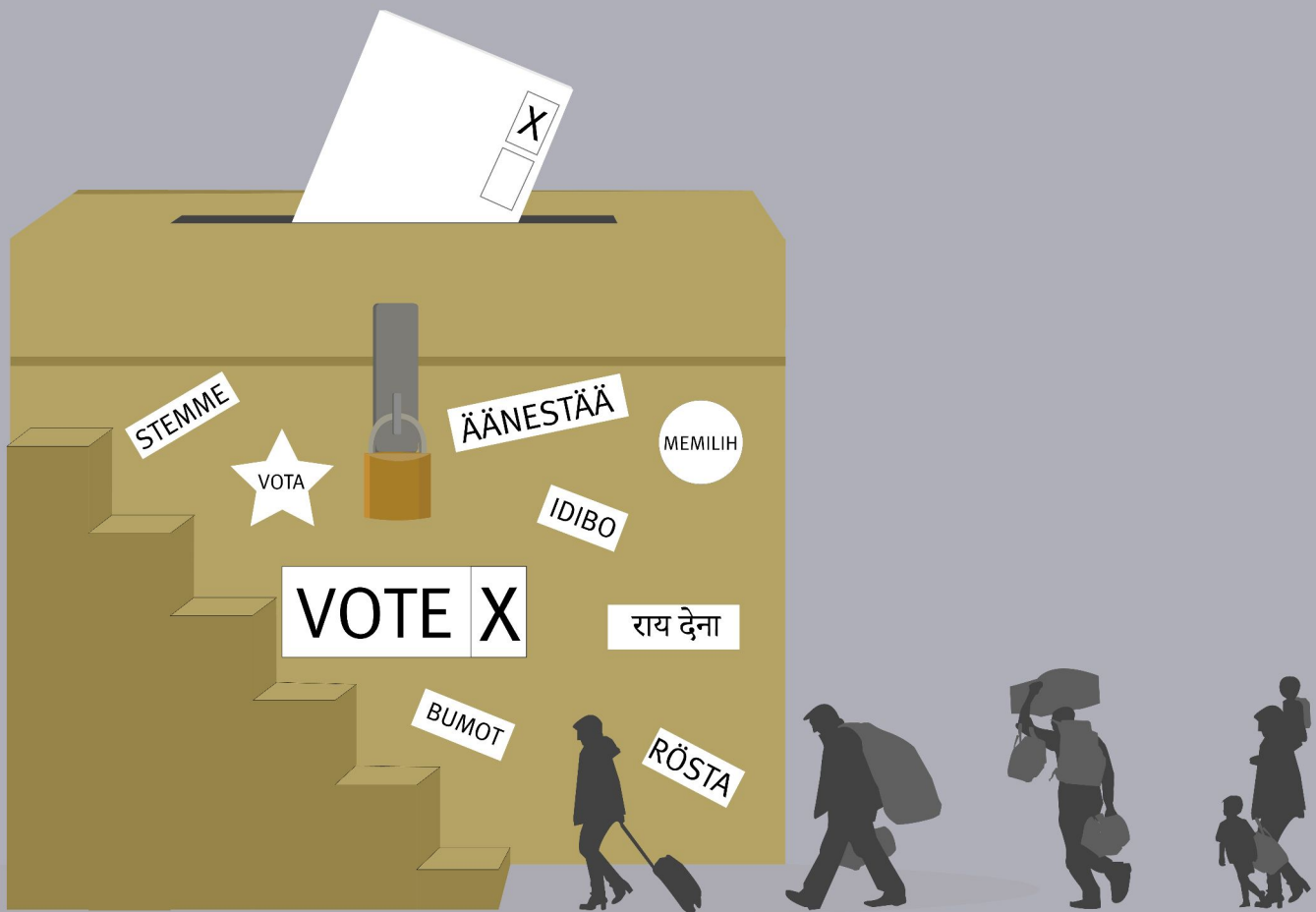


# Political Participation of Refugees

The Case of Congolese Refugees in South Africa





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## Abbreviations

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AMP	Adonis Musati Project
ANC	African National Congress
ARESTA	Agency for Refugee Education, Skills Training and Advocacy
CCSA	Congolese Community in South Africa
CCWC	Congolese Community in the Western Cape
CDFNML	Congolese Diaspora for Nelson Mandela Legacy
CEPPS	Consortium for Elections and Political Process Strengthening
CoRMSA	Consortium for Refugees and Migrants in South Africa
CSO	Civil society organization
DA	Democratic Alliance
DHA	Department of Home Affairs
DRC	Democratic Republic of the Congo
DSD	Department of Social Development
ID	Identity document
IOM	International Organization for Migration
OCV	Out-of-country voting
RRO	Refugee Reception Office



RSDO	Refugee Status Determination Officer
SATD	South African Travel Document
SCRA	Standing Committee for Refugee Affairs
UDSP	Union for Democracy and Social Progress
UNHCR	United Nations High Commissioner for Refugees
UNOCHA	United Nations Office for the Coordination of Humanitarian Affairs

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# 1. Introduction



The Democratic Republic of the Congo (DRC) is the second largest country in Africa. Its population is estimated at over 70 million, 52 per cent of which is female (UN Women 2016). Despite its extraordinarily vast natural resources, the DRC is one of the poorest countries in the world. This is mainly attributable to its history of protracted violent conflict since independence from Belgium in 1960. Since the early 1990s, violent conflict in the DRC has resulted in large outflows of Congolese migrants, many as refugees or asylum seekers, to various destinations across the globe, not least South Africa. The conflict in the DRC can be seen as an east-west conflict and migrants from the DRC can be categorized into two broad rival groups: the pro-combatants and the anti-combatants. The pro-combatants oppose President Joseph Kabila’s regime, come from the west of the DRC and speak Lingala, Tshiluba and Kikongo. The anti-combatants are from eastern DRC, primarily speak Kiswahili and are seen as pro-Kabila (Inaka 2016).

As a signatory to the 1951 UN Convention Relating to the Status of Refugees, the South African Government has an obligation to grant protection to refugees and other persons in need of protection. The non-encampment approach espoused in the 1998 Refugees Act, which guides the management of refugees and asylum seekers in South Africa, promotes civil rights such as freedom of movement and the right to work. Compared to other countries in Africa, where camp settings are fairly common, South Africa has been considered exemplary in its treatment of refugees (Johnson 2015). Unlike those countries where asylum seekers are hosted in camps, South Africa has opted to issue renewable short-term residence permits to registered asylum seekers and recognized refugees, allowing them to move freely, study and work in the country. Approved refugees enjoy most of the same fundamental rights enjoyed by South African citizens, as encapsulated in the country’s Constitution.

Table 1. Case study respondents’ profiles and locations

Research site	Congolese (DRC)		TOTAL	Key informants
	Male	Female		
Cape Town	27	3	30	2
Johannesburg	13	4	17	0
Pretoria	19	9	28	2
<b>TOTAL</b>			<b>75</b>	<b>4</b>





This case study examines the political participation of Congolese refugees and asylum seekers who reside in South Africa, and was written as part of a larger research project on the political participation of refugees (Bekaj and Antara 2018). The study involved a review of the relevant literature, statistical data, media reports and legal documents. Interviews were also conducted with refugees and asylum seekers, as well as representatives of organizations and government authorities working on issues affecting refugees and asylum seekers in South Africa. In all, 75 people were interviewed (59 men and 16 women) in Gauteng and Western Cape provinces, and in the cities of Cape Town, Johannesburg and Pretoria (see Table 1).

Among the respondents were also 4 representatives of government departments, international organizations and non-governmental actors. Five individual respondents were interviewed in each city. These were overwhelmingly male and aged between 30 and 49. Interviews were also conducted with two families in each city, and focus group discussions were held in Pretoria (mainly students) and Johannesburg, and two in Cape Town. The majority of the respondents were Christian and those who divulged their ethnicity were Luba or MoKongo. Many Lingala speakers preferred to refer to themselves as Bantu.

## 2. Host-country context: South Africa

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The South African Department of Home Affairs (DHA) registered 1,082,669 asylum seekers in the 10-year period 2006 to 2015. Between January and December 2015, 62,159 applications for asylum were received, 6,355 of which were from people giving the DRC as their country of origin (Parliamentary Monitoring Group 2016). In 2012, the United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA) named South Africa as the asylum capital of the world, after registering 82,000 asylum applications, the highest number of applications that year (UNOCHA 2014). The DHA reported 106,904 applications in the same year—a difference of over 25 per cent (Parliamentary Monitoring Group 2016). Interestingly, the United Nations High Commissioner for Refugees (UNHCR) indicated that in the 2015–16 period, the number of asylum seekers in South Africa dropped from almost 1.1 million to 218,300, a difference of almost 900,000 on the previous year (UNHCR 2017). However, the DHA insists that the numbers have not dropped, and attributes the discrepancies to the different statistical methodologies used by the government and the UNHCR. There seems to be no agreement on whether the statistics should include inactive cases, and this has an impact on the consistency of the data presented by different sources. These inconsistencies could be seen as evidence to support the view of the former Minister for Home Affairs, Hlengiwe Mkhize, that ‘migration issues are highly politicized . . . and about contestation for space and scarce resources’ (ENCA 2017).

Broadly speaking, South Africa’s approach to refugee policy has been to avoid the use of camps and allow people to settle in urban areas. The refugee population comprises men, women and children of all ages and from across the racial divide. Refugees tend to be concentrated in particular areas of South Africa, but particular nationalities are also concentrated in different areas (UNICEF n.d.). Most of the larger refugee and asylum seeker populations in South Africa are found within, or in close proximity to, the major cities of Cape Town, Johannesburg, Pretoria, Durban and Port Elizabeth. Johannesburg hosts the country’s largest refugee and asylum seeker community (Belvedere 2007). There are several reasons for the concentration in urban areas. The first is proximity to jobs and income-generating activities, given that the state does not provide any material support to refugees and asylum seekers. Another important reason is the need for regular visits to the Refugee Reception Offices (RROs), which are found in the major cities, to renew temporary permits and legalize their status in the country during the adjudication process (Belvedere 2007). A third factor for consideration may be the language barrier. It is arguably easier for refugees and asylum seekers with some formal schooling to learn English than to learn a local indigenous language such as IsiZulu. South Africans who live close to towns and cities are



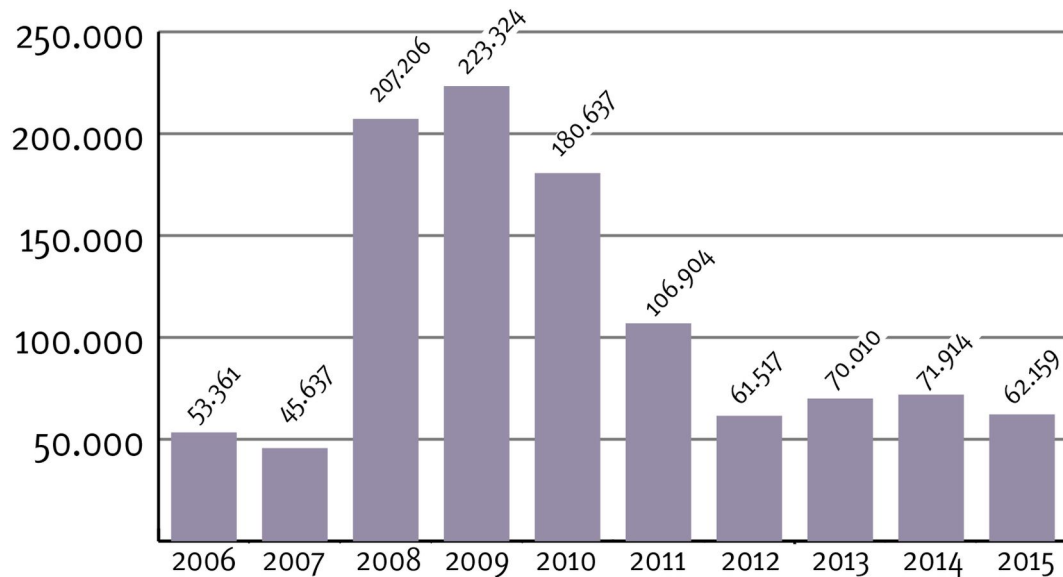
also generally more comfortable about expressing themselves in English, or finding other creative ways to communicate with refugees and asylum seekers, and other categories of migrants.

South Africa is home to 300,000 Congolese nationals, be they students, economic migrants, asylum seekers or refugees, which makes it host to the biggest Congolese diaspora group in the world (Clarke n.d.). As of 2015, there were an estimated 16,295 asylum seekers and 32,582 refugees from the DRC residing in South Africa (UNHCR 2017). This figure is likely to have increased since December 2016, following the mass exodus linked to renewed political turmoil and increased violence after President Kabila's decision to seek a third term.

Migrants from the DRC, including asylum seekers, tend to travel as family units, usually made up of women, children and the elderly (UNOCHA 2014). The communal spirit among Congolese migrants is also reflected in the host country, where they typically settle and integrate where there is already an existing network or a settled Congolese community. Qualitative research among Durban's Congolese refugee community suggests that on arrival in South Africa asylum seekers are usually accommodated by fellow Congolese who have migrated previously (Amisi 2006). This solidarity offers a social safety net because the established asylum seekers and refugees understand how the system works, what to expect, and the socially accepted norms and practices that can make integration smoother and quicker. Conversely, the lack of an encampment policy means that refugees and asylum seekers are left to fend for themselves, and often struggle to secure permits and earn a living. Congolese women refugees, like refugees everywhere, face challenges around securing adequate shelter, safety, food and primary health care, and usually survive with assistance from others (Kenge 2017).

Failure to integrate migrants, including refugees and asylum seekers, into their host communities can result in conflicts that affect stability and can undermine social cohesion (Paulk 2015). Based on the above, the sharing of prior knowledge, experience and social induction is of critical importance for new arrivals who have not previously been exposed to South African society and its dynamic social norms and practices. This is especially true for those who settle in semi-formal and informal settlements, which are usually found on the periphery of major towns and cities. Understanding the culture and social etiquette in these areas, historically known as 'locations' and referred to as 'lokshins' in South Africa, is critical to survival given the extent of xenophobia in these areas, and the ease with which expression of these attitudes and frustration with other social ills can manifest through indiscriminate public violence, usually targeted at foreigners. These tensions are exacerbated by the fact that to date, there is no legal means by which semi-skilled and unskilled migrants can enter, live or work in South Africa. Many economic migrants therefore try to use the asylum route to stay in the country. The government has also expressed concern that economic migrants are taking advantage of its generous asylum policies by applying for asylum to get work. This is evidenced by the fact that only about 5 per cent of registered applications for asylum are successful (Parliamentary Monitoring Group 2016, 2017; Mahr 2017). As a result of the non-encampment policy and the lack of basic support, including food and shelter, the government has had to issue asylum seekers with short-term residence permits. This has become a powerful 'pull factor' that further burdens the asylum system and has resulted in long delays with, and backlogs in, case adjudication (DHA n.d.b).

Figure 1. Asylum seeker trends, 2006–2015



Source: DHA [n.d.a]

## Overview of South Africa's refugee and asylum policy

The DHA (n.d.b) has set out a process to be followed by asylum seekers before they can become recognized refugees. A person enters South Africa through a port of entry, presents themselves to an immigration officer as an asylum seeker and, on that basis, is issued with a Section 23 Permit. This is a non-renewable 'asylum transit permit', which is valid for a period of 14 days and authorizes the applicant to enter the country and report to the nearest RRO in order to apply for asylum. Within 14 days, the asylum seeker must appear in person at the RRO, and present the Section 23 permit, proof of identification from their country of origin and a travel document, if available. An admissibility hearing is held, the applicant's fingerprints are recorded, and their data and image captured in the refugee system. They are then issued with a printed, signed and stamped Asylum Seeker's permit, or Section 22 Permit.

The Section 22 permit is a temporary residence permit that is valid for six months. It legalizes the asylum seeker's stay in the country temporarily, pending a final decision on their application. It can be repeatedly extended for periods of up to six months while the process of status determination progresses. Although there is no specific limit on the number of times the permit can be extended or renewed, the Regulations to the Refugees Act, which were introduced in 2000, suggest that ordinarily an adjudication should be concluded within 180 days of filing the application. The permit gives the holder the right to work and study in South Africa, and offers them protection against deportation to their country of origin. Before the permit expires, the asylum seeker must report to the RRO for a second interview to be conducted by a Refugee Status Determination Officer (RSDO), who adjudicates on the application, makes a decision on the claim for asylum and provides reasons for the decision. At the conclusion of the hearing, the RSDO must grant asylum, reject the application as manifestly unfounded, abusive or fraudulent, or refer any question of law to the Standing Committee for Refugee Affairs (SCRA).



When asylum is granted, the applicant becomes a refugee and is issued with a Section 24 Permit, or refugee's permit. This allows them to remain and work in South Africa for two years, and is renewable on review by an RSDO for a further period of two years. When considering an application for renewal, the Standing Committee has to determine whether the applicant will remain a refugee indefinitely and can therefore be 'certified' to apply for an immigration permit (Regulations to the Refugees Act 2000). There is no prescribed cap on the number of times the permit can be renewed. A recognized refugee is required to apply for a refugee identity document (ID) within 15 days of being granted asylum, after which they can apply for a South African Travel Document at any RRO. It is important to note that section 3(c) of the Refugees Act indicates that the dependants of a person who qualifies for refugee status also automatically qualify for refugee status. In practice however, there is a large backlog with many cases of protracted periods of asylum seeker status, which for some applicants exceeds 10 years.

Table 2. Summary of outcomes of refugee status determinations (RSD), 2011–15

RSD outcome	2011	2012	2013	2014	2015	Total per RSD outcome
Manifestly unfounded	20,275	31,965	35,958	36,958	44,048	<b>168,648</b>
Unfounded	16,875	25,037	25,553	29,545	14,093	<b>111,103</b>
Approvals	6,803	6,226	7,286	9,230	2,499	<b>32,044</b>
<b>Total RSD outcomes per year</b>	<b>43,803</b>	<b>63,228</b>	<b>68,241</b>	<b>75,733</b>	<b>60,640</b>	<b>311,795</b>

Source: DHA (2015)

Contrary to the provisions in the law that the applicant's status also covers their dependants, some of the asylum seekers interviewed for this research complained that individual files were being opened for each family member, which resulted in them having different legal status. For instance, one parent might be recognized as a refugee while their partner and children are still asylum seekers. In some extreme cases, it is alleged that families have been separated after a wife and children were given refugee status while the husband was rejected and deported after an unsuccessful appeal. In an interesting example, one female asylum seeker respondent stated that she was living with her husband, who was a recognized refugee, and their 18-month old son whose status was unclear. She also highlighted how Congolese women refugees and asylum seekers, especially married and older women who are still driven by the traditional and religious values and beliefs from their home country, struggle to participate in political life (Congolese asylum seeker 1, Johannesburg, 2017).

## Requirements for refugees' political participation and naturalization

The Refugee Act (1998) encapsulates South Africa's commitment to relevant international legal instruments, principles and standards relating to refugees and their legal status, as well as refugees' associated rights and obligations. The Act specifically states that all refugees are entitled to full legal protection, including the rights set out in the Bill of Rights (Chapter 2 of the 1996 Constitution). The Bill of Rights enshrines the fundamental, civil, social and economic rights of all people living in South Africa and affirms the democratic values of human dignity, equality and freedom. It gives everybody living in South Africa equal rights in all spheres of life and social interaction, with the exception of political rights which are only available to citizens. Specifically, every citizen is free to make political choices, which include the right to form a political party and participate in activities such as campaigning

and the recruitment of new members. In addition, every adult citizen has the right to vote in elections for any legislative body, and to stand for and hold public office.

#### Access to citizenship

Provided that they meet the criteria, refugees can access the right to vote by following the relevant procedures to become a South African Citizen (Chennells 2015). According to section 7 of the Refugee Act, refugees can apply for a permanent residence permit after five years of continuous residence in South Africa from the date they were granted asylum, provided that they have certification from the SCRA. This certification confirms that, based on several mitigating factors, including the continuing negative political and security situation in their country of origin, the applicant is likely to remain a refugee for an indefinite period. This certification in many ways entitles refugees to local integration as a durable solution.

The regulations contained within the Refugee Act give the SCRA discretion to grant certification at the same time as refugee status is granted. The regulations also make the possibility of certification a key consideration in the decision to renew the refugee permit every two years. When initiated by the applicant, an application for certification must be submitted to the RRO where the refugee initially applied for asylum. Once issued, the certification can be used to apply for permanent residence. Once they have been certified and their permanent residence application has been successful, a person can only apply for naturalization once they have held a Permanent Residence Permit for 10 years, and fulfilled other criteria as specified in the Citizenship Act (1995). Acquiring citizenship by naturalization is considered a privilege not a legal right. The minister may therefore refuse an application even if the applicant meets the criteria (Isaacson 2008). A less researched phenomenon, however, is that some male refugees are marrying South African women as a way to gain citizenship and enhance their chances of integration into South Africa (Kenge 2017: 6)

In a presentation to parliament, the DHA reported that 2,104 new applications for certification were filed in 2015, and 2,237 applications had been considered, including pending submissions from previous years (Parliamentary Monitoring Group 2016). Of the applications considered, 684 were granted and 681 denied. Some applications resulted in the withdrawal of refugee status.

Given the well-documented backlog of pending applications for asylum in South Africa, only taking the time spent in the country after asylum is granted into account when granting citizenship unnecessarily and unfairly prolongs the withholding of rights and opportunities for refugees to fully integrate into and participate in society. Some of the members and leaders of the Congolese community interviewed for this research see prolonging the adjudication process as a government strategy to limit the number of refugees in the country who will ultimately become eligible for citizenship through naturalization. They believe that the idea is to keep as many applicants as possible in the asylum seeker category (Congolese refugee 1, Johannesburg, 2017). It might be worthwhile to find ways to lobby local stakeholders and advocacy groups to revisit this issue in the context of the March 2017 White Paper on International Migration, which updates the previous White Paper adopted in 1999. The 2017 White Paper covers seven main areas: admissions and departures, residency and naturalization; asylum seekers and refugees, and the integration of international migrants. It was developed by the DHA but circulated widely prior to its finalization, including on the DHA website, to ensure public comment and engagement. However, several NGOs, including refugees' associations, are frustrated that they made lengthy, detailed submissions that were not considered or reflected in the finalized White Paper.

Based on the proposals contained in the White Paper, it is possible that there may be some changes made to policy and legislation. One possible suggestion might be to credit successful applicants with the difference in time from when the application was received by the RRO. Table 3 shows the number of refugees who acquired permanent resident status between 2003 and 2015. According to the DHA (2016), 5,846 Permanent Residency Permits were issued. Assuming that every permit-holder from the period 2003–07 had applied for naturalization by 2017, an estimated 526 former refugees should now have voting rights in South Africa.

Table 3. Permanent residency permits issued to refugees, 2003–15

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	Total
January	1	16	8	7	10	5	115	116	9	60	1	54	26	<b>428</b>
February	3	3	4	3	4	8	86	111	12	58	13	15	153	<b>473</b>
March	6	10	12	8	15	13	92	116	84	37	3	23	89	<b>508</b>
April	1	14	3	26	16	10	26	40	32	42	5	197	47	<b>459</b>
May	2	11	4	19	15	10	108	40	38	12	3	61	90	<b>413</b>
June		1	1	12	22	10	3	2	32	25	7	148	13	<b>276</b>
July	1	7	5	3	33	24	196	215	101	8	19	14	60	<b>686</b>
August	1	10	2	6	14	28	208	48	104	9	3	223	12	<b>668</b>
September	7	11	5	2	2	28	81	92	145	38	20	61	15	<b>507</b>
October	5	33	6	9	20	27	123	33	178	4	9	109	26	<b>582</b>
November	8	35	9	1	4	57	141	40	172	1	8	90	39	<b>605</b>
December	5	8	7	2	8	6	45	16	6	15	18	60	45	<b>241</b>
<b>TOTAL</b>	<b>40</b>	<b>159</b>	<b>66</b>	<b>98</b>	<b>163</b>	<b>226</b>	<b>1224</b>	<b>869</b>	<b>913</b>	<b>309</b>	<b>109</b>	<b>1055</b>	<b>615</b>	<b>5846</b>

Source: DHA (2015)

In the specific case of Congolese refugees living in Durban, a series of in-depth qualitative interviews with 10 respondents carried out in 2015 found as follows:

Despite being unable to live in DRC and facing extreme discrimination in Durban, all participants reported being proud of their Congolese nationality. When mentioning the potential of being naturalized, almost all respondents favoured their DRC citizenship to naturalization, except in the case of their children. All people interviewed that had families hoped that [the] children they had in South Africa would be recognized as South African citizens. Those that did wish for their own naturalization did so with the hope that being a South African citizen would decrease the burden of living in the country. (Paulk 2015: 27)

This raises an interesting question that has recently been a subject for discussion in South Africa's media and legal fraternities and led the DHA to publicly respond to media reports of a possible probe by the South African Human Rights Commission: Why are children born in

South Africa to foreign parents not automatically awarded South African citizenship? The DHA follows the basic principle that children follow the citizenship or nationality of their parent(s) (South African Government News Agency 2017; South African Human Rights Commission 2017). Equally, children born of permanent residents acquire their parents' legal status. Section 3(c) of the Refugee Act indicates that a dependant of a person who qualifies for refugee status also qualifies for refugee status. A child born in South Africa to refugee parents can qualify for citizenship either from birth on the grounds of statelessness or through naturalization. Specifically, section 2 of the Citizenship Act (2010) indicates that 'any person born in the Republic and who is not a South African citizen . . . shall be a South African citizen by birth if he or she does not have the citizenship or nationality of any other country, or has no right to such citizenship or nationality; and his or her birth is registered in the Republic in accordance with the Births and Deaths Registration Act, 1992' (Act. no. 51 of 1992). Furthermore, section 4 of the Citizenship Act states that 'a child born in the Republic of parents who are not South African citizens or who have not been admitted into the Republic for permanent residence qualifies to apply for South African citizenship upon becoming a major if he or she has lived in the Republic from the date of his or her birth to the date of becoming a major; and his or her birth has been registered in accordance with the provisions of the Births and Deaths Registration Act'.

Looking ahead, policy changes will mean that automatic progression and the granting of permanent residency and citizenship (naturalization) will be delinked, and that applicants, including refugees, will not be allowed to apply for permanent residence on the basis of the number of years spent in South Africa. Instead, applicants will have to qualify on other grounds, such as scarce skills and investment requirements. The government also wants to dispel the thinking that progression to citizenship based on the amount of time spent in South Africa is a constitutional right. Refugees will no longer be allowed to apply for permanent residence. Plans are under way to replace the Permanent Residence Permit with a long-term residence visa, which is equivalent to the refugee's permit and will afford refugees an opportunity to integrate into the country. Another important change is that in the future, refugees will only be allowed to have one legal status at any given time (DHA n.d.b.). Practically, this means that if a recognized refugee applies for a 'critical skills' permit and it is granted, they will cease to be refugees. In this example, the White Paper is not clear on whether the refugee status would fall away on application or approval. This is a significant shift from the current situation where refugees can benefit from multiple permit regimes without forfeiting their refugee status. There also seems to be an underlying assumption that once a refugee is covered by a different permit regime, they will automatically no longer be in need of international protection.

#### Access to voting rights and political parties

As noted above, the 1996 Constitution grants to citizens the right to form a political party, stand for public office, recruit, campaign or participate in the activities of a political party and vote for legislative bodies. Although in theory this does not mean that non-citizens are restricted from joining political parties, the Constitution does not protect their right to do so. Furthermore, Chapter 1 of the Electoral Act of 2013, which applies to the election of the National Assembly, provincial legislatures and municipal councils, defines a voter as a South African citizen who is 18 years old or older, and whose name appears on the national common voters' roll. The Act clearly prohibits the Chief Electoral Officer from registering anyone who is not a South African citizen on the voter's roll. Furthermore, only registered parties that have submitted candidate lists can contest elections in South Africa. Candidate lists are accompanied by an undertaking that each candidate is qualified to stand for public office in terms of the Constitution. South Africa's Electoral Commission Act also reinforces citizenship as a requirement for political party registration because one of the requirements





for registration is that the party's deed of foundation must be signed by a prescribed number of qualified voters. Thus, migrants, including refugees and asylum seekers, cannot actively participate in formal political or electoral processes, even those that directly affect their lives and livelihoods, unless they acquire South African citizenship and thereby gain a different legal status.

#### Access to civil society organizations

In South Africa there is no legislation or policy to restrict the formation of refugee associations or civil society organizations (CSOs). On the contrary, legislation and structures have been put in place to support the establishment of CSOs. These range from faith- and community-based organizations to other developmental and social organizations. The Nonprofit Organizations Act (1997), implemented under the leadership of the Department of Social Development (DSD), 'seeks to provide for an environment in which nonprofit organizations can flourish; to establish an administrative and regulatory framework within which nonprofit organizations can conduct their affairs'. According to Statistics South Africa (2017), a nonprofit organization must be a legal entity created by process of law. Among the different categories of nonprofit organizations identified by the DSD, refugee formations are likely to come under indigenous or territorial groups, which are organized around either cultural or ethnic groupings or a particular geographic area, mainly with the purpose of improving the welfare of their members (Statistics South Africa 2017). The 1996 Bill of Rights discusses rights such as equality, freedom of expression and association, freedom of opinion and freedom to demonstrate, picket and petition. These are extended to all, including refugees.

### 3. Refugees' and asylum seekers' political participation in the host country

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#### Formal political participation

In light of the legal restrictions on voting rights for non-citizens described in the previous chapter, it seems safe to assume that no Congolese refugee or asylum seeker participated in the most recent general elections in South Africa, which were held in 2014. However, during the in-person interviews, one respondent who claims to have been the first refugee in South Africa after the end of apartheid, having arrived in 1994, claimed that migrants with permanent residence status used to be allowed to vote in all elections. He also claimed to have voted in previous elections and although no evidence was presented, his wife also recalled their participation and experience as voters in previous local government elections (Congolese family 1, Johannesburg, 2017). Although not necessarily confirmation of the couple's claims of participation, chapter 2, section 6 of the 1993 Interim Constitution of South Africa made provision for non-citizens to vote in national, provincial and local government elections, including referendums.

Membership of some political parties is only open to South African citizens. One example is the Inkatha Freedom Party (2012). The official opposition in parliament, the Democratic Alliance (DA), extends membership to South African citizens and permanent residents (DA 2015). However, the African National Congress (ANC), the largest and current ruling party in South Africa, opens its membership to South Africans who are 18 years or older and all other persons who identify with South Africans and reside in South Africa. Its National Executive Committee can also grant honorary membership to people outside of these requirements (ANC 2012). This latter category is quite interesting because membership presumably allows all individuals the same opportunity to hold various leadership positions in the party, including chairperson and president. Established practice suggests that those who hold such senior positions in political parties would automatically be nominated for a leadership position in the National Assembly and by extension could rise to hold a position in the country's executive leadership. However, the Constitution makes such progression impossible because if they are not citizens, members cannot represent their political party in public office, including the National Assembly or provincial and local levels of government.

This might seem insignificant, but it seems to suggest that by giving non-citizens an opportunity to take up membership and participate in party processes, political parties are



extending them a right that is not guaranteed by the constitution. Does this make such membership unconstitutional? Given that the constitution does not make specific reference to 'joining' political parties when defining citizens' political rights, this discretionary practice by political parties could be an entry point for non-South Africans, including asylum seekers and refugees, to participate in and ultimately influence political processes more directly in South Africa. This would be the case in particular if asylum seekers and refugees collectively chose to engage in a manner that sought to advance their collective interests, rather than individual ambitions and aspirations. The assumption is that the political participation and engagement would be of a constructive nature.

Although there is some level of engagement between asylum seekers, refugees and South African political parties, including active local branches of Congolese opposition political parties such as a branch of the Union for Democracy and Social Progress (UDSP) in Johannesburg, this has mainly been in the context of lobbying and advocacy around socio-political developments in the DRC. None of the refugees interviewed for this research were members or active supporters of any South African political parties, even if some did have a degree of sympathy or preference for opposition parties as opposed to the ANC. This sympathy for opposition parties might stem from or be linked to the perceived negative role played by the South African Government, and therefore the ruling ANC, in escalating and sustaining the conflict and political instability in the DRC. For instance, when asked if he was a member or supporter of any South African political party, one interview respondent said: 'no, I'm not a member of any party, but if I could, I would join the Democratic Alliance because they always hold the ANC to account in parliament' (Congolese refugee leader 4, Johannesburg 2017). These sentiments were echoed by several other respondents. Others expressed support for opposition parties, whose members sometimes participated in their protests, for example in marches against xenophobia.

### Non-formal political participation

A number of CSOs represent Congolese refugees and other categories of migrants in South Africa. Many of these allow membership and participation by citizens and non-citizens alike. In one way or another, a majority of the refugees interviewed either actively participated in or contributed to the activities of refugee associations, CSOs and grassroots movements. The objectives and activities of the various CSOs working in and for refugee communities vary but most organizations seem to offer direct assistance such as legal, physiological and psychosocial support. Other organizations focus on civil and political issues and are mainly concerned with influencing people, outcomes and processes in the DRC, using various strategies and tactics, both violent and non-violent. In addition, organizations such as the Legal Resource Centre, the Adonis Musati Project, the Scalabrini Centre, the Consortium for Refugees and Migrants in South Africa (CoRMSA), Lawyers for Human Rights, Africans Unite and various law clinics offer legal advice and litigation services to vulnerable groups, including refugees and asylum seekers (Focus group discussion 2, Congolese refugees, Johannesburg, 2017; Congolese refugee 2, Cape Town, 2017).

Considering the high level of rejected applications for asylum, it is not surprising that legal services are the most requested, and that cases usually relate to appealing and contesting decisions taken by the DHA. An interesting example is the 2015 case brought by the Scalabrini Centre, the Legal Resource Centre and Lawyers for Human Rights in the Western Cape. Working closely with leaders of the refugee community, these organizations litigated the DHA's unilateral, ungazetted decision that all asylum seeker and refugee permits can only be renewed at the place where the initial application for asylum was submitted. For refugees who have found employment and other opportunities in areas that are distant from their initial point of application, this decision often forces them to make a choice between

continued employment and valid legal status. During the interviews, one of the community leaders shared an example of a young Congolese refugee who submitted his first application in Musina but now resides in Cape Town. The 1900-km journey to renew or extend his permit cost a lot of money and also took a lot of time. Given the long delays at most DHA offices, it would be unusual for this renewal to be concluded within one week. Although the High Court found in favour of the applicants and declared the DHA's action unlawful in 2016, the Department has appealed the decision. Pending a final decision, there is an informal agreement that the refugees and asylum seekers named in the application can continue to renew their permits at the Cape Town Refugee Reception Office. In preparation for the appeal process, the legal representatives and community leaders have continued to collect the names and other details of those who are adversely affected by the DHA's decision (Congolese refugee leader 3, Johannesburg, 2017; Representative of an intergovernmental organization 2, Pretoria, 2017; Congolese refugee 2, Cape Town, 2017).

The Bill of Rights and the Regulation of Gatherings Act (1994) afford everyone the right to assemble, demonstrate and picket, as long as they are unarmed and do so peacefully. The 1994 Act also stipulates the processes and rules that need to be followed in the event of a 'gathering'—a protest of 16 or more people together in the same public space. One such rule is the need to notify the local council, which in turn must notify the local police, of the planned protest at least seven days before it is due to take place. Although this notification is not about seeking permission to exercise the right to protest, the authorities have several grounds by which they can prohibit the protest, such as possible harm to other people or their property. One of the organizations interviewed for this research alleged that the Government of South Africa has been abusing its right to prohibit protests through the Police, councils and municipalities. They cited a specific example in which they were prohibited from staging a protest against xenophobia in Pretoria, while the 'concerned residents of Mamelodi and Atteridgeville' were allowed to proceed with their anti-foreigner protest within the same time frame. The respondents shared their belief that: 'this is deliberate misapplication of the Gatherings Act, because the act does not actually require permission (from the authorities)'. This is a case of 'rights being applied in a discriminatory way to favour nationals' (Representative of an intergovernmental organization 1, Pretoria, 2017).

Notwithstanding the above, based on the interview responses, for most refugees and asylum seekers the organization of and participation in protests and marches is mainly undertaken by the more politically active individuals and civil society groups, even though there have been instances where 'apolitical' refugees and asylum seekers have joined organized protests, usually around issues that directly affect them. In the interviews conducted for this case study, several respondents cited examples of organizations like CoRMSA, which have organized marches in protest against xenophobia that were attended by both politically active and less active refugees, asylum seekers and migrants. By contrast, organizations such as the Congolese Community in the Western Cape (CCWC) and the Congolese Community in South Africa (CCSA), working alone or with others, have organized national and local protests against the political situation and recent developments in the DRC. These have targeted key strategic points such as the Embassy of the Republic of Congo, the Union Buildings, the South African Parliament and even the headquarters of political parties, including the ANC (Congolese refugee leader 3, Johannesburg, 2017; Congolese asylum seeker 2, Cape Town, 2017).

During the interviews some of the respondents recalled that, on 24 June 2017, members of the CCSA had organized a protest outside the Presidential Guesthouse in Pretoria on the occasion of President Kabila's state visit to South Africa. Some of the respondents who had participated in the protest said that the objective was to express their unhappiness with what they consider to be 'President Kabila's unconstitutional, illegal regime', and highlight their



concerns around South Africa's role and interest in sustaining the political and security situation in the DRC. This was a follow-up protest to one held at the DRC Embassy in December 2016 after elections were postponed indefinitely. That 2016 protest, which was part of a global campaign, turned violent and ultimately required police intervention to disperse the crowds. Some political activists among the refugee leaders who were interviewed for this research blamed the violence on 'infiltrators from the anti-combatants who come to the protests pretending to be protesters, in order to instigate violence among the protesters and also provoke the police, so that they ultimately discredit the organizers and the combatants in South Africa' (Congoese refugee leader 3, Johannesburg, 2017; Congoese refugee family 1, Pretoria, 2017; Focus group discussion 1, Congoese refugees, Pretoria, 2017).

Most of the respondents, regardless of whether they were politically active, expressed concerns about 'South Africa's lack of neutrality and its partial facilitative role in efforts to normalize the situation in the DRC' (Congoese asylum seeker 2, Cape Town, 2017). Two older male refugee leaders who are at the helm of refugee organizations went so far as to question 'the role and political will of the broader international community, including the United Nations, the African Union and the Southern African Development Community', which they see as 'complicit in or beneficiaries of the sustenance of the apparent deficiencies in the rule of law in the DRC' (Congoese refugee leader 1, Pretoria, 2017; Congoese refugee leader 3, Johannesburg, 2017). The South African media is also seen as partial and as favouring the current regime, or perhaps the impasse, in the DRC. This could be reflective of broader business interests from the South African perspective and beyond, not excluding the role of multinational corporations as both interested parties in and beneficiaries of the protracted conflict. South Africa provides more than 20 per cent of the DRC's imports and is involved in the country's security, energy, infrastructure development, trade and mining industries (du Plessis 2017). One male respondent in his mid-40s believed that an example of the general bias or lack of impartiality can be seen in the reaction of the Southern African Development Community and the South African Government to the outcome of the 2012 elections in the DRC. Both affirmed that the elections were free and fair, and the outcome credible and legitimate, despite statements to the contrary by national and international observers (Congoese refugee leader 1, Pretoria, 2017; Congoese refugee leader 3, Johannesburg, 2017; Focus group discussion 3, Congoese refugees and asylum seekers, Cape Town, 2017).

In addition, when the Congoese community living in Cape Town marched to parliament to protest against the outcome of the 2011 general elections (*All Cape Times* 2012), one of the respondents argued that 'the media reported that there were only 300 marchers, and yet as organizers of the march, we had more than 2000 people present' (Focus group discussion 3, Congoese refugees and asylum seekers, Cape Town, 2017). In the interviews, allegations were made that the South African Government was 'directly involved in vote rigging, including printing and transporting fraudulent ballot papers for the 2011 DRC elections' (Congoese refugee leader 1, Pretoria, 2017; Congoese asylum seeker 2, Cape Town, 2017). Respondents argued that, 'the delay in finalizing and transporting the fraudulent ballot papers resulted in a delay in the announcement of the election results', but also saw 'President Jacob Zuma prematurely send an official congratulatory note to President Kabila as the victor, a day before the Electoral Commission had announced the results' (Congoese refugee leader 1, Pretoria, 2017, Focus group discussion 3, Congoese refugees and asylum seekers, Cape Town, 2017)

Notwithstanding these concerns, the more politically inclined civil society groups and individual refugees and asylum seekers are increasingly networking and lobbying South African political parties. They mainly target opposition parties, and court the media on matters of potentially mutual interest. For instance, while they have historically had ties with

the ANC, the CCSA cite their close relationship with the Economic Freedom Fighters leadership, while the CCWC claims to work closely with the DA.

Although the rights to freedom of expression, association and protest are enshrined in the Bill of Rights, several factors hinder the exercise or expression of these freedoms, and therefore civic and political participation by refugees, and more so by asylum seekers in South Africa. Although many of the challenges are structural or systemic, some stem from social issues such as inadequate public awareness of refugee matters and the level of peace and security in Africa. As a result of these and other factors, many people have held asylum seeker status for over 10 years and are still awaiting adjudication of their applications. Given their uncertain and temporary legal status, they feel less free to express their frustrations on any matter in a way that might attract negative attention from the authorities or adversely affect their application. A practical example of this is the case of a political activist in the Western Cape who, together with his four dependants, has been a registered asylum seeker since 2006. Referring to the court action against the DHA concerning the renewal of permits at the point of application, he noted:

. . . I have consistently refused to bribe corrupt officials. I have even reported them on several occasions, but it seems as if even the people I am reporting to are also corrupt, so in the end they work together to frustrate me. That is why even when they suddenly said we need to renew our permits in Pretoria or wherever we applied for the first time, I refused. I knew they just wanted money from us. That's why I went to the lawyers to complain, and even helped the lawyers to collect more than 500 names of people who are affected by this decision.

—Congolese asylum seeker 2, Cape Town, 2017

The respondent added that he has suffered persecution, including imprisonment, for raising questions around 'South Africa's involvement in electoral fraud in the 2011 elections in DRC'.

Another respondent, who has been a recognized refugee for over 13 years, shared similar concerns, and even cited excessive use of force by the police during a December 2016 protest at the Congolese Embassy where police used teargas, rubber bullets and water to disperse the crowd, in an operation to isolate, pursue and detain him personally:

It was surprising that so many police vehicles, dogs and a helicopter were deployed just to look for me and eight other people from among hundreds of people who were there. It was very clear from this excessive force that the operation was targeted at apprehending and incarcerating us in order to justify our eventual deportation to the DRC. Unfortunately, they failed. But based on this and other incidents, I am reluctant to submit an application for permanent residence. In addition to it possibly being rejected, submitting the application could result in the withdrawal of my refugee status, and my deportation to the DRC, an act which would result in my certain death.

—Congolese refugee leader 3, Johannesburg, 2017

According to this respondent, the possibility of withdrawal of status has deterred many refugees from applying for permanent residence.

Primary among the challenges faced by refugees and asylum seekers with regard to their civic and political participation in South Africa are the attitudes and actions of host communities that are influenced by politicians, traditional leaders and other prominent



people. For instance, some critics place King Goodwill Zwelithini, the Zulu monarch, at the centre of the xenophobic violence in KwaZulu-Natal in 2015 (Ndou 2015). Apart from stating that foreign nationals must return to their countries, the King also described them as ungrateful to South Africa for hosting them and criticized what he called their audacity to complain about access to employment, documentation and other basic services. This sentiment that refugees, asylum seekers and other migrants are being 'done a favour' by host communities and South Africans in general perpetuates the negative perception of migrants and elevates South African's sense of superiority at the expense of non-nationals. As a result, most foreign nationals, especially those working and trading in the informal sector, feel unwelcome and threatened in their host communities. In addition, the constant anxiety about their legal status makes it difficult for refugees and asylum seekers to voice their concerns about conditions in their communities and their places of work.

Based on the interviews, it would appear that uncertainties around the process for renewing and extending residence permits are at the heart of barriers to participation for vulnerable migrants such as refugees and asylum seekers, especially those who are not fully aware of their rights or face communication or mobility barriers, most notably women and children. However, even those who know and demand their rights are often victimized and subjected to abuses of power by immigration officers and the police. The example was given of a local pastor, a former refugee and now a permanent resident, who has resided in the suburb of Germiston for more than 10 years. He is still randomly searched by local police officers who are quick to detain him whenever they find him without his ID, denying him the opportunity to fetch it. He claimed that he was recently arrested and detained for an entire weekend at a police station less than a kilometre from his home, where he had left his ID. He was also denied the opportunity to contact his wife to ask her to bring it to the station (Congolesse refugee family 2, Pretoria, 2017)

The above statements and the documented experiences of Congolesse refugees and asylum seekers suggest that migrants, including refugees and asylum seekers, have very little if any political space in South Africa and primarily depend on the goodwill of immigration personnel, police, councillors, mayors and other politicians for the delivery of basic services, and ultimately survival. Regardless of their personal convictions, politicians will seldom side with non-citizens over their own constituents, especially when they have to be nominated and supported by the majority of (citizen) voters to occupy leadership positions. This is confirmed by King Goodwill Zwelithini's statement that 'most government leaders do not want to speak out . . . because they are afraid of losing votes' (Ndou 2015). Unfortunately, refugees and asylum seekers do not have a vote and have to rely on organizations like the UNHCR, the International Organization for Migration (IOM), to a very limited extent due to its limited refugee mandate, and other civil society actors to lobby, advocate and raise awareness of the rights of migrants, including refugees and asylum seekers.

Host communities working in collaboration with refugees and asylum seekers can go a long way to create platforms and a positive environment for civic and political participation in host countries. This can be achieved through enhanced civil society participation and programmes that focus on building social cohesion and promoting local integration of refugees into host communities, as well as joint awareness raising, advocacy and capacity-building on the rights and responsibilities of refugees and asylum seekers targeted at government officials. Institutions of higher learning such as the University of Pretoria, the University of Cape Town and the University of the Witwatersrand are engaged in awareness raising programmes on the rights of refugees and asylum seekers, in conjunction with the UNHCR which works through implementing partners. The UNHCR, together with the IOM, CoRMSA and other NGOs, have also worked to build sustainable communities of diversity and peace, through awareness raising, capacity-building and physical activity, such as soccer and other sports. These efforts have enhanced social cohesion in communities such

as Randfontein, which are prone to public violence fuelled by xenophobic sentiments. The media has also covered stories of xenophobia and called attention to the challenges faced by migrants in South Africa, thereby increasing empathy through public awareness. Organizations such as the Agency for Refugee Education, Skills Training and Advocacy (ARESTA), the Adonis Musati Project (AMP) and the University of Cape Town on behalf of the UNHCR have also been running campaigns to build and enhance the capacity of DHA officials both within and outside of the RROs (Congolesse refugee 2, Cape Town, 2017; Focus group discussion 4, leaders of Congolesse civil society and grassroots organizations, Cape Town, 2017; Civil society organization 2, Cape Town, 2017; Focus group discussion 2, Congolesse refugees, Johannesburg, 2017).



## 4. Country-of-origin context: Democratic Republic of the Congo

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Most Congolese in South Africa maintain political bonds with their home country, perhaps most notably because South Africa's immigration laws do not facilitate their political participation in their host country (Inaka 2016). Despite the efforts of local and international actors, the DRC has witnessed violent interstate and intra-state conflict since independence (Makanda 2016). In 1998 rebels backed by Rwanda and Uganda launched a campaign to overthrow President Laurent Kabila, who was subsequently killed by a bodyguard in 2001 and replaced by his son. Joseph Kabila was sworn in as the elected president in 2006 after winning the DRC's first democratic elections in 40 years (Reuters 2008; Tonheim and Swart 2015). He was elected for a second term in 2011. The arrival of the first wave of Congolese migrants in South Africa can be traced back to the 1990s. The appointment of some of these migrants to Laurent Kabila's administration in 1997 is considered evidence of their political activity while outside the DRC (Inaka 2016). Following the ousting of President Mobutu in 1997, some of his former 'collaborators' also went into exile in South Africa and participated in the activities aimed at overthrowing Laurent Kabila.

In 2015, major public protests were held all over the DRC in reaction to proposed changes to the electoral law, in particular a clause mandating that a national census be held prior to the 2016 elections—a move seen by many as an attempt to prolong Joseph Kabila's second term and avoid having to seek a third term (Ross 2015). In a national mediation process led by the country's religious leaders, in particular the Catholic Church, the DRC's conflicting parties signed a peace agreement that committed Kabila to step down at the next elections, which were due to take place before the end of 2017 (Nyemba and Ross 2016). Since then, the UN Security Council has heard concerns that delays in holding elections and in the implementation of the 31 December 2016 agreement are 'prolonging the political uncertainty plaguing the Democratic Republic of the Congo' (UN Security Council 2017). CSOs such as the Common Cause Network have expressed their concerns to the Security Council about the deteriorating security situation and the spread of inter-communal violence and inter-ethnic clashes, exacerbated by the uncertain political situation and the failure to hold elections. In its presentation to the Security Council, the DRC Government claimed to be using all available means to implement the agreement and stated that it had already registered 12 million voters for the upcoming election (UN Security Council 2017).

## 5. Refugee diasporans' political participation in their country of origin

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### Formal political participation

Although articles 5 and 6 of the 2006 Constitution of the Democratic Republic of the Congo give Congolese nationals over the age of 18 the right to vote and form political parties, the DRC's electoral law prevents Congolese nationals living abroad from registering to vote if they are physically absent from the country during the registration process (Mobula 2016). There have been suggestions that provisions will be made to facilitate out-of-country voting (OCV) for the upcoming election scheduled for 2018, but this remains to be seen. The Consortium for Elections and Political Process Strengthening (CEPPS) has recommended that the major political parties agree on a process for resolving election-related challenges, as well as the representation of women, people with disabilities and displaced persons. It has also encouraged the government to ensure an environment conducive to fair and credible elections and respect for the rights of all actors and participants in the electoral process, presumably including the diaspora (CEPPS 2016).

None of the refugees and asylum seekers interviewed participated in the 2012 general elections in the DRC and none were registered to vote in the next general elections. Although section 21 of the South African Constitution affords everybody the right to leave the Republic, section 22 of the Refugees Act states that an asylum seeker's permit will lapse if the holder leaves the country without the consent of the Minister of Home Affairs. Asking the minister's consent to travel to their country of origin would compromise an application for asylum as it suggests that the applicant is voluntarily returning to and accepting the protection of that state. As noted above, the Government of South Africa issues recognized refugees with documents to facilitate their international travel, but the status determination process can take more than 10 years. According to section 5 of South Africa's Refugee Act, a person ceases to be a refugee if he or she voluntarily avails him or herself to the protection of the country of his or her nationality. There is therefore a general perception among refugees that returning to the DRC, regardless of the length of stay, would lead to an almost automatic revocation of their refugee status (Congolese refugee 2, Cape Town, 2017; Focus group discussion 3, Congolese refugees and asylum seekers, Cape Town, 2017).

Although the South African Travel Document (SATD) issued to refugees is valid for travel to the country of origin, returning there could be interpreted as an indication that the refugee



no longer fears persecution and has chosen to avail themselves of the protection of their home country. Furthermore, it could be argued that a refugee who travels on a Congolese passport is implying that they are availing themselves of the protection of the Congolese State because if they were to be deported, it would be to the DRC. It is quite plausible that either of these actions could serve as a basis for withdrawal of refugee status. Fear of persecution and of possible loss of refugee status if they return to the DRC have served as major deterrents for the refugees interviewed. Other respondents were also unable to travel because they did not have a valid SATD, mainly due to the lengthy delays in issuing them. Two respondents in the Western Cape believed that 'it would be better if the ID and the SATD were issued at the same time because sometimes, by the time you get the ID, it is already time to renew the Permit, which means there is no way you can still get the passport' (Congolese refugee organization 1, Cape Town, 2017; Congolese refugee 2, Cape Town, 2017).

### Non-formal political participation

Outside of participation in formal electoral processes, there are many politically active refugees and asylum seekers in the Congolese community in South Africa. In addition to participation in formal structures, such as the Johannesburg branch of the UDPS, where recommendations and decisions are made and forwarded for consideration and endorsement to the party's headquarters in the DRC, others participate in political activism. Many left the DRC because of the conflict or because they were being persecuted for their political beliefs. They are therefore naturally more inclined to support and mobilize support on behalf of the political opposition. As noted above, this is the broad movement referred to as the combatants, whereas government supporters and representatives are seen as the anti-combatants. From the interviews conducted for this case study, it is clear that the combatants are not a homogenous or united group, mainly because they differ over the strategies and tactics that will be effective in dislodging Kabila. The more radicalized members of the group believe in armed struggle and think that sustained armed attacks on the government, and its representatives and supporters, especially in host countries, will enhance the pressure. Others strongly oppose the idea of a violent struggle and want instead to focus on advocacy and diplomacy, seeking international support to put pressure on Kabila to step down. In the middle there is a small group that believes that it would be better to adopt an approach that combines both tactics.

These differences have led formerly active supporters of the combatants' movement to withdraw from participation in its activities in an effort to distance themselves from a number of violent attacks on fellow Congolese living in South Africa, as well as Ministers and others known to be close to Kabila and his regime who used to frequent South Africa's major cities for shopping and other leisure activities. In their view, the violent actions of their colleagues are criminal acts that also undermine the rule of law in South Africa. In the interviews, several respondents claimed that 'there are some "fake refugees and asylum seekers" in South Africa who are working undercover and spying on the Congolese diaspora community on behalf of the DRC Government' (Congolese asylum seeker 2, Cape Town, 2017). Another respondent, a senior pastor and recognized refugee, referring to violent confrontations, said he was 'quite happy with how these agents are being sorted out by the younger members of the combatants' (Congolese refugee family 1, Pretoria, 2017). This sentiment is shared by groups such as the Congolese Diaspora for Nelson Mandela Legacy (CDFNML), which in a public statement has said that it is willing to take up arms against the DRC Government and will mobilize people to take up arms (Koko 2016). The CDFNML is also mobilizing Congolese nationals based in South Africa to return home to contribute to efforts to change the country's political climate.

Similar calls have been made by other organizations, such as the National Council of Congolese for Development, which, in addition to having direct links to opposition parties active in the DRC, has a large following among the Congolese diaspora—especially in Gauteng Province. As part of its activism, many of the leaders of refugee groups have strong links with and even hold senior positions in opposition parties in the DRC. Technological advances have made communications platforms easily accessible, enabling group leaders to keep abreast of developments in the DRC and participate in the strategic discussions and decisions of their political party, almost as if they were physically present. Some have found illicit ways to participate in person when the occasion demands. From the interviews, it seems that the more radicalized diaspora groups believe that their resort to violence is justified as they have few other options. One of the leaders in Germiston told how: ‘we are planning to shut down the DRC Embassy in Pretoria: we have nothing to lose and Kabila is not willing to give up power voluntarily’ (Congolese refugee leader 3, Johannesburg, 2017). Some of their actions could be in violation of South Africa’s Regulation of Foreign Military Assistance Act of 1998, which regulates the provision of foreign military assistance from within South Africa’s borders by South African and foreign citizens.

*Congo Square News* publishes a community newspaper in the Western Cape and works in the media space to share information on and raise awareness of various matters of interest to the Congolese population, including current and political affairs. In addition to a newspaper, it also organizes and covers press conferences, community meetings and other activities convened by prominent opposition leaders and political actors in the DRC (*Congo Square News* 2016). It therefore plays an important role in linking up members of the diaspora community and keeping them abreast of developments in their home country. It is also involved in efforts to unify and organize Congolese people living in the Western Cape so that they speak with one voice and unite their efforts to contribute to peacebuilding in the DRC. For instance, at the time of the interviews, it was working with an organization called Congolese Community (COMCongo) to organize a meeting between a prominent member of Congo’s Electoral Commission and the Congolese diaspora in the Western Cape. Among the issues to be discussed was the possibility of diaspora voting in the next DRC general elections. Both COMCongo and *Congo Square News* work closely with churches and other faith-based organizations, including women’s groups within the church, to offer support to the Congolese refugee and asylum seeker community. For example, they worked with the Woodstock Baptist Church to open a Refugee Centre in the church that will provide legal and material support to refugees and asylum seekers (Civil society organization 1, Cape Town, 2017; Focus group discussion 4, leaders of Congolese civil society and grassroots organizations, Cape Town, 2017).

Furthermore, in order to enhance social cohesion, COMCongo is planning to build a strategic relationship with the Confederation of South African Trade Unions, the biggest trade union in South Africa which has millions of members and considerable political influence. COMCongo hopes this partnership will help to build bridges between refugees, asylum seekers and their host communities. More specifically, ComCongo operates as an umbrella body in the Western Cape, linking and coordinating the activities of Congolese CSOs as well as grassroots movements that address social welfare issues in communities. ComCongo organizes its members into sectors, such as immigration, good governance, media and communication, employment, skills and capacity, and climate change and the environment. According to the Organization’s leadership, its objective is to unite civil society actors behind a common vision and spread unity across the Western Cape, the country and ultimately the Southern Africa region. The group’s outreach and recruitment strategy involves having a representative in every ward or municipality with a large Congolese community. This has helped it to identify and interact with female leaders in different sectors and communities, in order to help them to enhance their capacity and skills (Focus group



discussion 4, leaders of Congolese civil society and grassroots organizations, Cape Town, 2017).

Broadly speaking and based on the field experience gained during the interview process, it would appear that there are very few women activists at the forefront of the political activism in the Congolese refugee and asylum seeker communities in South Africa. The male activists interviewed mentioned the names of female fellow activists, but there were certainly fewer than five in Gauteng and the Western Cape combined. Interestingly, those mentioned were invited to the focus group but the two who responded positively withdrew at the last minute citing family and parental responsibilities. The female respondents who participated did so in their capacities as spouses of the male respondents or members of the same NGO. They were generally not involved in political activism. The posture and attitudes of the majority of male respondents suggest that, in this community, political issues are dealt with by men, who are seen as the head of the household, while women are responsible for child rearing and looking after the home.

## 6. Conclusion and recommendations

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South Africa's policy framework on the protection of asylum seekers and refugees seeks to promote their access to basic and civil rights, primarily by fostering local integration and access to livelihood opportunities. Although the constitution guarantees the same civic rights to everyone, electoral and citizenship rights are reserved for South African citizens. The constitution's silence on the right to join a political party, however, has left a door open to political participation by non-citizens. Perhaps surprisingly, this door is little used and hardly spoken about. This may be because the rights to vote or stand for public office are not extended to non-citizens, and this makes non-citizen political party membership unappealing for both the political party and the potential member when it comes to the all-important process of elections. Nonetheless, for refugees and asylum seekers, even though it may not offer the opportunity to stand for public office, political party membership could be a platform from which to influence political discourse, and parties' decision-making and positions on issues of public interest, especially at the local level. Based on the interviews with refugees and asylum seekers, the main challenges they face with regard to their civic and political participation in South Africa are related to lengthy status determination and adjudication processes, access to documentation that allows them to live and work in South Africa in a state of normalcy, and the fear of having their refugee status revoked if they openly engage in political activities. Despite the many challenges they face, some Congolese refugees and asylum seekers use their universal rights to freedom and equality as vehicles for political participation. Through their participation in different structures, from the grassroots level up, and use of technology that offers them access to international platforms through social media, they are able to remain engaged in political processes. Through their constitutionally guaranteed right to protest, they are able to convene at key strategic points to express their political concerns and demands, and to raise awareness and garner public support on certain issues.

With respect to political participation in their country of origin, opportunities for participation as voters or candidates are limited, given the lack of legal provisions for OCV and the requirement to be in the country of origin in order to register to vote. Given their travel limitations, particularly in relation to return to the DRC, refugees and asylum seekers are unable to participate in elections in the DRC without placing their legal status in South Africa at risk. For some, especially supporters or members of opposition political parties, it is easier to remain involved through the local branches of Congolese political parties that have been established in South Africa. In addition to the more visible forms of protest, some refugee groups are engaging with the media and using diplomacy as a tool to engage with



stakeholders they believe might be able to influence outcomes in the DRC. They write letters and also try to engage with influential individuals in an effort to share ‘the real picture’ of what is going on in the DRC. To a large extent, most of the refugee leaders interviewed for this research are looking forward to their return to a post-conflict DRC where they expect to play a leadership role in the reconstruction process.

Looking ahead, some improvements can certainly be made to enhance refugees’ and asylum seekers’ civic and political participation in South Africa and the DRC, as host country and country of origin, respectively.

## Recommendations

### For the host country

- The Government and decision-makers in South Africa should conduct consultations with leaders of refugee and asylum seeker organizations and wider civil society prior to amending any processes related to the assessment of asylum applications. As affected parties, refugees and asylum seekers should be able to participate in decision-making, and represent and get buy-in from their constituencies, which would then be more likely to comply.
- The Government and decision-makers in South Africa should consider the issuance of special travel documents for asylum seekers, and allow international travel if adjudication of an application exceeds a defined maximum period, such as 24 months. In the absence of provisions on OCV in DRC, such a document could carry special provisions for holders to return to their country of origin to vote in general elections without risking their refugee status.
- Local government and municipal authorities should create formal, structured platforms for engaging with non-citizens, including refugees and asylum seekers living in South Africa, perhaps through the establishment of migration desks in local and provincial government structures, responsible for liaising with migrants’ organizations and ensuring that their interests and concerns are factored into government planning and programming.
- Political parties in South Africa should develop strategies and platforms for engaging with refugee and migrant groups in order to promote social cohesion, build solidarity and enhance relations between refugees and native-born South Africans.
- Civil society organizations in South Africa should work with refugees and asylum seekers to inform host communities on refugee matters and implement programmes that enhance social cohesion and dialogue between refugees and the host communities.

### For the country of origin

- The Government and decision-makers in the DRC should explore means to facilitate OCV, especially in presidential elections. Due consideration should be paid to issues of transparency, legitimacy and credibility to ensure the sustainability of electoral outcomes.
- The Congolese Government and political parties should work with civil society and other stakeholders to reach out to Congolese in the diaspora so they can contribute to the country’s democratic development in a more structured manner.

- Congolese diaspora and civil society should work together to engage in voter and civic education for refugees and asylum seekers.
- Congolese diaspora organizations and civil society should undertake joint advocacy initiatives on OCV and promotion of the rule of law, good governance and democracy in the DRC.
- Congolese refugees and asylum seekers should use technology to build networks with other diaspora groups and partner with civil society on the ground to add value and contribute to awareness raising and capacity building.



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## Annex. Glossary of terms

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### Asylum

A form of protection given by a state on its territory based on internationally or nationally recognized refugee rights. It is granted to a person who is unable to seek protection in her or his country of nationality and/or residence, in particular for fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.

### Asylum seeker

A person who seeks safety from persecution or serious harm in a country other than her or his own and is awaiting a decision on an application for refugee status under relevant international and national instruments.

### Country of origin

A country from which people leave to settle abroad permanently or temporarily (IOM 2011).

### Diaspora

A group of individuals (and members of networks, associations and communities) who have left their country of origin but maintain links with their homeland. This concept covers more settled communities, migrant workers based abroad temporarily, expatriates with the nationality of the host country, dual nationals, and second- and third-generation migrants.

### Formal political participation

For the purposes of this research, formal political participation is understood as participation in decision-making through formal democratic institutions and processes such as national and local elections, referendums, political parties and parliaments.

### Host country

The country where a refugee is settled. In the case of asylum seekers, the country where a person has applied for asylum.

### Internally displaced person

A person who has been forced or obliged to flee or to leave their home or places of habitual residence, in particular because of (or in order to avoid) the effects of armed conflict, situations of generalized violence, violations of human rights, or natural or human-induced

disasters, but who has not crossed an internationally recognized state border (United Nations Economic and Social Council, Commission on Human Rights 1998).

#### Migrant

Any person who is moving or has moved across an international border or within a state away from her/his habitual place of residence, regardless of (a) the person's legal status; (b) whether the movement is voluntary or involuntary; (c) what the causes for the movement are; or (d) what the length of the stay is (IOM 2011).

#### Naturalization

Granting by a state of its nationality to a non-national through a formal act on the application of the individual concerned (IOM 2011).

#### Non-formal political participation

For the purposes of this research, non-formal political participation is understood as participation in political affairs through non-formal means, such as civil society organizations, trade unions, consultative bodies, community organizations, grassroots movements and so on.

#### Refugee

'A person who, owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinions, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country' (Refugee Convention, article 1A(2), 1951). In addition, article 1(2) of the 1969 Organization of African Unity Convention defines a refugee as any person compelled to leave her or his country 'owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality'. Similarly, the 1984 Cartagena Declaration states that refugees also include persons who flee their country 'because their lives, security or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violations of human rights or other circumstances which have seriously disturbed public order' (IOM 2011).

#### Resettlement

The transfer of refugees from the country in which they have sought refuge to another state that has agreed to admit them (IOM 2011).

#### Transnationalism

The process whereby people establish and maintain socio-cultural connections across geopolitical borders (IOM 2011).



## About the authors

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**Mukondeleli Mpeiwa** is a young professional diplomat with over ten years of experience in fields such as international finance and development, disaster management, international migration management, and peace and security. She has a keen interest in human rights and humanitarian support work, especially in the African context. She completed her undergraduate studies in international relations at the University of Pretoria, and postgraduate studies in international relations and diplomacy at the University of South Africa. She has worked in the South African public service, at the United Nations and for other international organizations, and has served as a training expert, content developer and multidisciplinary analyst, as well as a capacity-building trainer at the community and grassroots levels.

**Lina Antara** is a democracy support professional with a keen interest in electoral processes and human rights. She has worked as a Programme Officer at International IDEA since 2015, focusing on projects related to the political inclusion of marginalized groups. Previously, she worked with International IDEA's electoral support project in Myanmar, and with the Electoral Processes Programme conducting research for the Electoral Justice Database and the ACE Electoral Knowledge Network. Prior to this, she worked for the Court of Justice of the European Union and the European Parliament in Luxembourg. She also served as an election observer with the Organization of American States in Panama in 2014 and with the European Union in Liberia in 2017. She holds a master's degree in European law from the University of Luxembourg, a postgraduate degree in international election observation and electoral assistance from the University of the Basque Country, and a bachelor's degree in law from the Aristotle University of Thessaloniki.

## About the Refugees, Asylum Seekers and Democracy project

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Refugees have the potential to make an impact on the political life of both their host countries and their countries of origin, as they often maintain transnational links with their homelands while at the same time becoming part of their host society. Recognizing the dual role of refugees as political actors, the Refugees, Asylum Seekers and Democracy project aims to explore the challenges and opportunities related to the political participation of refugees in their host countries and countries of origin.

Among the formal mechanisms for political participation, the project explores issues of access to citizenship in host countries, electoral rights in both host countries and countries of origin, and membership or other forms of support to political parties. In addition, acknowledging that political life is not only confined to electoral processes, the project examines non-formal mechanisms for political participation, including refugees' participation in consultative bodies, civil society organizations, protests and grassroots initiatives, and other means of transnational political activism.

In 2018 the project produced a report, *Political Participation of Refugees: Bridging the Gaps*, which draws on eight case studies carried out through interviews and focus group discussions with refugees and key informants in host countries with high numbers of refugees. It offers cross-country insights into the experiences of refugee communities originating from five of the largest source countries.

The Refugees, Asylum Seekers and Democracy project was made possible by funding from the Robert Bosch Stiftung.

Download the case studies and the full report:  
<<https://www.idea.int/our-work/what-we-do/migration-democracy>>

## About International IDEA

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The International Institute for Democracy and Electoral Assistance (International IDEA) is an intergovernmental organization with the mission to advance democracy worldwide, as a universal human aspiration and enabler of sustainable development. We do this by supporting the building, strengthening and safeguarding of democratic political institutions and processes at all levels. Our vision is a world in which democratic processes, actors and institutions are inclusive and accountable and deliver sustainable development to all.

### What do we do?

In our work we focus on three main impact areas: electoral processes; constitution-building processes; and political participation and representation. The themes of gender and inclusion, conflict sensitivity and sustainable development are mainstreamed across all our areas of work.

International IDEA provides analyses of global and regional democratic trends; produces comparative knowledge on good international democratic practices; offers technical assistance and capacity-building on democratic reform to actors engaged in democratic processes; and convenes dialogue on issues relevant to the public debate on democracy and democracy building.

### Where do we work?

Our headquarters is located in Stockholm, and we have regional and country offices in Africa, the Asia-Pacific, Europe and Latin America and the Caribbean. International IDEA is a Permanent Observer to the United Nations and is accredited to European Union institutions.

<<http://www.idea.int>>

Drawing on individual perspectives of Congolese refugees based in South Africa, this case study explores the formal and non-formal political participation of refugees and asylum seekers in their host country and the ways in which they are able to participate in peacebuilding and democracy-building in their countries of origin.

Among the formal mechanisms for political participation, the case study explores issues of access to citizenship in the host country, electoral rights in both the host country and countries of origin, and membership or other forms of support to political parties. In addition, it examines non-formal mechanisms for political participation, including refugees' participation in consultative bodies, civil society organizations, protests and grassroots initiatives, and other means of transnational political activism.

This case study is part of the Refugees, Asylum Seekers and Democracy project and has informed the development of a longer report, *Political Participation of Refugees: Bridging the Gaps*, published by International IDEA in 2018.