

# Chapter 3 - Social Protection and Legal Provisions on COVID-19 for Asylum Seekers in South Africa

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## **Abstract**

The vulnerability and precariousness of asylum seekers increased during COVID-19. The peculiarity of asylum seekers, especially as regards social protection is of paramount importance. In light of this, the study examines South Africa's social protection policies on asylum seekers to assess to what extent the policies either widen or narrow the protection gap for asylum seekers in situations of vulnerability, such as COVID-19. The study employed triangulated desktop research sources such as government speeches, observations, policy documents, and News. Also underpinned by Honneth's (1995) theory of recognition to comprehend and criticize existing institutional and social protection in host societies. The findings revealed that social protection policies fail to recognize the unique needs of vulnerable groups such as asylum seekers. It is suggested that improving comprehensive and efficient social protection policies and legislation for asylum seekers is paramount to minimizing their vulnerability.

**Keywords:** Covid-19, Asylum seeker, Social protection, South Africa

## **Introduction**

Asylum seekers are prone to exclusion from social protection before and during COVID-19 because of their migration status. Asylum seekers in South Africa are not immune from social protection exclusion. South Africa

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is home to asylum seekers, evident by 18,104 asylum applications submitted to South Africa's Refugee Reception Centres, compared to 157,204 applications in 2009 (UNHCR Global Trends 2019; Department of Home Affairs 2021). The United Nations High Commissioner for Refugees (UNHCR) (2020) data suggests that South Africa hosts 266,694 refugees and asylum seekers. Ethiopia, Somalia, Zimbabwe, and the Democratic Republic of the Congo account for most asylum seekers in South Africa (Department of Home Affairs 2018).

Social protection are policies and programs that prevent and protect individuals from poverty, vulnerability, and social exclusion, especially in vulnerable situations (Worldbank 2022; Schnabel 2020; Fuentes 2020). Asylum seekers are individuals seeking protection from persecution in other countries while waiting for a decision on their refugee (Zoutman 2018; UNHCR 2020; Ristik 2017). Due to the vulnerabilities of asylum seekers, international legislative frameworks such as the 1948 Universal Declaration of Human Rights (UN 1948) underscore equality of treatment in social protection policies during national disasters regardless of nationality. Different countries implemented lockdown and social protection measures to mitigate the scourge of COVID-19. The measures were COVID-19 welfare palliatives and other austerity policies that either included or excluded asylum seekers from specific social protection (International Labour Organization 2021; Fuentes 2020; Carter *et al.* 2019; Crush *et al.* 2017; Loewe 2016). Countries like Portugal implemented short-term social protection for asylum seekers to access health care during the Coronavirus outbreak (Chantal 2020). Italy implemented a unique COVID-19 economic boost known as 'Decreto Cura Italia', which granted a €600 allowance to migrant workers with resident permits (ILO 2021). On the contrary, the United States excluded undocumented immigrants from the \$2.2 trillion coronavirus stimulus plan (Chantal 2020).

Other interventions were food aid or cash assistance through existing programs or COVID-19 palliative packages through civil society and NGOs (Khan & Mikhail 2021; Mukumbang *et al.* 2020). However, studies highlight that restrictive policies exclude asylum seekers from the COVID-19 welfare policies because of their migration status (Ilker & Reitter 2020; Khan & Kolabhai 2021; Kavuro 2020; Rogan & Skinner 2020; Khan & Kolabhai 2021). The initial start of COVID-19 cases in 2020 prompted South African President, Cyril Ramaphosa, to declare a National State of Disaster on 15 March 2020, to mitigate the spread of the disease (Rogan & Skinner 2020;

Oyewo 2020; South Africa Government 2020). Under the National State of Disaster 2020 Act Section 27(1), the Minister of Cooperative Governance and Traditional Affairs implemented the National State of Disaster. The South African government implemented different lockdown levels, referred to as the 'five alert levels' through various restriction levels nationally, province-ally, and in municipalities (CoGTA 2022; Oyewo 2020). Also, the South African government implemented COVID-19 welfare palliatives measures such as food parcels, COVID-19 social relief, unemployment funds, informal businesses policies and debt relief (Khan & Kolabhai 2021; CoGTA 2020; Kavuro 2020; Rogan & Skinner 2020; Khan & Kolabhai 2021). Initially, asylum seekers were excluded from the R350 Covid-19 social grant until the Pretoria court ruled that asylum seekers and special permit holders from Lesotho, Angola, and Zimbabwe should be included. The criteria to benefit from the R350 COVID-19 social grant are valid identification, not receiving an income, any other grant, or any economic relief from the Unemployment Insurance Fund.

Literature on asylum seekers suggests that the management of the South African asylum system is a barrier to accessing social protection during COVID-19 (Khan & Kolabhai 2021). In the same vein, there is evidence that asylum seekers' access to welfare packages is subject to their migration status, immigration policy and national politics (Ilker & Reitter 2020; Spencer 2017). The necessity of social policy and the objectives of immigration control may clash when national policies restrict this group's access to welfare services to limit migration (Ilker & Reitter 2020; Ataç 2019). Consequently, the study fills a gap in a scant study on social protection for asylum seekers in South Africa during disasters. The subsequent section outlines the theoretical underpinnings, research method and the importance of social protection for asylum seekers.

### **Theoretical Approach: Social Protection of Asylum Seekers**

Honneth's (1995) theory of recognition is the theoretical underpinning of the paper. Recognition is a dynamic process between two or more entities who acknowledge one another (Kati 2018). Moral claims to recognition are temporary. Honneth's recognition theory is a valuable instrument to comprehend and criticize existing institutional and social protection in host societies. Honneth's theory discusses the recognition or denial States provide to immigrants and the structure that facilitates such recognition or approval.

According to Honneth's theory of recognition, to act with agency, the human need to accept their identity in three aspects of family, civil society, and the state are significant (Formenti & West 2018; Honneth 1995). A sense of belonging in these three aspects also intertwines with identity recognition and underpins positive experiences in the host country. A sense of belonging could make asylum perceive the host country as a place of refuge.

Literature claim that the recognition theory is applicable to asylum seekers (Kati 2018; Honneth 1995). Prior studies, such as Kati (2018), employed Honneth's (1995) theory and found that neoliberal policies of nation-states do not recognize that asylum seekers deserve a happy life. From Honneth's (1995) theory, it could be gleaned that when asylum seekers cannot gain recognition in the host country, accessing social protection becomes difficult. Honneth's recognition theory provides significant insights into reciprocal relationships of care, respect, and social esteem which make individuals susceptible to mutual recognition rather than accepting the liberal conception of human subjects as independent and self-determining (Kati 2018). This idea is crucial in countries such as South Africa, with competition for resources and opportunities between migrants and locals. Asylum seekers are thus ostracized from priority since they are 'unwanted' and do not deserve social protection.

## **Research Method**

Data for this paper was generated from desk research, namely government policies, news, public comments, and public discourse. The paper is an excerpt from a desktop review of the 2020-2022 government speeches, policies, statements and news on COVID-19. Desktop research employs published data that has been used for a different study from the one being conducted (Zhou & Nunes 2016). Desk research is typically identical to the literature review and 'obtaining published secondary data' (Jackson 1994: 21). The desktop review concentrated mostly on speeches and COVID-19 policies published between 2020 and 2022, within two years range. As a result, these reviews were considered recent and brought relevance and a new viewpoint to the study. The justification for desk research alludes to the COVID-19 lockdown measures. The next section discusses the concept of social protection and the responses of the South African government to social protection programs for asylum seekers amidst COVID-19.

## **Asylum Seekers and the Need for Social Protection**

Social protection policies and programs aim to reduce and prevent poverty, vulnerability, risks, and social exclusion, especially among vulnerable groups (Fuentes 2020); International Labour Organization 2021; Loewe 2016). Social protection policies address social and economic vulnerabilities and improve an individual's capacity to respond to shocks (Worldbank 2021, Schnabel 2020; Fuentes 2020). Social protection policies strengthen the 'capacity of poor and vulnerable individuals to escape poverty and enable them to handle risks and shocks better' (Loewe 2016: 1). Social protection supports people, families, and communities to minimize vulnerability and increase equality (Worldbank 2021). Social protection policies include affordable health care, paid sick leave, job security, income support, cash transfers and other benefits that are critical components of policy responses to the COVID-19 pandemic (International Labour Organization 2022; Department of Social Development 2013). The social protection of asylum seekers is enshrined in the international legislative framework, such as the 1996 International Covenant on Economic, Social and cultural rights [ICESCR]. Notably, ICESCR Article 9 stipulates people's right to social security and the State's obligation to provide such security. Such right is also enforced in South Africa's 1996 Constitution that,

Everyone has the right to receive social security if they are unable to sustain themselves and their dependents, as enshrined in 1996 Section 27(1) (c) Constitution.

This right is part of the Bill of Rights, classified under socio-economic rights. The expansion of social protection to achieve the United Nations' 2030 Agenda for Sustainable Development goals applies to all, including forcibly displaced populations and refugees (ILO 2022). South Africa is a signatory to international legislation on the social protection of asylum seekers.

South Africa's social protection is underpinned by welfare programs and administered by the Department of Social Development (South African Government 2020; Department of Social Development 2013). Social protection policies in South Africa manifest in welfare programs that comprise community development, social grants and social welfare services (such as free basic services, public education, health care, housing, and subsidized public transportation) (Department of Social Development 2013; Goldblatt

2005). South Africa's welfare program is funded by national income tax and payments into insurance-based funds (Department of Social Development 2013). About 18 million people received social grants provided by the government (Magubane 2022). Social policies are translated into welfare packages such as social insurance, social security, and social assistance like social grants. Social security comprises a set of insurance schemes funded by employer and employee payments designed to address specific social risks associated with people's work, such as unemployment, work-related accidents, disability, and retirement (Department of Social Development 2013; Taylor 2002). South Africa's welfare policies 'strengthen the capacity of poor and vulnerable individuals to escape poverty and enable them to handle risks and shock better' (OECD 2009, cited in Loewe 2016: 1). Social protection involves both formal and informal dimensions. Sabates-Wheeler and Feldman (2011) identified four aspects of social protection: access to formal social protection, portability, employment condition and access to informal support networks.

Formal social protection plays a significant role in determining asylum seekers' level of vulnerability, protecting individuals against risks, and providing support to ensure livelihood security. The state provides legal support through publicly funded programmes such as social security benefits, short-term benefits, healthcare, education and social housing, regulated by policies and legislation (Bilecen & Barglowski 2015; Sabates-Wheeler & Feldman 2011). In the state provision of protection, specific rules, regulations and entitlements determine asylum seekers' access to legal services (Bilecen & Barglowski 2015).

Scholars have highlighted the negative interaction between the welfare state and irregular migration trigger control and exclusion policies (Kidd 2017; O'Reilly 2018). Policies Affecting Asylum Seekers are Linked to Migration Policy and Social Protection Politics (Scholten 2013).

### ***South Africa's Responses to Asylum Seekers' Social Protection***

This section outlines the social protection responses for asylum seekers in three dimensions: (a) social protection from the lens of COVID-19 TIERS (Temporary Employer/ Employee Relief Scheme (TERS)); (b) asylum seekers and access to COVID-19 vaccines; and (c) asylum seekers and access to COVID-19 palliatives to unravel the importance of social protection for asylum seekers.

### ***Social Protection through the Lens of COVID-19-TIERS***

The South African Government initiated a COVID-19 TERS through the Unemployment Insurance Fund (UIF) to assist employers in providing wage benefits to employees due to the effects of the COVID-19 pandemic on 26 March 2020 (South Africa Government 2020). Asylum seekers working in the informal economy are excluded from the COVID-19 TERS because it requires monthly salary contributions (Khan & Kolabhai 2021; Bhorat *et al.* 2013). Half of the world's workers are employed in the informal economy, and more than 90% of micro and small businesses (ILO 2018). This equates to 90% of all small- and medium-sized companies and 60% of the world's labor force (International Labour Organization 2018). The informal economy, called the shadow economy or the grey economy, is not regulated or registered (Ernest & Olawande 2020; ILO 2021). Such businesses are also not taxable, with economic activities operating outside of the social norms that are generally recognized (OECD 2019). In South Africa 27% of migrants work in informal and precarious jobs, compared to 15.7% of South Africans (Africa Centre for Migration Study 2020:2). About 540,000 migrants are employed in the informal sector, which amounts to 20% of the 2.7 million persons who comprise the informal sector (Africa Centre for Migration Study 2020:2). The informal economy is linked to self-employment in unregistered businesses consisting of SMEs, wage employment, self-employment, street vendors, Spaza, shoe shiners, and scrap collectors (Adam 2020; Skinner & Stulgaitis 2017). Over 100,000 Spaza shops are operating across South Africa's townships, and arguably 70–85 percent are owned by foreigners (Du Toit 2020). Migrants primarily own foreign Spaza shops from Ethiopia, Somalia, Bangladesh, and Pakistan (Du Toit 2020; Adam 2020). Abusive recruitment conditions such as lack of social security coverage, workplace exploitation and limited security in the labor market are common gaps in the social protection of asylum seekers (ILO 2022).

### ***Asylum Seekers and Access to COVID-19 Vaccines***

Evidence shows that initially, many countries used COVID-19 as a pretext to exclude asylum seekers from COVID-19 vaccinations because they lacked valid documents (Boitumelo 2021 *et al.* 2021; IOM 2021; Ataç & Rosenberger 2019). The International Rescue Committee (IRC) in May 2021, reported that 60% of the nations who received COVAX vaccines excluded

asylum seekers/ refugees from their national plans due to the problems of vaccine nationalism, vaccination exclusion, and vaccine hesitancy as well as their potential impact on the population. Various challenges for asylum seekers accessing COVID-19 vaccination include expired documents and xenophobia. A vivid example was when the former Health Minister, Dr. Zweli Mkhize, gave public briefings on the country's vaccine rollout strategy in January. Mkhize told SABC television that vaccines would only be available to South Africans since the country 'cannot assist undocumented foreign nationals' (Polity 2021). Even before COVID-19, asylum seekers found it difficult to access health services because of expired documents and medical xenophobia. Asylum seekers with medical conditions were denied treatment by local hospitals and clinics because they lacked proper documentation due to the expiration of their permits during the lockdown.

South Africa's Refugees Act 130 (1998) guarantees asylum seekers' rights in South Africa. Initially, at the start of COVID-19 in 2020, the South African government was hesitant to implement the 1998 Refugees Act, which allowed legal asylum seekers to benefit from the COVID-19 relief packages (Kavuro 2020). Bureaucracy hinders the protection of refugees because of a failed system of asylum documentation and identification' (Khan & Mikhail 2021: 77). Due to the increasing number of asylum seekers in South Africa, the Department of Home Affairs (DHA) is shrinking the asylum space to make the country undesirable for asylum seekers. This also manifested in an amendment to the 1998 Refugee Act and the 2017 White paper limiting the rights of asylum seekers and the closure of three Refugee Reception Offices (Crush, Skinner & Stulgaitis 2017; Department of Home Affairs 2016; Kavuro 2015). Through the amended Refugee Act, the Department of Home Affairs (DHA) planned to establish isolated Asylum-Seeker Protection Centers, which would serve as detention centers where asylum seekers live until their status determination processes are concluded (Amit 2015; Kavuro 2015; Landau & Amit 2014).

Asylum seekers in South Africa struggle to regularize their stay because of restrictive migration policies and the ineffectiveness of the Department of Home Affairs (Amit 2015; Kavuro 2015; Landau & Amit 2014). Immigration regulations create typologies of migrant statuses, which are internally stratified according to different privileges. According to Anderson (2010: 307 - 312), immigration rules, policies, and practices institutionalize uncertainty and generate distinct groups of migrants.

Due to the flaws and inconsistencies in the asylum system, many persons in need of protection remain illegal.

There was inadequate information on where foreign nationals could test in government testing centers during the COVID-19 period (Polity 2021). The lack of coordination between government departments initially led to excluding foreign nationals from vaccine rollout (Polity 2021). Due to their irregular situation, undocumented asylum seekers avoided using essential public services like health care such as COVID-19 testing due to fear of arrest and deportation. Evidence shows that initially, many countries used COVID-19 as a pretext to exclude asylum seekers from COVID-19 vaccinations because they lacked valid documents (Boitumelo 2021 *et al.* 2021; IOM 2021; Ataç & Rosenberger 2019; Louka *et al.* 2019). Polity (2021) cited a report by the International Rescue Committee (IRC) that 60% of the nations who received COVAX vaccines excluded asylum seekers/refugees from their national plans due to the problems of vaccine nationalism, vaccination exclusion, and vaccine hesitancy. Three African countries, Rwanda, Cameroon, and Senegal included asylum seekers in the COVID-19 vaccination jab and the national response. Senegal and Cameroon, for instance, permit refugees to register at certain health institutions and local councils (Further Africa 2021).

### ***Asylum Seekers and Access to COVID-19 Palliatives***

COVID-19 Intervention by the South African Government was implemented in the form of a social welfare package, COVID-19 350 grant, economic recovery, and hunger alleviation by distributing food aid to reduce the socio-economic impact of COVID-19 on people (Kavuro 2020; Rogan & Skinner 2020; Oyewo 2020; South Africa Government 2020). Initially, at the beginning of the COVID-19 lockdown in 2020, asylum seekers were denied access to the R350 COVID-19 social assistance grant until the Court ruled that the R350 Covid-19 grant be paid to asylum seekers with special permits from Lesotho, Angola, and Zimbabwe (Estelle 2020; Mukumbang, Ambe & Adebisi 2020). Similarly, the government implemented the ERRP (Economic Reconstruction and Recovery Plan) stimulus program to help the South African economy and small businesses recover (CoGTA 2020). Also, the COVID-19 Social Relief of Distress payment of R350 (\$20) to unemployed South Africans and those who lost their job within six months of the COVID-19 lockdown's implementation in 2020 is the stimulus package. The South

African government allocated R500 million (\$30 million) to the Business Relief Fund to assist businesses affected by the COVID-19 pandemic (Wegerif 2020; Reuters 2020; Bornman & Oatway 2020). Small business tax breaks and decreased contributions to the Unemployment Insurance Fund (UIF) were also included. In March 2020, the Minister of Small Business Development, Khumbudzo Ntshavheni, unveiled a Spaza shop scheme to fund Spaza businesses (Business Insider SA 2020). The Spaza shop scheme fund assists Spaza shop owners in buying stock, seed capital, and bulk-buying discounts at authorized wholesalers (Business Insider SA 2020). However, most of these palliatives are not available to foreign nationals because foreigners, particularly asylum seekers who work in the informal economy, do not pay taxes. National policies restricting asylum seekers' access to social programs could lead to tensions between social policy imperatives and immigration control goals (Ataç & Rosenberger 2019). The overview suggests that asylum seekers do not have consistent access to social protection (SP). Enabling such access is one of the national legislation and policy functions stemming from the interactions between host communities and asylum seekers. Although, some countries have made significant progress in establishing and implementing social protection for asylum seekers. The vast majority of developing countries lag far behind as developing countries have also taken significant steps toward reforming their Social Protection policies amidst COVID-19. Access to health care regarding COVID-19 testing and vaccination also differs and is linked to migration status in destination countries.

Discussion about how to approach asylum-seekers social protection deserves discussion because COVID-19 affects asylum seekers globally due to their migration status and reliance on the informal sector for income. The various statements by South African political elites, rising anti-migrant sentiments and politics of distribution of COVID-19 palliative measures indicate that asylum seekers in national social protection systems rarely have the same rights as citizens. Thus, equality of treatment remains a long way in many countries worldwide. National legislation may also limit asylum seekers' access to one or more social security benefits, and these benefits may be insufficient. Furthermore, because of their pending refugee status, asylum seekers frequently do not have the same rights as refugees or citizens because they do not have permanent residence status. The paper argues that asylum seekers' formal sector is unprotected, exposing them to periods of unemployment and vulnerability. Arguably, asylum seekers can transform

societies when their human rights are respected through access to social protection programmes and participation in the labor market (UN DESA 2018). Undocumented asylum seekers are prone to vulnerabilities and reduce their integration and economic contribution chances.

## **Way Forward**

The paper discusses the social protection of asylum seekers during COVID-19 to ensure they have equal access to social protection as nationals based on equality and non-discrimination. The social protection of asylum seekers is a polarized topic of debate, particularly among host communities where a strong stance on migration has gained political clout marked by fear and division in COVID-19. Instead, the South African government's lockdown tactics to tackle COVID-19 have aggravated the predicament of foreigners and unfair treatment. COVID-19 reinforces the critical role of social protection policies [SP] in mitigating asylum seekers' risks and vulnerability.

Consequently, integrated approaches that include asylum seekers in national social protection responses, under international human rights, international labor standards, and the principles of equality of treatment and non-discrimination will play a critical role in mitigating the effect. While asylum seekers' access to SP is a contentious issue, the paper suggests that asylum management should be prioritized during a national disaster like COVID-19. Due to the importance of SP, it is critical to develop new strategies consistent with the humanitarian-development nexus in social protection. Thus, integrating asylum seekers into national social protection schemes necessitates the development of tailored strategies that are inextricably linked to improving asylum seekers' livelihoods and economic inclusion. Responses to welfare policies for asylum seekers play a critical role in mitigating the effects of COVID-19 and other vulnerabilities. The paper suggests strong coordination and collaboration between government initiatives and development partners for greater alignment and precise targeting. These partnerships 'have the potential to improve national social protection systems' administrative, technical, and operational capabilities'. Hence, improving comprehensive and efficient national social protection policies and legislation for asylum seekers is paramount.

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