

University of Pretoria- Centre for Human Rights

LLM: Multi-disciplinary Human Rights

Mini Dissertation (MND 800) by: Veronica Irima Modey-Ebi

Student number: u15236392

**Research Topic: The challenges facing vulnerable urban refugee women
living in Pretoria/Tshwane.**

Supervisor: Professor Karin Van Marle

January 2016

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DEDICATION

This thesis is dedicated to the almighty God for granting me the strength to complete this course amidst other career and family responsibilities.

DECLARATION

This thesis is a submission of my original works. Notwithstanding that, where there are any contributions of third parties involved, effort has been taken to articulate such contribution, with due reference to relevant literature, and acknowledgement of peer discussions and collaboration.

The entire thesis was researched and written under the guidance of Prof. Karin van Marle, at the University of Pretoria.

Veronica Mody-Ebi.....

In my capacity as supervisor of the candidate's thesis, I certify that the above statements are true to the best of my knowledge.

Prof. Karin van Marle.....

ACKNOWLEDGEMENT

Undertaking this dissertation in spite of the many contractual and family responsibilities was no easy feat. I am thankful for the support extended to me.

To my family; my loving and caring husband Lawrence Eka Ebi who encouraged, supported and stood by me through it all- for driving me to and picking me from class everyday with a smile; my loving mother Madam Alice Oloko Akpala for her relentless prayers and support, my children; Veronica Nyep Ebi, Lawrence Bekaolom Ebi, Laretta Oloko Ebi and Ralphael Udo Ebi I wish to express my heartfelt gratitude for their love, support and for always being there for me. I am grateful to my aunt- Madam Felicia Akpana Modey for her selflessness, caring for my children while I was busy with school and UN assignments and to my brothers and sisters for their prayers.

I remain hugely indebted to my former work supervisor, Ms Clementine Nkweta-Salami who encouraged and approved my external studies in pursuing this programme. I am also thankful to my friends; Barbara Bentum-Williams Dotse for her endless encouragement and support, Kizitos Okisai, Benjamin Kariuki and Gideon Muchiri for their true friendship, support and kindness in the provision of study materials and giving me helpful suggestions. To my Secretary and friend Othelia for preparation of the reading materials and photocopies, I say – thank you!

Finally special thanks and admiration goes to my project supervisor, Professor Karin Van Marle for her patience, guidance and unwavering support. Her extensive comments, fair critique, review of the draft works and reference to reading materials will be treasured. – Thanks a million Prof.!

List of Abbreviations

ARV.....	Anti Retro Viral
Cormsa.....	Consortium for Refugees and Migrants
ExCom.....	Executive Committee
HIV.....	Human Immuno Deficiency
ICESCR.....	International Covenant on Economic, Social and Cultural Rights
JRS.....	Jesuit Refugee Services
OAU.....	Organization of African Unity
PoC.....	Person of Concern
RSD.....	Refugee Status Determination
SGBV.....	Sexual and Gender Based Violence
TIRRO.....	Tshwane Interim Refugee Reception Office
UN.....	United Nations
UNDP.....	United Nations Development Programme
UNHCR.....	United Nations High Commissioner for Refugees
WAR.....	Woman at Risk
WRC.....	Women Refugee Commission

Chapter one

1.1 Research problem

A sizeable population of refugees living in Pretoria, South Africa live in miserable conditions. The United Nations High Commissioner for refugees reports that ‘most either live rough on the streets or in cramped apartments in townships.’¹

The Women’s Refugee Commission (WRC)² notes that the conditions in the townships (or “locations” as they are commonly referred to) are synonymous with ‘poor physical infrastructure, inadequate education and poor health outcomes’. Service delivery protests in these areas are a common phenomenon. The Jesuit Refugee Services (JRS) reports that: ‘Women are particularly vulnerable to abuse, exploitation and destitution. Often with the added responsibility of childcare and other family duties, their cost of living dramatically increases.’³

This thesis investigates the challenges faced by refugee women who seek asylum within the City of Tshwane and the convergence between their daily challenges and the right to the city as espoused by Henri Lefebvre. It advances the notion that loss of familiarity within the city envisaged by Lefebvre in his writings on the right to the city could be cured by a multi-disciplinary approach to the plight of the urban refugee women away from the traditional legal empowerment of the poor (*LEP*) mechanisms.

¹ UNHCR, *Surviving in the City*: Pretoria, South Africa, UNHCR, 2013.

² Women Refugee Consortium, *Nowhere to go but up*’ available at https://womensrefugeecommission.org/joomlatools-files/docman-files/no_place_to_go_but_up-urban_refugees_in_johannesburg.pdf.

³ https://en.jrs.net/campaign_detail?PTN=promo-20100414073943&TN=PROJECT-20110407090619.

1.2 Assumptions

This research assumes the existence of structural safeguards entrenched in South Africa's legal framework such as the bill of rights, the 1998 Refugees Act that provides for the management of refugees, the South African Social Security Agency Act that *inter alia* provides for social grants to the vulnerable members of the society⁴. In specific, the research assumes existence of a revolving fund for the benefit of vulnerable refugee women and girls.⁵

The research further assumes that South Africa, as a signatory to the 1951 Refugee Convention lives up to its international obligations to protect urban refugee women who currently constitute the one of the most vulnerable persons fleeing persecution.

The research takes the view that the unavailability of resources within the townships/locations coupled with inadequate access to water, sanitation, health and education facilities to support the host communities as well as the urban refugees has greatly contributed to the increased vulnerability indicators among urban refugee women.

Finally, it is assumed that Lefebvre's notion of 'right to the city' as expressed in *Le Droit à la ville* and critiqued by scholars coupled with the right of ethnic minorities and indigenous persons to exercise their culture and traditions, commonly referred to as 'right to difference' could offer a multi-disciplinary approach to the challenges facing vulnerable urban refugee women.⁶

⁴ Refugees Act, 130 of 1998.

⁵ South Africa Social Assistance Act 9 of 2004.

⁶ H Lefebvre, *Le Droit à la ville* Routledge, 1968.

1.3 Research questions

- 1.3.1** Has South Africa's Refugee Act, 1998 and other relevant human rights legislation, incorporated social and other mechanisms to support vulnerable urban refugee women and girls?
- 1.3.2** In addition to tenuous legal protections, what is the practical effect on women and girl refugees in the City of Tshwane in the access to adequate basic means of subsistence?
- 1.3.3** What does the 'right to the city' and 'the right to difference' entail and how could it address approaches to vulnerable urban refugee women and girls?

1.4 Motivation

1.4.1 Background

The Office of the United Nations High Commissioner for Refugees (UNHCR) estimates that 59.5 million persons were forcibly displaced by conflicts as at the end of 2014. Approximately 13.9 million of these were new displacements in 2014 and compounded by unresolved conflicts.⁷ These figures represent the largest number of displaced persons since the Second World War.⁸ Refugees living in urban areas continue to increase and now constitute about a third of all refugees⁹

Women make up approximately half the number of urban refugees, a sizable population of whom are considered vulnerable or "Women at Risk" by the UNHCR as they

⁷ UNHCR, *Global Trends, Forced Displacement in 2014*, 18 June 2015.

⁸ <http://www.un.org/en/globalissues/briefingpapers/refugees/>.

⁹ 'UNHCR', UNHCR policy on refugee protection and solutions in urban areas, 2009 para 3.

are at times single mothers, early-single women, divorcees or survivors of sexual and or gender based violence. Indeed, UNHCR notes:

In the past, many refugees in cities were young men with the skills and savvy to survive on their own. These days they are increasingly women, who may have been raped or molested in escaping their countries, children and older people who all need special help. In large anonymous cities they often have a hard time finding their way to UNHCR for the support they need, and the UN refugee agency, for its part, cannot provide services as easily as in a camp.¹⁰

Despite the fact that women refugees flee to urban spaces in search of anonymity, shelter or social assistance as indicated, vulnerable refugee women often find themselves entangled in the challenges of a new world. Whereas food shelter and other basic social amenities may have been availed within the refugee camps, for these women, these basic commodities oft present a daily struggle to survive in the city. In the case of South Africa, urban refugees have to fend for themselves and for their families mostly operating *spaza* shops and stock delivery services.

Without regular rations from humanitarian agencies or social and family ties to fall back on within the cities, urban refugee women are confronted with tough challenges and end up being more vulnerable. Instances of sexual and gender based violence, trafficking and even detention have been recorded by UNHCR.¹¹

Unfortunately, traditional means of addressing the challenges facing vulnerable urban refugee women have been mixed at best. Despite the enormity of the problem, *women and*

¹⁰ UNHCR website. See generally, <http://www.unhcr.org/pages/4b0e4cba6.html> [accessed on 06 September 2015].

¹¹ n 2 above, para 3.

girls at risk only constituted 12% of all submissions (103,800) for resettlement to third countries.¹²

This mini dissertation explores alternative solutions available to vulnerable refugee women seeking asylum in Pretoria with a comparison of similar situations and solutions arrived at in the greater South Africa as well as in Nairobi in Kenya.

Chapter four of the mini dissertation applies and expands the ‘right to the city’ as intertwined with ‘right to difference’ advanced in publications by Henri Lefebvre, as part of a multi-disciplinary approach to the plight of vulnerable urban refugee women.

South Africa is the leading host country for Asylum seekers and refugees in the Southern African region, with current statistics indicating that there are approximately 576,113 refugees and asylum seekers.¹³ As more and more refugees and asylum seekers in South Africa [and indeed other parts of the world] stream into cities and away from the traditional refugee camps dotted with polythene sheets and tents, the world’s humanitarian approach has been forced to reconsider its traditional social support structures to its most vulnerable populations.¹⁴

This trend, compelled the United Nations High Commissioner for Refugees (UNHCR), the United Nations Agency entrusted with provision of International protection to refugees to realign its policies in light of the increased presence of refugees in urban spaces. In 1997, UNHCR developed its first policy on refugee protection in urban settings. However, a unique

¹² For a detailed analysis see generally <http://unhcr.org/5568600f9.html>.

¹³ UNHCR, <http://www.unhcr.org/pages/49e485aa6.html>.

¹⁴ Ikizoglu A, ‘Asylum and the Right to the city: Lessons from Turkey’s Syrian Guests and other Urban Refugees’. Available at http://www.jadaliyya.com/pages/index/16998/asylum-and-the-right-to-the-city_lessons-from-turk [last accessed on 31 August 2015].

set of challenges not experienced in the camp setting have been presented with this shift necessitating a raft of changes in 2006 by its Executive Committee.¹⁵

1.5 Literature Review

Chapter two, three and four of this thesis critically reviews the existing and available literature on the subject matter. In doing so, the following reports, law and materials are examined (i) the existing legal frameworks governing refugee affairs as well as social assistance mechanisms in Pretoria; (ii) various NGO reports detailing constraints in access to social security, food, shelter, water & sanitation as well as employment opportunities faced by the vulnerable women and girls residing in the township areas of Pretoria (Diepsloot, Atteridgeville and Mamelodi) and (iii) all accessible literature on the application of social sciences particularly ‘the right to the city’ and the ‘right to difference’ to advance solutions to these challenges.

Chapter two herein analyses South Africa’s Social Assistance Act (SASA). In doing so, this thesis poses the question as to whether the framers of the Act provided for special assistance to refugee women living in Pretoria (amongst other cities)? Can the ‘right to the city’, as argued by Lefebvre guide Tshwane Municipality to establish social and other grants/mechanisms (as opposed to traditional legal empowerment) to alleviate the suffering of vulnerable urban refugee women?

This chapter also carries out an in depth analysis of South Africa’s Refugee Act, (as well as proposed 2015 amendments) in so far as it sets down legislative channels and frameworks for the assistance of vulnerable refugee women in the country. Has the Act

¹⁵*ExCom Conclusion No. 105 on Women and Girls at Risk*, 2006 available at <http://www.unhcr.org/excom/EXCOM/45339d922.html> [last accessed on 7 September 2015].

envisaged the problems associated with urban refugee women? If so, are there any proposed safeguards to their plight?

A review of available literature from leading commentators (Butler, Merkel, Merrifield, Isin, Paschel, Bindel et al) is undertaken to assess whether there was any application of the right to the city as well as the right to difference for the benefit of these persons of concern within Pretoria.

How have urban refugee women and girls in vulnerable situations been able to exercise their culture within the urban spaces as well as within the refugee camps? Social support structures within the Somali, Ethiopian and Congolese refugee communities, alternative solutions encompassing anthropology, social sciences and other non - legal solutions to provide durable solutions to vulnerable women are discussed. The chapter analyses new and emerging forms of alternative solutions such as ‘*Umoja*’ the “women only” village in Samburu, Kenya, where refugee women and survivors of sexual and gender based violence (SGBV) live and practice their culture and no males are allowed.¹⁶

A vast pool of research and published literature on refugee law undertaken or commissioned by the United Nations Refugee Agency, (UNHCR), the International Organization for Migration (IOM) as well as other human rights bodies which formed part of the available resource is analysed. Whilst these materials form the foundation of research, a more broad/inclusive and multi-disciplinary approach in the available literature-from the arts, history, social sciences and feminist studies and feminist publications/ conferences- is incorporated. Works from feminist scholars have been considered as well.

¹⁶ <http://www.theguardian.com/global-development/2015/aug/16/village-where-men-are-banned-womens-rights-kenya>.

In Chapter 2, legislation affecting refugees, migrants as well as social security is critiqued. This includes South Africa's refugee regime (Refugee Act, 1998) and proposed amendments¹⁷ seeking to introduce statutory social assistance to urban asylum seekers who are deemed vulnerable and unable to support themselves.

Hathaway¹⁸ opines that vulnerabilities of women may be dependent on and peculiar to the social cultures. Urban refugee women living in Pretoria and who are widows or separated from male head of households may be at risk from forcible imposition of cultures exercised in countries of origin as was witnessed in the *Zekiye Incirciyan* case.¹⁹

Feminist scholars and publications while acknowledging a need for interventions for such vulnerable groups recommend that any assistance and or intervention conducted be in full participation of such vulnerable women.²⁰ The 1995 Conference on Women empowerment in Beijing (hereinafter “Beijing Conference”) recommended that ‘authorities undertake appropriate levels for adult women with little or no education, for women with disabilities and for documented migrant, refugee and displaced women to improve their work opportunities.’²¹

¹⁷ Section 22(7), Refugee Amendment Act, 2015, notice no. 805 of 2015.

¹⁸ J Hathaway *The law of refugee status* York 1995 p.162.

¹⁹ Immigration Appeal Board Decision M87-1541x, August 10 1987. This case involved a Turkish widow, who had no close family to support her in Canada. The Canadian Immigration Board ruled in the applicant's favour, by holding that Mrs Incirciyan be granted refugee status in the country as she belonged to ‘a particular social group composed of single women living in a Moslem country without the protection of a male relative’.

²⁰ Resolution SO/203 - Follow-up to the Fourth World Conference on Women and Full Implementation of the Beijing Declaration and the Platform for Action.

²¹ UN World Conference on Women Strategic objective B.3 (k), ‘Improve women's access to vocational training, science and technology and continuing education,’ Declaration and Programme of Action adopted at the Fourth World Conference on Women (Beijing, 4- 15 September 1995).

Merrifield argues that Lefebvre's analogy of Chaplain, bring to the fore the disorientation and strangeness that besets an individual's arrival to the city. Where the 'familiar is no longer familiar'.²² This research explores Merrifield's analogy by looking at the loss of familiarity encountered by vulnerable urban refugee women living in the Tshwane area.

The Women's' Refugee Commission's guiding principles on the empowerment of urban refugee women by equipping them with relevant skills to enable them to survive the complexities of urban refugee situations is discussed in greater detail. A convergence between the right to the city and the various schools of thought advanced by the theorists and feminists will be sought. At its conclusion, the thesis asks as to whether traditional feminist perceptions can give way for the exercise of the right to difference

1.6 Research methodology

Research was conducted through review of existing legislation, literature and publications by the agencies mandated under international law to avail protection to urban refugees and other migrants (UNHCR & IOM). National laws and human rights instruments, books, journals and policy papers were relied upon. Debates and developments will be analysed, and relevant judicial pronouncements are discussed

1.7 Chapter breakdown

1.7.1 Chapter 1:

The first chapter entails an introduction and *prima facie* overview of the proposed problem and research question. It simply introduces the mini dissertation and explains the research methodologies.

²²Merrifield A *Henry Lefebvre, A Critical Introduction*, (2006) p 7.

1.7.2 Chapter 2:

Chapter two lays down the various provisions within the 1998 Refugees Act that deals with vulnerable women and girls making up the refugee population. The chapter discusses current legal provisions as well as mechanisms set up to provide the problems facing urban refugee women and girls living in the comparable cities of Nairobi and Kampala. Thereafter, the chapter looks at the legal and other frameworks (as well as case law) that have been put in place to deal with the issues affecting urban refugee women in these jurisdictions.

Further, the Chapter interprets Chapter 2 of South Africa's Constitution [Bill of Rights] and apply the Bill of rights in so far as it provides for basic human and social economic rights for all with the 'right to the city' and 'the right to difference'? Does Chapter 2 establish a duty of care on the City of Pretoria towards vulnerable urban refugee women and girls? The chapter then discusses other domestic legislations such as the South African social Assistance Act as well as municipal by-laws that affect refugee women.

Finally, the chapter analyses the relevance and efficacy of South Africa's obligations under international law in the provision of international protection to these women at risk. Has the South African 1998 Refugee Act incorporated international law principles or the involved other social sciences to remedy the plight of urban refugee women and what possible amendments could be recommended?

1.7.3 Chapter 3

Chapter three critically addresses the various challenges faced by vulnerable women and girls amongst the refugees living in Pretoria's townships. It discusses the absence of adequate shelters or safe houses and substandard healthcare for the most vulnerable who cannot access food or shelter. What alternatives do refugee women and girls in vulnerable

situations have? This chapter explores the survival mechanisms employed by the women and girls in absence of the social structures in their countries of origin or in the camp settings. It thereafter looks at the Umoja village in Samburu Kenya and how it offers lessons to Tshwane in the management of disenfranchised refugee women.

1.7.4 Chapter 4

Firstly, chapter four looks at the primary works by Lefebvre. It introduces an in-depth assessment of the ‘right to difference and right to the city’ and secondly establishes a correlation between the plight of vulnerable urban refugee women and girls with the ‘right to the city’ and the ‘right to difference’ using a multi-disciplinary approach. How can vulnerable women and girls, residing in Pretoria benefit from the application of Lefebvre’s ‘right to the city’?

This chapter thereafter assesses the notion of right to the city as seen and discussed from the view of various publications and critics by foremost commentators of Lefebvre such as Chris Butler, Merrifield, Isin and Paschel discusses the suitability of their propositions. The Chapter explains the concept and applicability of the right to the city within the context of urban refugee women in the municipality of Tshwane. How and in what context [if at all] does the right to difference apply to refugee women and girls in urban areas such as Tshwane? How could the right be seen as a practical solution to their plight as enumerated in chapter three?

The mini-dissertation in this chapter examines the practicality of Lefebvre’s writings and theory in the modern day context. Further, Chapter 4 proposes possible multi-disciplinary approaches incorporating other social sciences to tackle the plight of these women and girls as part of the application of the right to difference.

Can the exercise of culture and distinct ways of life afford the vulnerable women living in urban spaces present new opportunities and better chance in life or is resettlement and or camp relocation (traditional solutions) their only hope?

Chapter two

According to Justice Mokgoro:

Excluding vulnerable refugee [women] ...simply because they are refugees will inevitably foster a climate of xenophobia which will be harmful to refugees and inconsistent with the overall vision of our refugees²³

2.1 Introduction

The research question addressed in this chapter focuses on how the legal framework for the protection of refugees in South Africa both at the national, and international levels address the problems of refugee women and girls with particular emphasis to urban refugee women in Tshwane, Gauteng Province.

The United Nations High Commissioner for Refugees (UNHCR) categorizes a sizeable portion of women refugees living in urban areas such as the City of Tshwane as '*Women at Risk*'. They are mostly single mothers, survivors of gender-based violence in their countries of origin or in host countries. Their reliance on social assistance-especially in the urban environment such as the City of Tshwane increases their vulnerability risks. While these women and girls have traditionally relied on assistance from the well-established refugee camp settings, the urban jungle presents a new challenge as they strive to access social economic rights with little or no social support structures.

²³ *Union of Refugee Women v Director: Private Security Regulatory Authority*, (2007) (4) SA 395 at 62. Per Mokgoro J's dissenting opinion.

2.2 The Constitution of the Republic of South Africa.

South Africa's 1996 constitution has been regarded as one of the most progressive constitutions.²⁴ The inclusion of a bill of rights, providing for a range of social economic and political rights guaranteed to all persons, irrespective of race, religion, gender or personal belief at a time when most constitutions in the continent did not provide for such rights has been widely celebrated.²⁵ As a departure from apartheid era law, the framers of the constitution intended that the 1996 law be founded upon the belief that the country belongs to 'all those who live in it' as well as the recognition of diversity as a unification tool.²⁶

Whereas the constitution does not expressly provide for the rights of refugees and asylum seekers within the bill of rights, the drafters of the constitution took great care to ensure universal inclusion in the enjoyment of these rights, refugee women and girls included. The *equal protection clause* under Article 9 of the constitution guarantees access to equal treatment, protection and benefit from the law. By dint of its preamble, the constitutional equality clause seeks to redress past social and legal injustices occasioned and sanctioned by the law. The framers aimed at 'heal[ing] the divisions of the past and establish a society based on democratic values, social justice and fundamental rights'.²⁷

²⁴ Crush, J. (2001) The Dark Side of Democracy: Migration, Xenophobia and Human rights in South Africa. *International Migration* 38. 103-133.

²⁵ Pineteh, E. The Challenges of living here and there: the conflicting narratives of intermarriage between Cameroonian migrants and South Africans in Johannesburg. *African and Black Diaspora; An international Journal* Vol.8 Issue 1, 2015 13.

²⁶ Preamble to the Constitution. *We the people....believe that South Africa belongs to all who live in it, united in our diversity.*

²⁷ Heyns C, Advancing Social Justice in South Africa Through Economic and Social Rights – From The Margins to the Main Stream *ESR Review* Vol. 1 No. 1 March 1998 p1.

Yacoob J, in the *Grootboom Case* refers to this constitutional provision as an ‘embodiment of the aspirations of the people of South Africa to achieve social economic inclusion’.²⁸ Life with human dignity for all persons embodies Chapter 2 as the central theme. Article 10 thereto provides that ‘Everyone has inherent dignity and the right to have their dignity protected and respected’. Human dignity has been reiterated under the freedom from slavery, servitude or forced labour²⁹, security of the person and freedom from torture, cruel inhuman and or degrading treatment³⁰ as well as guarantee of social economic rights to property³¹, housing and healthcare food and social security³²

The constitution adopts a generous and purposive interpretation of these rights.³³ The framers sought to ensure that they guarantee and secure the full protection of the charter’s rights.³⁴

In *Makwanyane*, the court noted that ‘[The constitution] must also be construed in a way which secures for "individuals the full measure" of its protection’.³⁵ Without any distinction made between nationals and refugees, the Constitution on one hand imposes a positive obligation on the state to take positive measures to protect and safeguard refugee women and girls’ right to human dignity as well as a negative obligation to refrain from

²⁸ *Government of the Republic of South Africa and Others v Grootboom and Others* 2001 (1) SA 46 (CC)

²⁹ Article 13.

³⁰ Article 12(1).

³¹ Article 26.

³² Article 27.

³³ *S v Makwanyane and Another* 1995 (3) SA 391 (CC); 1995 6 BCLR 665 (CC).

³⁴ Constitutional Court Case No. CCT/5/94 (5 April 1995).

³⁵ *Minister of Home Affairs (Bermuda) v Fisher* [1980] AC 319 (PC) at 328-329

interfering with their right to human dignity. It can therefore be surmised that the average urban refugee woman and girl has a general expectation to receive protection from the State as well as to be left alone when need be.³⁶ Further, the constitution recognizes that urban settlement results in cultural diversity. Section 30 and 31 thereof may be seen as an acknowledgment that urban refugees within the city of Tshwane ought to be permitted to exercise their culture and cultural ways of life...even as to earn a living.

Bennet notes that:

...Culture may also denote people's entire store of knowledge and artefacts, especially the languages, systems of belief, and laws, which give social groups their unique characters. This meaning would encompass a right to customary law, for customary law is peculiarly African...³⁷

Chapter four hereinafter advances the notion that the freedom to exercise culture, traditions and ways of lives, is a right extending to refugee women residing in the City of Tshwane. That urban refugee women and girls not only have a right to live in these urban spaces but may also earn a living from their cultural practices.

The freedom from arbitrary arrest and deprivation of liberty under Article 12 of the constitution is guaranteed and extends to asylum seekers or refugee women and girls. In *Mustafa Aman Arse Case*, the Supreme Court of Appeal while presented with the issue as to whether the arrest and subsequent detention of the Applicant- an asylum seeker ordinarily resident in Tshwane reiterated the freedom from *arbitrary* arrest, as a constituent of the bill of right extends to refugees and even asylum seekers whose status in the country is yet to be

³⁶ However, certain rights are exclusive to nationals such as entry and exit rights, passport (Art 21) and political rights (Art.19). This encompasses the responsibility to protect and the respect when necessary and is on the state.

³⁷ Bennet, *Human Rights and African Customary Law* 23-24.

ascertained.³⁸ In *Mustafa Aman Arse's case* the Supreme Court has reaffirmed that arrest and detention of an asylum seeker while sojourning in the City of Tshwane pending the final hearing and determination of his asylum application amounted to an arbitrary and unlawful arrest.³⁹ Similar protections have been applied by the court in the granting of trading permits in the *Limpopo Traders' Case*,⁴⁰ as well as the right of refugees and asylum seekers to seek employment in the *Watchenuka Case*.⁴¹

However, despite the well drafted legislation and these judicial pronouncements, Nyaradzo argues that the law does not create an 'enabling environment' for the urban refugees in South Africa.⁴² This chapter explores the efficacy of the various legislations (the Refugee Act, the 1951 Refugee Convention and its Protocol, and the OAU Convention) in the strengthening of international protection for refugee women and girls living in Tshwane. Are the legislative and judicial mechanisms in place effective in the provision of social economic and civil and political rights to refugee women living in Pretoria?

2.3 The Refugee Act 130 of 1998

³⁸ *Arse v Minister of Home Affairs*, (25/2010) [2010] ZASCA 9 (12 March 2010), South Africa: Supreme Court of Appeal, 12 March 2010, available at: <http://www.refworld.org/docid/4c933be42.html> [accessed 09 December 2015]

³⁹ n.11, para 19.

⁴⁰ *Somali Association of South Africa v. Limpopo Department of Economic Development, Environment and Tourism*, 48/2014 ZASCA 143.

⁴¹ *Minister of Home Affairs and Others v. Watchenuka and Another*, (010/2003) [2003] ZASCA 142.

⁴² Nyaradzo M, Can a case be made for the provision of government funded social assistance to refugees in South Africa, (2005) Publisher / Source?.

The South African Refugee Act 130 of 1998 (Hereinafter “*The Act*”) is the operative legislation governing all matters incidental to South Africa’s refugee regime. The long title thereto provides for its aim as:-

To give effect within the Republic of South Africa to the relevant international legal instruments, principles and standards relating to refugees; to provide for the reception into South Africa of asylum seekers; to regulate applications for and recognition of refugee status; to provide for the rights and obligations flowing from such status; and to provide for matters connected therewith.⁴³

Section 3 of the Act, provides for the operative definition of a refugee within South Africa’s context. The Act’s definition incorporates both definitions found in article 1 A (2) of the 1951 UN Convention as well as article 1(2) of the 1969 OAU⁴⁴ conventions.

‘3(a) Owing to a well-founded fear of being persecuted by reason of his or her race, tribe, religion, nationality, political opinion or membership of a particular social group, is outside the country of his or her nationality and is unable or unwilling to avail himself or herself of the protection of that country, or, not having a nationality and being outside the country of his or her former habitual residence is unable or, owing to such fear, unwilling to return to it; or

3(b) Owing to external aggression, occupation, foreign domination or events seriously disturbing or disrupting public order in either a part or the whole of his or her country of origin or nationality, is compelled to leave his or her place of habitual residence in order to seek refuge elsewhere’

Oloka-Onyango⁴⁵ asserts that, this expanded definition was one of the most progressive and bold step taken in the realm of international refugee protection.⁴⁶ According

⁴³ (Gazette No. 19544, Notice No. 1558, dated 2 December 1998. Commencement date: 1 April 2000 as amended by Refugees Amendment Act 10 of 2015 Government Notice 893, in Government Gazette 39234 dated 25 September 2015)

⁴⁴ Organization of African Unity (OAU), Convention Governing the Specific Aspects of Refugee Problems in Africa (“OAU Convention”), 10 September 1969, 1001 U.N.T.S. 45.

⁴⁵ See generally n.35.

⁴⁶ Hunt L, “Tracking Progress: Initial Experiences in the Implementation of the Refugees Act, 130 of 1998, South Africa”: National Consortium for Refugee Affairs. Date of publication? Publisher?

to Khan, the Act benefited from the timely enactment by adopting clear and beneficial positions as regards to *refoulmer*.⁴⁷ Prohibition from expulsions, forced returns or push backs of asylum seekers to areas where they may suffer harm- a principle which had hitherto been contested.⁴⁸ However, in South Africa, criticism that the definition was neither conscious of the specific plight of [urban] refugees nor broad enough to include social support mechanisms for vulnerable refugees such as women has proved justified.⁴⁹

The Department of Justice in 1998 highlighted that at its enactment, women and girls constituted only 5% of all persons granted refugee status, by the Department of Home Affairs and therefore legally entitled to receive international protection.⁵⁰ Valji and Hunt note that women and girls faced historical and institutional discrimination.⁵¹ This is more so in their access to social protection as the international refugee legal framework envisioned a refugee and or asylum seeker as a male and women and girls, despite being the most vulnerable, could not be envisioned as capable of suffering “persecution”.⁵²

⁴⁷ Article 33(1) of the 1951 Refugee Convention.

⁴⁸ Khan F & Schreier T, *Refuge Law in South Africa*, Juta, 2014 page?

⁴⁹ O’Hare A ‘Realising human rights for women’ in *Human Rights Quarterly*, (1999) 21, 2.

⁵⁰ www.doj.gov.sa/policy/gender02.html [last accessed on 11 September 2015].

⁵¹ Hunt L, Tracking Progress: Initial Experiences in the Implementation of the Refugees Act, 130 of 1998, South Africa: National Consortium for Refugee Affairs.

⁵² Valji N, ‘Seeing refugee women as refugees: the gendered nature of persecution’ in Track Two, 9, 2.

Consequently, the drafting, enactment and subsequent implementation of the Act was intended to incorporate social mechanisms to *inter alia* support vulnerable refugee women as a right “flowing from the granting of refugee status”.⁵³

Section 6 (1) of the Act, paves the way for the local application of the 1951 Refugees Convention.⁵⁴ The Act provides a host of rights that are available to refugees upon the granting of the refugee status under Section 24. These include sojourn rights within the republic and the right to seek work.⁵⁵ While acknowledging the importance of legal empowerment, it is conceded that mere granting of rights to refugee women and girls to seek work or sojourn within the republic free from arbitrary arrest or detention is not enough. Whereas section 27 grants these rights, it fails to spell out the duty holder and the extent to which these rights may be enjoyed remains vague. The Act has not spelt out which vocations refugees and asylum seekers may or may not engage in. The 1951 Convention on the other hand demands that state parties afford the most favourable treatment as afforded to “foreign national in the same category”.⁵⁶ It is however unclear as there are no classes of foreign nationals in the same category as refugees.

This ambiguity within the Act has led to judicial dissents in their decisions. In *Union of Refugee women case* the constitutional court of South Africa was at pains to determine whether the ban on refugees to work as guards by the Private Security Regulatory Authority

⁵³ N Valji, L. Hunt & H Moffett *Where are the women? Gender discrimination in refugee policies and practices*, 2005.

⁵⁴ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <http://www.refworld.org/docid/3be01b964.html> [accessed 17 November 2015].

⁵⁵ Section 27 (f) of the Refugees Act 1998.

⁵⁶ Article 17 of the 1951 Convention.

was discriminatory and a violation of Section 27 (f) of the Act as argued by the Petitioners-refugee women⁵⁷

While the majority of the court were of the opinion that:-

Section 27(f) of the Refugees Act provides that “[a] refugee is entitled to seek employment”. Section 23(1) (a) of the Security Act limits the refugees’ right to choose employment only to the extent that they may not work in the private security industry. It in no way prevents them from seeking employment in other industries.⁵⁸”

The dissenting judges differed sharply:

I see no reason why access to employment in the security industry by persons in their situation should not be permitted in relation to sectors such as these, where no high security interests are at stake. To bar them would be to discriminate against them unfairly.⁵⁹

It is this ambiguity in the law that is likely to erode the very intention to safeguard their right to work of urban refugees. The ambiguity as well as different applications of the law has *inter alia* led to a large number of refugee women and girls living within the City of Tshwane opting to stay at home rather than venture into the realm of gainful employment. Indeed, the dissenting bench in *Union of Refugee Women* warned: “Disproportionate and uncalled-for adverse treatment would defeat that objective and induce an unacceptable and avoidable experience of alienation and helplessness. It would be most unfortunate if the left

⁵⁷ *Union of Refugee Women v Director: Private Security Regulatory Authority*, (2007) (4) SA 395 cc. Per Sachs J’s dissenting opinion .

⁵⁸ *Ibid* at 132.

⁵⁹ n 57 at 134.

hand of government, that supervises the security industry, took away what the right hand of government that accords to accredited refugees a special status, gives.”⁶⁰

According to Human Rights Watch, this ambiguity in the law has opened a channel of exploitation and abuse of vulnerable migrants and refugee women and girls.⁶¹ Whereas the Act has provided for a right to seek work, available opportunities for work are little and few between, leaving them with menial and low-wage paying jobs in poor working conditions. This is despite the attempts by the Basic Conditions of Employment Act, 1997 to introduce fair labour practices in the marketplace.⁶² In response to this, an increasing number of urban refugee women in Tshwane have opted to venture into spazas and other personal businesses in the informal townships of Mamelodi and Diepsloot.⁶³ These too have not been spared by the xenophobic flare ups⁶⁴

Of importance is that while the Act provides for the right to work and study- a right that is reprinted in on the refugee permits issued by the Tshwane Interim Refugee Reception Office (TIRRO), and despite the recognition of refugees as a special class of vulnerable persons, the Refugee Act and the regulations thereunder do not provide for any quotas available specifically to refugees. The law merely recognizes them as a vulnerable group and falls short of providing for affirmative action or similar opportunities open to the

⁶⁰ n 57 above Per Sachs J at 134

⁶¹ Human Rights Watch, Unprotected Migrants: Zimbabweans in South Africa's Limpopo Province, 8 August 2006, at 158.

⁶² Basic Conditions of Employment Act, No. 75 of 1997.

⁶³ UN High Commissioner for Refugees (UNHCR), Building Communities of Practice for Urban Refugees: South Africa Roundtable Report, 25 March 2015

⁶⁴ Integrated Regional Information Networks (IRIN), South Africa's xenophobia problem: dispelling the myths, 21 April 2015.

implementing agencies such as the City of Tshwane to alleviate their vulnerabilities. This is in contrast with quotas available for Black Economic Empowerment and other marginalized groups. UNHCR implementing partners, have had to therefore intervene in Tshwane based schools to permit refugee girls to enroll.

Hunt argues that as a result, urban refugee women in South Africa have been afforded less protection and thence faced more vulnerability despite them being amongst the most vulnerable in the urban refugee setting.⁶⁵ It is recommended that the Act ought to incorporate residency-based quotas for refugees seeking to apply for work or schools. The City of Tshwane would thereafter allocate municipality-wide quotas for eligible refugee women and girls. Similar programs have been implemented in Switzerland, Belgium and Germany.⁶⁶ Whilst quotas, depending on the area of residency (Municipality, Province or Town) may not be the most ideal mechanism, it would uplift the urban refugees- who are mostly not seen and not represented- into positions where they can influence decisions made by the local municipality affecting their day to day lives such as education, housing and access to water and sanitation. This ideally works well in developed countries with low unemployment rates, but is recommended for application in Tshwane context. Affirmative action should be considered for women refugees.

It is however prudent to note that access to work and school, amongst other rights for refugee women and girls would be difficult to implement on a quota basis due to high unemployment rates in the city in which case affirmative action for women refugees should be considered as they are disproportionately affected. The Constitutional court has warned on

⁶⁵ Shacknove A, 'Who is a Refugee', 2005, in Ethics 6.

⁶⁶ http://www.swissinfo.ch/eng/refugee-crisis_making-sense-of-migration--facts-and-figures/41560118

the difficulties in the enforcement and implementation of these social economic rights – especially for refugees:-

The question of how socio-economic rights were to be enforced was a difficult issue which had to be carefully explored on a case-by-case basis considering the terms and context of the relevant Constitutional provision and its application to the circumstances of the case⁶⁷

As discussed in Chapter four, the recognition of refugees as members of a urban space as well as the acknowledgement by the Tshwane Municipality that refugee urban dwellers with their diverse cultures and backgrounds have rights that emanate from their urban residency may help realize the elusive social economic cohesion and integration of the most vulnerable refugee women and girls. Until such recognition is made by the city authorities, access to these social economic and political rights for refugee women and girls will remain elusive.

Wallace notes that “The relative freedom [to live in urban settings]’ that asylum seekers in South Africa still enjoy has the effect of further disadvantaging women refugees”⁶⁸

2.4 The 1951 United Nations Convention Relating to the Protection of Refugees

South Africa is a signatory to the 1951 Refugees Convention.⁶⁹ The accession of the convention by South Africa and its subsequent application in municipal law was reiterated by the inclusion of S. 6(1) (a) of the Refugees Act.

⁶⁷Ex parte Chairperson of the Constitutional Assembly: *In re Certification of the Constitution of the Republic of South Africa*, 1996 (4) SA 744 (CC) at para 20.

⁶⁸ Wallace R (1996) ‘Making the Refugee Convention gender sensitive: the Canadian guidelines’ in *International and Comparative Law Quarterly*, 45

⁶⁹ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189.

The application of the 1951 Convention in South Africa has been subject to judicial discourse. Sachs J, in the *Union of Refugee Women case* before the Constitutional court- while adjudicating on the legality of restrictions imposed on applicants, refugee women, from working in the security industry by the regulator-the Private Security Authority (PRISA) acknowledged that the application of the 1951 Convention was subject to state restrictions or reservations.⁷⁰

Similar to the 1998 Refugees Act, Article 17 of the 1951 Convention presents a problematic interpretation. It provides:

(1) The Contracting State shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.

(2) In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, or who fulfils one of the following conditions:

- (a) He [or she] has completed three years' residence in the country;
- (b) He [or she] has a spouse possessing the nationality of the country of residence...⁷¹

As noted above, the problematic application of the 1951 convention in South Africa and by extension in the City of Tshwane is perfectly summed up by Justice Sachs as;

One of the difficulties with this formulation is that, whatever the situation may be in other countries, there are no nationals of a foreign country in South Africa who are identically situated to refugees. The status of being a refugee is unique in our law and not identical to any of the other categories of foreign national.⁷²

⁷⁰ *Union of Refugee Women v Director: Private Security Regulatory Authority*, (2007) (4) SA 395.

⁷¹ *Ibid*, Per Sachs J's dissenting opinion.

⁷² n 68 para 399.

It may be argued that the absence of a ‘similar group of foreign nationals’ residing in the country may be the reason behind the limited access to social economic rights and therefore challenges facing urban refugee women. Section 233 of the South African Constitution has however cured this defect by guiding that any interpretation of international law be wide and generous.

Article 6 of the 1951 Convention guides that “in the same circumstances” as referring to the term

In the same circumstances” implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a refugee, must be fulfilled by him, with the exception of requirements which by their nature a refugee is incapable of fulfilling.⁷³

While there are no publicly available statistics on the number of refugee women residing in the city of Tshwane, it is still necessary to examine the role of the effect of the 1951 Convention on the city of Tshwane in ensuring access to social assistance to women and girls. This is because as more refugee situations become protracted- a technical term by UNHCR referring long term periods of intractable limbo for refugees, with no durable solution in sight a corresponding obligation ensues on the host countries.⁷⁴

In South Africa, urban refugees present this obligation on the municipalities. It is within this context that this thesis looks at the applicability of the right to the city and the right to difference in Chapter 4 as possible responses to the plight of urban refugee women in the City of Tshwane.

⁷³ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, at Article 6.

⁷⁴ J Milner (2007) ‘*Towards Solutions for Protracted Refugee Situations; The role of resettlement*’, TRS Project p.5.

2.5 The International Covenant on Economic Social and Cultural Rights (ICESCR)

South Africa signed the International Covenant on Economic Social and Cultural Rights (Hereinafter the “ICESCR”) ⁷⁵ in 1994, but only ratified the same in January 2015.⁷⁶ This subsection explores whether the *lacuna* and problematic interpretations in the Refugee Act, the OAU convention as well as the 1951 Convention (discussed above) as regards to the access of social services by urban refugee women may perhaps be alleviated from the application of the ICESCR.

The relevance of the ICESCR to refugee women and girls living in Tshwane cannot be overstated. Whereas the 1951 Convention identifies the government as the primary duty holder in the protection of refugees within South Africa, absence of UNHCR administered camps in South Africa as well as camp based social intervention as seen in other countries means that refugee women and girls not only have to overcome legal disadvantages in the formulation of their refugee claims but also ensure sustenance, both for themselves as well as the accompanying children. As presently constituted, as well as there are no social assistance structures at the designated refugee reception centres such as TIRRO serving refugee women and girls in the City of Tshwane. It is however conceded that there are attempts to amend the Refugee Act envisage the establishment of social welfare officers at TIRRO to evaluate the ability of urban women and girls to sustain themselves pending the hearing and determination of their asylum claims. ⁷⁷ As the bill seeks to shift the burden to the Office of the UNHCR, critical questions however still remain such as the capability to provide social assistance in light of more pressing emergencies in Syria and Yemen as well as criteria to determine who qualifies for the social assistance (means test).

⁷⁵ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.

⁷⁷Refugees Amendment Act, 2015.

The availability of social and economic rights to refugees in general and refugee women in Tshwane in specific is mixed at best. The notion of *progressive realization* of social economic rights has in effect removed the obligation on the governments and by extension the City of Tshwane to provide shelter, food and other amenities to displaced vulnerable women and girls.

The Supreme Court of Appeal in the *Soobramaney v Minister of Health, Kwa Zulu-Natal*⁷⁸ in a landmark case brought by a patient seeking to compel the government to allow immediate access to government sponsored medical assistance for his kidney condition, a condition he termed as ‘life threatening’, interpreted the obligation imposed on the state to avail social economic rights within the context of sections 26 and 27 of the constitution as being ‘progressive and contingent upon the availability of funds by the state’. Currie argues that the imposition of progressive realization in effect translates to a right to access and not necessarily a right to receive social economic rights on demand or request.⁷⁹ If the refugee women and girls living in the City of Tshwane, and who bear the brunt of infectious and other diseases due to their exposure to hazards, merely have a right to access medical assistance and not a right to access assistance on demand or request in recognition of their special vulnerability, it is expected that their requests for access will be hindered by the lengthy queues witnessed at the Tshwane District Hospitals or the increased homelessness of refugee women within the City of Tshwane.⁸⁰ However, Khan argues that despite this, refugee women have been accorded preferential treatment as vulnerable groups.⁸¹ The

⁷⁸ 1998 (1) SA 765 (CC).

⁷⁹ Currie & de Waal, *The Bill of Rights Handbook* 576.

⁸⁰ <http://www.health-e.org.za/2014/10/29/complaints-tshwane-hospital-persist/>

⁸¹ n 11 at 223.

de facto treatment, is technically seen to fall short of the minimum core obligations of the state as interpreted by the court: ‘The State was obliged to take positive action to meet the needs of those living in extreme conditions of poverty, homelessness or intolerable housing.’⁸²

The Constitutional court in *Grootboom’s* case⁸³ however differentiated the applicability of these rights to minorities under the ICESCR from the constitution. The court gave a generous interpretation of these rights to citizens – and refugees alike. However, in practice, access to most social economic rights such as subsidized housing, bank loans and other services for refugees is not available.⁸⁴ It is submitted that despite the internationally accepted standards under the ICESCR- as well as the minimum core obligations on the State- and by extension the City of Tshwane-, the urban refugee woman living in the City of Tshwane is yet to fully benefit from the intentions of the framers of the Covenant. This *de facto* situation facing refugee women and girls is in sharp contrast to the requirement under Section 6 of the Refugee Act obligating the Act to be applied towards refugees in a manner consistent with the obligations emanating from International legal instruments such as the ICESCR and the Universal Declaration for Human Rights.⁸⁵

Judicial intervention in the High Court sitting at the Western Cape in the *Scalabrini Case*⁸⁶-wherein the Applicants sought to challenge the constitutionality of certain provisions

⁸² at para [24] at 62D – E.

⁸³ [2000] ZACC 19.

⁸⁴ Greenburg, J. and T. Polzer (2008). Migrant Access to Housing in South African Cities. Migrant Rights Monitoring Project Special Issue Report 2. Johannesburg, Wits Forced Migration Studies Programme.

⁸⁵ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III).

⁸⁶ *Scalabrini Centre and Others v Minister for Home Affairs and Others* 2013 (3) SA 531 (WCC).

of the Social Assistance Act in so far as it denied refugees access to government funded assistance, was instrumental in the realization of social security for disabled refugees under the South African Social Service Authority. In *Scalabrini*, the court was quick to point out that membership by South Africa into the United Nations and its accession to international instruments such as the ICESCR placed obligations to provide to refugees without discrimination and at the very least –meet its minimum core obligations.⁸⁷ The declaration by the *Scalabrini* case led to the amendment of the Social Assistance Act⁸⁸ bringing into the fold the application of Article 23 of 1951 convention which guarantees access to public relief for refugees as enshrined in the ICESCR.

While not discussed by the *Scalabrini* court, it is noted that under a devolved system of governance such as in South Africa, where the delivery of social services to urban residents and urban refugees rests with local governments- the net effect of Article 6(2) of the ICESCR is to place obligations on the local municipalities such as the City of Tshwane to:

[Establish]...Technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.⁸⁹

Therefore, as will be discussed in Chapter three and four, the covenant imposes obligations on the City of Tshwane to avail public relief to the women and girls who are most vulnerable in the society. How effective has the City of Tshwane been in ensuring the realization of these rights to the average refugee woman in Tshwane into its service delivery policies so as to enable women and girls access social assistance and public relief?

⁸⁷ ICESCR, Article 6.

⁸⁸ Social Assistance Act 13 of 2004.

⁸⁹ ICESCR, Article 6 (2).

2.6 The 1969 OAU Convention

One of the most celebrated⁹⁰ legislation, the OAU Convention governing the Specific Aspects of Refugee Problems in Africa (hereinafter the “OAU Convention”) is an instrumental tool in the identification and protection of refugees in South Africa. Ratified by South Africa in 1995, the OAU Convention incorporates an expanded definition of a refugee and consequently affords more protection than the 1951 convention.

The OAU Convention recognizes the displacement effect that conflicts in the continent have on the most vulnerable being the women and the children. However, jurists insist that despite the broad protection and definition afforded by the convention, the application of the convention by refugee status determination officers (RSDO’s) in TIRRO specifically has been flawed thereby denying the most vulnerable –who flee not due to direct persecution but by the effects of generalized conflict in their countries the protection they so need most.⁹¹

Sadly, as discussed in the subsequent chapters, there is little jurisprudence on the application of the OAU definition of a refugee in South Africa with little or no application of the OAU convention on the availability of social assistance to refugee women and girls who form a bulk of those displaced due to generalized conflicts in the continent.⁹²

2.7 Conclusion

Despite the progressive legislative efforts and advances made in the drafting and enactment of refugee laws in South Africa, little attention has been given towards the incorporation of

⁹⁰ J Oloka-Onyango, “The Plight of the Larger Half: Human Rights, Gender Violence and the Legal Status of Refugee and Internally Displaced Women in Africa” (1996) 24:2-3 *Denver J International Law & Policy* 349.

⁹¹ T Schreier, ‘An Evaluation of South Africa’s Application of the OAU refugee definition (2008).

⁹² *Deo Gracias Katshingu v Standing Committee for Refugee Affairs* [Unreported].

social support mechanisms to the women and girls living in urban areas. The challenges facing urban refugee women – poor housing conditions within the informal settlements of Mamelodi, Diepsloot and in Pretoria West continue to prevail despite clear constitutional provisions on the rights of all persons-refugee women and girls included.

South Africa's Refugee Act, 1998, The 1996 Constitution, the OAU Refugee Convention and other relevant human rights legislations, have fallen short of incorporating social and other mechanisms to support vulnerable urban refugee women and girls. Despite the clear pronouncements by the various judicial bodies in South Africa on the rights of refugee women and girls as well as the obligations flowing from the accession of international instruments by South Africa- the intertwining of social support mechanisms at the municipal level by the City of Tshwane has not been forthcoming. This chapter concludes that the various rights within the various legal frameworks affecting urban refugee women have not translated to meaningful and practical benefits for the vulnerable urban refugee woman or girl in Tshwane.

It is however hoped that the application of the recently enacted South Africa's Refugee Amendment Act 2015 will introduce social support to the most vulnerable asylum seekers [including single women with children]. Shelters for women and girls have also been proposed as a temporary measure. However, the same is contingent upon availability of funds from the UNHCR rather than as a sole mandate of the host government. This might be problematic given the lean resources that UNHCR increasingly has to operate with.

Chapter three hereinafter discusses the how despite the promulgation of a progressive constitution as well as enactment of various legislations, refugee women living in Tshwane continue to face marginalization. It looks at the comparable situations of Samburu women in

Kenya and asks whether the Umoja village presents a viable solution to the plight facing urban refugee women.

Chapter Three

An anonymous Somali girl aptly puts it that; ‘When I was in Somalia, my mother said that when we got to a safe place I could study. Now we are here but I still don’t have my dream. It is like jail for me’.⁹³

3.1 Introduction

Evidence suggests that [refugees and] foreign migrants are worse affected by the challenges linked to financial and human resource constraints in the public healthcare system, particularly the frustrations of frontline health care providers.⁹⁴

This chapter specifically seeks to identify, explore and discuss the specific challenges faced by urban refugee women living in the city of Tshwane. More particular, this chapter will test the hypothesis that, in addition to tenuous legal protections, women and girl refugees in the City of Tshwane do not practically have adequate access to the basic means of subsistence.

For the refugee women and girls, close to half of the 576,133 refugees and asylum seekers in South Africa, the challenges facing urban refugees is a daily struggle.⁹⁵ In

⁹³ Somali girl, anonymous in UNHCR, The Implementation of UNHCR’s Policy on Refugee Protection and Solutions in Urban Areas, Global Survey-2012

⁹⁴Moyo K. 2010. Street Level Bureaucracy: The Interface between Health Personnel and Migrant Patients at Hillbrow Community Health Centre, Unpublished MA Thesis. Forced Migration Studies Programme: University of the Witwatersrand.

Tshwane, the struggle for food, shelter and other social amenities- entitlements guaranteed under legislation but barely accessed in practice- remains a daily pain. The ambiguities in the Refugee act, the OAU Convention as seen in the preceding chapter coupled with the absence of a clear legal intervention framework in South Africa has ensured that the plight of urban refugee women and girls remains bleak. If the relevant laws have failed to recognize the specific needs of urban refugees and provide for specific measures for the emancipation of the urban refugee women and girls, then what resultant vulnerabilities have they been exposed to?

In 2014, UNHCR introduced its ‘Alternative to Camps Policy’,⁹⁶ an administrative directive to its staff and implementing partners in the field. The policy was pursuant to the mandate of the Office of the High Commissioner for refugees and the 1951 Convention which directs states parties to the convention to allow freedom of residence for its recognized refugees.⁹⁷ Further, UNHCR’s policy on urban refugees identifies urban spaces as *bona fide* places of habitual residence for refugees.⁹⁸ As discussed in chapter two, section 21(1) of the Constitution of South Africa read together with section 22 of the Refugees Act, 1998 guarantees the freedom of movement and residence in South Africa—even to refugees.

⁹⁵ UNHCR, 2015 UNHCR Statistical Year book, Global Displacement figures.

⁹⁶ UN High Commissioner for Refugees (UNHCR), UNHCR Policy on Alternatives to Camps , 22 July 2014, UNHCR/HCP/2014/9, available at: <http://www.refworld.org/docid/5423ded84.html> [accessed 20 November 2015].

⁹⁷ Article 26 of the 1951 Convention provides: ‘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

⁹⁸ UNHCR, UNHCR Policy on Refugee Protection and Solutions in Urban Areas, September 2009.

However, despite the express wording of the law, many refugees who have settled in urban spaces continue to face unimaginable challenges from xenophobic violence to poverty.

This chapter shall dwell on the plight of urban women and girl refugees in Tshwane in regards to access to food and shelter, availability of affordable healthcare, safe houses or shelters. It discusses, *inter alia*, the specific vulnerability indicators, It seeks to critically interrogate the city of Tshwane's response to the challenges facing the vulnerable women and girls.

3.2 Access to healthcare

According to the World Health Organization; 'The health of girls and women is critically affected by social and economic factors, such as access to education, household wealth and place of residence...'⁹⁹

Of the 26 health clinics that the City of Tshwane owns, the City estimates that its 23 fixed clinics and 3 satellite clinics serve an approximate 2,140,967 persons, an average of 82,344 Tshwane residents per clinic.¹⁰⁰ This is in contrast with the World Health Organization recommendation of not more than 10,000 persons per clinic.¹⁰¹ Of these clinics, none has a dedicated refugee or mixed migration health desk or program. Within the city of Tshwane, there lacks a specific attention to the healthcare needs of refugee women and girls

⁹⁹ UN World Health Organization (WHO), Women and Health: Today's Evidence Tomorrow's Agenda, November 2009 p.12.

¹⁰⁰ City of Tshwane website accessible at: <http://www.tshwane.gov.za/sites/Departments/Health-and-Social-Development/Pages/Primary-Health-Care.aspx>.

¹⁰¹ UN World Health Organization (WHO), World Health Statistics, 2012.

despite their recognition as a vulnerable group in most societies¹⁰² and have peculiar health needs as a result of their reasons for flight (emotional, psychological and physical wellness).

Despite the large concentration of refugees amongst the townships, the availability of healthcare per population has been identified as key challenge. Of the 23 fixed clinics in Tshwane, only 2 (*Atteridgeville* and *Mamelodi west*) are located in the urban refugee residential hotspots which are densely populated thereby increasing competition to access even the basic of facilities. This is notwithstanding that refugee women and girls have the right to access and enjoy the ‘highest attainable standards of healthcare’ enshrined under ICESCR,¹⁰³ the International Covenant on the Rights of the Child (CRC)¹⁰⁴ and South Africa’s constitution and as noted in *Grootboom Case*.¹⁰⁵ The World Health Organization notes that:

States must recognize and provide for the differences and specific needs of population groups, such as [refugees] women, children, or persons with disabilities, which generally face particular health challenges, such as higher mortality rates or vulnerability to specific diseases.¹⁰⁶

General Comment 14 provides that the right to health must be evaluated within the parameters of ‘Accessibility’, ‘Acceptability’, ‘Availability’ and ‘Quality’. Accessibility and acceptability must be to everyone within the jurisdiction of the authorities and conscious of

¹⁰² NSW Department of Health. *Strategic Directions in Refugee Health Care in NSW*. Sydney, NSW Department of Health, 1999. ISBN 0731340795.

¹⁰³ UN, International Covenant on Economic Social and Cultural Rights, ICESCR, Article 12.

¹⁰⁴ UN, International Covenant on the Rights of the Child, CRC, Article 24.

¹⁰⁵ Section 27 of the 1998 Constitution.

¹⁰⁶ UN World Health Organization/Office of the United Nations High Commissioner for Human Rights 2008. Fact sheet no. 31, Right to Health.

the ethnic and cultural diversities of the people.¹⁰⁷ UNHCR further notes that the attendant costs such as costs related to treatment, cardiovascular operations and cancer treatments is often too expensive and inhibits accessibility.

However, within the City of Tshwane, reports of neglect, poor record keeping of confidential patient information, poor reception conditions and insufficient resources within these community clinics continue to be documented¹⁰⁸. In one instance, *Soshanguve* Block X clinic patients waited for an average 5 hours on long queues as medical practitioners acted oblivious to them¹⁰⁹. Refugee women and girls have to not only compete with the local population for the few opportunities to receive medical assistance in the 2 clinics (*Atteridgeville* and *Mamelodi*) but do so under un suitable conditions and without recognition of their special needs.

According to UNHCR:

The access of refugee women to health care services is important both to their own health and to the welfare of the broader community. Women are also the prime providers of health care to other family members. Thus, the health of other members of the family will be directly related to a mother's knowledge or interest in promoting a healthy environment and taking preventive actions against disease.¹¹⁰

It is conceded that refugee women and girls living in urban spaces such as the City of Tshwane are viewed by the City as secondary inhabitants with no right for special consideration. This is because their right to reside, and by *extenso*, access healthcare

¹⁰⁷ UN Office of the High Commissioner for Human Rights (OHCHR), Human Rights, Health and Poverty Reduction Strategies, December 2008, Issue No 5 p.10

¹⁰⁸ <http://www.health-e.org.za/2014/09/11/hundreds-patient-files-found-public-toilet/>.

¹⁰⁹ <http://www.health-e.org.za/2014/09/03/day-life-clinic-queue/> [accessed on 17 November 2015].

¹¹⁰ UN High Commissioner for Refugees (UNHCR), Information Note on UNHCR's Guidelines on the Protection of Refugee Women, 22 July 1991, EC/SCP/67 para 89.

facilities in Tshwane's public hospitals and facilities has been ignored or wished away at best. Instances of pro-active visits by the medical practitioners and health care workers to the refugee communities in Atteridgeville and Mamelodi to establish the specific concerns of the refugee women and girls –majority of whom do not venture outside often- are undocumented at best.

Consequently, in this subsection I ask how despite constitutional and legislative assurances of a right to access healthcare, urban refugee women and girls residing in *Atteridgeville, Mamelodi* and Pretoria West are left out of the mainstream healthcare structures and at the mercy of profit oriented private practitioners. Inaccessibility of affordable healthcare within the informal townships has been noted to further perpetuate stigma associated with certain health conditions such as HIV/Aids.

A study by the University of Pretoria and Yale University notes that:

In South Africa research has shown that people who are poor, uneducated and lack basic literacy skills tend to stigmatize more than the more affluent and educated.¹¹¹

As noted in chapter two, Article 27(1) of the constitution of South Africa guarantees the right to access healthcare for all. Further Section 27 (g) of the Refugee Act provides that refugees are entitled to the same healthcare entitlements as inhabitants of the country. It is within this premise that South Africa has been lauded as having a progressive legislation that encompasses the rights of all.

However, jurists insist that despite the well-meaning language of the law and continuous advocacy, urban refugee women and girls continue to struggle in their efforts to access affordable healthcare.

¹¹¹ Vissera et al 2009, *HIV/AIDS stigma in a South African community*, AIDS Care 21(2), p 200-201.

The Consortium for Refugees and Migrants in South Africa (Cormsa) reports that:-

There is little evidence of consistent, systematic improvement in access to basic health care services ... for asylum seekers and refugees, rights they are guaranteed under South African legislation

Whereas refugees have in theory a right to access public health care facilities, the reality as noted above is heavily dependent on the awareness by the healthcare practitioners to recognize and accept refugee documentation. This is more so where refugee women will not have the refugee ID but rather the refugee certificate issued at the reception centers.

In order to overcome this challenge, UNHCR acknowledges that building refugee self-reliance and access to sustainable livelihoods activities is the cornerstone of successful urban refugee populations. Legal, Social Economic and other racial restrictions impose a challenge to the realization of self-reliance¹¹² –a key pull factor for refugees to live in Tshwane.

Whilst approximately 112,192 recognized refugees and a further 463,490 asylum seekers are documented as living in the country, there lacks reliable scientific data on the number of women refugees residing in the informal settlements of Tshwane .¹¹³ I submit that the absence of this crucial, yet overlooked information has to a fair extent, played a key role in the increased vulnerability amongst the women and girls making up the urban refugee population in Tshwane.¹¹⁴

¹¹² See generally, n 3,p. 8

¹¹³ For a general idea on the refugee statistics in South Africa, see <http://www.unhcr.org/pages/49e485aa6.html>

¹¹⁴<chrome-extension://oemmnndcblldboiebfnladdacbfmadadm/http://www.cormsa.org.za/wp-content/uploads/Resources/CoRMSA%20Report%202009%20-%20Protecting%20Refugees,%20Asylum%20Seekers%20and%20Immigrants%20in%20South%20Africa.pdf>

Sachs J in *Soobramoney v Minister of Health, KwaZulu-Natal*¹¹⁵ in the oft cited case seeking to compel the government to take measures to ensure affordable access to Anti Retro Viral (ARV) Treatment to HIV/Aids patients as a human right opined that social economic rights under chapter 2 [including health care access] were equitable to a corresponding obligation to provide on the government agencies. This obligation within the urban city environment is enshrined under Section 83 of the National Health Act¹¹⁶ which directs municipalities to shoulder this obligation. The trickledown effect is that the City of Tshwane therefore, is obligated to plan, educate its front-line staff and allow access to urban refugee in their quest for medical attention. Heywood asserts that a second obligation arises, one the authorities to ensure that they take steps to bring down the costs of access to medicines by licensing of generic drugs or subsidies to pharmaceuticals seeking to establish generic drug plants in the Country.¹¹⁷ I therefore submit that it is arguable that the latter is more applicable to the City of Tshwane and beg the question on the steps taken by the City in realizing this right.

Access to medical assistance for urban refugee women and girls is more so critical when it involves reproductive health, an area often neglected. Media reports indicate that women and girls in townships (Atteridgeville, Orange Farm, *Garankuwa*, *Soshanguve* and Mamelodi) within Gauteng, have to rely on private medical practitioners to access sufficient and regular reproductive health supplements and medication.¹¹⁸

¹¹⁵ [1997] ZACC 17;

¹¹⁶ National Health Act, 2003 (Act 61 of 2003)

¹¹⁷ M Heywood, South Africa's Treatment Action Campaign: Combining Law and Social Mobilization to achieve the Right to Health, *Journal of Human Rights Practice* (2009) 1 (1): 14-36.

¹¹⁸<http://www.health-e.org.za/2015/11/13/orange-farm-women-report-alleged-stock-outs-of-prenatal-supplements/> [accessed on 18 November 2015]

Interestingly, despite the relatively higher resources in Tshwane and the large number of urban refugees residing in the Tshwane area, official, medical reports and policies in sexual and reproductive health as well as guidelines on maternity care in South Africa do not seem to factor this critical audience. Tshwane District Hospital had the lowest per capita expenditure nationally at R.623 as against a national average of R.743 for the period 2014/2015.¹¹⁹

It is within this context that UNHCR notes that:

Existing health services too often overlook female - specific needs. For example, gynaecological services are frequently inadequate as are child spacing services. Basic needs [of refugee women and girls], such as adequate cloth and washing facilities for menstruating women, are overlooked. Serious problems, such as infections and cervical cancer, and harmful practices such as female circumcision go all but undetected¹²⁰

Researchers¹²¹ argue that the inadequate access to medical assistance amongst refugee women and girls has posed a great challenge in the fight against sexually transmitted diseases with refugee girls being at higher risks of contracting HIV and AIDS.¹²² Access to affordable healthcare for vulnerable urban women refugees is by no means an isolated incident in South

¹¹⁹ N Massyn , Peer N, Padarath A, Barron P, Day C, (eds), District Health Barometer 2014/15. Durban: *Health Systems Trust*; October 2015.

¹²⁰ UN High Commissioner for Refugees (UNHCR), Information Note on UNHCR's Guidelines on the Protection of Refugee Women, 22 July 1991, EC/SCP/67 para 94.

¹²¹ ICRW.(2010), What role can economic empowerment strategies play in reducing HIV risk and vulnerability among girls and young women. A Briefing Note for Global Technical Meeting “Emerging Insights on Economic Empowerment and HIV Interventions for Girls and Young Women. Center for Research on Women: Washington, DC.

¹²² Nkosana, J (2006), Intergenerational Sexual Relationships in Urban Botswana. PhD Thesis, University of Melbourne, Australia.

Africa but a global challenge. Reports document similar challenges in Australia¹²³, Cambodia¹²⁴ and USA.¹²⁵ In Nairobi, Kenya, UNHCR mandated refugee's access free medical assistance from UNHCR implementing partner clinics as well as major hospitals on special arrangements. However, this access is restricted to a referral system and refugees mandated by the government are ineligible.

3.3 Access to adequate food and safe shelters¹²⁶

Vulnerability among women and girls is believed to increase rapidly in a refugee settings where failure to meet their unique needs occasioned by displacement heightens their risk of harm.¹²⁷ According to the City of Tshwane, there are approximately 35 shelters in the municipality with a majority of these privately owned.¹²⁸ However, data of refugee oriented shelters, lodging for at risk girls or temporary beds for gender-based violence in Tshwane is little and far to come by. This is despite the large number of refugees residing in the city some of whom remain homeless and living on the streets. Even more scarce are shelters

¹²³ Lamb C, Smith M et al, Problems Refugees Face when accessing Health services, *NSW Public Health Bulletin* Vol 13 No.7, 161.

¹²⁴ Downs K, Bernstein J, et al. providing culturally competent primary care for immigrant and refugee women: A Cambodian case study. *J Nurse Midwifery* 1997; 42(6): 499–508.

¹²⁵ Marjorie A, New paradigms for refugee health problems, *Social Science & Medicine*, Volume 35, Issue 4, Pages 515-523.

¹²⁶ According to the Inter-Agency Standing Committee (IASC), the term '*safe shelter*' is used to refer to any physical space or network of spaces that exclusively or incidentally offers temporary safety to individuals fleeing harm. A variety of terms—such as 'safe house' or 'protection/safe haven'—are used to refer to shelters.

¹²⁷ Olsen E and Scharffscher S, "Rape in Refugee Camps as Organisational Failures," *International Journal of Human Rights* 8, no.4 (2004) p.380.

¹²⁸ City of Tshwane, 'Health and Social Development, Homelessness Policy' 2014.

catering exclusively to urban refugee women, who more often are the most vulnerable to displacement and societal abuse.¹²⁹

In 2010, the city of Tshwane in perhaps the best indication of the challenge of realizing adequate shelter facilities for urban refugees, noted that the problem of vagrancy and homelessness within the municipality was exacerbated by the law enforcement approach adopted by the city rather than a social approach wherein [refugees] without documentation were subjected to fines and legal proceedings to evict them out of the city rather than addressing the real underlying causes as to why they were homeless and vulnerable.¹³⁰

Refugee women and girls who oft find themselves at risk, have little recourse to alternative accommodation and often end up camping outside social facilities together with their children. UNHCR implementing partners in Tshwane have limited beds (if any) to offer vulnerable women and girls and only for a temporal time if available. Refugee women and girls have been reported to reside in makeshift cardboard boxes in Pretoria¹³¹, a condition that is inconsistent with their right to human dignity under Article 10 of the Constitution.

The United Nations Entity for Gender Equality (UN Women), notes that establishment and easy access to community shelters for women and girls fleeing violence is critical to their survival.¹³² In recognition of the right to access the city where such opportunities as well as the potential for risks against refugee women and girl, UNHCR

¹²⁹ UN High Commissioner for Refugees (UNHCR), *Safe Haven: Sheltering Displaced Persons from Sexual and Gender-Based Violence*, May 2013.

¹³⁰ n 23, para 5.7

¹³¹ <http://reliefweb.int/report/south-africa/jrs-dispatches-no-253> [accessed 2 November 2015]

¹³² <http://www.endvawnow.org/en/articles/1575-provide-emergency-safe-shelter.html> [accessed on 20 November 2015]

generally operates safe shelters. However, few (if any exist in Pretoria)¹³³ and are operated and available for the most vulnerable, leaving a sizeable majority of women to fend for themselves.¹³⁴

The Women Refugee Consortium opines that these inadequacies combined with their reasons for flight worsen an already complex web of vulnerabilities and expose women and girls to exploitation and abuse¹³⁵. Reduced resources and availability of assistance in turn increases competition between the displaced refugees and the host communities within the urban spaces, a direct causative of xenophobic attacks.¹³⁶

UNHCR data indicates that whereas UNHCR does not give direct assistance to refugees, a small proportion of its funds are available to vulnerable women and girls in the form of food vouchers. This amount approximately R.500 per family for a month is barely enough to sustain an average sized family of 4. Hunt advocates for an urgent reframing of the women refugee rights in the access to shelter, food and other social economic rights.¹³⁷

¹³³ UN High Commissioner for Refugees (UNHCR), Protection network of women's organizations and safe houses for SGBV survivors: SGBV - Shelter - Access to Justice, August 2012, available at: <http://www.refworld.org/docid/504d946d2.html> [accessed 2 November 2015]

¹³⁴ <http://www.csvr.org.za/wits/gender/directory/Gauteng/SHELTERS%20tshwane.htm>

¹³⁵ SAFE: Protecting Women and the Environment in the Great Lakes Region of Africa, MacArthur Foundation, 2009.

¹³⁶ <http://www.socdev.gpg.gov.za/NPOPartnerships/Documents/Database%20of%20Shelters%20of%20Abused%20Women.docx> [accessed 12 November 2015].

¹³⁷ n 11, p 61.

Scholarly assessments¹³⁸ in the Tshwane area suggest that income inequality amongst the young women and girls, poverty, xenophobic tendencies and lack of employment opportunities have led to intergenerational sexual tendencies as a coping and survival mechanism amongst the refugee girls and women.

3.4 Umoja Village: A radical solution or feminist cultural distortion?

Rebecca Lolosoli's words to an abused young Samburu woman sums up the *Umoja* approach; 'Women don't have to put up with this nonsense anymore.'

In 1995, Rebecca Lolosoli, a middle aged Samburu woman and women's' rights advocate had had enough. In the outskirts of Northern Kenya where culture is king and where the traditional understanding of the role of women is heavily chauvinistic and skewed in men's favour, she – a survivor of gender based violence- was an outcast. For disagreeing with Samburu village men on various cultural practices that demeaned and disadvantaged women such as child marriages, forcible FGM practices. Rather than quietly retreating, Lolosoli chose to challenge societal challenges facing refugee women and girls; use her entrepreneurial skills and education to establish an all women safe shelter village, *Umoja* ("Unity").¹³⁹

The Office of United Nations Special Rapporteur on Violence against Women notes that gender-based violence remains pervasive in Diepsloot.¹⁴⁰ While urban refugee women living in the informal settlements of *Diepsloot* or *Atteridgeville* within the City of Tshwane-

¹³⁸ TK Francis, 'Inter-generational Sexual Relationships and the risk of HIV', Unisa, 2014. Available at <https://www.google.co.za/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-8#q=refugee+girls+in+Tshwane+prostitution> [Accessed on 20 November 2015]

¹³⁹ Wax E, Where women rule, Washington Post, July 9, 2005.

¹⁴⁰ UN, 'Despite progressive laws, gender-based violence 'pervasive' in South Africa, UN expert warns, UNOHCHR, 15 December 2015

where media reports indicate that rape and other forms of gender based violence is rife and unhindered- are heavily reliant on the City of Tshwane as well as well-wishers to rescue them, the residents of *Umoja* village look inward to exercise their skills-pottery, crafts, weaving and art-to earn a living by selling their hand woven, knitted, moulded or other handicrafts at their tourist attraction community shop and camp site shop adjacent to the village and drag themselves from the yolk of male perpetuated violence.¹⁴¹ While women's' groups are common worldwide, it is the combination of art and culture (a multidisciplinary approach) rather than a plain rights-based approach to empower refugee women and girls that makes *Umoja* stand above the rest.¹⁴² Lolosoli and the *Umoja* women folk sought to fight the notion of a 'helpless African woman' and established a 'place where women rule'.

Alone and abandoned and cast away from their husbands and children, Samburu and other women in *Umoja*- majority raped by British Army Training Unit Kenya (BATUK) soldiers in the region or local tribesmen- have sought to apply a feminist approach to overcome their challenges, where they employ the notion of evenness with males and reject the idea that women are chattels or second rate. In *Umoja*, no man is allowed to live or work. Despite the village being located in Samburu heartland –where the cultural notions of a woman is no more than a chattel, Lolosoli and the women of *Umoja* sought to empower themselves and where the battered women did not view themselves as the societal demands dictated but rather through their own eyes. In *Umoja*, traditional female oppression through repugnant practices such as female genital mutilation- a prevalent practice among the Samburu. This subsection questions the efficacy of such an approach. Could similar feminist

¹⁴¹ Diepsloot: *Where men think it's their right to rape*, Mail & Guardian, 05 October 2015.

¹⁴² Tadic E, *Umoja: No Men Allowed*, African Studies Review, Vol.57, Issue 3

approaches, granting urban refugee women in Tshwane financial empowerment by using their unique cultural identity to earn a living and break free from their challenges

As noted in the preceding chapter, Sections 30 and 31 of the constitution of South Africa grant all persons in South Africa a right to exercise their culture and tradition. The same right is further guaranteed under the ICESCR. This subsection notes that in light of the failure by the City of Tshwane to establish safe shelters or housing for survivors of gender based violence and statutory limitations imposed on refugee women to engage in gainful employment in sensitive areas such as private security as discussed in the *Union of Refugee Women Case*, it may be feasible to employ the Umoja village model as a viable means to rescue refugee women and girls. Would the City of Tshwane empower or license the baking and sale of *Injera* the acclaimed Ethiopian delicacy by Ethiopian refugee women to the residents of Tshwane or the weaving of traditional Somali attires and *hina* decoration on brides and bridesmaids by Somali refugee women be explored as viable means to overcome the challenges facing urban refugee women in Tshwane? It is noted that similar approaches are already at play within the City- plaiting of hair by Congolese refugee women and girls in the many emerging hair salons within the City of Tshwane.

While Lolosoli's *Umoja* village approach may be regarded as too 'feminist' -as it views women as not just equal to men but also takes the view that excluding men from their society would help resolve their vulnerability- and 'radical', it offers lessons and perhaps solutions to apply a multi-disciplinary approach in facing the challenges facing refugee women and girls living in Atteridgeville, Diepsloot and Mamelodi areas of Tshwane.¹⁴³

¹⁴³ Moolman J, 'still more promises than progress; Beijing +10 Review, *Agenda: Empowering Women for Gender Equality*, (2005) Vol.19 Issue. 64 p. 4-13.

3.5 Conclusion

In conclusion, the inability of the legal provisions and failure of the well drafted legal provisions to solve the challenges facing urban [refugee] women and girls in the informal townships of Diepsloot and Atteridgeville as noted by the Office of UN Special Rapporteur on Violence against Women. He concluded that refugee women in Tshwane continue to suffer from inadequate access to housing, safe shelters and are excluded from accessing and the government funded medical assistance. This is especially so where medical complications arise and need specialized treatment.

It is concluded that the inefficiency of the law may be cured by the application of a multi-disciplinary approach – by employing feminist approaches and allowing refugee women and girls to attain economic independence by earning a living through exercising their cultural practices such as poetry, weaving and pottery- and relying on the population of Tshwane as a ready market rather than clamouring for increased social assistance and grants from the City of Tshwane.

Veney¹⁴⁴ argues for a multi-disciplinary approach, away from a legal centric approach as the issues affecting refugee women, including displacement and urban residence as both a product and subject of political calculations and forces. As to be discussed in Chapter 4, this research evaluates the possibility of moving away from a legal centric approach as well as using a multi-disciplinary approach in addressing the challenges facing vulnerable urban refugee women and girls in Tshwane. How best may the municipality use this approach, in the apparent inadequacies of a purely legal centric approach to address the concerns of women and girls fleeing displacement and complicated by domestic violence, gender-based attacks and competition for inadequate social economic benefits?

¹⁴⁴ Veney, C. R. (2007). *Forced migration in Eastern Africa: democratization, structural adjustment, and refugees*. New York: Palgrave Macmillan.

Chapter Four

Purcell notes: ‘The Right to the City is a fundamental ingredient of a necessary model of new urban citizenship.’¹⁴⁵

4.1 Introduction

The plight of urban refugee women living in Tshwane remains grim. Despite legislative steps to alleviate human suffering and the application of domestic, regional and international human rights-based legislation, urban refugee women and girls in Tshwane living in *Diepsloot* and other informal dwellings in Tshwane continue to face gender-based violence at an almost pervasive level.¹⁴⁶ Access to health facilities, water and sanitation and safe shelters remain a challenge. A fact finding mission by the Office of the UN Special Rapporteur on Violence Against Women recently noted that despite legislative progress, there were insufficient training for GBV first responders, gender-based violence survivors residing in *Diepsloot* had no access to victim friendly rooms at police stations and that there was little political will to alleviate their suffering.¹⁴⁷ As noted in chapter two and three, pure legal interventions have only registered partial success. However, interesting outcomes have been registered in the *Umoja* Samburu village upon engagement of a multidisciplinary approach.

In this chapter, I address the ‘Writings on Cities’ by French author Henri Lefebvre. In Specific, his works on the ‘Right to the city’ as well as the ‘Right to Difference’-on the need to incorporate certain groups and individuals in the participation and creative formulation of

¹⁴⁵ Purcell M, ‘Citizenship & the Right to Global City: Re-imagining the Capitalist World Order, *International Journal of Regional Research*. P564-590.

¹⁴⁶ UN, Special Rapporteur on Violence against Women, 11 December 2015.

¹⁴⁷ UN OCHCR ‘Preliminary findings, South Africa fact finding mission’, 11 December 2015.

the new socially sustainable urban environment – with a reduction of inequalities and discrimination - and how applicable they may be in addressing the challenges discussed in chapter three in light of the limited success of the legal framework. In addressing Lefebvre, I critic his writings with a comparative look at the works of Chris Butler.¹⁴⁸

This chapter concludes by establishing as to whether Lefebvre's writing is merely utopian or forward thinking and timely in dealing with the challenges facing urban refugee women in Tshwane. Can a new application of the Lefebvrian writings attain an element of international human rights law?

4.2 Right to the City: A right to urban life?

Lefebvre opines that;

The human being has the need to accumulate energies and to spend them, even waste them in play. He has the need to see, to hear, to touch, to taste and the need to gather these perceptions in a 'world'.¹⁴⁹

According to Lefebvre, his notion of [Urban] Citizenship is meant to ensure that there is universality in the access to social justice¹⁵⁰. In his socialist writings¹⁵¹ Lefebvre advances the ideas of social needs as having an anthropological foundation. To him, these needs are at times opposed yet complementary including security yet opening, adventure yet certainty, predictable yet unpredictability

Lefebvre advances the notion of the science of the city as having the city as the object while the needs of the city and the urban life being freely exchanged only where the exchange

¹⁴⁸ Butler C, Henri Lefebvre, *Spatial Politics, everyday life and the right to the city*, Routledge New York, 2012

¹⁴⁹ Lefebvre H, *The Right to the city*, Blackwell, 1996. Translated and Edited by Kofman E & Lebas E.

¹⁵⁰ Tilly C, Conclusion: 'Why Worry About Citizenship?'; in Hannagan, M & Tilly, C, 2009.

¹⁵¹ *Le Droit a la Ville* , 1969.

is not commerce oriented or profit driven. Van Marle and De Villiers note that to Lefebvre, the everyday life represented a dualist view on the one hand as an extension of the capitalist accumulation [driven by profit, exchange value and commerce] and on the other an opportunity to ‘stand up to capitalist and state power’.¹⁵²

The advent of the World Wars, the great massacres and the brutal demands of the economic growths that followed, represented Lefebvre’s notion of the ‘death of the old humanism.’¹⁵³ Lefebvre notes that while authors predicted ‘the death of God and man too’ and the emergence of the post war ‘super human’ from an era of industrial production, the “new man” has been disappointing and has not planned with rationality. He sees old humanism and traditional cities as moving away and dying with the world crisis of agrarian civilizations

It is within this premise that Lefebvre advances his ‘right to the city’ theory. Not merely as a visiting right or as a return to traditional cities but as a renewed *right to urban life*. In his renewed urban life, Lefebvre presupposes an integrated theory of city and urban life using sciences and art in order to ‘understand the tragic misery of the residential ghetto dweller’ or the daily struggles of the workers and to ‘break free from the generalized misery of the youth, workers, students and intellectuals by creating with the new city, a new life in the city’¹⁵⁴

Lefebvre’s realization of a new way of life in the city seems more inclusive than traditional approaches. He proposes that for the new urban life to succeed, ...’the architect,

¹⁵² Karin van Marle and Isolde de Villiers, Law and Resistance in the City of Pretoria: Space, History and the Everyday, *The Australian Feminist Law Journal* 2013 Volume 38 p.132.

¹⁵³ *Le Droit a la Ville*, 1969 ...’ This old humanism died during the world wars’....

¹⁵⁴ *Ibid*, p.159.

the sociologist, the economist, philosopher...must as teams clear the way provide a lesson from failure and give way to the possible'. To Lefebvre, the architect is no more a miracle worker than the sociologist as separately; they merely help trends be formulated. He advocates for an urgent need to change intellectual approaches and tools in the formulation of a new city.

At the point we have arrived, there is an urgent need to change intellectual approaches and tools. It would be indispensable to take up ideas and approaches from elsewhere and which are still not very familiar.¹⁵⁵

4.3 Lefebvre: An indispensable approach or Experimental Utopia?

Lefebvre's 'right to the city' writings have been criticized as *vague* and at times *experimental utopian*.¹⁵⁶ It is perhaps in anticipation of this critique that Lefebvre writes:

Who is not utopian today?...only narrowly specialized practitioners working to order without the slightest critical examination of stipulated norms and constraints...only these not very interesting people escape utopianism...¹⁵⁷

Chris Butler, in his critique of Lefebvre notes that Lefebvre's interest in the right to reinvent the city is a concept of utopia, partly driven by his attempt to reinvigorate Marxist thought and the inevitable sense of impossibility associated with utopian dreams.¹⁵⁸ However, Butler cautions that 'the apparently impossible is always present within the possible.' Douzinas further explores this utopian dream exhibited by Lefebvre and links it with the

¹⁵⁵ Ibid, p.151.

¹⁵⁶ Gottendeiner, Mark et al. *New Urban Sociology*, 3rd Ed, Cambridge, 2006.

¹⁵⁷ n. 9 p.151.

¹⁵⁸ Butler C, Henri Lefebvre, *Spatial Politics, everyday life and the right to the city*, Routledge New York, 2012 p.135.

‘hidden utopian dimension of contemporary human rights.’¹⁵⁹ He likens the human desire for universality of rights with Lefebvre’s notion of a new urban city where there is universal inclusion. Bloch, on the other hand, correlates Lefebvre’s utopian concept to man’s ‘longing for his unrealized potential’ and weary of the burden of ‘unsatisfied human needs’.¹⁶⁰

Butler notes that Lefebvre’s utopianism anticipating and effecting the future, is also manifested on a lesser scale with the dreams of possibility of a social change- a new world order –when an opportune moment is grabbed and subjected to contestation and struggle to open up a new world of hope and inclusion.¹⁶¹ It is this possibility of a break from the past that drives Lefebvre to dream and theorize of a new urban renewal under the right to the city.

Despite the recent prominence of Lefebvre’s right to the city, with jurists linking Lefebvre and human development, urban studies and human rights¹⁶², I, in the discussion analysis and quest for solutions to the challenges facing urban refugee women in Tshwane seek to co-relate the Lefebvre’s ‘utopian’ dream of a new urban renaissance, an urban life where social inclusion is the norm and the applications of international refugee and human rights law to address the realities faced in South Africa’s City of Tshwane by its most vulnerable section of the society- urban refugee women and girls.

In this chapter, I pose the question that, if access to the city was intended to ensure that the weakest link in the society have the basic of needs, or at least a realistic chance to access equitable rights and social economic empowerment, then what effect would a well thought

¹⁵⁹ Douzinas C, *The End of Human Rights: Critical legal thought at the end of the century*, Oxford: (2000) Hart

¹⁶⁰ Bloch E, *The Principle of Hope*, MIT Press (1986)

¹⁶¹ n.14, p.135

¹⁶² Plyushteva A, *The Struggle over Public Citizenship*, *The Urban Re-Intervention on Online Journal*, Issue 3/09 *The Right to the City, The Entitled and The Entitled*.

out urban inclusion and participation of refugee women and girls in the daily spaces of Tshwane's daily life and decision making have in alleviating their plight? As noted in previous chapters, despite progressive laws, the *defacto* treatment of urban refugee women and girls in the City of Tshwane falls short of key human rights requirements. How effective would this utopian ideal of fundamental inclusion be? It is argued that for the success of this proposition, full inclusion, and not a mere cosmetic 'visiting right' is needed.

The right to the city is far more than the individual liberty to access urban resources. It is a right to change ourselves by changing the city...¹⁶³

Holston analogizes this notion of right to the city as a jurisprudential shift from the 'needs of the poor' to 'the rights of the city's inhabitants' - an argument that the right to the city is a development of 'insurgent citizenship' as a right to change the set of rights when they no longer justified necessities of the citizenship¹⁶⁴.

Purcell,¹⁶⁵ however argues that the right to the city is to be understood as the right to have the participation in *decision making* of the urban dwellers in decisions and policies that affect the lives of the urban citizens. Involvement within municipal authorities, committees and public participation.

A cursory analysis of municipal legislation indicates a close relationship between the law and Purcell's clamour for greater participation. Article 195(1)(e) of the Constitution of South Africa provides for the public participation in the policy making by the public administration in an effort to meet the needs of the people as a basic tenet of the democratic

¹⁶³ Harvey David, *The Right to the City*, *International Journal of Urban & Regional Research*, 2013.

¹⁶⁴ Holston J, 'Insurgent Citizenship', *Disjunction of Democracy & Modern Brazil*, 2008, Princeton, Princeton University Press.

¹⁶⁵ n 1 , p 570.

value in public service. If Purcell's perspective is then to be applied to the urban refugee situation in Tshwane, then, I ask, does the local municipality involve the "people" – as demanded by the supreme law of the land- while making fundamental policies that affect urban refugees?

A further perspective of inclusion regards physical proximity to the city. According to Butler, the physical separation and marginalization of certain groups from the collective, creative industrial production (the city's hub) constitutes a denial of the right to the city. To Butler, at its most bare, this right to the city encompasses a right not be segregated either by market driven profit oriented policies or by enforced dispersal of marginalized communities [refugee women and girls] through state and municipal policies and laws. He advances the notion that residents ought to 'feel and project ownership' of the urban spaces that they reside in order to ensure that they benefit from their urban residency. In Tshwane, marginalized communities of refugees are to be found within the outer areas of Tshwane in Diepsloot, Atteridgeville or in Mamelodi, far away from the CBD or the most productive and valuable areas of the city, where the affluent-mostly upper class citizens and others reside and own real estate. This physical segregation has been achieved through a two pronged approach; discriminative apartheid policies establishing Bantustans which mandated the forcible removal and relocation of blacks coupled with the high commercial value of land and properties in the City of Tshwane have worked to keep refugees away from the affluent or middle income neighbourhoods of Tshwane.¹⁶⁶ This therefore goes contrary to social inclusion models as advocated by Lefebvre: The right to the city is grounded in the

¹⁶⁶ Richardson C, Self Determination, International Law and the South African Bantustan Policy. 17 Colum. *Journal of Transnational Law*. 185 (1978)

entitlement to physically occupy urban space and, the pursuit of this right gathers the interests...of the whole society and firstly of those who inhabit it.¹⁶⁷

With the advent of devolution and local politics, Painter argues that there is an increasing shift in the burden towards the local municipalities and the provincial governments to develop inclusive policies in service delivery to those living in the cities.¹⁶⁸ It is therefore expected that local municipalities ought to, in the formulation of policies, involve the local citizenry, and by extension, consider the effect of the municipal policies and by-laws on the refugee women and girls.

Lefebvre however cautions as against ‘cosmetic’ participation of the marginalized. To him, restrictions on the decision making and adequate representation by use of technicalities, (such as excluding or bare minimal representation of asylum seekers or urban refugee women in the municipal committees/ projects/ decision making process as they are not permanent residents or nationals) renders participation a mere ‘charade’. To him, self-management of these groups is key to their involvement ‘Without ‘self-management, “participation” has no meaning; it becomes an ideology and makes manipulation possible.’¹⁶⁹

However, does this obligation to ensure physical and legal social inclusion and greater participation extend to non-state actors? Interestingly, Harvey¹⁷⁰ opines that increasingly, the

¹⁶⁷ Butler C, Henri Lefebvre, *Spatial Politics, everyday life and the right to the city*, Routledge New York, 2012 p.145.

¹⁶⁸ Painter J, *Regulation Theory, post Fordism and urban politics*, in Judge D, Stoker G et al (eds) *Theories or urban politics* p.276.

¹⁶⁹ Lefebvre H, ‘The survival of capitalism: reproduction of the relations of production, St. Martins Press

¹⁷⁰ Harvey D, *The Right to the City*, *New Left Review* 53, September, 2008. Available at <http://newleftreview.org/II/53/david-harvey-the-right-to-the-city> [accessed on 22 November 2015]

obligation to make decisions and policies affecting the urban residence [urban refugees included] is resting upon the private non state actors as well as quasi-private interests. Can it therefore be argued that non-state actors-providing essential services such as water, education, healthcare and transport- within the City of Tshwane have a duty of care to incorporate the right to the city while making policies that affect urban refugees? It is therefore pertinent for scholars to explore to what extent have community service organizations and other entities such as UNHCR Implementing partners dealing with refugees and asylum seekers effectively incorporate refugees in their policies? Do these implementing partners have a duty of care to ensure that their policies therefore do not disenfranchise the most vulnerable?

Would UNHCR's Age Gender and Diversity Mainstreaming exercise- a protection tool to adopted by UNHCR where staff travel far and wide to reach refugees otherwise not easily accessible to UNHCR to ensure that there is adequate representation of the marginalized and of unreachable refugees in the UNHCR policies affecting its persons of concern be termed as an "effective participation?"¹⁷¹

This subsection applies Holston's advocacy for a radical shift in urban spaces planning. He views the right to urban life as a call to meet the needs of the urban poor and the rights of those that dwell in the cities.¹⁷² This subsection however highlights that historical application of a 'rights based-approach'- by merely providing rights and using the law as a yardstick to demand better treatment of marginalized communities- has failed to meet the needs of the most vulnerable. Whereas the municipal legislation (Constitution, The Refugee

¹⁷¹ UN High Commissioner for Refugees (UNHCR), Age, Gender and Diversity Mainstreaming Forward Plan 2011-2016 , 2011.

¹⁷² n 7 p 122.

Act, The City of Tshwane's By Laws) has enunciated the rights of those most susceptible, it is argued that a purely rights based approach intended to meet the 'legal needs of the poor' has failed to translate these rights to a practical fulfilment of the needs of urban refugees...especially the women and girls.

It is therefore recommended that a more inclusive approach, one that recognizes urban refugee women as key constituents of the City of Tshwane, be adopted. How best can social inclusivity and participation be incorporated within the City of Tshwane in meeting the needs of the urban refugee women and girls? It is recommended that the City of Tshwane radically assesses its participatory approach. Are there urban refugee women or girls sitting at any of its council meetings deliberating on issues affecting homelessness, access to healthcare, or other social economic rights constitutionally guaranteed to the refugees—albeit as friends of the council?

4.4 Right to the City: Opportunities for vulnerable urban refugee women and risks.

Historically, the management and assistance of refugees and asylum seekers was seen as a preserve of international aid organizations and national governments and was conducted in far off refugee camps. From Kakuma and Daadab camps for the Sudanese, Ethiopian and Somali refugees in Kenya to Yarmouk camp for displaced Palestinians in Syria and the Zaatari refugee camp for the displaced Syrian nationals in Jordan, the plight of these oft forgotten individuals is miserable.

Reports indicate that the Kakuma and Daadab camps in Kenya are located in the most inhospitable desert areas of Kenya with living conditions below the UNHCR and WFP

minimum standards.¹⁷³ With protracted refugee conflicts, diminishing resources¹⁷⁴ and donor fatigue, resource based conflicts have erupted between the already disenfranchised refugees and the host communities.¹⁷⁵ The refugees and many asylum seekers, whose legal status has remained in limbo for years, have had to put up in unsatisfactory condition and insecurity where they are gradually forgotten or ignored.

Jacobsen notes:-

Between 1980 and 1999, twenty-two of the world's largest refugee populations were protracted ones, i.e. where refugee populations greater than 100,000 lived in host countries for more than ten years... [where] many live in camps or other unsatisfactory and unsafe circumstances, with few means to support or educate themselves and their children, and few prospects.¹⁷⁶

Within the refugee camps, UNHCR, governments and aid agencies had established support mechanisms for the assistance of the most vulnerable women and girls. These range from regular provision of food rations to women headed households, establishment of grievance desks and separate community centres for women and girls in *Jalozai* camp in Afghanistan by UNHCR to provision of long term free legal assistance by UNDP and UNFPA to women and girls fleeing abuse and violence in the *Erbil*, *Dohuk* and Kurdistan

¹⁷³ Human Rights Watch, 'From Horror to Hopelessness; Kenya's Forgotten Somali Refugee Crisis.' HRW, 2009 available at <https://www.hrw.org/reports/2002/kenyugan/kenyugan1002%20ap%20alter-17.htm> [accessed on 27 November 2015].

¹⁷⁴ IRIN News: Camp resources stretched by influx of Somali refugees., IRNA,2009

¹⁷⁵ IRIN News: Kenya: 'Marginalized Turkana vie with refugees',22 July 2003.

¹⁷⁶ Jacobsen K, The Forgotten Solution, local integration for refugees in developing countries, *New Issues in Refugee Research* Working Paper No.45, Tufts University, 2001.

regions of Iraq¹⁷⁷. However, with increased movement of asylum seekers and refugee into the urban areas, conventional methods of social assistance to the most vulnerable have been less effective.

Furthermore, municipal legislation¹⁷⁸, in absence of an encampment policy, - a policy limiting the rights of refugees to freely move/sojourn within the republic and restricting them to living in a refugee camp- provides for the freedoms of movement and association-thereby allowing refugee women and girls a chance to settle in the city away from the traditional refugee camp.¹⁷⁹ As noted in chapter two, the constitutional court in *Watchenuka*¹⁸⁰ has also reiterated the rights of these marginalized and vulnerable refugee women to undertake income generating activities as a main component to live with dignity.¹⁸¹ I argue in this subsection that for the effective realization of this right, a different component, already envisaged by the law would be vital in solving the challenges facing women refugees, the right to difference. At its core, it recognizes the cultural and traditional diversities and seeks to empower humans to utilize these differences through practical action. Lefebvre hopes for a society where the differences lead to a harmony in the society. ‘The formal theory of

¹⁷⁷ UNDP, UNFPA, Enhancing the Protection of Vulnerable Women and Girls among Syrian Refugees from Sexual & Gender-Based Violence and Trafficking, 2009.

¹⁷⁸ Section 27(b) of the Refugee Act, 1998 guarantees refugees ‘full legal protection’...including the rights under Chapter 2 of the Constitution (Bill of Rights).

¹⁷⁹ Section 22(1) of the Refugee Act, 1998.

¹⁸⁰ *Minister of Home Affairs and Others v Watchenuka and Others* (010/2003) [2003] ZASCA 142.

¹⁸¹ Article 10, Constitution of the Republic of South Africa, 1994: *Everyone has inherent dignity and the right to have their dignity respected and protected.*

difference opens of itself onto the unknown and the ill understood; onto rhythms; onto circulations of energy and onto the life of the body'¹⁸²

It is conceded however, that Lefebvre's notions are not without risks. With increased urbanization trends however, a growing population of refugees and asylum seekers have moved away from the refugee camps to cities and urban spaces. As noted elsewhere, UNHCR estimates that up to half of the world's refugees and displaced populations now reside in the cities and other urban spaces.¹⁸³ Despite this migration, little or no shift in service delivery has followed this vulnerable population to the urban spaces. Refugees are still seen as 'outsiders' or as derogatory viewed. The United Nations notes that refugee women and girls who try to locally integrate in the communities are more likely to suffer the brunt of violence, are often dehumanized and called '*Makwere-kwere*' and instances of being 'neck laced or having their houses torched and driven out of the communities.'¹⁸⁴ Indeed, Butler cautions against this danger of model citizenship, where the local population are emancipated and view refugees and migrants as 'outsiders' infiltrating and changing the local ways of life. Similar attacks have been documented in Cronulla beach, Sydney¹⁸⁵ 'There is always the danger that a model of citizenship based on inhabitancy may collapse into a reactionary and exclusivist defence of locality'¹⁸⁶

¹⁸² n. 9 p.151.

¹⁸³ UNHCR Policy on refugee protection and solutions in urban areas', UNHCR 2009

¹⁸⁴ UN Committee on the Elimination of Racial Discrimination (CERD), *UN Committee on the Elimination of Racial Discrimination: Addendum to the Third Periodic Reports of States Parties Due in 2004, South Africa*, 19 May 2005, CERD/C/461/Add.3, p.37.

¹⁸⁵ UNHCR, Far-Right fringe raises its profile by reclaiming its immigration debate, *Refugee Global Press Review*, 2015.

¹⁸⁶ n 7 p.137.

To Butler, the above danger is cured by a concurrent application of the right to difference. He argues that to apply the ‘right to the city’ to effectively assist those who are most marginalized, peculiar needs of the beneficiaries must be taken to account. Majority of refugee populations in the informal settlements of *Mamelodi*, *Atteridgeville*, *Soshanguve* and others are Somalis and Congolese. As noted, Harvey argued that the ‘right to the city is more than the individual liberty to reside. Consequently, how has municipal legislation and policies acknowledged the unique or cultural needs of Somali and or Congolese women and girls? Has the municipality established shelters for Somali women and girls fleeing practices considered repugnant [such as female genital mutilation or forced marriages]? A mere restatement of Article 10 of the Constitution ensuring inherent human dignity does not suffice. Lefebvre dictates that authorities move beyond a restatement of rights and take practical steps to ensure that, for instance, a young Somali girl fleeing repugnant customs receives ‘international protection’

Further, it is argued that within the current context, a right to the city would also entail freedoms to practice their cultural ways of life [in so far as they are consistent with the domestic constitution], freedoms to live as they would in their countries of origin so as to ensure restoration of their inherent dignity. A right to the city would also entail a wholesome inclusion of those most vulnerable in the decision making process so as to ensure that legislation and policies address their social economic needs rather than alienate them further. For what worth would a mere right to live in a city if they go hungry or cannot afford shelter?

Historically, the plight of urban refugee women within the jurisdiction of Tshwane District has for long been ignored. With only two shelters run by UNHCR’s implementing partners, they are mostly left to fall within the cracks. However, the Women Hope Centre¹⁸⁷,

¹⁸⁷ See generally; <http://www.unhcr.org/print/3d9459314.html> [Accessed on 28 November 2015]

a refuge shelter for refugee women and girls escaping gender-based violence- in Tshwane is a model of using diversity to bring harmony and sustenance. Noting the limitations of traditional mechanisms of providing temporal shelter, counselling and issuance of ‘letters in support’ of refugee women, the centre has trained and equipped the women with skills and it thereafter approached the City of Tshwane in 2002 with a request to exhibit the items made by these women. Despite initial reluctance, they eventually received approval to participate in the City of Tshwane market.

Whereas the ‘City of Tshwane’s Vision 2055¹⁸⁸’ does not expressly provide for the inclusion of refugee women and girls, its participatory process¹⁸⁹ has identified the need to include women, girls and refugee communities as role players.

A dialogue on social cohesion noted that it was critical to include women – and gender parity – for a society to be considered inclusive. Similarly, children should be part of the community, and refugees, who had a role to play too, should be safe.¹⁹⁰

It is submitted that in light of the above, the City of Tshwane Vision 2055 ought to follow a more inclusive approach. If the Vision 2055 is its visionary document, has the City incorporated the needs of the most vulnerable in its planning and execution? Has the City approached these vulnerable citizens within its jurisdiction to establish their needs?

¹⁸⁸ City of Tshwane, Tshwane Vision 2055; Remaking South Africa’s Capital City, 2013

¹⁸⁹ Tshwane Vision 2055, Participatory meeting, Freedom Park, 17 August 2013.

¹⁹⁰ <http://www.tshwane2055.gov.za/home/tshwane-2055-info/news/218-women-must-be-included> [accessed on 17 November 2015]

4.5 Conclusion: Transforming Diepsloot, Atteridgeville and Mamelodi into Tshwane's Umoja Village?

The problems facing women and girls in Tshwane-specifically in the informal settlements of *Attridgeville*, *Soshanguve*, or *Mamelodi* cannot be solved or eliminated instantly. Access to basic and specialized healthcare, adequate food and shelter are heavily reliant on the availability of funds. As noted in the preceding chapters, despite progressive legislations, courts have interpreted the full realization of these rights as merely one of access and may only be progressively realized over time depending on available resources.

Refugee women and girls continue to live in marginalized communities where their vulnerability risks are increased. I conclude that the conservative efforts to deal with these challenges have borne little fruit in providing international protection to women and girls. Interesting alternatives such as the *Umoja* village present fresh opportunities to alleviate the suffering of refugee women and girls. It is therefore worth exploring the successes presented in the *Umoja* village. It is recommended that the City of Tshwane explores possibilities of using the very cultural diversities that have marginalized urban refugee women to unite and empower them. After all, the constitution provides that South Africa belongs to 'all who live in it'...regardless of age, race or cultural diversity.

As highlighted, currently, Tshwane's policy on issues such as Homelessness assumes its application only to non-refugees- in isolation. Paschel argues that it is imperative that the law and policy erases its blindness towards different shades in the society and acknowledges their right to live within the city and exercise their culture. Establishment of culture weeks or cultural markets where diversity can be celebrated and enable the refugee women and girls earn a living from commerce and sale of handicrafts as illustrated by the *Umoja* narrative ought to be initiated. Whilst this is by no means an easy task, it is essential to reduce

marginalization and radicalization of those ignored by ‘the system’. After all, the letter of the law alone will not protect and empower the vulnerable woman or girl in Tshwane

The Women’s Refugee Consortium¹⁹¹ argues that there ought to be more radical changes in the race to include those most vulnerable refugee women such as enactment of legislation strengthening partnerships between local service providers and refugee centred organizations to ensure that the needs of those in informal settlements and settings are met.

Whereas non-state actors may simply be profit –oriented in their nature and hence shy away from the provision of services (with little or no profit) the social inclusion of these vulnerable group, will in the long run benefit these organizations as they could act as sources of cheap – yet educated labour force- assist in the identification of service delivery gaps/markets as well as act as a ready market. The law, policies and authorities must however first shun their blindness towards the existence of urban refugee women.

¹⁹¹ Women’s Refugee Commission, ‘No Place to go but Up; Urban Refugees in Johannesburg South Africa’, 2011.

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