

REFUGEE PROTECTION IN SWAZILAND

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The African continent continues to be ravaged by conflicts and the refugee-generating countries are now well known.¹ The Kingdom of Swaziland is one of the Southern African countries at the receiving end, hosting refugees mainly from the Great Lakes region and the Horn of Africa. As at June 2001 refugees in the Kingdom were 689 and asylum seekers were 361.² Out of a total figure of 1050 refugees and asylum seekers, those from Burundi topped the list with a figure of 177, followed by the Democratic Republic of Congo (DRC) with 144.

Currently, the legal instruments affecting refugees and asylum seekers in Swaziland are: the Citizenship Act of 1967; the Immigration Act of 1964; the Citizenship Regulations of 1967; the Citizenship Regulations of 1975; the Citizenships Order of 1974 and the Refugees Control Order of 1978. The government of Swaziland entered into a memorandum of understanding with the United Nations High Commission for Refugees (UNHCR) regarding the branch office of the UNHCR representative for Swaziland in 1984.

The Kingdom of Swaziland upholds a generous policy towards refugees.³ This is despite the fact that the Refugees Control Order of 1978 is outdated. It continues to respect refugees and asylum seekers in accordance to the international norms and standards in so far as refugees and asylum seekers are concerned. The Kingdom is a state party to the 1951 UN Convention Relating to the Status of Refugees subject to reservations regarding articles 22⁴ and 34,⁵ the 1954 Convention Relating to the Status of the Statelessness

¹ These include Angola, Burundi, DRC, Rwanda, Somalia and Sudan. See I van Beek "Prima facie asylum determination in South Africa: a description of policy and practice." <<http://www.niza.nl/lhr/refugee/book/ingrid.htm>> (accessed 16 August 2001).

² According to the statistics information obtained from the UNHCR office in Swaziland. (on file with the Author).

³ According to The Refugee Section, Ministry of Home Affairs.

⁴ Article 22 (1) provides that the contracting parties shall accord to refugees the same treatment as accorded with respect to elementary education Article 22 (2) provides that contracting states shall accord to refugees treatment as favourable as possible, and in any event, not less favourable than that accorded to aliens generally in the circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and award of scholarships.

⁵ Article 34 provides that contracting parties shall as far as possible facilitate the assimilation

of Persons, the 1961 Convention relating to the Reduction of Statelessness, the 1967 UN Convention Protocol on the Status of Refugees and the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.

Further to its international obligations in so far as refugees and asylum seekers are concerned, the government of Swaziland joined forces with the UNHCR and Caritas,⁶ a Catholic Church organization, to form an umbrella body known as the Tripartite, responsible for refugees and asylum seekers in the Kingdom. The Tripartite is bound by an agreement relating to refugee issues in the Kingdom. The Swaziland government through the Ministry of Home Affairs, Refugee Section, is responsible for the overall physical and legal protection of refugees in the Kingdom. The UNHCR is responsible for the provision and promotion of international protection of refugees in the Kingdom and Caritas is tasked with the responsibility of refugee program delivery.

Most significantly, Caritas is a service provider to refugees. These services include education, career guidance, psychosocial counselling, medical care, food and shelter. Over and above providing these services, Caritas is responsible for creating an enabling environment for the refugees in the country, which is aimed at contributing positively towards their social-economic well-being.

Following the Olso Declaration and Plan of Action, a consortium of Non Governmental Organizations (NGOs) committed to refugee work and the Swaziland government, known as Partners in Action (PARinAC) was formed in 1995. The PARinAC operates as a forum for inter-agency information sharing, mutual support and implementation of relevant joint programs and activities. Among other things, the PAinAC publishes a Refugee Newsletter quarterly specifically dealing with refugees and asylum seekers in the Kingdom.

Progressively, with the advice of the UNHCR, the government of Swaziland has drafted a Refugee Bill, which is to be debated in Parliament. The Refugee Bill is aimed at providing for the recognition of refugees, their protection, assistance and control.⁷ It is further aimed that this new legal regime will usher in an innovatory scheme that will be in line with the international Instruments, especially the 1969 OAU Convention Governing Specific Aspects of Refugee Problems in Africa. This Bill also aims at repealing the Refugee Control Order No. 5 of 1978, which has outlived its lifespan.⁸

In terms of the Refugee Control Order No. 5 of 1978, a refugee is a person who belongs to a class of persons, who have been declared as such by the Minister for Home Affairs, and 'who are, or prior to their entry into Swaziland

and naturalisation of refugees. They shall in particular make every effort to expedite naturalisation proceedings and to reduce as far as possible the charges and costs of such proceedings.

⁶ International Conference of Catholic Organization for Charitable and Social Action.

⁷ In terms of the Memorandum of objects and reasons of the Refugee Bill.

⁸ Ibid.

were, ordinarily resident outside Swaziland to be refugees for purposes of this Order.⁹

It is aimed that the Refugee Bill will make a significant change regarding this somehow unclear definition.¹⁰ Suffice it to say that the granting of refugee status to asylum seekers remains the prerogative of the government of Swaziland. The Order goes on to provide that in the event that a question arises as to whether or not a person is a refugee, the onus rests on that person to prove that he is in fact a refugee.¹¹

The Political Asylum Committee (POLASCO) is responsible for refugee status determination. The POLASCO is an executive body comprising of government officials from the Ministries of Home Affairs, Justice and Constitutional Development, Foreign Affairs and the Police Department. Its functions include undertaking an assessment on whether or not a person's claim for refugee status is valid. This assessment is done in accordance with the existing international and national legislation. The UNHCR enjoys an observer status with the POLASCO and also renders advice to it. Recommendations by the POLASCO are forwarded to the Minister of Home Affairs for a final decision.

It has been reported that a majority of asylum seekers move to those countries within the Southern African region, which they believe provide better treatment and more social and economic opportunities for asylum seekers a refugees.¹² To this end Swaziland continues to be a 'stepping stone' as most of these asylum seekers and refugees end up in South Africa. It is therefore not surprising why South Africa continues to host the largest number of urban refugees in the Southern African region.¹³ The Swaziland government has however adopted a positive attitude towards 'measures aimed at combating the abuse of the asylum system by persons having no right to be treated under this regime.'¹⁴

In June 2001, about 100 refugees of Malindza camp demonstrated and blocked the Minister of Home Affairs, Prince Sobandla, from entering Malindza camp, where he had been invited to address them during a commemoration of the Refugee day.¹⁵ The demonstration was against local integration, which the refugees alleged to have been forced upon them by the UNHCR and Caritas. The regional representative of the UNHCR, Bema Donkoh extended an apology to the government of Swaziland on behalf of the refugees and explained that the complaint did not represent the majority of refugees in Swaziland.

⁹ Section 3 of the Refugee Control Order of 1978.

¹⁰ The Refugee Bill adopts the definition of a refugee in terms article 1 of the OAU 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa.

¹¹ Section 3 (3) of the Refugee Order of 1978.

¹² Country Profiles-Swaziland <<http://www.unhcr.ch/world/afri/swaziland.htm>> (Accessed 6 August 2001).

¹³ UNHCR 2001 Global Appeal at 173.

¹⁴ Ibid.

¹⁵ 'Refugees rude to Minister as they demonstrate', Times of Swaziland 21/06/2001.

Taking the lead among African countries, the Kingdom of Swaziland has translated the 1969 OAU Convention into a Siswati version.¹⁶ This is part of the UNHCR's dynamic effort to promote and disseminate refugee law coupled with its protection principles for the benefit of the citizens of Swaziland. These efforts are an extension of the UNHCR mandate to lead and coordinate international action for the worldwide protection of refugees and the resolution of refugee problems as enunciated in its mission statement.

According to the UNHCR 2001 Global Appeal,¹⁷ the UNHCR's activities in Swaziland will focus on providing international protection of refugees and asylum seekers and assisting them with the basic relief assistance. This includes access to primary and secondary school education for the refugee children. Training courses are to continue to be organized on environmental awareness, the rights of the child, reproductive health (including prevention of HIV/AIDS) and Malaria control. Further, refugees in Swaziland will receive advice and training in business management. The annual programme budget for the year 2001 for the Kingdom of Swaziland is US\$ 469,647.

¹⁶ The launching of the dissemination of the siswati version of the 1969 OAU Convention took place at Mphophoma in Malkerns and was launched by the deputy Prime Minister Hon. Senator A.R.V. Khoza.

¹⁷ UNHCR 2001 Global Appeal at 124.