Wither Policy

Southern African Perspectives on Understanding Law, ‘Refugee’ Policy and Protection

Plenary Panel Session 4: Quasi-Legal Non-state mechanisms and Informal RSD Processes

Center for Forced Migration Studies
Northwestern University
Refugee Protection Outside of the International Legal Framework
28 May 2014

www.migration.org.za
Delineating Refugee Policy

• Misplaced focus on formal refugee policy and law
• Limited protection effects of legal status and documentation
• Other significant factors: social connections, non-refugee policy fields, administrative practices
• Role of bureaucratic autonomy: DHA has developed a policy that diverges from the law
Displacing the locus of refugee policy

- Legal status and documentation not good indicators of either migration histories or of effective protection
- Negative effects of targeting refugees
- Social relations as a primary determinant of protection
- Domestic migrants may be more vulnerable than refugees
Implications

• Challenges legal positivists and reliance on legal solutions
• Necessity and political viability of refugee-centric programs where others are more vulnerable
• Protection policies related to issues around access to housing, labor markets, health care, education
Shifting the Locus of Refugee Policy
Refugee Law in SA

- SA’s refugee legislation among most progressive
- Expansive refugee definition
- High numbers of asylum seekers
- Low numbers of refugees
- Recognition rate: 5-15%
- Individual who qualify under the law are not granted refugee status
- Progressive refugee law does not translate into refugee protection
SA: Gap between Law and Policy

- Progressive elements far removed from daily realities of most asylum seekers and refugees
- DHA routinely violates legal provisions and judicial outcomes
- Focus on legal processes alone overlooks the variability of law as a source of authority and regulation
- Policy implementation has moved into a parallel space outside of the law
Bureaucratic Autonomy

- Pace of immigration outstrips institutional capacity and oversight
- General hostility from government and citizens
- Relatively weak civil society
- Dominance of ANC National Executive Committee
- Gradual weakening of judiciary
Migration Context
Factors influencing policy

- SA the largest recipient of asylum seekers between 2006-2011
- Public perceptions
- Characterization of asylum seekers as economic migrants → rejection rates
- Work and study entitlement for asylum seekers
- Securitization of migration has resulted in narrowed access to asylum
Asylum Statistics: New Arrivals

- 1998: 11,135
- 2001: 16,325
- 2005: 43,289
- 2008: 207,206
- 2009: 222,324
- 2010/11: 124,336
- 2011/12: 81,708
Policy Influence on the Status Determination Process

2 Underlying processes in the status determination process that contribute to the narrative that everyone in the asylum system is an economic migrant

• Narrowing the understanding of who is a refugee: very limited understanding of political refugee

• Reframing the stories of individuals seeking asylum to make them invisible
Conclusion: Implications for studying refugee policy

- Broaden and contextualize what we mean by refugee policy
- Local policies, and non-refugee policies, including general urban policies
- Understanding of the limits of formal policy
- Institutional interests, administrative practices, and bureaucratic autonomy
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