on this report, UNHCR noted that professional interpretation services are available in South Africa and Zambia (as well as in Mozambique and Namibia, however those countries were beyond the scope of the day 1 discussions).

ground of persecution is also currently under discussion in South Africa. The South African Refugees Act of 1998 also adds 'tribe' to the traditional five grounds of persecution under the 1951 Convention.

(d) The Role of UNHCR in RSD

As already noted, UNHCR continues to conduct RSD in Kenya, yet the Organisation has featured prominently in the development of RSD in each country. In all countries except South Africa, UNHCR continues to occupy an observer or monitoring/supervisory role. Once the process of handover is complete, UNHCR can play either an advisory or monitoring/supervisory role, and indeed may perform both functions. For example, UNHCR occupies an advisory or observer seat on the NECs in Tanzania, Uganda and Zambia. This ranges from what was described as 'an active observer' (review of files, advice to the NEC, but reserving any decision-making role, e.g. Tanzania) to being a more passive observer. It also provides governments with financial and technical assistance, including payment of office space, vehicles, computers and training, depending on the country. The UNHCR holds the view that RSD is the primary responsibility of host governments. The UNHCR's role, in contrast, is as the supervisor of compliance with 1951 Convention standards via Article 35 of that treaty. The Organisation also sees itself as an advocate for fair asylum determination procedures and for the creation of the institutions associated with that. From its perspective, chief among the elements of a successful handover is government willingness to conduct RSD, including over time. UNHCR's aim is to handover responsibility to governments, but the handover is not an end in itself. Rather, it is a process.

2. Refugee Rights

The presentations canvassed a range of rights applicable to refugees, of which freedom of movement and choice of residence and the right to work were central.

(a) Freedom of Movement and Residence

The restriction of refugees' freedom of movement and residence – guaranteed to varying degrees under Article 26 of the 1951 Convention, Article 12 of the African Charter on Human and Peoples' Rights (ACHPR) and Article 12 of the International Covenant on Civil and Political Rights (ICCPR) – was a feature of the legal frameworks of four (Malawi, Tanzania, Uganda and Zambia) of the six countries covered at the workshop. Some legislation required refugees to reside in particular locations (Malawi), whereas the right to freedom of movement and choice of residence was recognised in the Refugees Acts of the other three countries, yet it could be altered according to other laws or, in the case of Uganda, via a designation by the Commissioner for Refugees. In each of the four states, refugees are required to reside in designated camps or settlements, which are usually in remote locations. Official permission is required to live elsewhere and in some cases to even travel outside of the settlements. Furthermore, humanitarian assistance is

generally not provided to refugees residing outside the settlements. Most presenters noted that this restriction was not in keeping with their home country's obligations under international human rights law (including arguably the right to liberty and security of person when refugee camps are viewed as a form of arbitrary detention), however several states retain reservations to the freedom of movement provision of the 1951 Convention.

(b) The Right to Work

Refugees' right to work, which is guaranteed to varying degrees by Articles 17, 18 and 19 of the 1951 Convention, Article 15 of the ACHPR and Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), was also variously provided to refugees. The restriction was most severe in Malawi, where refugees are prohibited from working outside of refugee settlements and the restriction on freedom of movement – which renders trade with the surrounding areas and the purchase of supplies difficult – makes exercise of the right difficult, if not theoretical. In Kenya, Uganda and Zambia, refugees are permitted to work with a permit, the grant of which is either discretionary or subject to a prohibitively expensive application fee. Refugees have the right to work in Tanzania and South Africa.

3. Regional Developments

(a) From Control- to Rights-Based Legislation

In the past quarter century, certain states in southern and east Africa have replaced control-oriented refugee legislation with acts based on the rights of refugees under international law. Tanzania was at the forefront of reform, replacing its Refugees (Control) Act of 1966 with its Refugees Act in 1998. Both Kenya and Uganda adopted new refugee acts in 2006; Uganda's entered into force in 2008, while Kenya's remains to be implemented. Zambia's Refugees (Control) Act of 1970 has yet to be repealed, but a refugee bill incorporating a range of refugee rights was tabled in 2008. Malawi and South Africa adopted refugee legislation late and in each case the original act remains in force, although the latter country's act has been amended once and is currently undergoing its second process of amendment. Malawi's Refugee Act 1989, while not rights oriented, is at least less control oriented than the former Kenyan, Tanzanian and Ugandan acts and the current Zambian act. South Africa's 1998 Refugees Act largely reflects the rights of refugees under international law. Many of the original acts match the security-rights dichotomy that influenced the 1969 Convention deliberations. At the same time, many of the early laws build on colonial era immigration control legislation.

Despite these promising legislative developments, participants noted problems of implementation as well as the fact that refugees are increasingly being viewed by governments as a security, rather than a humanitarian, concern. The treatment of

Rwandan refugees in Uganda, described below, represents a salient example. Similarly, residents of refugee hosting countries are increasingly intolerant and xenophobic, particularly in South Africa in light of the recent influx of refugees from Zimbabwe.

(b) Freedom of Movement Within Regional Economic Communities

Each of the two regional economic communities relevant to the countries under discussion possess a free movement protocol. The East African Community's (EAC) Common Market Protocol allows citizens of its member states – Burundi, Kenya, Rwanda, Tanzania and Uganda – visa free movement and rights of establishment, including the right to work, throughout the Community. Having only entered into force on 1 July 2010, the modalities of the EAC Protocol's implementation remain unelaborated. The Southern African Development Community (SADC) – which includes Angola, Botswana, the Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, the Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe – has the Draft Protocol on the Facilitation of Movement of Persons, which aims to remove obstacles to free movement of citizens within the SADC region. The Draft Protocol includes a provision (Article 28) relating to refugees, which provides that member states will manage refugees in the region in accordance with international law and pursuant to a yet-to-be-drafted memorandum of understanding among them. The Protocol opened for signature in 1995 but will not come into force until it receives the requisite nine ratifications. So far, only Botswana, Lesotho, Mozambique, South Africa and Swaziland have signed and it seems that the necessary ratifications are a long way off. The effect of these protocols on refugee protection gave rise to interesting debates at the workshop.

Although not yet operational, these protocols have raised the prospect that an unrecognised refugee or a refugee whose protection has ceased may nevertheless be permitted to remain in the country to which he or she has fled, with a sub-set of the rights that would have been accorded to him or her as a refugee. This may be of particular importance to Rwandans in Uganda, for example, many of whom wish to remain there despite the impending 2011 invocation of the cessation clause. Neither the EAC nor the SADC protocols remove the rights of states to expel or deport regional citizens on national security or public order grounds. Thus, the right to freedom of movement within a regional economic community is unlikely to constitute a substitute for refugee protection, not least the protection from *refoulement* that would protect EAC or SADC citizens who are also refugees. Furthermore, these regional free movement protocols do not take account of the fracturing of relations between a refugee and his or her home state, which could, for example, frustrate the refugee's ability to obtain or renew passports or national identity documentation permitting them to travel throughout the region or to reside in one or more of the participating states. Convention Travel documents would still be needed in such situations.

Day 2: Thematic Panels and Discussions

Panel One: The Interface between Refugee and Migration Law

The first thematic panel, chaired by Dr Edwin Abuya of the University of Nairobi, consisted of three presentations broadly concerned with mixed migration and its implications for refugee protection. The first presentation by Dr Roni Amit of the Forced Migration Studies Programme (FMSP) at the University of the Witwatersrand discussed the merging of immigration and asylum in South Africa. Her presentation drew on an FMSP report on major shortcomings of South Africa's RSD process, which she argued are largely the result of the South African government's view that many asylum applicants, particularly those from Zimbabwe, are not refugees but economic migrants.[6] She argued that the process of RSD has thus largely become an exercise in rooting out economic migrants, instead of a process of seeking to identify individuals in need of protection due to flight from persecution (1951 Convention criteria) or 'events seriously disturbing public order' (1969 Convention criteria). This, coupled with systemic problems in the status determination process – for example, RSD officers must hear and decide ten cases per day – has led to poorly reasoned and/or supported decisions that often reject individuals who are likely genuine refugees. South Africa's rejection rate is 92 per cent at first instance. Of the 324 negative decisions Amit reviewed for her report, almost none revealed a correct understanding of basic principles of refugee or administrative law.

Dr Bonaventure Rutinwa, professor at the University of Dar es Salaam, discussed similar issues in the Tanzanian context. Rutinwa divided historical patterns of flight to Tanzania into three periods: the 1960s-1980s were characterised by mass influx; the 1990s saw individual arrivals of refugees; and the 2000s saw refugees arriving in mixed and/or secondary migration flows. The individual arrivals of the 1990s led to individualised RSD. Simultaneously, Tanzania's long history of mass influx meant that jurisprudence around individual refugee claims never developed, creating a false belief among government officials that refugees must necessarily be fleeing war and to the related false assumption that individual refugees must therefore really be economic migrants. Additionally, the recent relative peace in the Great Lakes region and the friendly coming together of states in the area around arrangements such as the EAC have prompted the Tanzanian government to pursue a 'refugee free zone' policy. These factors combined have resulted in very low recognition rates for refugees fleeing individualised persecution. In its last sitting, Tanzania's NEC recognised only ten per cent of applicants.

[6] Roni Amit, 'Protection and Pragmatism: Addressing Administrative Failures in South Africa's Refugee Status Determination Decisions' (2010) University of the Witwatersrand Forced Migration Studies Programme Report <http://www.migration.org.za/report/amit-r-2010-protection-and-pragmatism-addressing-administrative-failures-south-africa-s-refug> accessed 27 November 2010.

The third of Rutinwa's refugee flows has been the arrival of refugees within mixed and/or secondary migratory flows. Such flows are the result of trafficking, smuggling and socio-economic migrants to South Africa transiting through Tanzania. Rutinwa argued that many individuals arriving in Tanzania as a result of such population flows may have protection needs, however the refugee protection system there cannot identify them effectively. The Refugees Act, for example, provides that anyone who has transited through a third country cannot receive refugee status in Tanzania. Rutinwa argued that the statutory framework for refugee protection in Tanzania must keep pace with changing patterns of migration to ensure correspondence between the refugee protection system and the nature of population flows to Tanzania.

The workshop, with its focus on refugee protection in particular countries in southern and east Africa, was naturally grounded in comparative law. Professor Jonathan Klaaren, Acting Head of the School of Law of the University of the Witwatersrand, provided a rigorous theoretical framework within which to conduct such comparative analysis, which provided a structure for reflection at the workshop. Klaaren drew a distinction between the 'old comparative law' and 'the new comparative law'. The old approach presumed national legal systems based in one of the Anglophone, Francophone or Lusophone families, and recognised the durability of colonial legal structures within such families. The old comparative law also focused largely on private matters, including commercial and family law. The new comparative law, by contrast, recognises the role of international and regional actors – such as international oganisations, regional arrangements and transnational legal networks – in the development of national legal systems. It is driven by comparative constitutional law, in particular the work of Mark Tushnet, and comparative economic and regulatory studies. Tushnet has identified three purposes or effects of comparative constitutional law: (1) comparative analysis is used as part of a search for solutions (*i.e.,* it is instrumental); (2) comparative analysis stands in for an exploration of the situation surrounding a particular issue (*i.e.,* knowledge expansion); and (3) the concept of bricolage, which is an argument that comparative constitutional law creates something new and different through the process of comparison.[7] Klaaren drew important parallels between the new comparative law and the discussions ongoing at the workshop; the new comparative law approach will likely contribute to the theoretical orientation of the research project to follow on from the workshop.

Panel Two: Exercising Refugee Rights

The second thematic panel, chaired by Dr Katy Long of the University of Oxford's Refugee Studies Centre, consisted of three presentations on the exercise of refugee rights. Deirdre Clancy, co-director of IRRI, began with a presentation on the situation of

[7] M Tushnet, 'The Possibilities of Comparative Constitutional Law' (1999) 108 *Yale Law Journal* 1225.

Rwandan refugees in Uganda in light of the impending invocation of the cessation clause. Her presentation was based on an IRRI and Refugee Law Project (RLP) report investigating why refugees in Uganda's Nakivale refugee settlement are reluctant to return to Rwanda, despite Rwandan government efforts encouraging their return and considerable 'push' factors and deadlines for return imposed by the government of Uganda, under the guise of security considerations.[8]

After providing a legal overview of cessation, Clancy explained that the research – based on 102 interviews with Rwandan refugees, UNHCR and government officials – revealed that in most cases there are legitimate reasons for refugees' reluctance to return to Rwanda, most notably political repression. Refugees' reluctance to return to such conditions has had dramatic consequences for the terms of their stay in Uganda, including allegations that up to 12 Rwandan refugees were killed when they refused to participate in a forced repatriation from Nakivale refugee settlement, the restriction of food rations coupled with a ban on cultivation in the settlement and the limiting of educational opportunities for Rwandan refugee children. Furthermore, new Rwandan refugees arriving in Uganda are subject to a government decision made earlier this year to suspend all applications for refugee status from Rwanda.[9] Clancy argued that the treatment of Rwandan refugees in Uganda and the conditions to be faced by them should they be returned underlines the need for a fundamental reconsideration of the Ugandan approach to Rwandan refugees and represents a challenge for the international community to adopt a more realistic narrative about the Rwandan transition to democracy.

The second presentation, by Dr Ines Raimundo of Eduardo Mondlane University in Mozambique, examined the situation of refugees in Mozambique's Maratane refugee camp in Nampula province. She began by situating refugee protection in Mozambique in historical perspective, noting that due to its civil war Mozambique was until 1992 largely a refugee producing country. Now, however, it predominantly plays host to refugees and acts as a transit country for refugees and migrants en route to South Africa. In the early 1990s, the government established Bobole and Massaca refugee camps in Maputo province to host the new flows of refugees into Mozambique. Importantly, refugees were not forced to live in Bobole or Massaca; some opted to live in one of the camps, while others chose to live in the capital Maputo. Crime in the camps eventually led the government to close them and relocate refugees to Maratane.

The focus of Raimundo's presentation was an anthropological and geographical inquiry into refugees' perceptions of life in Maratane camp. She described the camp as 'a

[8] International Refugee Rights Initiative and Refugee Law Project, 'A Dangerous Impasse: Rwandan Refugees in Uganda' (2010) Citizenship and Displacement in the Great Lakes Region Working Paper No 4 <http://www.refugee-rights.org/Publications/Papers/2010/10_08_30_Dangerous_Impasse.pdf> accessed 27 November 2010.

[9] In their feedback on this report, UNHCR Uganda noted that the government had not made any such decision, and that Rwandan refugees have had their status recognised in Uganda as recently as December 2010.

nightmare for some and an El Dorado for others', explaining the broad range of reactions to the camp, in which – unlike its predecessors – refugees are required to reside. Aspects of negative perceptions of camp life include the insecure legal status accorded to refugees, many of whom live for years in Mozambique as asylum seekers, with a *declaração* – the piece of paper refugees complete to register their claim to asylum – their only legal documentation, and the sense of isolation stemming from Maratane's distance from the capital. Positive perceptions of life in Maratane include the business opportunities presented by the camp and the space for refugees to form civil society organisations to govern themselves and manage civic life. Despite these optimistic views of life in Maratane, Raimundo concluded by highlighting the need for a more robust legal and policy framework around refugee and immigration issues in Mozambique.

The panel concluded with a presentation from Mr Redson Kapindu of the University of Johannesburg offering a comparative analysis of refugee rights in Malawi and South Africa. Kapindu began by situating his analysis within the international legal framework for refugee rights constituted by international human rights law – in particular, the ICESCR and the ACHPR – and the 1951 and 1969 Conventions. After noting the rights that these instruments guarantee, he highlighted that the legal framework fails to protect explicitly rights to health care, food and potable water, while recognising that there exist a range of other socio-economic rights in these instruments, some subject to various legal criteria of attachment. He then proceeded to a comparative analysis of the socio-economic rights of refugees in Malawi and South Africa. In Malawi, the Constitution guarantees rights in general, yet Malawi's 1989 Refugees Act is silent on the question of rights with the exception of *non-refoulement*. As a result, Kapindu argued that it falls on the courts to interpret the rights contained in the Constitution in favour of refugees. Indeed, there is some emerging jurisprudence to this effect, including *The Registered Trustees of the Public Affairs Committee v Attorney General & Another,*[10] *Aden Abdihaji & 67 Others v The Republic*[11] and *Okeke v Minister of Home Affairs and another.*[12] Taken together, he argued that these cases stand for the proposition that the rights guaranteed under the Malawian Constitution apply equally to citizens and refugees, in addition to the international human rights guarantees of which refugees benefit by virtue of Malawi having ratified the relevant instruments.

In the context of rights for refugees in South Africa, he concluded that the situation is somewhat better than that in Malawi, mostly owing to progressive jurisprudence in the former, and fragile statutory guarantees in the latter. While like Malawi the South African Constitution does not specifically guarantee any of its rights to refugees, the Refugees Act 1998 protects certain socio-economic rights and provides that the rights set out in South Africa's Bill of Rights apply equally to refugees. Jurisprudence of South

[10] Civil Cause No. 1861 of 2003.
[11] Criminal Appeal Case No. 74 of 2005.
[12] Civil Cause No. 73 of 1997.

Africa's constitutional court, including *Khosa and Others v Minister of Social Development and Others*,[13] confirms this.

Next Steps

During the second half of day two, the practitioners and researchers discussed ways forward in their respective working groups. The outcomes of each discussion are reported in turn below. It is hoped, however, that their efforts will be supplemented by contributions from the wider community of practitioners and researchers working on refugee protection in southern and east Africa. This report constitutes an open invitation for cooperation and collaboration. Expressions of interest in the initiatives described below, and indeed alternative ideas, should be sent to Jonathan Klaaren (jonathan.klaaren@wits.ac.za), Katy Long (katy.long@qeh.ox.ac.uk) and Marina Sharpe (marina.sharpe@law.ox.ac.uk).

Practitioners

The practitioners agreed that domestic legal frameworks are a critical component of migration governance and that this workshop could and should feed into this year's conference of the International Association for the Study of Forced Migration (IASFM), to be hosted by the RLP in Kampala in July 2011, or the Public Interest Law conference to be hosted at the University of the Witwatersrand in November 2011. The practitioners also noted that the lack of government capacity around refugee issues is a critical factor behind sub-optimal refugee protection in each of the six states discussed. They discussed the possibility of jointly seeking funding for a regional government refugee protection training initiative; and in working on and through SRLAN.

[13] CCT 13/03, CCT 12/03 [2004] ZACC 11.

Agenda

Refugee Status Determination and Rights in Southern and East Africa

Regional Workshop
Kampala, Uganda
16 and 17 November 2010

Day 1

9.00-9.30	Registration
9.30-9.40	Welcome and overview of project and workshop: Alice Edwards, University of Oxford
9.40-10.00	Introductions

Country Panels: Refugee Status Determination

10.00-11.30	Chair: Deirdre Clancy, IRRI - Uganda: Salima Namusobya, RLP - Zambia: Chongo Chitupila, University of Zambia Discussion
11.30-11.45	Break
11.45-13.00	Chair: Laban Osoro, Kituo Cha Sheria - Malawi: Levi Mvula, CHRR - South Africa: Kajal Ramjatham-Keogh, LHR Discussion
13.00-14.00	Lunch
14.00-15.30	Chair: Jonathan Klaaren, University of the Witwatersrand - Kenya: Simon Konzolo, RCK - Tanzania: Charles Nkonya, NOLA Discussion
15.30-15.45	Break
15.45-17.00	Chair: Alice Edwards - UNHCR and RSD in Africa: Louise Aubin, UNHCR
17.00-19.00	Drinks Reception

Day 2

9.00-9.15	Arrival

Thematic Panels

9.15-11.00	Panel 1: The interface between refugee and migration law Chair: Edwin Abuya, University of Nairobi - Roni Amit, University of the Witswaterstrand *The merging of immigration and asylum in South Africa* - Jonathan Klaaren, University of the Witswaterstrand *RSD in comparative context* - Bonaventure Rutinwa, University of Dar es Salaam *Mixed migration in Tanzania* Discussion
11.00-11.15	Break
11.15-12.15	Panel 2: Exercising refugee rights Chair: Katy Long, University of Oxford - Deirdre Clancy, IRRI *Cessation of Refugee Status in the Great Lakes* - Inês Raimundo, Eduardo Mondlane University *Local integration in Mozambique* - Redson Kapindu, University of Johannesburg *Socio-economic rights in Malawi and South Africa*
12.15-13.00	Discussion
13.00-14.00	Lunch

Working Groups

14.00-16.00	Working Group Discussions Group 1: Practitioners (led by Kene Esom, RLP) Group 2: Researchers (led by A Edwards and J Klaaren)
16.00-17.00	Reporting back from group discussions and closing

Brief Biographies of Participants

Edwin Abuya is senior lecturer at the Nairobi University law school. His research interests lie in the areas international asylum and humanitarian law. He has published articles, delivered conference papers and advised international agencies and government on these themes. He has taught law in Australia, the UK and the US.

Roni Amit is senior researcher with the Forced Migration Studies Programme at the University of the Witwatersrand and previously worked as a research and strategic litigation fellow at Lawyers for Human Rights in Johannesburg. Her research focuses on rights protection, administrative justice, legal processes and developments in the areas of refugee law and immigration detention.

Louise Aubin is currently the Assistant Representative for Protection at UNHCR's regional office in Nairobi. She was recently appointed to the post of Deputy Director of the Division for International Protection at UNHCR headquarters in Geneva.

Chongo Chitupila a lecturer and tutor in international law at the University of Zambia, works with the counter trafficking unit of the IOM in Zambia and is a practising lawyer. Her research interests include intellectual property rights in developing countries, human trafficking within SADC and regional judicial institutions.

Deirdre Clancy is Co-Director of the International Refugee Rights Initiative. She was previously Director of the International Refugee Programme at Human Rights First. She holds a Masters in Human Rights and Democratization from the University of Padua, Italy and Robert Schumann University, France, and an LL.B. from Trinity College, Ireland.

Justin de Jager holds a BA, LL.B and LL.M. from the University of Cape Town and has practiced at the UCT Law Clinic Refugee Rights Project since 2006. Justin plays a key role in the Project's strategic litigation program. His litigation matters currently focus on seeking compensation for victims of xenophobia and challenging discriminatory labour policies. Justin is also involved in the Project's research initiatives.

Alice Edwards (project director) is Lecturer in International Refugee and Human Rights Law at the Refugee Studies Centre, University of Oxford, and Member, Faculty of Law. She was previously at the University of Nottingham, where she remains a Fellow of the Human Rights Law Centre. She has also been a legal adviser to UNHCR and Amnesty International. Her work relevant to this workshop includes a co-edited collection, *Human Security and Non-Citizens: Law, Policy and International Affairs* (CUP, 2010) and 'Refugee Status Determination in Africa' (2006) 14 *Afr J Int'l & Comp L* 204-233.

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Cover Photo: Refugees from DRC in Uganda. Thousands of refugees from Democratic Republic of the Congos volatile North Kivu province live in basic shelters at Nyakabanda, just inside Uganda.UNHCR / E. Denholm 2007