SCHOOL OF SOCIAL SCIENCES

Discipline: Conflict, Transformation and Peace Studies

Cluster: International Public Affairs

The implementation of the Refugee Act 130 of 1998 in South Africa and the question of the social exclusion of forced migrants; A case Study of DRC forced migrants in Pietermaritzburg.

Sikanyiso Masuku

216076291

Supervisor: Dr. Sharmla Rama

Submitted in fulfilment of the requirements for the degree of Doctor of Philosophy in the Postgraduate programme in Conflict, Transformation and Peace Studies

to

College of Humanities, School of Social Sciences

Pietermaritzburg Campus
University of KwaZulu-Natal

June 2018

Declaration

Submitted in fulfilment of the requirements for the degree of Doctor of Philosophy, in the Graduate Programme in Conflict, Transformation and Peace Studies, University of KwaZulu-Natal, Pietermaritzburg, South Africa.

I, Sikanyiso Masuku, declare that

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Sikanyiso Masuku

Student Name

28/06/2018

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DR SHARMLA RAMA

Name of Supervisor

SRama

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Acknowledgements

I would like to thank my saviour and creator for providing me with the strength and courage to not only embark on a Doctoral program but to tirelessly strive towards the timely completion of this academic work. In cognisance of the many challenges along the way, I believe that without God I wouldn't have made it this far. I also thank my entire family, particularly my sister Sikhumbuzo, my mother Constance Msiza and my father Simon Msiza for their unwavering faith in me and the tremendous support they have continuously shown in all aspects of my life.

I also like to thank my supervisor Dr. Sharmla Rama, who accepts nothing but perfection and hard work from her students. As my supervisor she helped me develop a good work ethic, perseverance and focus which helped me grow as a researcher and academic. Her constructive criticism of my academic work largely benefitted me and helped propel me through an otherwise arduous academic undertaking.

To the many colleagues I met along the way, many of whom became my mentors, I would also like to thank them. Through their valid input, insightful contributions and encouragement my research work greatly benefitted.

Lastly, I am deeply indebted to the Congolese community in Pietermaritzburg. Their willingness to foreground and share their many personal struggles and lives aspirations helped develop this academic work. May the many challenges facing all those who are displaced, vulnerable and excluded throughout the world be addressed and may their silent cries find a voice.

> *When a stranger sojourns with you in your land, you shall not do him wrong. You shall treat the stranger who sojourns with you as the native amongst you, and you shall love him as yourself, for you were strangers in the land of Egypt…Leviticus 19:33-34*

Abstract

The 1951 Geneva Convention Relating to the Status of Refugees refers to the concept 'forced migrants' as victims of coerced movement. In South Africa, the Refugee Act 130 of 1998 entitles all forced migrants the right to access education, employment and other social and economic services. However, forced migrants in the country remain socially excluded and continuously fall outside networks of controlled association. This study examines the underlying barriers in the enactment of the Refugee Act 130 of 1998. The central focus is the interplay between social exclusion and forced migrants failure to access their legal rights. The study offers an exploratory examination of social exclusion (a predominantly Eurocentric concept), within the context of the developing world while paying particular attention to the effects of social exclusion against forced migrants. A case study approach was adopted in the research along with an interpretive research paradigm. A non-probability sampling technique (expert sampling and homogeneous sampling) was then used to select the study participants; Democratic Republic of Congo (DRC) forced migrants and civil society members. Participants were grouped to participate in the focus-group discussion (One FGD – eight participants), two participated in the life history and three in the in-depth interviews.

The data was then analysed using thematic content analysis. Murphy's theory of Social Closure (monopolization and exclusion) underpinned the analysis of the study. The multidimensionality of social exclusion, namely; the primary cultural as well as structural agentive processes of exclusion were examined in the study. The findings from the study show that a range of multidimensional factors influence the degree of social closure, prejudice, opportunity hoarding and institutional biases confronting forced migrants. As a result, Congolese forced migrants have been inhibited from accessing a host of legal entitlements in the country. Poor collaboration between the state and civil society, inadequate refugee rights education initiatives as well as bureaucratic challenges within the South African refugee appeal system were identified in the study as contributing to these challenges. The findings suggested how a capability based approach may facilitate forced migrants social

inclusion, cohesion and their access to a spectrum of commodity bundles, civil rights and other necessaries enshrined by law. This study therefore makes a significant contribution to the body of knowledge by establishing the link between social exclusion and the deprivations confronting forced migrant populations.

Key Words: Forced migration, DRC, social exclusion, refugee policy, human rights, South Africa

List of Abbreviations and Acronyms

AFDL	Alliance of Democratic Forces for the Liberation of Congo
BPETR	Bureau for the Placement, Education and Training of Refugees
CRA	Congolese Refugees Association
DHA	Department of Home Affairs
DRC	Democratic Republic of Congo
FBO	Faith Based Organisation
FGDs	Focus Group Discussions
FMO	Forced Migration Online
HRE	Human Rights Education
HRW	Human Rights Watch
IASFM	International Association for the Study of Forced Migration
ICCRP	International Covenant on Civil and Political Rights
ICESR	International Covenant on Economic, Social and Cultural Rights
IDPs	Internally Displaced Persons
IRC	International Rescue Committee
KZNCC	KwaZulu Natal Christian Council
LHR	Lawyers for Human Rights

MLC	Movement for the Liberation of the Congo
MONUC	United Nations Observer Mission in the Democratic Republic of Congo
MUD	Moral Underclass Discourse
NEPAD	New Economic Partnership for Development
NGOs	Non-Governmental Organisations
NSFAS	National Student Financial Aid Scheme
OAU	Organisation of African Unity
RCD	Congolese Rally for Democracy
RDP	Reconstruction and Development Program
RED	Redistributive Discourse
RRO	Refugee Reception Office
RSDO	Refugee Status Determination Officer
SAPS	South African Police Services
SADC	Southern African Development Committee
SASSA	South African Social Security Agencies
SAMP	Southern African Migration Program
SGBV	Sexual and Gender Based Violence

SID	Social Integration Discourse
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UDHR	Universal Declaration of Human Rights
WFP	World Food Program

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CHAPTER 1: INTRODUCTION AND BACKGROUND

1.1 INTRODUCTION

This study examines the social exclusion of forced migrants within refugee receiving states. It therefore focuses on the victims of coerced migration from the Democratic Republic of Congo (DRC), settled in South Africa. The study analyses how the legal framework governing forced migrants` rights and social cohesion as enshrined in the Refugee Act 130 of 1998, have been implemented in South Africa. In conceptualising forced migrants` social exclusion in the country, this study examines various frameworks on social exclusion. Such frameworks speak to the preclusion of poverty, extension of rights, availing of employment opportunities and so forth, as panaceas in deterring social exclusion (Levitas, 2004). Informed by these frameworks, the study proceeds from the hypothesis that the Refugee Act 130 of 1998 is not exclusionary in itself. The Refugee Act 130 of 1998 is observed by this study as appropriately guaranteeing forced migrants` entitlements to healthcare, education, employment, legal protection, housing, documentation and so forth (Regulation 27 G, Regulation 27 F, Regulation 27 B, Regulation 27 D and 29). However, the study also acknowledges Congolese forced migrants` challenges in converting these inclusive tenets into effective protections (Peberdy and Majodina, 2000; Klaaren and Ramji, 2001; Palmary, 2003; Bahamjee and Klaaren, 2004; Landau, 2006; Buckland, 2011). In examining the causes of these challenges, the study conceptualises them as originating from the limitations in fully implementing the South African refugee policy framework.

In determining the prevalence of social exclusion amongst Congolese forced migrants, the study is partially informed by Sen`s (1983), 'capabilities' approach in identifying deprivations or impediments to Congolese forced migrants` realisation of certain 'functioning' vectors. The notion of individuals` 'capabilities' refers to the opportunities to achieve valuable functioning's in society and the nation at large (Sen, 1992 cited in Bhalla, and Lapeyre, 1997: p.416; Sen, 2000: p.5). The study therefore examines social exclusion as a manifest phenomenon amongst Congolese forced migrant groups in South Africa. Forced migrants` social exclusion, is also seen as emanating from when they are denied participation

in specific areas of activity (functioning's). These specific areas of activity are also observed by the study as indispensable towards fostering integration and social cohesion.

The said areas of activity correspond with the fundamental preservation of universal human rights and have to do with the aversion of poverty, extension of rights, employment opportunities and so forth (Burchardt et al, 2002; Levitas, 2004; Bourdieu, 1986 cited in Cederberg, 2012: p.61). In assessing forced migrants social exclusion, this study qualitatively examines what Smith (1996 cited in Sen, 2000: p.7) referred to as 'necessaries', which the author demarcated to mean those commodities which are indispensably necessary for the support of human life. The study thus focuses on forced migrants access to healthcare, education, employment, legal protection, housing and documentation as articulated in the Refugee Act 130 of 1998 (respectively, Regulation 27 G, Regulation 27 F, Regulation 27 B, Regulation 27 D and 29).

This study observes the limitations and impediments in the implementation of the Refugee Act 130 of 1998, as the cause for what has been described as a deplorable state of social wellbeing for forced migrants in South Africa (Klaaren and Ramji, 2001; Palmary, 2003; Bahamjee and Klaaren, 2004; Landau, 2004; Amisi and Ballard, 2005; Landau, 2006; Buckland 2011; Bwalya, 2012 cited in Namukaso, 2015: p.18). It is in support of this view that Rutinwa (2002) submits that in South Africa, public opinion towards migrants has negatively influenced the implementation of refugee policy. This is mostly discernible through the perennial xenophobic violence in the country which is a clear testament of some South African citizens` detestation of both forced and voluntary migrants. This particular research is also carried out at a point and time when South Africa is experiencing serious socio-economic challenges, with an ever increasing poverty prevalence rate (52.3 % of South Africans were living below the poverty datum line of ZAR577 or $72 per person per month in 2015) (Scorgie et al, 2015: p.2). Baldry (2016: p.791), concurs and argues that the country`s unemployment rate is also significantly high (29.1% for black South Africans and 48.9% amongst the 15–24 age group), especially amongst the previously underprivileged groups. Such socio-economic challenges can thus be interpreted as having contributed to the

rise in racial intolerance and ultra-nationalistic sentiments channeled against migrants in the country (Crush et al, 2013).

1.2 STUDY RATIONALE

According to Bhalla and Lapeyre (1997: p.414), despite issues of certain social groups disfranchisement, poverty and exclusion being prominent within the developing states of Asia, Africa, Latin America and so forth, social exclusion as a concept has not gained as much focus. This study is thus rationalised by how there has not been a compelling activity in the area of research with regards to social exclusion in the developing world (Saunders et al, 2008; Popay, 2010; Khan et al, 2015). This is despite the clear existence of this phenomenon particularly within African states and its negative effects discernible through a lack of social cohesion, social deprivations and the proliferation of inequities (Tilly, 1998; Du Toit, 2004; Adato, 2006; Chigona et al, 2009; Landau and Freemantle, 2010; Lucas, 2011; Hungwe, 2013). Internationally, efforts have also been made in recognising the unpropitious effects of social exclusion. This has been exemplified by the 1995 International Institute of Labour Studies (Geneva) recommendations on how social cohesion should be regarded as one of the main dimensions of development in Europe (Rodgers et al, 1995). Throughout such developments, Africa has nonetheless trailed behind. In their studies on the importance of globalising the concept of social exclusion, scholars such as Faria (1994, 1995 cited in Bhalla, and Lapeyre, 1997: p.421) argue that:

> "A plea for making exclusion a global concept is based on the assumption that the analytical concepts and categories are universal even if their operationalisation in specific social and cultural contexts may be different…it helps in organising different, loosely connected notions such as poverty, the lack of access to goods and services and the absence of social and political rights into a general framework."

Furthermore, focus on the prevalence of social exclusion amongst forced migrants in the study as opposed to other risks and negative externalities such as poverty, was considered essential. This was in recognition of how the concept of social exclusion focuses on the central aspects of deprivation that are equally relevant for analysis as they are

"multidimensional and part and parcel of social relations" (De Haan, 1999: p.1). Additionally, statistics identifying South Africa as the continents` largest asylum seeker destination further rationalised the validity of the study in examining the exclusionary challenges facing forced migrants in the country. By the year 2004, South Africa, was the largest asylum seeker destination globally, receiving 21% of all asylum claims with the majority being from neighbouring and regional states (Manicom and Mullagee, 2010). Challenges related to the exclusion and lack of social cohesion amongst South Africa`s migrant groups (both forced and voluntary) is corroborated by a 2011 post xenophobic violence report by the United Nations Human Rights Council (UNHCR). Prepared after an official visit to document the situation of both voluntary and forced migrants by Jorge Bustamante (United Nations special rapporteur on the human rights of migrants), the report made several recommendations. These included encouraging the South African government to treat the social integration and protection of all migrants` human rights as an essential feature of their immigration policy. The government was also encouraged to prioritise the adoption of measures to make such integration and social cohesion a reality (Bustamante, 2011).

This particular study is also validated by its view of the limitations in the implementation of the Refugee Act 130 of 1998, as the chief cause of forced migrants` state of social exclusion in South Africa. In the same vein, the implementation failures of the Refugee Act 130 of 1998 are observed as partly emanating, from the precarious state of social exclusion that Congolese forced migrants are subject. This has then degenerated into a self-perpetuating cycle, whereby the limitations in implementing the Refugee Act 130 of 1998 have resulted in a denial of forced migrants` human rights. As a consequence, forced migrants have succumbed to social exclusion and vulnerability. In examining the pervasiveness of social exclusion amongst Congolese forced migrants in South Africa, this study investigates the impediments to a successful refugee policy implementation. This is in recognition of how forced migrants inability to convert their legal rights as enshrined in the Refugee Act 130 of 1998, is an issue of concern and a primary cause of inequality.

The rationale of the research is also built on how it recognises and examines the importance and specific roles non-governmental organisations (NGOs) and faith based organisations (FBOs) play in the implementation of the Refugee Act 130 of 1998. These institutions, are also identified by the study as pivotal in the facilitation of Congolese forced migrants` social inclusion and social cohesion within South Africa. Globally since the Brundtland Commission of 1987, non-governmental organisations have operated as custodians of civil liberties and command a wider access to foreign aid than the respective governments from where they operate. Their international relevance and legitimacy is well imbedded in their recognition by institutions such as the United Nations, European Union, African Union as well as other multinational organisations. This study is therefore cognisant of how non-state players are indispensable stakeholders to government in policy implementation (Bebbington et al, 2008; Dongier et al, 2013).

In that regard, this study carries out an examination of civil society`s specific role in securing forced migrants` social protection in South Africa as well as the existing level of rapport between civil society and Congolese forced migrant groups in the country. Such an examination is done towards the formulation of panaceas against the various primary-cultural and structural factors perpetuating forced migrants` social exclusion in South Africa (Makhema, 2009; Khan et al, 2015).

1.3 RESEARCH PROBLEM

The study proceeds from the hypothesis that in South Africa, Congolese forced migrants` failure to convert their legal entitlements (as enshrined in the Refugee Act 130 of 1998), into effective protection and benefits (Landau, 2006; Moret et al, 2006), emanates from two negative externalities. The study conceptualises these negative externalities as being discernible through social deprivations and a state of social closure confronting Congolese forced migrant groups. Social exclusion, is conceptualised in the study as being both a cause and catalyst of forced migrant groups` inability to access social protection and their legal rights as enshrined within the Refugee Act 130 of 1998.

Congolese forced migrants fleeing conflict and political persecution in their home country are faced with considerable hardships in South Africa. These hardships are discernible through xenophobia, scant livelihood opportunities, poor provision of legal documents and an inadequate access to health services and education (Bahamjee and Klaaren, 2004; Amisi and Ballard, 2005). According to Sen (2000), when employment opportunities are scarce, minorities within society are usually the most affected. This inadvertently weakens their prospects of easy integration into the social life. Furthermore, Sen (2000: p.21) also explains that due to how "immigrants are often seen as people competing for employment, unemployment feeds the politics of intolerance and racism." In South Africa, both voluntary and forced migrants are generally perceived as threats to the country`s socio-economic homeostasis, with most problems ranging from unemployment, drugs, HIV and AIDS, crime, prostitution and so forth being blamed on them. The exclusionary public opinions and behaviour in South Africa, have adversely hampered the implementation and realisation of progressive refugee policies such as the Refugee Act 130 of 1998 (Moret et al, 2006; Crush et al, 2013).

Xenophobic and exclusionary predilections have also been considerable challenges for Congolese forced migrants in South Africa. Although much of the media focus has been on the violent forms of xenophobia in the country (Bahamjee and Klaaren, 2004; Konanani and Odeku, 2013; Crush, 2013: p.12), both forced and voluntary migrants, have been victims of institutionalised xenophobia as well as other latent forms of exclusion and social closure. Also, upon entry into South Africa, Congolese forced migrants are exposed to the risks often associated with the country`s free settlement system. Within the refugee free settlement model, forced migrants are often exposed to the xenophobic, unruly and exclusionary actions of the public service staff as well as host communities (Handmaker and Parsley, 2001; Nyaoro, 2010: p.127). According to Bwalya (2012 cited in Hungwe, 2013: p.6), "a major challenge affecting forced migrants in South Africa is the contradiction of a society with a constitution favourable to forced migrants but is not willing to observe the framework." Through 'medical xenophobia', (Crush and Tawodzera cited in Hungwe, 2013: p.6), and other similar means through which service exclusion is perpetrated, Congolese forced

migrants find themselves socially excluded in South Africa. Conditions of social closure inhibit forced migrants` access to social protection rights and other 'necessaries' (Smith, 1996 cited in Sen, 2000: p.7), as guaranteed in Regulation 27 (G) of the Refugee Act 130 of 1998.

Delays in processing asylum applications and documentation for forced migrants also subject them to prolonged insecurity and social disenfranchisement. Such insecurity and social exclusion emanates from an inability to access work or education, confining forced migrants to the peripheries of society (Human Rights Watch, 2013 cited in Manicom, 2010: p.176). Without access to social assistance and economic participation, asylum seekers find themselves in a situation of 'enforced destitution', where they are denied the ability to survive legally (Cholewinski, 1998 cited in Handmaker and Parsley, 2001: p.44). Many Congolese forced migrants, despite having been in South Africa for over ten years, are yet to receive their Section 22 permits. As a result, they are not only socially ostracised but unable to legitimately access work, education, healthcare and other social protections (Namukaso, 2015). In South Africa, due to the said structural as well as primary cultural factors, Congolese forced migrants continually find themselves socially excluded. As a result of such closure, forced migrants have been forced to rely on what Amisi and Ballard (2005:p.2) term 'ethnic networks', as a coping mechanism against the inaccessibility of mainstream social, economic and political spheres.

In conceptualising social exclusion, scholars such as Duffy (1995), recognise it as encompassing not only low material means but the entire process by which individuals are denied social protection rights. These rights are identified by the study as prerequisites in securing full access to the opportunities and resources fundamental for social integration and inclusion. In South Africa this injustice has effectively manifested itself through forced migrants` failure to access documentation, shelter, employment, legal protection and social services (Handmaker, 2001; Bahamjee and Klaaren, 2004; Masuku, 2006; Nyaoro 2010: p.127; Crush and Tawodzera, 2014). This study is therefore particularly concerned with the exclusion of Congolese forced migrants from accessing essential 'necessaries' and 'functioning's' discernible through an inaccessibility of socio-economic rights, shelter,

employment, documentation, legal protection and social services. Such deprivations are thus observed by the study as constituting a violation of forced migrants` human rights (Sen, 1983; Smith, 1996 cited in Sen, 2000: p.7; Landau, 2006; Ho, 2007; Polzer, 2007; 2008; Vearey, 2008; Sibanda et al, 2012).

1.4 RESEARCH OBJECTIVES AND AIMS

According to Kavuro (2015: p.250), the Refugee Act 130 of 1998 is an "urban asylum policy that encourages a group of forced migrants and asylum seekers to self-settle and integrate into South African society." The policy framework has however remained largely conceptual, barely benefitting its intended beneficiaries (Klaaren and Ramji, 2001; Palmary, 2003; Landau, 2004; Amisi and Ballard, 2005; Landau, 2006; Buckland 2011; Bwalya, 2012 cited in Namukaso, 2015: p.18; Crush et al, 2013: p.8). This study therefore attempts to analyse the implementation of the Refugee Act 130 of 1998. In its examination, the strengths and weaknesses in implementing refugee policy in South Africa, are observed as being inextricably linked to forced migrants` social protection and state of social inclusion (Duffy, 1995; Sen, 2000; Taylor, 2004; Amisi and Ballard, 2005; Bustamante, 2011).

1.4.1 Research Objectives

1. To determine the extent to which the Congolese forced migrants in Pietermaritzburg are socially excluded.

2. To determine Congolese forced migrants` awareness of their legally enshrined rights.

3. To examine Congolese forced migrants in Pietermaritzburg access to their legally enshrined rights and establish what they identify as the barriers to accessing these rights.

4. To examine the relationship between forced migrants` social exclusion and the Refugee Act 130 of 1998 limitations.

5. To determine the nature of the working relationship between the Government and Civil society, Faith based Organisations and Non-governmental Organisations in implementing Act 130 of 1998.

1.4.2 Research Questions

The study is guided by various questions, key of which are:

1. To what extent do Congolese refugees in Pietermaritzburg feel and experience social exclusion?
2. To what degree are Congolese refugees aware of their legally enshrined rights?
3. To what extent are Congolese refugees in Pietermaritzburg able to access their legally enshrined rights? Which rights are they able to access and what do they identify as the barriers to accessing all other rights?
4. To what extent is there a relationship between refugee's experiences of social exclusion and limitations in the full implementation of the Refugee Act 130 of 1998
5. What is the nature and extent of the working relationship between the Government and Civil society (Faith based Organisations and NGOs), in implementing Act 130 of 1998 and the provision of support to forced refugees?

1.5 KEY CONCEPTS

1.5.1 Forced Migration

According to Turton (2006), forced migrants include refugees as defined by the 1951 Geneva Convention Relating to the Status of Refugees. The 1951 Convention (UNHCR, 1951: p. 14; Turton, 2006 cited in Maystdat, 2010: p.13) defines a refugee as any person who:

> "…owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable…to avail himself of the protection of that country"

In South Africa, the Refugee Act 130 of 1998 is the legal embodiment of the 1951 Convention and it similarly defines a refugee as one "residing outside his or her country of nationality, unable or unwilling to return due to a well-founded fear of persecution on account of race, religion and nationality..," (UNHCR, 1951: p.14; Refugee Act 130, 1998: p.20). Forced Migration Online (FMO, 2012) recognises conflict induced forced migration to occur when people are forced to flee their homes due to armed conflict including civil war, generalised

violence and persecution on the grounds of nationality, race and so forth. There are various types of forced migrants ranging from asylum seekers, internally displaced persons as well as victims of trafficking. According to Verdirame et al (2013: p.258), internally displaced persons (IDPs) are those persons or groups:

> "who have been forced or obliged to flee or leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflicts, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised state border."

Forced migration can thus be understood as a term encapsulating any type of involuntary movement, taking into account both forced migrants and internally displaced persons (IDPs). It focuses not on the route of the movement but rather the primary causes of such movements, which are unvaryingly always coercive in nature (common factors influence both types of movement) (Schmeidl, 2000; Moore and Shellman, 2004: p. 725). Schmeidl (1997) also explains that there are basically three types of factors that universally influence forced migration and these include root causes, proximate conditions as well as intervening factors. Root causes refer to the economic factors (poverty), underdevelopment and overpopulation related issues. Proximate conditions refer to oppressive governments and human rights violations along with ethnic and civil conflicts. Intervening factors take into account all of the variables that can either obstruct or facilitate the seeking of refuge (Zolberg et al, 1992; Schmeidl, 1997: p.287-288; Renaud et al, 2007). However, in most cases of coerced migration, all three factors (root, proximate and intervening factors), are interconnected and thus do not always operate autonomously in influencing coerced movements.

Forced migration, although not defined in the South African legislation, is a social science term encapsulating the involuntary movement of forced migrants, asylum seekers, trafficked victims, internally displaced persons and so forth (Moore and Shellman, 2004: p.724; IASFM, 2011; Forced Migration Online, 2012; UNHCR, 2016). International humanitarian law, through the various conventions on refugee issues namely, the Universal Declaration of Human Rights (1948), the 1951 Convention relating to the Status of Refugees and the 1967

Protocol Relating to the Status of Refugees, universally recognise forced migrants` rights. Such rights are tied to the aforementioned political protection (policy alignment to international laws), assistance (economic, self-sufficiency) as well as integration (documentation and legal protection) of forced migrants (Ricca, 1998; Landau, 2006). This particular research is thus delimited to the study of migrants coercively displaced by a combination of proximate, intervening and root factors from the DRC. The study then assesses the implementation of the Refugee Act 130 of 1998, in the aversion of DRC forced migrants social exclusion in South Africa. Such an assessment of Congolese forced migrants rights is done in cognisance of how South Africa is a signatory to the abovementioned international humanitarian laws (Ricca, 1998; Landau, 2006).

1.5.2 Social Exclusion

The concept of social exclusion gained prominence within Europe in the late 1960s as well as amongst French Republican thought in the mid 1970`s. Often times used to refer to a process of social disaffiliation, the concept was initially coined in dissatisfaction with the conventional approaches to poverty that focused more on income as a cause and indicator of poverty. The term has been associated with the French policy maker Rene Lenoir who in 1974 discovered how a significant part of the French population was not protected by social security and thus constituted an excluded class (Bhalla and Lapeyre, 1997: p.414; Hickey and Du Toit, 2007: p.2; Hungwe, 2013: p.52). According to Levitas (2004), in Britain the term social exclusion emerged after a 1979 publication by Peter Townsend on the prevalence of poverty in the United Kingdom. In the publication, the author argued that poverty had other dimensions apart from material deprivation. Townsend (1979 cited in Levitas, 2004: p. 44), argues that poverty was a relative term arrived at after a comparative analysis of certain factors. These factors were the resources of one family, compared to those commanded by the average family unit in that same setting. Such a comparison helped to ascertain whether or not those individuals were excluded from the ordinary living patterns, customs and activities respective to their context (Townsend, 1979: p.32 cited in Levitas, 2004: p. 44).

According to Levitas (2004), through the years (1980-1990`s) social exclusion and poverty gradually became interrelated and closely associated within a framework that identified poverty as part of a wider pattern of social inequality. The Social Policy Research Centre, based at the University of New South Wales (Saunders et al, 2008), also contends that unlike the focus of poverty on a single dimension (lack of resources and income), exclusion is a multi-dimensional concept. As a concept, it is therefore designed to highlight the role of both institutional structures and community attitudes in creating the barriers that lead to exclusion and the denial of the social and constitutional rights of others (De Haan, 1999; Mario and Wodon, 2001; Hickey and Du Toit, 2007; Gijsbers and Vrooman, 2008; Fischer, 2011: p.3).

Saunders et al (2008), defined social exclusion as a condition existing in three primary dimensions. These dimensions are disengagement (a lack of participation in social and community activities), service exclusion (unable to access key services), and economic exclusion (restricted access to employment, economic resources and a capacity to derive an income). Therefore, definitions of social exclusion evidently evolved and in the 20th century, a more multifaceted concept was developed, Levitas (2004: p.9), defined it as involving:

> "…the lack of or denial of resources, rights, goods and services, and the inability to participate in the normal relationships and activities, available to the majority of people in a society whether in economic, social, cultural or political arenas. It affects both the quality of life of individuals and the equity and cohesion of society as a whole."

In present day Europe, the United Kingdom`s Department for International Development conceptualises social exclusion differently from the 19th Century approach. According to Khan et al (2015: p.3), the department now views social exclusion as a process whereby:

> "…certain groups are disadvantaged and discriminated against on the basis of their ethnicity, race, religion, sexual orientation, caste, descent, gender, age, disability, HIV status and migrant status or where they live."

The Department for International Development also submits that such discrimination can occur in public institutions such as the legal system, education, health as well as social service institutions. Social exclusion can also be identified when a group is not socially participative

for reasons beyond their control, when they in fact would like to participate in areas of activity (Burchardt et al., 2002). Such areas of activity whose inaccessibility constitutes social exclusion include the capacity to purchase goods and services, participation in economically or socially valuable activities, involvement in decision making processes as well as community integration.

Over and above, social exclusion is principally a complex and multidimensional concept referring to the process by which numerous negative externalities are perpetuated. Such negative externalities affect the quality of life of individuals and the general equity and cohesion of society as a whole (De Haan, 1999; Mario and Wodon, 2001; Hickey and Du Toit, 2007; Levitas et al, 2007; Saunders et al 2007; Gijsbers and Vrooman, 2008; Fischer, 2011: p.3). Other negative consequences emanating from social exclusion include its capacity to cause the unobtainability of not only political participation but also representation. Social exclusion is therefore a serious cause for concern because it not only encroaches upon the demand for social justice but it also reduces social solidarity. Scholars such as Barry (2002) concur and argue that the absence of social solidarity is normatively negative because in its absence, the interests of the excluded are likely to be opposed and obscured in the interests of the included whom are usually in the majority. The interplay between social exclusion and the arising challenges in accessing social capital are closely examined below.

1.5.3 Social Capital and Social Exclusion

Mario and Wodon (2001) argue that the concept of social capital cannot be examined without reference to that of social exclusion and this is particularly in recognition of how social exclusion illuminates on the role of networks and human relationships as assets. Silver also refers to the notion of social capital to capture exclusion and inclusion in social networks (Silver, 1994 cited in De Haan, 1999: p.11). This is further supported by Bourdieu`s (1986), articulation on how social capital refers to the resources linked to sustainable social networks to which some individuals have access and others do not. Such capital reinforces and reproduces class divisions through the transmission of economic resources within a closed network. Bourdieu identifies three forms of capital, transmitted through such networks and

these are symbolic capital (your position and status to the outside world), cultural capital (education, cultural knowledge, tastes and interpersonal skills) as well as social capital (friends and networks and the resources such give you access to) (Bourdieu, 1986 cited in Cederberg, 2012: p.61). Social capital, as a negative externality, exposes the excluded to chronic deprivations. Understanding social capital as a concept, helps demonstrate how group formation in society is a key characteristic of communities. These group formations are then adversely accompanied by the exclusion of others (De Haan, 1999: p.9).

This study would like to argue that Congolese forced migrants` social exclusion and inability to exercise certain social functioning's (employment, shelter and so forth) is partially due to a lack of all three forms of capital:

- **Symbolic capital**: Forced migrants from the DRC have a diminished status due to being forced migrants. The majority are of a low social class with a diminished cultural and social identity. This diminished identity is affirmed by the derogatory names (such as makwerekwere, illegal aliens etc.) used in South Africa to refer not only to them but all black migrants in the country (Hungwe, 2013; Scheen, 2011; Kilgore, 2014).

- **Cultural capital**: Forced migrants from the DRC have limited cultural knowledge and divergent identities (dress styles and mannerisms), norms as well as beliefs from those of South African nationals. Being predominantly a Swahili, Lingala and French speaking people, it makes it difficult to bridge the cross cultural gaps within South African communities. This is substantiated by the Southern African Migration Program (2013) findings whereby, 62% of participants indicated that their biggest contention with foreigners including forced migrants, was that they are 'culturally different', (Crush et al, 2013).

- **Social capital**: Apart from their fellow forced migrants already resident in South Africa, forced migrants from the DRC usually do not know anyone when they arrive. In 2012, a study done in South Africa`s urban areas by The African Cities study found

that from the participants, 38% of Congolese forced migrants had no South African friends (Sibanda et al, 2012). This means that their access to crucial information and knowledge regarding jobs, social mobility, resources, integration and so forth is very limited. Sen (2000), identifies such a low level of social contact as having an impoverishing effect on a person's life. In the absence of social capital (a product of social contact), individuals economic opportunities are often obstructed (Sen, 2000: p.14).

Findings from Taylor`s (2004) studies on forced migrants in Australia corroborate the abovementioned views. The study identified how racism, discrimination and dialectal differences are considerable impediments to forced migrants` social inclusion and integration (Taylor, 2004). Social, symbolic and cultural capital are all seen as important in the reinforcement of group identities. Once dominant group identities are established, in a bid to increase their competitive advantage, they often monopolise resources, restricting access to outsiders based on their race, language, social origin, religion and so forth (Parkin, 1979; Kabeer, 2000; Weber, 1978 cited by Tholen, 2016: p.3). In cognisance of such primary cultural impediments to social inclusion, Putnam (2000 cited in Cederberg, 2012: p.65) identified two forms of social capital and these include 'bridging' forms of social capital as well as 'bonding' forms of social capital.

In South Africa, it has been very difficult for Congolese forced migrants to transcend the group divisions that determine social capital distribution and monopolisation. As a result, they have not been able to establish the more beneficial 'bridging' forms of social capital (Sibanda et al, 2012). According to Putman (2000), bridging forms of social capital occur when disadvantaged groups "transcend their group identities, and go beyond the tribal, racial and cultural boundaries so as to benefit from another groups advantageous monopoly over advantages" (Putman, 2000 cited in Cederberg, 2012: p.65). Through bridging, groups can transcend barriers and achieve social integration by tapping into the other groups resources (Sen, 2000: p.14). As evidenced by the existence of many unregistered Congolese associations in South Africa (Amisi, 2005: p.2), 'bonding' forms of social capital are the most

prominent. However, these 'bonding' forms of social capital have had very little effect in breaking the barriers that have confined Congolese forced migrants to the peripheries of the social capital order. Putman (2000), explains how 'bonding' forms of social capital refer to the process when the disadvantaged groups attempt to seek help and resources from within their own group. This however, as shall be discussed in the proceeding Chapters, results in very little social mobility, integration and cohesion (Putman, 2000 cited in Cederberg, 2012: p.65).

1.6 PRINCIPAL THEORY

1.6.1 Social Closure in the Theory of Monopolisation and Exclusion (Murphy, 1986)

According to Swartz (1990) and Morrow (1990), the theory of monopolisation and exclusion borrows from the social closure tradition of Weber (1978) and developments by Parkin (1974) and Collins (1968; 1971; 1975; 1979; 1980) as well as Marx`s submissions on class (Marx 1895). Weber (1978) used the term closure to refer to the process of subordination whereby one group monopolises advantages "by closing off opportunities to another group of outsiders beneath it, perceiving it as inferior and ineligible on account of their race, language, social origin, religion…" (Weber, 1968: p.342; Weber, 1978 cited in Murphy 1986: p.23; Weber, 1978 cited by Tholen, 2016: p.3; Swartz, 1990: p.480; Kabeer, 2000). Parkin (1974), explains closure as consisting of two reciprocal modes which are namely exclusion and usurpation, with both being a means for mobilising power in order to enhance or defend a group's share of resources. Social closure thus encapsulates different degrees of closure and conditions of participation with participation being dependent upon an appropriated right, varying from relative to absolute methods of closure and regulation (Weber, 1978: p.128; Weber, 1978: p.45; Swartz, 1990: p.480). Murphy (1986) acknowledged exclusion from all means of life as rarely existent, identifying it as mostly confined to material monopolisations such as property, income generating areas or those areas that facilitate access to such (Murphy, 1986: p.25). Murphy`s theory (1988), therefore argues for a closure perspective of exploitation, more inclusive than that of Marxism, offering a threefold distinction between the three forms of exclusion (principal, derivative and contingent).

Principal forms of exclusion and monopolisation are enforced by the apparatus of the state through legal and ultimately coercive sanctions excluding groups from power, resources and opportunities in society (Murphy, 1988). In South Africa, top down institutional hierarchies (municipalities, Department of Home Affairs and so forth), have been used to further group monopolisations and exclusion despite the existence of an inclusionary refugee policy. Congolese forced migrants have thus been socially closed off from accessing documentation, legal protection, shelter, healthcare and other legally prescribed social services, (Palmary, 2003; Bahamjee and Klaaren, 2004; Vearey and Richter, 2008; Crush et al, 2013). Weber (1978), argues that there can be monopolisation of both property advantages and forms of prestige (Weber, 1978 cited in Swartz, 1990: p.480). This explains how legal status and documentation, which are seen in South Africa as determinants of inclusion or exclusion (prestige), have been made difficult for forced migrants to acquire (Amisi and Ballard, 2005; Landau et al., 2005 cited in Rugunanan, 2011: p.709; Namukaso, 2015). Principal forms of exclusion are also acknowledged as potent by Gijsbers and Vrooman (2008) in their four dimensional concept of social exclusion (the nexus between structural arrangements, material deprivation and social rights). Structural violence as a conceptual framework, also views systems of unequal power that imbed inequity amongst groups (principal forms of exclusion), as a structural violation of human rights (Galtung, 1990 cited by Barnett, 2008: p.78; Ho, 2007).

According to Murphy (1988), derivatives often correspond with contingent forms of exclusion and operate informally without legal sanction, deriving their basis from the primary forms of exclusion. This therefore includes racial, ethnic religious and gender as criteria's upon which exclusion is perpetuated (Murphy, 1988 cited in Morrow, 1990: p.478). Interpersonal derivative forms of exclusion, can thus manifest themselves as the other two dimensions in Gijsbers and Vrooman (2008) conceptual framework of exclusion (whereby primary cultural elements close off the normative integration of outsiders). Traditional and historical prejudices (derivative forms of exclusion), can thus obstruct the realisation of inclusionary legal rational authority, on the basis of any group attribute. Group attributes, ranging from race, ethnicity, religion, language and so forth are thus used to close off social

and economic opportunities to out groups (Weber, 1968; Weber, 1978; Murphy 1986; Murphy, 1988). Similarly, scholars such as Bourdieu, (1986) cite the absence of social, symbolic and cultural capital attributes within a group such as the Congolese forced migrants, as reason enough for them to be excluded (Bourdieu, 1986 cited in Cederberg, 2012: p.61). In South Africa, the legal rational authority (Refugee Act 130 of 1998) is thus undermined by traditional authority`s xenophobic predilections, resulting in a denial of civil rights, social inclusion and legal status for forced migrants (Palmary, 2003; Bahamjee and Klaaren, 2004; Amisi and Ballard, 2005; HRW, 2013 cited by Manicom, 2010 p.176; Crush et al, 2013 p.8). The theory therefore expands the scope of closure and monopolisation from private property autonomies to a range of other forms of monopolisation and exclusion. Murphy, identifies those forms of exclusion as constituting credentialism, racial, sexual, ethnic and religious monopolisations (Murphy, 1986: p.37).

This study therefore utilises the theory of monopolisation and exclusion due to its illustration of how both structural and primary cultural factors can entrench social exclusion. The theory and its appreciation of the multi-dimensionality of social exclusion is thus useful in the study`s examination of Congolese forced migrants lives in South Africa. The theory is also utilised in recognition of how social inequalities, prejudice and exclusion are all proliferated by discriminative institutional arrangements and social (inter-relational) cogency's.

1.7 RESEARCH METHODOLOGY AND METHODS

This study adopted an interpretive research design technique (Denzin and Lincoln, 1998). This particular study adopted a case study framework as it examined the experiences of forced migrants as a case that is 'holistic and bounded' (Hungwe, 2013: p.81: Yin, 2013). A case study was also found applicable because it was suitable for exploration (Benbasat et al., 1987: p.371). Exploratory studies examine meanings to social phenomena by asking questions, as experienced by the individuals in their natural contexts (Gray, 2004; Malterud, 2001).

1.7.1 Data Collection Tools and Sources of Data

Interviews allow for the observation of participants reactions and enable the researcher to obtain clarification on any unclear responses (Malterud, 2001; Creswell, 2013). In obtaining the participants input, this study utilised life history interviews, face to face in-depth semi structured interviews and focus group discussion (FGDs). The pattern of interviews was open-ended as these required lengthier answers enabling the researcher to obtain more input from the participants (Salant and Dillman, 1994). Data for this study was gathered from both primary and secondary sources. The main participants of the study comprised of the purposively selected civil society and forced migrants.

(a) Primary Sources

Documents provide a lot of data about social facts and the phenomenon under study (Needleman and Needleman, 1996). The study therefore made an empirical analysis of policy documents such as the Refugee Act 130 of 1998, Bill of Rights, the South African Constitution, 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, 1951 Geneva Convention Relating to the Status of Refugees and its 1967 Protocol.

(b) Focus group

The research was carried out in Pietermaritzburg, a refugee-receiving town in South Africa. According to Morgan (1998), FGDs are excellent when trying to understand social situations, complex behaviour and motivations. The study therefore made use of FGDs. Language barriers were addressed through translation of English into Swahili, Lingala and French wherever necessary. This was achieved by use of a local skilled facilitator proficient in all four languages and identified through the use of expert purposive sampling (Krueger and King, 1998). There was only one FGD, consisting of five males and three females and it lasted 90 minutes. The study identified social exclusion as manifest when groups are denied participation in specific areas of activity (Bourdieu, 1986 cited in Cederberg, 2012: p.61; Burchardt et al., 2002; Levitas, 2004). The FGDs were therefore used as an instrument to analyse forced migrants participation in those areas of activity, thereby determining their

level of inclusion or exclusion. Permission to use an electronic recording device was sought so as to capture the FDGs, the obtained information was then transcribed in verbatim during data presentation and analysis.

(c) Face to Face Interviews

The study utilised face-to-face in-depth interviews in interpreting opinions (Guest et al, 2012). The in-depth interviews (30-45 minutes each), were then held with the staff of civil society groups dealing with forced migrants issues. Also, two separate life history interviews (45-60 minutes each) were conducted with two purposively selected forced migrants so as to build on the findings from the FGDs. These two participants, based on the duration they have been domiciled in South Africa, were purposively selected from the FGD sample. According to Atkinson (1998: p.5), life history interviews "provide an altogether practical and broad introduction to the sensitive collection of first person narratives." Life history interview topics for the two gender balanced, purposively selected participants, were thus aimed at revealing Congolese forced migrants` feeling and experience of social exclusion, their knowledge of their rights, what rights they are able to access and what they identify as the barriers and so forth.

Face to face, semi-structured in-depth interviews for the non-governmental organisations, were aimed at revealing the participants perceptions on several issues. These ranged from their working relationship with the government, the social exclusion of forced migrants and their organisational level of intervention. Organisations that were interviewed include the Lawyers for Human Rights (LHR), the KwaZulu-Natal Christian Council (KZNCC) and the informal Congolese forced migrants` representative group the Congolese Refugees Association (CRA). The CRA was formed in 2009 and is responsible for uplifting the quality of life for refugees in Pietermaritzburg. Its small membership of 50 forced migrants (who were mostly from the Bembe tribe) was a result of how such associations are usually closed off to members who originate from deviant ethnic groups (Amisi and Ballard, 2005).

1.7.2 Selection and Recruitment of Participants

A sample design is a definite plan for obtaining a sample from a given population (Kothari, 1998). According to Amisi (2005: p.2), refugee "social networks purposely emerge in organised communities in the form of refugee associations and ethnic organisations" as a coping mechanism to social exclusion. The study therefore interviewed the Congolese Refugee Association, with a membership of 50 Congolese. A homogeneous sampling technique was used in purposively selecting participants from this group (Gray, 2004). Such a sampling method was ideal due to how it focuses on candidates who share similar traits or specific characteristics. In that regard, the study factored in how the members, (all of whom were Congolese forced migrants), best fit the criteria of forced migrants as required by the study (Etikan et al, 2016). With no particular focus on age but with all participants being above the legal age of consent (18), stratified purposeful sampling was intended to obtain a gender representative sample for the FGD participants (Patton, 2002). However, due to challenges associated with working with vulnerable groups, the study faced challenges in recruiting female participants (Jacobsen and Landau, 2003; Rodgers, 2004; Harrel, 2007; Mackenzie, 2007). As a result, the study ended up having a single focus group discussion (comprising of three females and five males).

In obtaining a sample from the non-governmental organisations this study utilised expert sampling, a form of purposive sampling technique (Etikan, et al, 2016). Through expert sampling, the study selected the participant organisations based on their respective involvement in forced migrant issues, activism in human rights, social justice as well as social equality in Pietermaritzburg, the KwaZulu-Natal province and South Africa at large (Oescher, 2007). In assessing the expertise of the organisations, the study examined their programs focus areas and overall social impact, such information was readily accessed from the respective organisations websites.

1.7.3 Methods of Data Analysis

Thematic content analysis was used to derive meaning from the existing literature and collected data (Braun and Clarke, 2006). Interviews and FGDs were digitally recorded and

the gathered data was transcribed in verbatim, cleaned and then coded into different themes. Nvivo computer software was also used to classify, sort, arrange and examine relationships in the data. This allowed the researcher identify trends and cross-examine information. All of the collected information, both soft and hard copies was scheduled to be kept by the supervisor pending destruction by incineration or shredding after the minimum storage period of storage (5 years) has elapsed.

1.8 STRUCTURE OF DISSERTATION

The thesis is divided into eight Chapters. The first Chapter (**Chapter 1**) is the introduction which sets the background, outlining the research rationale and objectives of the study. This Chapter serves to outline the research objectives, research questions, the study rationale, theory and methods utilised.

Chapter 2 provides an exegesis of the various international conventions and legislations that are imperative in the contemporary, global human rights discourse. These include the 1948 Universal Declaration of Human Rights as well as the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. In assessing forced migrants rights within the African context, the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa is also examined. This is done in contrast with the body of refugee law not only in South Africa but other SADC states (related policy frameworks and legal instruments governing forced migration).

Chapter 3 closely looks at South Africa as the major destination for forced migrants in the Southern African Development Committee (SADC) and the continent. The Chapter also gives a contemporary and historical understanding of forced migration both in the local, regional and international contexts and analyses the three contending models on social exclusion as well as their applicability to South Africa and the developing world. The Chapter provides a historical account of the conflict in the DRC, so as to highlight the deep seated structural challenges facing the country and its history as a refugee producing state. The

reasons behind Congolese forced migrants` preference of South Africa as a final destination are also examined in the Chapter.

Chapter 4 has the Literature Review and Theoretical Framework of the study. The Chapter simultaneously provides the conceptual framework of the study as well as a review of relevant literature on the issues under discussion. Such literature includes a host of empirical publications on forced migrant issues and their social exclusion. The Chapter carries out an in-depth discussion of the relevant principal theory to the study and illustrates how the theory under use, conceptually encapsulates all dimensions of social exclusion as well as other arguments canvassed in the study (De Haan, 1999; Hickey and Du Toit, 2007; Levitas et al, 2007; Saunders et al, 2008; Gijsbers and Vrooman, 2008; Fischer, 2011: p.3). In analysing social exclusion in all its dimensions, the study utilises the theory of monopolisation and exclusion (Murphy, 1986). This theory therefore governed the methods of data collection as it clearly underpins the different aspects which are under scrutiny in the research. Through the use of this theory, the study critically examines Congolese forced migrants` access to socio-economic rights, documentation, shelter, employment, legal protection and social services.

Chapter 5 is the research methodology and methods section of the study. The choice of a qualitative research paradigm is thus methodically explained and substantiated in the Chapter. The data collection procedures for the study, data analysis and ethical issues are all elaborated in the Chapter.

Chapter 6 is a discussion and analysis of data and it outlines the social exclusion of Congolese forced migrants in Pietermaritzburg from the experiences of those within the forced migrant community themselves. The Chapter therefore empirically examines the Congolese forced migrants state of welfare and inclusion in South Africa, as well as their lived experiences as forced migrants. Such an epistemological inquiry, is crucial in ascertaining the limitations of the refugee policy and the extent to which forced migrants` social cohesion and inclusion has been secured in South Africa. Through the participants` narratives, the study ascertains their social exclusion within South African communities,

institutions and socio-economic sectors. Through interviews, the role of distributional structures as well as primary-cultural factors in the proliferation of forced migrants` social exclusion are examined. The link between forced migrants` state of social exclusion and their inability to access the rights to essential entitlements such as documentation, shelter, employment and social services (basic health and education) as enshrined in the Refugee Act 130 of 1998 is also established in this Chapter.

Chapter 7 is a discussion and analysis of data collected through face to face semi structured, in-depth interviews with the civil society. The civil society sample comprised of the informal (unregistered) Congolese Refugees Association, the Kwazulu-Natal Christian Council and the Lawyers for Human Rights. The Chapter presents, discusses and analyses data on the nature and extent of civil society institutions working relationship with government in implementing the Refugee Act 130 of 1998. The ways in which civil society can complement the government in fostering the social inclusion and cohesion of Congolese forced migrants in South Africa is also examined in the Chapter. The Chapter also presents findings on the opinions from the civil society on whether or not they feel South Africa is doing enough in fulfilling its local, regional and international obligations in the preservation of international humanitarian laws.

Chapter 8 draws summary conclusions and recommendations from the data presented and analysed in the previous Chapters. The Chapter also elaborates on how the study contributes to the scholarly body of knowledge with specific regard to the forced migrant and social exclusion discourse.

1.9 CHAPTER SUMMARY

Chapter 1 elucidated on the proceeding Chapters within which the study will be structured and simultaneously outlined the objectives and justification of carrying out the research. The research questions as well as the research objectives were outlined in the Chapter. The Chapter also provided a sequential foreword on the proceeding Chapters and concepts as contained in the study. The Chapter illustrated how such concepts are all interlocked and thus

imperative in the examination of social exclusion amongst forced migrants. The Chapter also illustrated how the study assumes a bottom-up approach, through its focus on the beneficiaries of the refugee policy, their challenges in its access and the limitations of the framework. This therefore enabled the marginalised groups to give their own accounts, experiences and challenges regarding access to critical social services. Through these accounts, the study then examined the extent to which inadequate policy implementation can inadvertently create exclusionary nodes.

The Chapter also provided a precise methodological explanation, elaborating on the choice of qualitative research paradigm. A qualitative study, was explained in the Chapter partly as being most befitting due to its interpretive qualities. Furthermore a qualitative study was also chosen due to the non-quantifiable nature of the phenomenon under study (forced migrants` views, opinions and experiences). The research design and methods for the study therefore had to be in tandem with these issues. For that reason, in selecting the participants for the study the choice of the purposive sampling methods, was justified in the Chapter. Selected members from the non-governmental community as well as the forced migrants from the DRC located in Pietermaritzburg, were thus the main participants in the study. The data from the FGDs, life history interviews and the face to face semi-structured in-depth interviews was presented, discussed and analysed in Chapter 6 and 7 of this study.

CHAPTER 2: REFUGEE LEGISLATIVE FRAMEWORKS

2.1 INTRODUCTION

The Chapter provides an examination of the various international conventions and legislations that are imperative to the contemporary, global human rights discourse. According to Kavuro (2015), international laws and guidelines are what form the fundamentals for all constitutional states including South Africa. In cognisance of the significance of universal humanitarian laws, the Chapter closely examines the content of refugee law in South Africa (related policy frameworks and legal instruments governing the area). It also looks at South Africa as the major destination for forced migrants from the region and comparatively examines the South African refugee policy framework against those found in the region. Such an assessment is done in the Chapter so as to examine how South Africa is fairing in guaranteeing the political protection (policy alignment to international laws), assistance (economic, social incorporation, self-sufficiency) as well as Integration (status determination and legal protection) of its forced migrants (Ricca, 1989). The Chapter thus provides a contemporary and historical understanding of forced migration law both in the local, regional and international contexts. In this Chapter the theory-praxis gap between South Africa`s accordance of numerous liberties to forced migrant groups such as the Congolese forced migrants and the implementation of such policy, is examined.

2.2 REFUGEE RIGHTS: INTERNATIONAL HUMANITARIAN LAWS

2.2.1 Universal Declaration of Human Rights (1948)

Forced migrants constitute a vulnerable population and the issues governing their protection, refuge and fundamental rights are internationally observed through various conventions, protocols and resolutions. Throughout history, the world systems have evolved in their recognition of the fundamental principles that are dedicated to the preservation of human rights and dignity. Such tenets include what are now recognised as intrinsic birthrights to equity, freedom and various social protections regardless of one's class, gender, race or creed. Scholars such as Viljoen (2001), argue that the most important aspects of the international

human rights law discourse can be found in the period between 1945 and 1966. It is within this epoch that the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR) as well as the International Covenant on Economic, Social and Cultural Rights (ICESCR) were all adopted. According to Henkin (1987 cited in Viljoen, 2001: p.19), the "Universal Declaration of Human Rights, ICCPR, ICESCR along with the Optional Protocol to the ICCPR (OPI), then went on to constitute what is now known as the International Bill of Rights." Therefore, these three instruments set the foundation upon which the observance of human rights and the protection of those liberties for forced migrant groups, was founded.

Nickel (1987: p.11), argues that the natural rights discourse as a concept, "had long been common among lawyers and philosophers, however through the 1948 Universal Declaration of Human Rights (UDHR), these rights became internationally recognised." The 1948 Universal Declaration of Human Rights, therefore served as a fundamental model for many domestic organisations, laws, guidelines and policies that protect human rights (Hannum, 1995). On the significance of the 1948 Universal Declaration of Human Rights, Nickel (1987: p.11) maintains that:

> "The formulation by the United Nations in 1948 of the Universal Declaration of Human Rights made possible the subsequent flourishing of the idea of human rights. The declaration was an attempt to give an authoritative international list of human rights that would give some fixed meaning to the idea…"

The Universal Declaration of Human Rights (UN, 1948: p.61), transcends barriers of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status and this also extends to forced migrants. The Declaration categorically declares in its 30 Chapters, a host of equal entitlements to rights such as liberty, equality before the law, right to life, and security of person. Other rights also include access to education and property ownership, the right to be presumed innocent until proven guilty, equal pay for equal work, to marry and raise a family and to participate in government and in the social life of the community. The Universal Declaration of Human Rights also makes

available to all, certain liberties such as freedom from arbitrary arrest, freedom to a fair and impartial trial and freedom to a nationality. Other freedoms also include freedom of conscience, religion, opinion, expression, association as well as assembly. Specific rights are also made mention to and these include the right to a secure society and an adequate standard of living for all as well as the right to travel from a home country at will and return at will. Regarding forced migrants (without defining the contextual meaning of the word asylum seeker), Article 14 of the Universal Declaration of Human Rights (UN, 1948: p.30), makes specific mention to the following entitlements:

> "1. Everyone has the right to seek and to enjoy in other countries asylum from persecution."

> "2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations."

The evolution of the refugee rights and entitlements discourse can therefore be traced back to the Universal Declaration of Human Rights (1948) mention of fundamental freedoms such as freedom to a nationality, freedom to a secure society as well as an adequate standard of living. The Universal Declaration of Human Rights (1948) and its according of inalienable entitlements to all humans regardless of colour, nationality, refugee status nor ethnicity justifies the rationality of this study. This is particularly so given how the study examines the barriers to forced migrants` realisation of their civil entitlements (basic human rights) as enshrined in the Universal Declaration of Human Rights (1948). Through utilising the Universal Declaration of Human Rights (1948) as a benchmark, the study thus strives to analyse the full extent to which forced migrants are excluded or included from the full participation in the social life of the community. In examining Congolese forced migrants entitlements to leading a desired life, having health, security, food security, employment, education, and so forth the codifications within the Universal Declaration of Human Rights (1948) that further validate the rationality of the study include:

- Article 22 on the rights to social security for all (UN, 1948: p.46)
- Article 23 on the right to gainful employment for all (UN, 1948: p.48)

- Article 25 on the right to food, clothing, housing and medical care and necessary social services for all (UN, 1948: p.52)

- Article 25 on how states should provide special care and assistance to motherhood and childhood for all (UN, 1948: p.52)

- Article 26 on the right to education for all (UN, 1948: p.54)

The Universal Declaration of Human Rights (UN, 1948: p.42), declares the economic, social and cultural rights obligatory in the preservation of human dignity and the free development of their personality as a fundamental right. The Universal Declaration of Human Rights (1948) was therefore a very important formulation recognising the equality of all humans and the need to preserve and uphold the fraternity of the global community on impartial terms. Such equality as observed in contemporary states through customary laws transcends barriers such as gender, class, nationality, religion, sexual orientation, race or creed. The Universal Declaration of Human Rights (1948), for that reason pioneered and set forth the foundation upon which the subsequent United Nations 1951 Convention Relating to the Status of Refugees, the Protocol Relating to the Status of Refugees (1967) and the Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa (1969) were also set. These other Conventions and Protocols will be discussed at length in the subsequent sections.

2.2.2 A Critique of the Universal Declaration of Human Rights (1948)

According to Donnelly (1986), one of the most notable weaknesses in the Universal Declaration of Human Rights (1948) is the issue of how declarations in general are not entirely binding. Consequently, after drafting the 1948 Universal Declaration of Human Rights, individual sovereign states were left responsible for aligning the declarations tenets into their national policy frameworks. As a result of this, adherence as well as observance of the 1948 Declarations vastly differs across states. This is exemplified by how countries such as Australia have been criticised for holding asylum seekers in detention, thereby restricting their legal rights to accessing not only Article 14 of the 1948 Declaration of Human Rights but a host of other rights (Mares and Mares, 2001; Killedar and Harris, 2017). In some

instances, as the case with Botswana, states assume no obligation whatsoever regarding the social protection of forced migrant groups as required in Article 22, 23, 25 and 26 of the 1948 Universal Declaration of Human Rights (Makhema, 2009: p.25; Polak, 2015).

In his focus on rights to goods and services, O'Neill (2005) also argued that human rights were not made universal by the Universal Declaration of Human Rights (1948) because such rights were defined by convention and only had force when states ratified such international covenants. The universality of rights is therefore a contentious issue even in contemporary times. Access to the Declarations (UN, 1948: p.48, 52), entitlements to human rights such as health care, shelter, employment, education and so forth are still outside the reach of many people in the world (Bendick, 1996; Miraftab, 2001; Woods et al, 2006; Cediey and Foroni, 2008). Twinomurinzi (2013: p.2), further argues that there has also been a disjuncture in the adoption of universal rights between the developed and developing states. Such an incoherence can be observed through the lack of priority towards the issue of women`s rights in Africa and how they only became a topical area for discussion as recent as the 1980s.

Another weakness of the 1948 Universal Declaration of Human Rights, is in its preamble. According to Gerber (2011: p.247), the preamble of the document constricts its focus, it "delimits its attention to discrimination along the lines of race, sex, language or religion." This is despite the existence of other forms of discrimination confronting forced migrants and other minority groups on the grounds of sexual orientation, disability, class, nationality, caste and age (Kabeer, 2000 cited in Hickey and Du Toit, 2007: p.18; Gerber, 2011: p.247). In examining the Congolese forced migrants` social exclusion, this particular study identifies discrimination and social closure along the lines of nationality and citizenship as prevalent in South Africa. Such discrimination has been notable through Congolese forced migrants` failure to access rights such as shelter, education, employment and documentation (Handmaker, 2001; Bahamjee and Klaaren, 2004; Masuku, 2006; Nyaoro 2010: p.127; Crush and Tawodzera, 2014). Other studies done in the United States of America, Belgium and France have also identified how one`s foreign nationality can adversely be used to socially

close off and exclude them from accessing the same rights and opportunities available to others (Bendick, 1996; Arrijn et al, 1998; Cediey and Foroni, 2008).

Ted (1997), argues that documents such as the 1948 Declaration of Human Rights are created in a context. Due to historical and contextual changes over time, the document may fail to maintain its relevance. As an example, the 1948 Universal Declaration of Human Rights was crafted at a point in history when the concept of social exclusion had not been fully developed. Consequently, the 1948 Universal Declaration of Human Rights assumes a top-down approach and is insistent on the role of states in the successful implementation of its tenets (through policy alignment) (Ted, 1997; Gerber, 2011: p.248). This contextual approach however did not take into account the issues of social exclusion and how it can be adversely deployed, (despite the existence of enabling policies) to deny some social groups access to their human rights. Gerber (2011), therefore identifies one of the declarations weaknesses as being its inability to emphasise a bottom-up approach to human rights and needs. Due to the declarations failure in mapping out a clear path to the implementation of the normative content of Human Rights Education (HRE), vulnerable groups have thus remained socially excluded and uninformed of their universal human rights (Bovenkerk, 1995; Palmary, 2003; Sibanda et al, 2012: p.37).

2.2.3 The 1951 Convention and its 1967 Protocol

When the drafters of the 1951 Convention "initially considered the rights and status of forced migrants, they were able to draw on a legal tradition that had developed in the interwar years" (Zimmerman, 2011: p.6). According to Viljoen (2001), within this epoch (1945-1966) during which the 1951 Convention was also drafted, the number of African countries that had attained independence from colonial rule steadily rose from 4 to 37. Although this meant that African states were not as prominent in the drafting of the 1951 Convention, after the attainment of their independence, such nations almost instantly became member-states of the United Nations (Viljoen, 2001: p.19). In its drafting, the 1951 Convention was initially designed to mitigate on the issue of the Turkish, Saar, Russian and Armenian stateless persons displaced after the First World War of 28 July 1914 to 11 November 1918. The 1922 Nansen

passport for Russian forced migrants, the June 1928 intergovernmental conference on forced migrants and the 1933 Convention have thus largely been seen as precursors to the 1951 Convention Relating to the Status of Refugees (Jennings, 1939; Hathaway, 1984; Skran, 1988; Viljoen, 2001; Zimmerman, 2011). The 1951 Convention Relating to the Status of Refugees, was ratified by 145 state parties (out of a total United Nations membership of 192) and remains the foundational framework on refugee status and rights globally.

In essence, the 1951 Convention Relating to the Status of Refugees was a post-Second World War document which was based on Article 14 of the 1948 Universal Declaration of Human Rights (UN, 1948: p.30). The 1948 Universal Declaration of Human Rights, recognises the right of all persons "to seek asylum from persecution in other countries" (UNHCR, 1951: p.2). In tribute to the Arrangements of 12 May 1926 and 30 June 1928, the conventions of 28 October 1933 and 10 February 1938 as well as the Protocol of 14 September 1939, the 1951 Convention Relating to the Status of Refugees (UNHCR, 1951: p.14), defined a refugee as one who:

> "…owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, 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; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

The same definition for a refugee, along with all the associated universal rights was then adopted by all 145 member states signatory to the 1951 Convention, with the United Nations High Commissioner for Forced migrants (UNHCR) serving as its custodian. South Africa became signatory to the 1951 Convention in 1996, only two years after the attainment of its own independence in 1994. As a signatory of the 1951 Convention Relating to the Status of Refugees, South Africa upheld its tenets through the Refugee Act 130 of 1998. The 1951 Convention Relating to the Status of Refugees (and its 1967 Protocol) obliges the South African government to formally recognise and provide protection to all people within its borders, classifiable as forced migrants (Kleinsmidt and Manicom, 2010: p.165). The 1951

Convention is both a status and rights-based instrument and is underpinned by a number of fundamental principles, most notably non-discrimination, non-penalisation and non-refoulement of asylum seekers, applicable without racial, nationality, religious or gender discrimination (UNHCR, 1951: p.3).

In terms of refugee rights and entitlements, the 1951 Convention Relating to the Status of Refugees (Article 12-30) seeks to guarantee basic minimum standards and rights for forced migrants. This is ensured through making the issuance of identity papers and travel documents (as an equivalent of the 1922 Nansen passport) compulsory, to all forced migrants within member states borders. The 1951 Convention Relating to the Status of Refugees also accords forced migrants entitlements to the most appropriately conducive treatment possible, which must be at least as favourable to that accorded to all foreigners in the same circumstances. The 1951 Convention accords forced migrants` property ownership rights, the right to practice a profession, the right to self-employment, access to housing as well as access to higher education (UNHCR, 1959: p.24). The 1951 Convention Relating to the Status of Refugees also entitles forced migrants rights to receiving the same treatment as non-nationals with regard to the right to choose their place of residence, the right to move freely within the country, free exercise of religion and religious education. Legal rights are also ensured through entitlements to accessing the courts including legal assistance as well as access to elementary education, access to public relief and assistance. Forced migrants are also entitled to protection provided by social security, protection of intellectual property such as inventions and trade names, protection of literary, artistic and scientific work as well as equal treatment by taxing authorities (UNHCR, 1959; Human Rights Library, 2003).

In the formulation of the 1967 Protocol Relating to the Status of Refugees, member states did so in the recognition of how new refugee situations had since arisen since the 1951 Convention was adopted. The 1967 Protocol was also an attempt to grant equal status for all forced migrants covered by the definition in the 1951 Convention Relating to the Status of Refugees, irrespective of the 1st January 1951 dateline (UNHCR, 1967: p1). According to Gill (2001), the 1967 Protocol Relating to the Status of Refugees, reflected recognition by

the UNHCR and signatory member states that there was a disjuncture between the universal UNHCR statutes and the scope of the 1951 Convention Relating to the Status of Refugees. The 1967 Protocol Relating to the Status of Refugees, ratified the time and place restrictions in the terminological meaning of the term refugee. This was necessary due to how the 1951 Convention Relating to the Status of Refugees only covered persons within Europe who had become forced migrants due to events occurring before the 1st of January 1951 (UNHCR, 1967: p.2). According to the 1967 Protocol, state parties would agree to apply the relevant provisions of the 1951 Convention, but without necessarily becoming party to that treaty (UNHCR, 1967; Gill, 2001: p.131; Gill, 2017: p1). The approach was approved by the UNHCR Executive Committee and the draft Protocol was referred to the Economic and Social Council for transmission to the General Assembly.

2.2.4 Limitations in the 1951 Convention and its 1967 Protocol

Shortcomings in the two legal documents mainly emanate from how the 1967 Protocol Relating to the Status of Refugees, stipulates that state parties may only agree to apply the relevant provisions of the 1951 Convention, without necessarily becoming party to that treaty (UNHCR, 1967; Gill, 2001: p.131; Gill, 2014: p1). This has meant that the 1951 Convention has been subject to inconsistencies in its interpretation, with different states undertaking a selective application of the conventions codifications (Millbank, 2000). Influenced by individual states need to safeguard their national economic, political and ideological interests, inconsistent policy implementations (implementation gaps) have resulted in what Turk and Dowd (2014: p.5) refer to as 'protection gaps'. In the case of South Africa, researchers have termed this a 'laissez faire' approach to refugee policy issues (Peberdy and Crush, 1998; Handmaker, 2001: p.45). Kavuro (2015), also argues that all sovereign states enjoy the right to determine the manner in which they safeguard their resources with regards to the exclusion of foreign nationals. Consequently, a uniformity in the enactment of the 1951 Convention`s provisions amongst a growing number of signatory states, has been on the decline. According to Karamanidou (2011), over half a century after the signing of the 1951 Geneva Convention, not all forced migrants are able to access the protections promised, even within the signatory States (Bendick, 1996; Arrijn et al, 1998; Cediey and Foroni, 2008).

The 1951 Convention`s definition of a refugee is also considered too narrow and out of context. According to Millbank (2000), the Convention's criteria of defining what a refugee is are both limited and outdated. The definition it gives to a refugee as one who is fleeing from a "well-founded fear of persecution" (UNHCR, 1951: p.3), ignores how forced migrants can flee from factors prevailing in a particular country in general as opposed to the individual fears of the refugee (Onyango, 1991: p.455). By virtue of this omission, the 1951 Convention Relating to the Status of Refugees has been blamed for overlooking the issues influencing contemporary forms of forced migration. Refugees nowadays, are coerced into migrating due to a range of factors that are not necessarily associated with 'risks to personal self' but rather, such factors are increasingly more general and intrinsic to the state in question. Such general factors, which are very common in Africa include coups d'état`s, civil strife, economic crisis and political unrests (Makhema, 2009; Flahaux and Schoumaker, 2016; Meny and Chiumia, 2016).

Another weakness of the 1951 Convention Relating to the Status of Refugees is in its contextual relevance (Ted, 1997; Millbank, 2000). As a post-Second World War document, it is considered too ambitious and idealistic. Teneale (2016), has referred to this as a narrow conceptualisation of refugee issues and the feasibility of enacting the associated obligations. The 1951 Convention, warranties forced migrants access to the most favourable treatment provided to foreign nationals. However due to the increase in new types and numbers of forced migrants over the years (Onyango, 1991; Millbank, 2000), such favourable treatment has been hard for member states to guarantee all forced migrants. These new categories since the post-Second World War era include political and economic asylum seekers, environmental hazard forced migrants, trafficked victims and so forth (Moore and Shellman, 2004; IASFM, 2011; Forced Migration Online, 2012; UNHCR, 2016). An increase in this new caliber of forced migrants, has translated into several challenges for signatory member states. One of these challenges has been the failure to accord forced migrants in their growing numbers, social integration rights enshrined through the right to belong to trade unions, education, public relief, employment and wage-earning (UNHCR, 1959: p.22; Bendick, 1996; Miraftab, 2001; Woods et al, 2006; Cediey and Foroni, 2008).

Contributing to the growing numbers of forced migrants, has also been the increase in the number of those displaced by armed conflicts since the post Second World War era. This has been exemplified by how in 1951, when the United Nations High Commissioner for Forced migrants (UNHCR) was established there were only 1.5 million forced migrants internationally (Buckmaster, 2001 cited in Phillips, 2013: p.10). By the end of the year 2015, there were already around 65.3 million internally displaced people worldwide including 21.3 million forced migrants globally (UNHCR, 2015). Such displacements were due to reasons ranging from persecution, coups d'état`s, civil conflict, political unrests, generalised violence as well as human rights violations. From the previous year`s statistic of 15.5 million, in 2015 there was a 5.8 million increase in the number of forced migrants globally (UNHCR, 2015). Such escalating numbers in the statistics of global forced migration could be attributed to the correspondingly growing number of root, proximate and intervening factors influencing coerced migration (Zolberg et al, 1992; Schmeidl, 1997: p.287-288; Renaud et al, 2007).

The above mentioned root and proximate factors have also changed in form during the course of the years since the post Second World War era. These now predominantly include ethnic conflicts, religious and hyper nationalism, terrorism, famine, climate change and environmental or natural disasters. The said factors (both proximate and root), therefore stand out as the most manifest catalysts of forced migration in contemporary times. Such developments in the 21st century have significantly altered the scale and scope of the global forced migration discourse, especially in Africa. Faced with growing numbers of forced migrants on the continent, African states have struggled to uphold the recommendations of the 1951 Convention Relating to the Status of Refugees. This has mainly been identified through reports of appalling living conditions (poverty, cholera, malaria, malnutrition and jaundice) in most African refugee camps (Nduna and Goodyear, 1997; Kalipeni and Oppong, 1998; Crisp, 2000; Kibreab, 2001 cited in Crisp, 2003: p.9). The risks and physical harm to vulnerable demographic groups such as women, the elderly and children has also been significantly high (Whittington et al, 2005; Blaikie et al, 2014). In 2012, the United Nations Aid agencies also identified a poor adherence to the 1951 Convention by African states with

2.4 million forced migrants in 22 countries (over 200 refugee sites) depending on food aid (World Food Program, 2012).

In South Africa, the upsurge in regional and global forced migration statistics has also led to the overwhelming numbers of both forced and voluntary migrants flooding its borders (Morris, 1998; Tevera and Zinyama cited in Hungwe, 2013; UNHCR, 2014 cited in Stupart, 2016). Adverse effects of this have been operational, budgetary and capacity related constraints in implementing the codifications of the 1951 Convention Relating to the Status of Refugees by state parties, especially in Africa. Consequently, due to how the 1951 Convention does not enforce nor monitor signatory state parties adherence to its tenets (UNHCR, 1967; Gill, 2001: p.131; Gill, 2014: p.1), over the years member states have increasingly introduced immigration policies that allow for the exclusion of forced migrants. Forced migrants globally, are thus often met "by systems of filtering, choosing, accepting and exclusion" (Worth, 2006 cited in Bollaert, 2008: p.13). This has therefore constituted a significant impediment to the 1951 Convention`s codifications on the non-refoulement of asylum seekers as well as the provision of social protections (UNHCR, 1951: p.3, 24).

2.2.5 Protection gaps: International Organisations interventions

International organisations have assumed pivotal roles across the globe not only in issues of coerced migration but within support and consultative roles to government`s worldwide. They have been actively involved in holding governments accountable to their humanitarian obligations as well as the design and implementation of migration policies within sovereign states (Dongier et al 2013). Given how one of the limitations facing international conventions and the realisation of equal access to human rights is the issue of poor Human Rights Education (HRE) (Bovenkerk, 1995; Palmary, 2003), international organisations have actively addressed such gaps. This has been done through their assumption of the role of principal actors in spearheading HRE programs globally in countries such as South Africa (through the UNHCR) and further afield (Sibanda et al, 2012: p.37)

The role International organisations play in mitigating against the limitations within the above mentioned universal legislations, is what makes them essential stakeholders in the alleviation of forced migrant groups` deprivations. Their significance is evidenced by how in 2012, the United Nations Aid agencies identified a poor adherence to the global humanitarian laws by African states (World Food Program, 2012). Such a poor adherence to global best practices and guidelines on refugee rights has resulted in a high under five mortality rate as well as a scarcity of basic facilities (health, housing and education) within African refugee camps (Nduna and Goodyear, 1997; Kalipeni and Oppong, 1998; Crisp, 2000; Kibreab, 2001 cited in Crisp, 2003: p.9). The efforts of international organisations such as UNHCR, UNDP and UNOCHA have therefore been mostly visible through integration programs designed to alleviate forced migrant groups challenges. Such programs by development and aid agencies include the Comprehensive Refugee Response Frameworks (CRRF), whereby social integration of refugees is encouraged by settling them within indigenous communities where they jointly share the available facilities (Chelwa et al, 2016; Turk, 2016).

Humanitarian actors and development partners have also been actively involved in the prevention of the spread of epidemics, the provisioning of housing (temporary) and healthcare facilities for forced migrant groups. In response to how the access to the Universal Declaration of Human Rights (UN, 1948: p.48, 52), entitlements to health care is still outside the reach of many people in the world (Bendick, 1996; Miraftab, 2001; Woods et al, 2006; Cediey and Foroni, 2008) multinational organisations have introduced programs to mitigate against such gaps. In managing the issue of unequal access to healthcare especially amongst vulnerable groups such as refugees, (thereby curtailing the problem of high infant mortality rates), development and aid partners have introduced programs such as the Safe Motherhood Action Groups (Sialubanje et al, 2017). Through such programs, the right to motherhood as enshrined in the Universal Declaration of Human Rights (UN, 1948: p.52), is protected as a fundamental human right for all.

2.3 REFUGEE RIGHTS IN THE AFRICAN CONTEXT

2.3.1 The Organisation of African Unity Convention (1969)

The 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa was drafted as a supplementary instrument to the 1951 United Nations Convention Relating to the Status of Refugees. The 1969 Convention was driven by the conviction that all African problems must be solved in the spirit of the Charter of the OAU. Weis (1970 cited in Viljoen, 2001: p.24) argues that African countries recognised the 1951 Convention as a Eurocentric instrument, thus the 1961 Convention Governing the Specific Aspects of Refugee Problems in Africa was an attempt to resolve refugee issues peculiar to the African context. Issues it intended to address included the constantly increasing numbers of forced migrants in Africa as well as the resultant frictions and hostilities amongst OAU member states. Such problems were proliferated by the changing nature of the African refugee narrative and in support of this scholars such as Wilkinson (1999: p.8) argue that:

> "…wars of independence no-longer became the main source of forced migrants but brutal civil and guerilla conflicts, humanitarian refugee situations became politicised and militarised beyond recognition."

The 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa was thus adopted on the 10th of September 1969 by the Assembly of Heads of State and Government and entered into force on 20 June 1974 (OAU, 1969; Awuku, 1995; Obbo, 2001; Viljoen, 2001). In general the 1969 OAU Convention`s resolutions all pertain to the safeguarding of lives, dignity and the overall wellbeing of forced migrants and asylum seekers within the refugee recipient states. Through Article 6, paragraph 1 the 1969 OAU Convention Governing the Specific Aspect of Refugee Problems in Africa, touches on the key aspects similar to the 1951 Convention Relating to the Status of Refugees. These guidelines, for member states pertain to issues such as asylum seeking, prohibition of subversive activities, non-discrimination, voluntary repatriation as well as the issuance of travel documents (OAU, 1969: p.4):

> "Subject to Article III, Member States shall issue to forced migrants lawfully staying in their territories travel documents in accordance with the United Nations Convention relating to the Status of Refugees and the Schedule and Annex thereto, for the purpose of travel outside their territory…"

In the furtherance of the 1951 Convention relating to the Status of Refugees traditions, (UNHCR, 1951: p. 14) the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa also maintained the definition of the term refugee (Article 1, paragraph 1). The 1951 Convention Relating to the Status of Refugees (Article 1 F), as well as the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (Article 5) definitions of a refugee all exclude any person who has committed a crime against peace or humanity, a serious nonpolitical crime or one who has been guilty of acts contrary to the purposes of the United Nations and the 1969 OAU Convention. Whilst adopting this definition, the 1969 Organisation of African Unity Convention Governing the Specific Aspects of Forced migrants, added on to the semantic value of the term refugee (Kleinsmidt and Manicom, 2010: p.165), to mean:

> "…every person who, 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, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality"

Through the above definition, the 1969 OAU Convention was responding to the contemporary reality of how the refugee exodus in Africa was emanating from a more different form of both root and proximate factors. As civilian rule gave way to "military dictatorship, political pluralism to the single party State and wars of independence became civil wars", by just 1967, Africa had a refugee population of nearly half a million people (Onyango, 1991: p.454). The amended definition of a refugee, was thus an attempt by African leaders to accommodate forced migrants fleeing from coup d'état`s, civil strife and political unrests which were rampant on the African continent. Therefore, such forced migrants that the 1969 OAU Convention accommodated included those who are unable to prove any individual well-founded fear of persecution (known as de facto forced migrants in Europe) (Paludan, 1981; Onyango, 1991: p.456). Elaborating on the procedural admission of this

group as forced migrants was important in Africa due to the high prevalence of economic forced migrants fleeing poverty and famine who were thus unable to technically prove any individual fear of persecution.

According to Wilkinson (1999), the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa was also an attempt to contain the retrogressive conduct of some member states. Such conduct included the introduction of filtering policies by some states so as to absolve themselves of the responsibilities that came with being a refugee recipient nation (Wilkinson, 1999; Worth, 2006 cited in Bollaert, 2008: p.13). In the face of subversive elements masquerading as forced migrants, the 1969 Convention Governing the Specific Aspect of Refugee Problems in Africa, was also strategically crafted by the African member states so as to operationalise measures that would clearly articulate on who was a refugee.

2.3.2 An Examination of the OAU Convention (1969)

The 1969 Convention`s conceptualisation of refugee issues has mostly been blamed for being out of context with contemporary African issues. In 1969 when the Convention was written, forced migrants were mostly emanating from colonial states that were waging wars of independence against imperialist governments. The spirit towards forced migrants` issues when the 1969 Convention was drafted, was thus an exuberant sense of solidarity (Okello, 2014). However, "it was not expected that after independence there would still be forced migrants nor internally displaced persons, who do not even feature in the OAU Convention" (Okello, 2014: p.17; Polak, 2015). Political violence, civil war and ethnic conflicts in post-independent African states generated millions of forced migrants (Kalipeni and Oppong, 1998). By the year 1995, "Rwanda had produced 1.7 million forced migrants, Liberia 750 000, Somalia 450 000, Eritrea 300 000, while Sudan and Angola had 450 000 and 400 000 respectively" (UNCHR, 1993, 1995 cited in Kalipeni and Oppong, 1998: p.1637). Faced with such large numbers of forced migrants, individual member states have embarked on a calculated paradigm shift from the former sense of solidarity. This has culminated in a failure to adhere to the 1969 Convention`s principles. As a result, through the years, member states have gradually realigned their immigration policies to follow the more exclusionary

lead of other Western and more developed regions (Worth, 2006 cited in Bollaert, 2008: p.13).

One of the biggest weaknesses in the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa, has also been its appreciation of intrastate displacements as not constituting a form of refugee movement. By overlooking the plight of internally displaced persons (IDPs) through its pronouncement of a refugee as one "who is outside their country of origin" (OAU, 1969: p.1), the 1969 Convention`s scope is therefore delimiting. As a result of this, Human rights experts have been critical of the 1969 Convention arguing that internally displaced persons are not recognised by the 1969 Convention as forced migrants. According to Omede and Ngwub (2017: p.31), in 2007 the total number of displaced Africans in the region stood at 12.7 million. By virtue of this technicality, internally displaced persons such as those in Sudan, Central African Republic, DRC, Sierra Leone and so forth, have found themselves falling outside the 1969 Convention`s mandates (OAU, 1969: p.1; Onyango, 1991: p.458; Crisp, 2000; Amnesty international, 2004 cited in Coghlan, 2004: p.3; Pantuliano et al, 2008; Spittaels and Hilgert, 2009).

Furthermore, the 1969 Convention`s legal expansion of the term refugee to include those who are unable to prove any individual well-founded fear of persecution, created some legal loopholes (OAU, 1969: p.2; Paludan, 1981; Onyango, 1991: p.456; Awuku, 1995: p.81). This meant that on top of the millions of forced migrants fleeing civil wars in Africa, coup d'état`s, civil strife and political unrests, refugee receiving countries also had to admit other forms of forced migrants. This category included economic forced migrants and all those fleeing drought, famine, economic issues or repressive state policies. Many economic migrants have since exploited such weaknesses in the African refugee law and lodged illegitimate asylum claims. At a considerable fiscal cost, African countries such as South Africa (due to their economic appeal), have had to admit millions of illegitimate asylum seekers (Landau, 2006). Illegitimate asylum seekers include ,"those seeking to escape from a dysfunctional political economy denying them access to basic needs including rights of mobility and expression" (Butler, 2009 cited in Andrews, 2015: p.330). South Africa, as an example currently hosts

the second highest number of asylum seekers on the continent, the majority of whom are economic migrants from Zimbabwe, Somalia, Burundi, Ethiopia and Rwanda (Morris, 1998; Manicom and Mullagee, 2010; Tevera and Zinyama cited in Hungwe, 2013; U.N. International Migration Report, 2015; UNHCR, 2014 cited in Stupart, 2016).

Furthermore, another weakness in the 1969 Convention has to do with how it did not establish a monitoring and evaluation mechanism to effectively pursue "the matter of adherence to its principles nor the laws and practices of member states" (Onyango, 1991: p. 459). Refugee policy frameworks within signatory member states are essential institutional mechanisms in operationalising the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa (Makhem, 2009: p.114). Poor alignment of individual states refugee policies to the 1969 Convention has adversely stifled the adoption of the continental body`s recommendations. This has been worsened by how apart from the Bureau for the Placement, Education and Training of Refugees (BPETR) founded by the OAU in 1968, there is no other way of standardising the adherence of member states to African and universal refugee laws. In its design, the Bureau was proposed to facilitate the provisioning of socio-economic and educational opportunities to refugees. It was also designed to provide OAU member states with relevant information pertaining to refugees and align the functions of multinational organisations, voluntary agencies, civil society and governments towards drawing panaceas to refugee problems. However, Onyango (1994: p.34) argues that the Bureau has achieved minimal success due to how amongst other issues, it faces serious financial and operational challenges. Consequently, there has been little alignment of refugee laws on the African continent with gross human rights violations within OAU member states. Obbo (2001: p.108) concurs and argue that:

> "It is also clear that the Bureau has abandoned the attempt to persuade Member States to incorporate the provisions of the 1969 Convention into their domestic law or to amend their immigration and refugee legislation so that they are brought into conformity with the Convention."

Due to the above mentioned shortcomings, refugee camps such as those in Kenya, Tanzania, Ethiopia and South Sudan have been marked by poverty, violence, coercion, intimidation and

sexual violence against forced migrants (Ackerman, 1997; Nduna and Goodyear, 1997; Kalipeni and Oppong, 1998; Crisp, 2000; Kibreab, 2001 cited in Crisp, 2003: p.9; Piwowarczyk et al, 2008). Within African countries that have a self-settlement policy, forced migrants have been equally exposed to extreme poverty and insecurity due to 'spontaneous integration' (Betts, 1981: p.214). In South Africa, forced migrants have been victims of state sanctioned xenophobia and 'Afrophobia' whereby violence, prejudice and victimisation is targeted particularly on migrants of African descent (Koenane et al, 2015; Tshishonga, 2015). As a result, forced migrants in the country continue to fall outside networks of controlled association (Silver, 1994 cited in De Haan, 1999: p.11; Handmaker and Parsley, 2001: p.43; Taylor, 2004; UNHCR, 2012). The 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa, has therefore remained largely conjectural and unable to guarantee the same refugee rights it was designed to protect and uphold within African member states.

2.4 REFUGEE ADMINISTRATION MODELS IN SADC: A REGIONAL COMPARISON

An analysis of Southern African Development Committee (SADC) states evolution from colonial rule to the present day independent republican governments, shows that some states were either never fully colonised or had moderately peaceful political transitions. As a result, only a few of their citizens were displaced and became forced migrants, these countries include Botswana, Tanzania, Malawi, Zambia, and Mauritius. The majority of African states in the SADC region however, fought protracted wars of liberation before finally attaining independence. These countries include Angola and Mozambique (1975), Zimbabwe (1980), Namibia (1990) and South Africa (1994) (Makhema, 2009: p. 7).

In solidarity with the neighbouring states under colonial rule, while the wars of independence were being fought, newly emancipated countries allowed forced migrants to enter, remain and work in their countries freely. However, during this time 'social' protection was not provided by these states and forced migrants were expected to naturally integrate into local communities and this was in the spirit of African solidarity (Okello, 2014). This approach

has remained the same in some countries such as Botswana where the government (through a camp settlement model) assumes zero responsibility over resident forced migrant groups (Makhema, 2009: p.25; Polak, 2015).

A paradigm shift and change of attitude towards fellow African forced migrants in the region has however been discernable particulalrly after the turn of the 20th century. This has been mostly influenced by how armed conflicts in post-independent African states have continued to generate millions of refugees (Kalipeni and Oppong, 1998). This has inadvertently forced individual African member states to embark on a calculated shift from the former sense of solidarity to a more exclusionary and restrictive immigration stance. Such a change in approach has also been informed by how the "attainment of independence within African states was ideally anticipated to simultaneously end the prevalence of both forced migrants and internally displaced persons in the region," a situation which however did not materialise (Okello, 2014: p.17).

Other countries in the Southern African region that have free settlement systems grant permission for the free movement of forced migrants within their sovereign borders. Additionally, forced migrants are also granted access to the available public social amenities in the host country as an integral aspect of protecting their human dignity. In the determination of refugee status, countries in the SADC region either use a 'prima facie' refugee status determination model or an individualised criteria. Within the refugee camp system, 'prima facie' status determination is commonly used while the free settlement models utilise an individualised status determination.

An individualised status determination approach was designed in recognition of the subjective requirement of fear, as stipulated in the 1951 Convention Relating to the Status of Refugees (UNHCR, 1951: p.14). This then means that "each separate case has to be assessed for its well-foundedness" before refugee status is individually conferred (Viljoen, 2001: p.24). As a result, refugee status applicants within a free settlement system whose status has been adjudicated through an individualised system, have a higher claim to the entitlements stipulated in the 1951 Convention. This however is mostly not the case within a refugee camp

system where access to a host of social protections is limited. According to Hyndman and Nylund (1998), 'prima facie' status adjudication is predominantly used as a temporary measure in the face of influxes in Africa with forced migrants being settled in refugee camps. As a result, a single country can concurrently implement both policies such as the case in Kenya where Somali and Sudanese nationals were granted prima facie refugee status upon arrival, while other nationalities received individual adjudications (Jacobsen, 2006: p.275).

In the SADC region, individualised procedures for status determination are found under the laws of South Africa, Angola, Botswana, Namibia, Lesotho, Malawi, Mozambique, Tanzania and Zimbabwe, as well as (administratively) Zambia (Klaaren and Rutinwa, 2004: p.86). However, through a 'prima facie' refugee status determination, as in the case of DRC, Madagascar, Mauritius and Swaziland, refugee status is homogeneously conferred to a specific group of applicants upon adjudication by a regulatory authority.

Table 1: Domestic Legislation regarding forced migrants in SADC member states

State	Act	Year
Mauritius	No refugee legislation	
Madagascar	Decree for the creation of a refugee office within the Ministry for the Interior	1962
Botswana	Forced migrants Recognition and Control Act	1967
Zambia	Refugee (Control) Act	1970
Swaziland	Forced migrants Control Order	1978
Lesotho	Refugee Act	1983
Zimbabwe	Refugee Act	1983
Malawi	Refugee Act	1989
Angola	Law on Refugee Status (8/1990)	1990
Mozambique	Refugee Act (21/1991)	1991
South Africa	Refugee Act 130 of 1998	1998
Tanzania	Forced migrants Act	1998
Namibia	Forced migrants (Recognition and Control) Act	1999
DRC	Refugee Status Act (21/2002)	2002

Source: Social Protection for Forced migrants and Asylum Seekers in the Southern Africa Development Community (Makhem, 2009: p.114)

Table 2: Dominant Refugee Reception Model

Camps	Self-settlement
Botswana	Angola
Malawi	DRC
Mozambique	Lesotho
Namibia	South Africa
Tanzania	Swaziland
Zambia	
Zimbabwe	

Source: Social Protection for Forced migrants and Asylum Seekers in the Southern Africa Development Community (Makhem, 2009: p.114)

From the two tables above, South Africa, Angola, Namibia and the DRC have the most recent refugee policy frameworks in the region. Correspondingly, with the exception of Namibia, they all have a self-settlement model for forced migrants. This is in keeping with Article 26 of the 1951 Convention Relating to the Status of Refugees, which touches on the freedom of movement of forced migrants (UNHCR, 1951: p.27).

2.4.1 Refugee Camp Models

The extent to which forced migrants are socially included or excluded also varies greatly across the SADC region. A good way to examine these variations is through a comparison of the laws and policies of various states and how they accord forced migrants rights to freedom of movement (UNHCR, 1951: p.27). Countries such as Botswana, Malawi, Mozambique, Namibia, Tanzania, Zambia and Zimbabwe have a refugee camp settlement system and thus require forced migrants to reside within camps. Other researchers such as Idris (2017), argue that refugee camps in theory do facilitate for the provisioning of protection services to forced migrants. However, they also carry dangers particularly to women, the elderly as well as children within the refugee population and these dangers are mostly in the form of violence, crime, sexual and gender based violence (SGBV) (Idris, 2017: p.4). Other researchers have also identified the camps as havens for human traffickers due to the lapse in security and high human vulnerability within the settlements. Such cases have been exemplified by the forced

abductions of young under-age boys into militia groups such as the Sudan Peoples` Liberation Army (SPLA), as well as Burundian Hutu rebels' recruitment of child soldiers from Tanzanian, Rwandan and Kenyan refugee camps (Crisp, 2000; Singer, 2006).

In the countries with a refugee camp system, forced migrants are confined to the camps and are restricted from exiting such settlements "without permits unless they have expressly been exempted" (Klaaren and Rutinwa, 2004: p.88). By virtue of this debilitating and exclusionary regulation, forced migrants within the camp settlements are detached or excluded from essential social domains. Such social spheres are imperative in the attainment of the 1951 Convention Relating to the Status of Refugees as well as the 1948 Universal Declaration of Human Rights. The rights associated with the said legal frameworks include universal rights to employment, social security and freedom of movement for all people including forced migrants (UN, 1948: p.46, 48, 52, 54; UNHCR, 1959: p.22, 27). In articulating what a refugee camp system entails, Idris (2017: p.3) gives the following description:

> "Camps are purpose-built for forced migrants and administered by UNHCR and/or host governments. Food, water and services such as schooling and health care are provided by relief agencies. Forced migrants in camps are not expected to be self-sufficient. Camps are generally conceived as temporary though in practice this is often not the case."

Within most refugee camps in the SADC region, forced migrants are indirectly denied social protection and autonomy by virtue of being excluded from the socio-economic sectors outside the camps. In Botswana, although sometimes faced with influxes in asylum seekers as exemplified by the 2009 statistics of between 40,000 and 100 000 Zimbabwean asylum seekers at Francistown detention camps, the government still assumes no obligation towards forced migrants (Betts, 2010: p. 369). In such refugee camps where forced migrants are denied the right to engage in wage earning, there are distinctly high levels of vulnerability, epidemics and overpopulation as exemplified by the camps in Tanzania, Malawi and Mozambique (Swerdlow et al, 1997; Ackerman, 1997; Nduna and Goodyear, 1997; Kalipeni and Oppong, 1998; Crisp, 2000; Kibreab, 2001 cited in Crisp, 2003: p.9; Piwowarczyk et al, 2008; Shahin et al, 2015). Studies carried out in the Maheba refugee camp in Zambia between

2008 and 2014 equally indicated the prevalence of a high under five mortality rate amongst forced migrants (Chelwa et al, 2016). Given such structural challenges confronting forced migrants within the camp models, non-governmental organisations have thus often assumed the responsibility of provisioning aid and relief in the form of shelter, food and other basic amenities. In Botswana for instance, civil organisations have included non-governmental organisations operating in the refugee camps and these include the Botswana Council of Churches (BCC), the Lutheran World Federation (LWF), and the Botswana Refugee Council (BRC).

Other researchers such as Abdi (2005), in their examination of the refugee camps in Africa have however identified the incapacitating nature of refugee camp models and the subsequent intervention of non-governmental organisations, as promoting aid dependency. Kinyua (2005: p.62), identifies the dependency on food aid within refugee camps as particularly more prominent and indicative of forced migrants low level of integration into the mainstream socio-economic networks. Some refugee camps such as Kakuma in Kenya, despite being in existence for over twenty years, still have not equipped forced migrants with life skills, self-reliance and economic independence. Cases of passive dependency on aid and relief were also identified by Sander and Edwards (2017), in a study of over 5 400 Congolese forced migrants temporarily accommodated at the Kenani transit center in Zambia. This particular study therefore identifies refugee camp systems as exposing forced migrants to a higher degree of exclusion by virtue of how they restrict their level of social contact and integration (Klaaren and Rutinwa, 2004: p.88). Furthermore, ostracising forced migrants from the socio-economic networks heightens their over-reliance on relief thus creating "a dependency mentality" while at the same time financially overburdening the host country (Harvey and Lind, 2005: p.3; Idris, 2017).

2.4.2 Free Settlement Systems

Free settlement refugee regimes are correspondingly associated with individualised adjudication systems. Therefore under such a model, any person who wishes to be recognised as a refugee, must present himself upon entry "to the specified government authorities in the

area of entry, and indicate his desire to apply for asylum" (Klaaren and Rutinwa, 2004 cited in Kleinsmidt and Manicom, 2010: p.167; Department of Home Affairs, 2017). In the case of South Africa, such an individual is then afterwards accorded with a Section 23 permit at the port of entry. This permit is nonrenewable and valid for a period of 14 days. The permit authorises the applicant for refugee status to report to the nearest refugee reception office (RRO) in order to apply for asylum in terms of Section 21 of the Refugee Act 130 of 1998. During the next stage at a refugee reception office (within the stipulated 14 days), applicants fingerprints are taken and the first interview conducted by a refugee reception officer. At this point, a document known as a BI-1590 is duly completed (Department of Home affairs, 2017). Thereafter, an Asylum Seeker's permit (Section 22 permit) is printed, signed, stamped and issued to the asylum seeker. The Section 22 permit is only valid for six months and legalises the asylum seeker to stay in the country temporarily pending a final adjudication by the Ministry of Home Affairs. Such an adjudication is done through an interview conducted by a refugee status determination officer (RSDO) before the expiration of the Section 22 permit. When granted asylum (written recognition of refugee status) in South Africa, a forced migrant is generally issued with a Section 24 permit. This permit then allows such a person to remain for a specified period of 2 years in South Africa and is renewable (through a review process) upon expiration.

The main differences in the refugee policies amongst SADC member states are mostly rooted in what Makhema (2009), terms 'social protections'. These social protections are defined as the mechanisms availed to vulnerable and ostracised individuals in mitigating their exposure to risks and improving their social welfare (Makhema, 2009: p.4). According to Klaaren and Rutinwa (2004), the laws of countries in the Southern African Development Community differ significantly when it comes to forced migrants` social protection and entitlements to employment and wage-earning. In South Africa, in accordance with the 1951 Convention Relating to the Status of Refugees (Article 17), the Refugee Act 130 of 1998 in Regulation 27 (F), affords forced migrants the right to employment in the same way as citizens except in the case of political rights, freedom of trade, occupation and profession.

In the entire SADC region, only South Africa and Angola have refugee policy frameworks which are regarded as the most progressive in the region with both of them having self-settlement models. Within the two countries, refugee status determination automatically warrants one rights to economically gainful activities such as employment and other legal forms of wage earning (Klaaren and Rutinwa, 2004: p.89; Kavuro, 2015). As a result, other researchers argue that self-settlement systems are more long-term solutions to forced migration, whereas camp models are short-term (Idris, 2017). This is mainly so due to the high incidents of protracted displacements with the average prolonged refugee situation lasting 26 years (Kerwin, 2016 cited in Idris, 2017: p.13). The long-term nature of displacement as a phenomenon therefore demands a more empowering and durable model such as the self-settlement approach.

As the case with refugee camp models in Africa, self-settlement systems in Angola, DRC, Lesotho, South Africa and Swaziland have also subjected forced migrants to social exclusion and an in access to social protections (Makhema, 2009; Kavuro 2015). Although this system, possesses several merits, inclusive of but not confined to its facilitation of the free movement and integration of refugees into the market economy, it has also been blamed for increasing forced migrants vulnerability (Handmaker and Parsley, 2002; Amisi and Ballard, 2005). Other researchers such as Jacobsen (2006), concur and argue that the self-settlement systems in Africa proliferate the risks confronting forced migrants by exposing them to urban poverty, homelessness and unemployment. Idris (2017: p.6) also argues that although self-settlement systems facilitate for forced migrant groups social integration and unhampered freedom of movement, they inadvertently expose forced migrants to arrests, xenophobia, detention, extortion and exploitation.

In addition to the above mentioned issues, due to the adverse effects of 'spontaneous integration', forced migrants in the self-settlement systems have also been exposed to social exclusion and a spectrum of other risks (Betts, 1981: p.214). In the case of South Africa and Namibia, their self-settlement approach has meant that "forced migrants are expected to integrate themselves into society and to support themselves and their families" (African

Centre for migration and Society, 2013 cited in Kavuro 2015: p.233). Countries in the SADC region with a self-settlement system (Lesotho, South Africa, DRC and Angola), therefore assume that through integration, forced migrants will assume self-sustenance. As a result of this assumption, they offer the forced migrants very little support in as far as social protection is concerned. This argument is also put forward by Makhema (2009: p.39) when he states that:

> "In a system based on self-supporting integration, public social protection mechanisms are in place only for emergencies and cases of exceptional hardship, while the everyday provision of food, shelter and basic necessities are assumed to be the responsibility of each individual, based on income from work or informal social support networks."

2.5 THE EVOLUTION OF SOUTH AFRICA`S REFUGEE POLICY FRAMEWORK

Before South Africa`s independence in 1994, national policy on entry, residence, temporary migration, immigration (permanent residence) and refugee status determination all fell under the Aliens Registration Act No 26 of 1936 (Handmaker and Parsley, 2001). Enacted in 1939, the Aliens Registration Act was in keeping with most migration policies of its time which were more inclined towards immigration control rather than immigration management. This was mostly so due to how in its design, the Aliens Registration Act No 26 of 1936 was intended to exclude the entry of Indians as well as Jews (during as well as after the World War era of 1939-1945). Most essential in its exclusionary architecture, was the objective to prevent black migrants from entering the country. The official definition of an immigrant, according to the Aliens Registration Act, was that he or she had to be able to assimilate into the white population (Peberdy and Crush, 1998; Crush, 2008).

Handmaker and Parsley (2001: p.41) further submit how the entry of black migrants from neighbouring states into apartheid South Africa was only limited to addressing the needs for labour in the thriving mining and agricultural sectors. Although during the early 19th century, thousands of black immigrants were admitted into South Africa as labourers, once in the country their movements were heavily controlled through the Influx Control and Pass Laws and these included the Natives (Urban Areas) Act No 21 of 1923 (Buckley, 1997 cited in

Namukaso, 2015: p.2; Handmaker and Parsley, 2001: p.41). Established on 14th June 1923, the Influx Control Law cut South Africa into urban and rural areas and thus systematically restricted the movement of black males into the urban areas (Evans, 1991). Black immigrants from neighbouring states such as Mozambique were thus confined to the mines and farms where they were employed with access into the white urban areas highly restricted. It is therefore as a result of such issues that from the very onset, the Aliens Control Act was regarded as a racially discriminative legislation.

In 1991 a shift towards the liberalisation of migration policy in South Africa was seen through a repeal of the Aliens Registration Act (No 26 of 1936) and the introduction of the Aliens Control Act (No 96 of 1991). After the attainment of Independence in 1994, an incorporation of all the key principles from the body of international instruments on refugee protection was further required (Klaaren and Rutinwa, 2004: p.92 cited in Kleinsmidt and Manicom, 2010: p.167). These included but were not confined to the Universal Declaration of Human Rights (1948), the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol as well as 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. Accordingly between 1997 and 1999, through the draft Green Paper as well as the White Paper on International Migration, efforts were undertaken to reform South Africa`s migration policies. According to Crush and McDonald (2001: p.118), both the draft Green Paper and White paper on International Migration equally called for "a human rights based approach to the post-independence immigration system" (Kleinsmidt and Manicom, 2010: p.164). Through the two draft papers and ultimately the Refugee Act 130 of 1998, the post-apartheid South African government was attempting to present a more progressive and liberal immigration policy framework (Crush, 2008).

The Refugee Act 130 of 1998 was therefore a representation of South Africa`s efforts in incorporating its national refugee policy within the framework of the Southern African Development Community (SADC), the African Union (AU), the New Economic Partnership for Development (NEPAD), its own Constitution and other international conventions (Crush, 2008; Kleinsmidt and Manicom, 2010: p.164). Handmaker and Parsley (2001), have however

critiqued how the evolution towards a more liberal migration policy in South Africa was blighted by the Refugee Act 130 of 1998`s association with the Aliens Control Act.

The negotiated settlement prior to South Africa`s independence whereby job security for most in the civil service was secured, resulted in a civil service filled with people from the apartheid era (Mangcu, 2003: p.107). Such immigration officials in the Department of Home Affairs who had retained employment, were now tasked with implementing the liberal tenets of the Refugee Act 130 of 1998. This meant that the same organ in apartheid South Africa, in charge of enforcing apartheid alien laws was now responsible for the execution of liberal immigration policies. The ideological gaps between the Aliens Control Act (No 96 of 1991) and the Refugee Act 130 of 1998, have thus raised several debates. In the era after apartheid, although affirmative action and proportional representation has meant that black South Africans are now employed within the Department of Home Affairs, the department`s ideological evenhandedness in implementing the Refugee Act 130 of 1998 is still being questioned (Peberdy and Crush, 1998; Crush, 2008).

2.5.1 The Refugee Act 130 of 1998

The Refugee Act 130 of 1998, in Regulation 27 (G) accords forced migrant's entitlements to the same basic health services and basic primary education as the inhabitants of the Republic. Regulation 27 (F) affords them the right to employment in the same way as South African citizens except for political rights, freedom of trade, occupation and profession. Regulation 27 (B) accords forced migrants full legal protection, which includes the rights set out in Chapter 2 of the Constitution. Regulation 27 (D) and 29 (1) entitles forced migrants to identity documents. The South African constitution also observes the right to preserve the sanctity of life, wellbeing and human rights for all including forced migrants (Bill of Rights Chapter 2 article 9 and 11). It is due to such a friendly immigration policy that South Africa hosts the largest number of migrants in Africa and is the largest asylum seeker destination globally, receiving 21% of all claims mainly from neighbouring and regional states (Makhema, 2009; Manicom and Mullagee, 2010; UNHCR, 2014).

The Refugees Act 130 of 1998, is therefore an "urban asylum policy that encourages a group of forced migrants and asylum seekers to self-settle and integrate into South African society" (Kavuro, 2015: p.250). However, forced migrants in South Africa face many challenges accessing the rights and entitlements enshrined in the Refugee Act 130 of 1998 (Landau, 2006; Buckland 2011; Klaaren and Ramji, 2001). Due to how forced migrants have not fully benefited from such stipulated legal rights (Klaaren and Ramji, 2001; Palmary, 2003; Landau, 2004; Landau, 2006; Buckland 2011), this section provides a policy analysis of the Refugee Act 130 of 1998 limitations and implementation.

According to Landau (2006), although Regulation 27 (C), Regulation 27 (F), Regulation 27 (D) and Regulation 29 (1) of the Refugee Act guarantees refugee rights, protection, documentation and limited use of detention, the government has not enacted systems for the specialised provisioning of such. Despite its failure to indicate any special provisions for the elderly, the Refugee Act 130 of 1998 under Regulation 32 (1) is also very vague in its articulation of unaccompanied children and disabled persons legal rights. Although South Africa is signatory to the 1991 Convention on the Rights of the Child, the Refugee Act 130 of 1998 fails to elaborate on how the rights of such vulnerable forced migrant groups shall be upheld. Consequently, according to Handmaker (2001), the government in South Africa assumes no obligation for providing specialised assistance to forced migrants, their unaccompanied children and the disabled. Studies done amongst forced migrants in South Africa equally found that in "almost all cases, unaccompanied minors coming to South Africa face the risk of exploitation and receive almost no protection from the government" (Makhema, 2009: p.37).

According to Moret et al, (2006), the progressiveness initiated by the post-apartheid government in South Africa through crafting of the Refugee Act 130 of 1998 was short lived. Reasons for this are partly due to "the shortage of adequately trained staff in the Department of Home Affairs, the majority of whom urgently need training to process the steadily increasing numbers of asylum applications" (Handmaker and Parsley, 2001: p.43). According to Honorine (2012), South Africa has 58,000 forced migrants and more than 200,000 pending

cases for asylum seekers. Such sizeable numbers of pending asylum cases indicate serious capacity related concerns (Moret et al, 2006). Examples of capacity constraints in South Africa can be exemplified by "the shortage of adequately trained staff in the Department of Home Affairs, the majority of whom urgently need training to process the steadily increasing numbers of asylum applications" (Handmaker and Parsley, 2001: p.43). Challenges in the South African immigration system also emanate from how refugee rights are enshrined in the Constitution, "making the government (rather than the international community' or non-governmental organisations) entirely responsible for the social protection of forced migrants" (Makhema, 2009: p.23).

Due to the above mentioned capacity challenges, the Refugee Act 130 of 1998 has thus faced several challenges. As a result, it has inadvertently exposed forced migrants in the country to considerable hardships. Such hardships have been characterised by an inability to translate the codifications contained in Regulation 27 (G), Regulation 27 (F), Regulation 27 (B) and Regulation 27 (D) of the Refugee Act 130 of 1998 into tangible benefits. These include livelihood opportunities, social protection, access to services such as health and education as well as legal documentation (Bahamjee and Klaaren, 2004; Amisi and Ballard, 2005).

In the face of overwhelming numbers of both forced and mostly voluntary migrants flooding South Africa`s borders (Morris, 1998; Landau, 2006; Tevera and Zinyama cited in Hungwe, 2013; UNHCR, 2014 cited in Stupart, 2016), the Refugee Act 130 of 1998 has faced several challenges. Guaranteeing internationally prescribed liberties to forced migrants in South Africa has thus been mostly encumbered by limitations within the implementation of refugee policy (Amisi and Ballard, 2005; Landau, 2006: p.323; Bollaert, 2008; Manicom and Mullagee, 2010; Bwalya, 2012 cited in Namukaso, 2015: p.18; Crush et al, 2013: p.8). Without the fundamental access to social assistance and the right to economic participation, asylum seekers in South Africa find themselves in a situation of 'enforced destitution', denying them the fundamental ability to survive legally (Cholewinski, 1998 cited in Handmaker and Parsley, 2001: p.44; Human Rights Watch, 2013 cited in Manicom, 2010: p.176).

Furthermore, many Congolese forced migrants, despite having been in South Africa for over ten years, are yet to receive their Section 22 permits and thus cannot access the rights enshrined in the Refugee Act 130 of 1998 (Namukaso, 2015). This particular study is therefore validated in its analysis of the limitations of the South African refugee policy framework (Refugee Act 130 of 1998) and the question of the arising exclusion and associated deprivations confronting forced migrant in the country.

2.6 CONCLUSION

The Chapter examined the main refugee legislative frameworks framing the study. Such frameworks are indispensable in the forced migration discourse and form the foundation upon which all contemporary policy and legislation governing refugee issues is based. The Chapter therefore examined refugee related policy in the local, regional and international contexts. In doing so, it provided an exegesis of Refugee rights and entitlements as encapsulated in relevant international conventions, International Humanitarian Laws and the Refugee Act 130 of 1998 of South Africa. A critical analysis of such instruments was done with some of the shortcomings being identified as possible causes for the contemporary challenges facing forced migrants in Africa as well as further afield. Through such a comparative analysis, the Chapter was also able to illuminate on South Africa`s legal humanitarian obligations towards forced migrants and the extent to which it has aligned its own legal frameworks along such guidelines. Several works written on the Refugee Act 130 of 1998 and the welfare of forced migrants in South Africa were also examined by the Chapter. The Chapter also juxtaposed and carried out a comparative analysis of South Africa`s refugee policy framework with the prevailing refugee systems in the SADC region. Such a comparison was done so as to develop an appreciation of the prevailing trends on the continent, regarding the welfare, entitlements and social inclusion of forced migrant groups.

CHAPTER 3: FORCED MIGRATION IN THE REGION: REFUGEE PRODUCING ISSUES

3.1 INTRODUCTION

This Chapter examines South Africa as the major destination for forced migrants in the SADC region as well as the continent. This is done so as to highlight the refugee and migration trends in South Africa as well as the regional socio-economic dynamics influencing such patterns. The Chapter gives a historical account of the conflict in the DRC, since the colonial era up until the current crisis. This detailed account is intended to show the deep seated structural, cultural, socio-economic and political challenges facing the country and its subsequent history as a refugee producing state. Through the use of scholarly literature on what affects and influences coerced movements, the migration of Congolese forced migrants throughout the region is also examined. The reasons why Congolese forced migrants prefer South Africa as a final destination are also examined in the Chapter.

3.2 HISTORICAL NARRATIVE OF DRC: A REFUGEE PRODUCING STATE (1885-1908)

For more than seventy five years (1885-1960), the present day DRC was controlled by Europeans. Initially for thirteen years the country was under a Belgian national, King Leopold II (1885-1908) and then afterwards it fell under the ruler ship of the Belgian government, a period lasting for fifty two years (1908-1960). After Europe had acknowledged Leopold`s claim to the Congo Free State at the Berlin Conference of 1885, he ruled over it through the Association 'Internationale Africaine', a non-governmental organisation, with him as the singular stockholder and chairman (Hochschild, 1999). During his thirteen year reign, the Belgium national, Leopold II, ruthlessly exploited Congo Free State`s vast natural resources through harsh tyrannical rule which included extensive slave labour. Due to the vastness of the Congo Free State, ranging in the region of 2,345,410 square kilometers, making it larger than France, Germany, Spain, Denmark, the Netherlands, Belgium, Switzerland, Australia and the United Kingdom (Hochschild, 1999: p.116; Oppong, 2007: p.11), Leopold II found it unmanageable to centrally govern the country. In response to this challenge, he leased out

the lands he was unable to economically exploit to various concessionary companies which would then surrender as royalty, half of their profits to his administration (Buelens and Marysse, 2009; Kolar, 2015).

According to Harms (1983), the establishment of such concessionary companies in Africa profoundly affected the history of the continent. Harms (1983: p.125), argues that the largest rubber concession companies in Congo Free State "did not create any self-perpetuating structural relationships nor introduce any new technology, new market relations or a new indigenous elite" to the country. These companies instead, incorporated in their operations barbaric plundering's and a tribute collection system. From 1890 onwards, Congolese nationals were forced to collect rubber as the only means of paying new taxes levied on them by Leopold II (Lagergren, 1970; Arlin, 2008). Failure to meet specified rubber collection quotas led to the murder of over ten million Congolese nationals in the rubber-collecting expeditions of 1901 as well as mass mutilations and amputations afterwards (Casement, 1904; Nelson, 1994 cited in Kolar, 2015: p.3). According to Harms (1983), these companies operated on a 'boom-and-bust cycle', characterised by violence and inhumanity. After the bust, such notorious concessionary companies departed, leaving a legacy of death, disease, and destruction in the Congo Free State (Wilson, 1971; Harms, 1983; Perry et al, 2012; Boelaert, 1952 cited in Kolar, 2015: p.13).

A correlation can be drawn between the violence perpetrated by the concessionary companies and that of the warlords and militia groups in independent DRC. As shall be discussed in the proceeding sections, these militia groups have inflicted similar degrees of anarchism in the Congolese state, rendering the country a troubled, refugee producing state (Perry et al, 2012; Hecker et al, 2013).

3.2.1 DRC as a Refugee Producing State (Belgian Congo 1908-1960)

After reports of widespread murder and torture, the Congo Free State was finally surrendered to the Belgian government in 1908. This signaled the establishment of an absolute colonial administration in the colonial state renamed to Belgium Congo (Harms, 1983). According to

Turner (2007: p.28), Belgian colonial administration in the Congo was laid on the foundations established by Leopold II of the 'colonial trinity' comprising of the state, the church and the private companies. The change in administration in the newly acquired colonial state signaled an era whereby the Belgian government began a more long term and steady program of mineral resource exploitation. In essence, the economic exploitation of the Congo for the Belgian economy (through the mining of copper and cobalt in Katanga, diamond in Kasai and gold in Ituri), was the coloniser`s main motive for capitalist expansion. According to Arlin (2008), while the most unfair labour practices employed in Leopold II`s Congo Free State were eliminated, most Congolese people`s welfare was no better under the new Belgian administration.

Belgium Congo was a large source of copper, palm oil, rubber as well as being the sole supplier of most of the uranium used in the construction of atomic bombs for the Second World War (1939-1945). As a result of this, it enjoyed substantial industrialisation and urbanisation in the interwar and post war period (Stover, 1970: p.58; Arlin, 2008; Buelens and Cassimon, 2013). However, the Belgian colonial attitude remained extremely paternalistic with strict punishments being meted out to disobedient black Congolese. Black nationals were also not taught any modern technical or administrative skills and when Independence eventually came in 1960, the social and cultural effects of colonialism had left the colony unbalanced economically and politically inexperienced (Perry et al, 2012). Such political inexperience emanated from how the Congo was unlike most African states in the 1950`s and 1960`s who had had an intellectual class and some form of self-governance prior to the attainment of Independence. This inexperience for the Congo, meant that they were not accustomed to elections and other democratic processes. At independence in 1960, the DRC was to have only a handful of graduates and technocrats. Several historians have claimed that in the period 1960-1961, there were only between 14 and 31 graduates in a country with a total population of about 14 million (James, 2000: p. 153; Arlin, 2008; Campbell, 2008;Perry et al, 2012).

In addition to the above mentioned structural challenges, the Belgians division of the Congo into provinces along tribal lines also promoted rampant tribalism, polarisation and instability. The resultant divisions worked to their advantage and clearly demonstrated how the "divide and rule" strategy was used by both the colonial regime and post-colonial oligarchies (Reno, 2006: p.51). As shall be discussed later in the Chapter, this greatly contributed to the tribally affiliated tensions in the Congo, which in the long run inadvertently proliferated rebel group formations as well as conflict. At independence for instance, such societal disunity plunged the country into a state of turmoil that would last for the greater part of its future (Perry et al, 2012).

According to James (2000: p.153), at the advent of independence for Congo a complete "lack of political and governmental experience was an unhappy portent…the tribe was the focal point of association with more than 200 mutually suspicious tribal groups." After Joseph Kasavubu (1913-1969) and Patrice Lumumba (1925-1961) won the 1960 elections, violent disorders from disgruntled political, ethnic and military groups erupted within a week of independence. In the midst of the turmoil, virtually all remaining Europeans fled leaving the new country without administrators, professionals, and technicians (Collins 1993: p. 247; Witte and Wright, 2002; Arlin, 2008; Campbell, 2008). The copper and cobalt mineral-rich Katanga province, led by Moise Tshombe of the Lunda tribe, seceded signaling a protracted spell of armed conflict that was to last for the greater part of Congo`s future. Such historical fissures in the Democratic Republic of Congo`s socio-political landscape cannot be divorced from the present-day challenges facing the country. According to Perry et al (2012), the contemporary conflict and poverty facing the Democratic Republic of Congo, have their structural roots in both the near and distant past.

3.2.2 Independent Congo: The Degeneration into a Troubled State (1965-2001)

In 1965 Mobutu Sese Seko overthrew Joseph Kasavubu, installing himself as interim president for the next half decade as well as canceling the upcoming presidential referendum (Kodi, 2006). Mobutu Sese Seko, with his political party the Popular Movement of the Revolution (MPR), ruled over the Congo for 31 years and officially renamed it in 1971 to the

Republic of Zaire. As a way of consolidating his authoritarian administration, Mobutu Sese Seko declared the Republic of Zaire a one party state, making the MPR the only political party for all Congolese nationals (Arlin, 2008). During the Cold War years, Mobutu was considered by the West as an ally against Communist machinations in the region and beyond. As a result, he received military and financial aid from the Western countries in curtailing the Katanga region secessionist attempts that were backed by Communist Angolan forces (James, 1996 cited in McNulty, 1999: p.58; Weiss, 2000: p.5). However, due to his growing reputation as a corrupt and autocratic human rights violator, in 1990 the United States of America cut direct military and economic assistance to the country (McNulty, 1999).

After the Rwandan genocide of 1994, close to a million forced migrants fleeing the ethnic conflict began to enter Zaire (Toole, 1994). Most historians have argued how within this inflow of forced migrants, there were also perpetrators of the Rwandan genocide who were fleeing reprisals from the newly established Kagame led, Tutsi regime (McNulty, 1999; Arlin, 2008). As a result, many Rwandan refugee camps inside the Republic of Zaire were controlled by armed Hutu militias. Such militias comprised of former members of the Rwandan army, some of whom had been directly responsible for genocidal killings in Rwanda. Mobutu`s treatment of this volatile situation has been interpreted by many scholars as the primary catalyst behind Congo`s degeneration into a conflict zone and refugee producing state. Through the September 1996 attempted ethnic cleansing of the Banyamulenge tribe on the basis of their Tutsi ethnicity, the Republic of Zaire was tipped further into conflict and instability.

The above mentioned events significantly worsened Zaire`s already volatile state of national security and plunged the country into a full scale ethnic war. Rwandan Tutsis` involvement in the fight led to the establishment of the Laurent Desire Kabila led resistance movement known as the Alliance of Democratic Forces for the Liberation of Congo (AFDL). The AFDL not only fought off the Republic of Zaire government but simultaneously attacked Hutu refugee camps. As a consequence of the rape, massacres and forced conscription of child soldiers by the AFDL, the refugee population at Mugunga camp grew to more than half a

million forced migrants during this time (McNulty, 1999: p.75; Olsson and Fors, 2004: p.324; Arlin, 2008). Other scholars such as Kim (2006), argue that the precedent set by the AFDL of forcibly recruiting several thousands of child soldiers, established a precedent that all other rebel groups would in turn follow over the years.

On May 16, 1997, Mobutu surrendered power and left Kinshasa. As the new president, in 1998 Laurent Desire Kabila expelled all the Rwandan military advisors, removed all Tutsi people from his government and in a similar fashion to the events of 1996, attempted to strip the Tutsi Banyamulenge of their Congolese citizenship. In resistance, with the assistance of Rwandan soldiers dismissed by Kabila, the Banyamulenge staged an armed uprising under the rebel army known as the Congolese Rally for Democracy (RCD). Another rebel group supported by Uganda, the Movement for the Liberation of the Congo (MLC) also emerged from the North of the Democratic Republic of Congo. Although these were all repressed through the regional coalition forces of Zimbabwe, Angola, Namibia, Chad, and Sudan, the country became a troubled state and officially plunged deeper into civil war, producing millions of refugees (Clark, 2001; Perry et al, 2012).

3.2.3 DRC and the Proliferation of Rebel Groups (Contemporary issues)

Renamed by Laurent Desire Kabila from Zaire to the DRC in 1997, the country remained unstable even with his son Joseph Kabila taking over after his assassination in 2001. The civil war in the Congo persisted into the 21st century and in 1999 the United Nations established the largest UN peace keeping mission in the world (Arlin, 2008; Howard, 2008; Smillie, 2010: p.196; Koko, 2011; Karlsrud, 2015). Known as the United Nations Observer Mission in the Democratic Republic of Congo (MONUC) and despite having a considerable seventeen thousand troops, the mission has nonetheless been criticised for failing to pacify the Congolese Conflict. According to Karlrud (2015: p.44), MONUC "has repeatedly been accused of not being able to act or even being reluctant to do so." The MONUC peacekeeping force (which includes South African forces), has also been accused of exhibiting a reactive attitude and failure to protect civilians as the case in the 2004 Bukavu attacks as well as during the Kisangani massacre in May 2002 (Baldo, 2002; Marks, 2007: p.67; Reynaert, 2011: p.9).

As a result of the above mentioned failures in pacifying the DRC conflict throughout the years, considerable casualties have been recorded in the country. The first four studies carried out by the International Rescue Committee (IRC), on the Congolese war between 2000 and 2004 estimated that roughly 3.9 million people had died since 1998. According to Shekhawat (2009: p.10), about 10 per cent of all those deaths "were due to violence and 90 per cent were due to diseases like malaria, diarrhoea, pneumonia and malnutrition." The fifth survey by the IRC, covering the period from January 2006 to April 2007, estimated that 5.4 million people had died since the beginning of the Congolese conflict in 1998. That statistic translates to more than 8% of the DRC's population of 66 million, indicating the severity of the humanitarian crisis in the country. In 2003, when the civil war officially ended, the mortality statistics remained very high with an estimated 45,000 additional deaths every month (Onsrud et al, 2008; Deibert, 2008; Kandala et al, 2009; Shekhawat, 2009; Kristof, 2010; BBC, 09 October 2013). Such indicators are thus evidence of the contemporary challenges facing the Congolese state.

According to Karbo and Mutisi (2012), the DRC is recognised as the second most ethnically diverse nation in the world with over 200 tribes. As a consequence of the many years of war highlighted in the study, the DRC is socially polarised along ethnic, political, ideological and tribal lines (Devisch, 1995; Shearer, 1999: p.102; James, 2000: p. 153). Regarding the importance of ethnic differences in the continuation of armed conflict not only in the DRC but the bulk of African conflicts, Braathen et al (2000: p.3), argues that:

> "Ethnicity plays a role in most conflicts in Sub-Saharan Africa, in the sense that ethnic affiliations often structure the composition of groups in conflict. Moreover, there is little doubt that one of the main reasons why people kill each other is over who they are and the identities they represent."

Due to the said ethnic diversity in the DRC, the arising divisions have now been embodied through the existence of more than 200 tribal based militia groups (James, 2000). In support of this, scholars such as Onsrud et al, (2008: p. 265) argue that since 1996, "the eastern parts of the DRC have been through several periods of war and insecurity, resulting in the destruction of social networks." Other researchers such as Mararo, (1997) in his study of the

DRC (1940-1994), identified land and power struggles as central in negatively impacting on the pre-existing ethnic hostilities. In modern times, incidents of infighting within the Congolese state between Rwandan and Ugandan forces and their respective Congolese client factions have increased around coltan-rich areas in the 'coltan belt' (Montague, 2002: p.112). Such complex, armed conflicts have extended from Bunia to Goma, Bukavu, and Kindu while aggravating pre-existing ethnic tensions in those provinces (Baldo, 2002; Marks, 2007; Reynaert, 2011).

The above mentioned social divisions in the DRC, have thus been closely associated with conflicts centered on the monopolisation of mineral resource wealth. The groups have been blamed for perpetrating what the United Nations has termed Sexual and Gender Based Violence (SGBV), as well as the forced conscription of thousands of fighters below the age of eighteen (Kim, 2006; Coleman, 2007). As a result, the DRC is reported to have the highest number of child soldiers in the world (Bayer, 2007; McMullen, 2013).

The DRC also has 80% of the world`s cobalt reserves, rich soils as well as abundant deposits of copper, gold, diamonds, uranium, coltan and oil (Shearer, 1998; Fairhead, 2001: p.102; Grignon, 2005; BBC, 10 October 2013). Competition over a monopoly of such natural resources mostly found in the Eastern Kivu and Goma provinces, has inadvertently resulted in the prolongation of armed conflict involving several militia groups. There are currently around twenty six militia groups fighting each other in the DRC, all with varying agendas and foreign support (James, 2000; Spittaels and Hilgert, 2009). Some of the major rebel groups include the Forces Démocratiques de Libération du Rwanda (FDLR), which is suspected to have Rwandan foreign funding. Other groups include a political military group made up of integrated army units such as the Mai and the Forces Armées de la République Démocratique du Congo (FARDC). There is also the Mouvement du 23 (M23) and the National Congress for the Defense of the People (CNDP), all with varying and divergent objectives (Spittaels and Hilgert, 2009 cited in Phakati, 2014: p.2). The smaller groups are shown in the following table:

Table 3: Rebel groups in the Democratic Republic of Congo

Rebel Group	Members/Leadership	Year formed	Tribal Affiliation
Union pour la Réhabilitation de la Démocratie du Congo – URDC	An M23 ally, URDC is led by "Brigadier General" Paluku Kombi Hilaire, a FARDC defector.	2012	Nande ethnic group
Raia Mutomboki	An M23 ally, Raia Mutomboki, ("outraged citizens") is the largest armed body in South Kivu	2005	Multi ethnic (Anti-Hutu)
Maï Sheka (Nduma Defence of Congo - NDC)	North Kivu Minerals businessman Ntabo Ntaberi Sheka (Surrendered July 2017) with army deserters and youths	2009	Nyanga ethnic group
Maï Kifuafua	Batembo, Bahunde and Bayanga communities and it is active in southern Masisi Territory (North Kivu).	1998	Tembo ethnic group
Local Defence Forces Busumba (LDF)	An M23 ally, Erasto Ntibaturama, Hutu ethnic leader in northern Masisi (North Kivu)	2005	Hutu ethnic group
Front de défense du Congo (FDC)	Led by "General" Butu Luanda, a former CNDP officer.	2012	Lendu ethnic group
Union des Patriotes Congolais pour la Paix (UPCP/FPC)	A coalition of Maï Maï groups and FARDC defectors led by "General" Kakule Vasaka Sikulikyolo Lafontaine.	2012	Hema ethnic group
Mouvement Populaire d'Autodéfense (MPA)	Hutu FARDC defectors. Led by Col Ndagijimana Basabose, protects Hutu interests against ex-CNDP officers and M23.	2011	Hutu ethnic group
Maï Morgan	Led by Paul Sadala (died April 2014), and operates in Orientale Province's Mambasa and Bafwasende territories.	1998	Nande, Ndaka, Bakumu, Bapiri ethnic groups
Maï Simba	Led by "General" Mando Mazero and "General" Lucien Simba.	1964	Kumu ethnic group
Allied Democratic Forces (ADF)	Ugandan-led Islamist rebel group northwest of DRC's Beni Territory led by Jamil Mukulu	1995	Ugandan nationals
Lord's Resistance Army (LRA)	Led by ICC indicted Joseph Kony.	1987	Multi ethnic (mostly Acholi)

Forces nationales de libération (FNL)	Burundian opposition party in South Kivu's Uvira plateau. Led by Isidore Nibizi with "General" Aloys Nzamapema	1980	Hutu ethnic group
Maï Maï Yakutumba	Led by William Amuri Yakutumba.	2007	Babembe ethnic group
Nyatura	Maï Maï Nyatura is a Congolese Hutu militia which collaborates with FDLR and FARDC against M23.	2010	Hutu ethnic group
Forces des Défense des Intérêts du Peuple Congolais (FDIPC)	Hutu militia group formed to expel M23 from Rutshuru Territory (captured by government forces on 27 October).	2013	Hutu ethnic group
Alliance des Patriotes pour un Congo Libre et Souverain (APCLS)	Led by FARDC deserter "General" Janvier Buingo Karayiri,	2008	Hunde ethnic group
Coalition des Groupes Armés de l'Ituri (COGAI)/MRPC	Umbrella organisation aimed at uniting militias in Orientale Province's Ituri District. Led by "Brigadier-General" Justin Banaloki (alias Cobra Matata),	2012	Multi ethnic groups from Ituri
Forces de resistance patriotiques en Ituri (FRPI)	Led by Cobra Matata.	2009	Lendu ethnic group
Kata Katanga	Loosely structured armed group campaigning for the secession of DRC's southeastern Katanga Province.	2011	Multi ethnic group from Mitwaba
Forces de Défense Nationale (FDN)	Former FARDC soldiers who defected from the national army.	2010	Tutsi ethnic group
M18	New rebel faction in northeastern DRC.	2012	Tutsi ethnic group
M26	Veterans of Nyatura who refused integration in FARDC.	2012	Hutu ethnic group

Source: The Landscape of Armed Groups in the Eastern Congo (Stearns and Vogel, 2015:p.4)

From the table above, the proliferation of rebel group activity and ethnic polarisation in the Democratic Republic of Congo can be observed. These rebel groups are largely seen in the study as a manifestation of the deep seated ethnic antagonisms in the country, which have heightened the complexity of the Congolese conflict. As a consequence, the protracted conflict has displaced many Congolese nationals throughout the African region as well as further afield.

3.2.4 Historical Issues Contributing to DRC`s Refugee Producing Status

In cognisance of the above mentioned issues within the section, this study identifies many negative aspects within the Democratic Republic of Congo`s colonial and post-colonial history. Such issues are observed as having cumulatively contributed towards the Congo`s current structural, political and economic instability (Mararo, 1997; Smith, 2010; Karbo and Mutisi, 2012). In their study of the negative effects of colonial violence in post independent states, Licata and Volpato (2010: p.5) argue that such violence as witnessed in the DRC `s history, can adversely influence a country`s "social relationships, ideologies and imaginaries." Such colonial violence in the Congo, as aforementioned in the Chapter, can be traced back to the days of Leopold II (1885-1908), and the "boom and bust cycle", used as a medium of conveying the colonialist dogma of racial subjugation, servitude and capitalist accumulation. The murder, pillaging and mutilations perpetrated by companies such as the Manyeman (1885), Sanford Exploring Expedition (1886), the Dutch Trading Company (1889) and others, can be seen as a precursor to the present day culture of violence in the Congolese state.

Some analysts see the influence of these companies as being negative due to how they created self-preserving structures of violence and dependency in the Congo (Harms, 1983). In a similar fashion to these concessionary companies, the present day militia groups in the Democratic Republic of Congo have exhibited similar patterns of inhumanity, killing and ferocity (Harms, 1983; Smith, 2010; Devisch, 2010; Perry et al, 2012; Hecker et al, 2013). Such historically imbedded, multi-dimensional (structural and political) challenges are thus responsible for how millions of Congolese nationals have since been forced to migrate to neighbouring countries such as South Africa (Karbo and Mutisi, 2011; BBC, 10 October 2013; UNHCR, 2015 cited in Flahaux and Schoumaker, 2016).

Entangled in a protracted resource based civil war, conflicting (ethnic based) rebel groups have forcibly coerced the migration of scores of Congolese nationals. As illustrated in the previous sections, the issues that have rendered the DRC a conflict zone, distressed by resource based ethnic wars and outside interference, are strongly linked to its history (Harms,

1983). On the nexus between the DRC`s historical experiences and its present day challenges with regard to peace and stability, scholars such as Herp et al (2003: p.141) argue that:

> "The people of DRC have for decades been living in a situation of chronic crisis. Thirty years of appalling mismanagement and corruption under the rule of President Mobutu had left public services in this country in disrepair, creating desperate poverty and chronic poor health… the successive conflicts have further shredded the economic and social fabric of the country."

In understanding how the Democratic Republic of Congo degenerated into a refugee producing state generating millions of forced migrants in the region and beyond, this study identifies several issues within its history. Such issues include the Belgian government administration (1908-1960), and acrimonious division of the country into provinces along tribal lines. Partitioning the Congo along ethnic lines, inadvertently affected the social cohesion as well as unity within the country and the negative effects of this are now discernible through the polarised politics and contemporary civil conflicts (Devisch, 1995; Shearer, 1999: p.102; James, 2000: p. 153; Biaya, 2001: p.57; Frere, 2009; Kaplan, 2009). Scholars studying conflict also support how such ethnic differences can be significant causes of armed violence due to how the "reasons for fighting may become intertwined with the need to maintain cultural autonomy" (Braathen et al 2000; Stewart, 2002: p.342). In post-colonial Congo, politicians such as Mobutu Sese Seko (1965-1996), in pursuit of both political and personal economic mileage, capitalised on the aforesaid tribal and ethnic divisions. This inadvertently further tipped the Democratic Republic of Congo into a highly polarised and unstable state (Lemarchand, 1964: p.206; Mararo, 1997; Shearer, 1999; James, 2000: p.153; Braathen et al, 2000; Marks, 2007).

Under subsequent post-colonial governments, including the current Joseph Kabila led administration, problems facing the DRC became worse. These problems have been predominantly characterised by a manipulation of the said pre-existing social divisions, poor governance, corruption as well as serious human rights violations (McNulty, 1999; Amnesty international, 2004 cited in Coghlan, 2004: p.3; Frere, 2005: p. 355; Arlin, 2008; Smith, 2010; Freedman, 2011; Flahaux and Schoumaker, 2016). As a consequence, apart from being a

refugee producing state, the Congolese state has been ranked in the top 10 on the world's most fragile states index for several years (Fragile States Index, 2014). This study therefore submits that the above mentioned political and social events in the Democratic Republic of Congo, have cumulatively contributed to its current status as a deeply polarised, refugee producing state (Devisch, 1995; Herp et al, 2003: p.141; Licata and Volpato, 2010: p.5).

3.3. FACTORS INFLUENCING DRC FORCED MIGRATION

3.3.1 Proximate Factors

In the examination of the Congolese refugees` coerced migration, all three factors (root, intervening and proximate) can be seen to be at play. The said three factors do not always operate separately but can be seen as being interconnected in influencing coerced movements (Schmeidl, 1997; Boswell, 2002; Stewart, 2002; Moore and Shellman, 2004: p. 725). Proximate factors include the escalation of violent conflict, individual persecution and account for why most structurally unstable countries in the developing world produce more forced migrants (Ellen, 1999; Elbadawi and Sambanis, 2000; Boswel, 2002: p.4). According to Stewart (2002: p.342), by the year 2009, "eight out of ten of the world`s poorest countries were suffering, or had suffered from large scale violent conflict." Since the beginning of the 19th century there have been significant changes in contemporary warfare with civilians becoming ever more directly involved as both aggressors and victims in armed conflicts (Mels et al, 2010: p.1096). An upsurge in such conflicts where civilians are deeply involved has adversely resulted in an increase in the global forced migration statistics with the UNHCR in 2009 reporting there to be 42 million forced migrants in the world.

In most cases, violent conflict as a proximate factor, can bring about socio-economic challenges (root causes) which further proliferate forced migration. According to Stewart (2002: p. 342), "wars in developing countries have heavy human, economic, and social costs and are a major cause of poverty and underdevelopment." Other researchers such as Keen (1998 cited in Goodhand, 2003: p.636), also argue that poverty and poor social services can significantly fuel conflict 'from below'. In their study of conflicts in 161 countries between the years 1960 and 1999, Elbadawi and Sambanis, (2000) provided findings that dispelled

the popular belief that wars on the African continent were due to ethno-linguistic fragmentations. Elbadawi and Sambanis, (2000), discovered that high levels of poverty, competition for limited resources, services and other structural issues were the major causes of conflict on the continent. There is therefore a strong relationship between underdevelopment, socio-economic inequities, armed conflict and coerced migration (Schmeidl, 1997; Ohlsson, 2000; Murshed, 2002; Goodhand, 2003; Walter 2004; Do and Iyer, 2007, 2010; Duffield, 2014). As can be seen in the Democratic Republic of Congo, armed violence has created many forced migrants due to both the violence and the associated risk factors such as poverty, underdevelopment and social inequalities.

Proximate conditions in forced migration have been defined as referring to the oppressive governments and human rights violations along with ethnic and civil conflicts (Zolberg et al, 1992; Schmeidl, 2000: p.287-288; Boswel, 2002: p.4; Renaud et al, 2007). Proximate conditions in the Congo can be seen through the country`s historically repressive and ruthless colonial past (1885-1960), as well as a majority rule system that soon degenerated into a dictatorship (1965-2001). All the years combined, the Democratic Republic of Congo has been under tyrannical or oppressive regimes for over a century.

The current government of Joseph Kabila has also been blamed for human rights abuses especially in the run-up to the December 19, 2016 deadline of his constitutional two term limit (HRW, 2016; Wembi, 2017). In disregard of the 2006 constitution enacted through a referendum, Congolese government security forces have committed the bulk of the recorded 5,190 human rights violations against civilians and opposition activists, which represented a 30 percent increase from the year 2015. Such issues, together with the contemporary rebel group activity and ethnic based wars, can be seen as the proximate conditions responsible for the displacement of millions of Congolese nationals. These proximate conditions in the DRC, have thus led to a multiplication of risks through the proliferation of Sexual and Gender Based Violence (SGBV), forced conscription of child soldiers and many other human rights violations generating millions of forced migrants (Amnesty international, 2004 cited in

Coghlan, 2004: p.3; Kim, 2006; Coleman, 2007; BBC, 10 October 2013; Hategekimana, 2007 cited in Namukaso 2015: p.23).

3.3.2 Root and Intervening Factors

Due to the existence of the said proximate conditions, Congolese forced migrants have fled all over the world in search of better living conditions, better social protection and social security. Intervening factors as a concept in forced migration, take into account all the variables that can either obstruct or facilitate the seeking of such refuge (Bright and Thomas, 1941; Stouffer, 1960; Lee, 1966; Zolberg et al, 1992; Renaud et al, 2007). Intervening factors are however, never causes of coerced migration in themselves "but rather only facilitate or deter migration stemming from root or proximate causes" (Schmeidl, 1997: p.290). In that sense, scholars such as Stouffer (1960), identify intervening factors in migration as influencing the number of people migrating from a point, not as a function of distance directly but rather as a function of the spatial distribution of opportunities. According to Massey (1988 cited in Schmeidl, 1997: p.289), intervening factors in forced migration also include "the idea of migration networks (family or friends) in the destination country." Though the use of ethnic based social networks (bonding networks), these intervening factors have been useful to DRC forced migrants in their move to South Africa and further afield (Simone, 2001; Amisi and Ballard, 2005: p.2; Putman, 2000 cited in Cederberg, 2012: p.65). Such networks, not only help inform the forced migrants on how to travel to the destination country but also how to assimilate and attain self-sustenance once there.

Another intervening factor that has also contributed to the regional and global movement of Congolese forced migrants is the ease of seeking refuge, as facilitated by the 1951 Convention relating to the Status of Refugees. In particular, this pertains to the 1951 Convention`s clause on the non-discrimination, non-penalisation and non-refoulement of all asylum seekers (UNHCR, 1951: p.3; Stoyanova, 2008). The issue of how much a country`s refugee policies are aligned to the 1951 Convention, is a significant intervening factor in influencing forced migration trends. Other studies carried out on forced migration in the

SADC region, also found that forced migrants` itinerary is biased towards the more asylum friendly states, Klaaren and Rutinwa, (2004: p.93) submit that:

> "In various countries we visited, we were told of forced migrants who would move on to other SADC countries even after they had been given asylum. The countries to which forced migrants tend to move suggest that better treatment and opportunities are the reasons…"

According to Boswell (2002: p.4), root causes refer to factors such as the economic underdevelopment of a country, a weak state, severe social fragmentation and so forth. Despite the Democratic Republic of Congo`s constitution stipulation of equality, justice, social protection for women and children (Article 11-33), a cumulative combination of root causes have displaced millions from the country. Such root causes include ethnic based corruption, nepotism, armed conflict, human rights abuses and social inequities (McNulty, 1999; Amnesty international, 2004 cited in Coghlan, 2004: p.3; Arlin, 2008; Freedman, 2011; Flahaux and Schoumaker, 2016). However, the study notes that root causes do not function autonomously and they can either precede or proceed the proximate factors in influencing coerced movements. The nexus between root and proximate factors can be seen through violent conflicts and their facilitation of a multiplication of risks factors (Schmeidl, 1997; Ohlsson, 2000; Murshed, 2002; Goodhand, 2003; Do and Iyer, 2007, 2010; Duffield, 2014).

According to Walter (2004: p.371), most conflicts within Africa as well as outside the continent occur in instances where individual hardships are discernible (poverty due to inequality). Proximate conditions within the Democratic Republic of Congo (in the form of violent conflict), have inadvertently contributed to making it one of the poorest countries in the world. Researchers such as De Kock (2010: p.2), argue that despite a progressive constitution the DRC government has failed to effect provincial governance structures which are pertinent towards territorial consolidation and national policy implementation. As a result of such challenges in ensuring state protection, in 2002 out of the DRC`s overall population (70% of whom live in the rural areas), 71% were registered as malnourished (Olivier, 2002; Marivoet, 2002; Iyenda, 2005; SADC, 2014; Marysse, and Reyntjens, 2015). Furthermore, around 18.5 million Congolese, most of whom are in the eastern parts of the country, do not

have access to basic healthcare services with the bulk of those facilities having been destroyed in the many years of conflict (Montague, 2002).

Within the country`s provincial regions, violence and armed militia group activities are scattered along provincial lines that are analogous with the prevailing poverty and inequality trends. Katanga province for instance, a hotbed of rebel group activity is also the "second-largest contributor to the overall poverty headcount in the country" (Marivoet, 2002: p.262). As a byproduct of the ongoing conflict, the structural decay (root factors) in the Democratic Republic of Congo can thus be seen as a cause of coerced refugee movements from the country (Herp et al, 2003). Due to such root causes, Congolese forced migrants have made their way to regional and neighbouring states such as South Africa, Angola, Zambia and further afield to countries within Europe and the Americas.

3.3.3 Congolese Forced Migrants` Itinerary towards South Africa and the Continent

As aforementioned in the study, the conflict in the DRC has caused many forms of human rights abuses resulting in the forced migration of millions of Congolese people. Although official reports claim that there is now relative peace in the DRC capital Kinshasa, the same cannot be said for the Eastern more rural parts of the country, namely Kivu and Goma. According to Alvi (2016) in an exposition titled 'Conflict minerals, Rebels and child soldiers in Congo', in the Eastern parts of the DRC, the conflict for precious minerals, by various rebel groups rages on over territorial control. The DRC has a rich natural resource base, rich soils with abundant deposits of many alluvial and conglomerate minerals (Shearer, 1998; Fairhead, 2001: p.102; Montague, 2002; Grignon, 2005). Such resources have thus been a major fuel of the prolonged conflict which has displaced millions of people. As a consequence, it is therefore estimated that around 3, 8 million Congolese nationals have been internally displaced and 440,000 are now forced migrants (Amnesty international, 2004 cited in Coghlan, 2004: p.3; Karbo and Mutisi, 2011; BBC, 10 October 2013; UNHCR, 2015 cited in Flahaux and Schoumaker, 2016; UNOCHA, 2017).

Although root and proximate factors in the Eastern Kivu and Goma regions of the DRC remain significant push factors, more appealing opportunities (intervening factors) in destination countries have also contributed to this growth (Schmeidl, 1997; Klaaren and Rutinwa, 2004: p.93; Stoyanova, 2008). The 1994 end of apartheid in South Africa, naturally increased the country`s appeal as a possible asylum destination within the region especially amongst Congolese forced migrants. In 1994 when the war in the DRC was at its peak and South Africa had also attained its independence, out of the 152 414 applications for asylum received in 1994 by the Department of Home Affairs, the largest group were Congolese forced migrants (Groot 2004: p.38). In this sense South Africa`s appeal and overall status as a refugee receiving state has mostly had to do with its stable economy and egalitarian style of governance, alongside a progressive Refugee policy framework (Refugee Act 130 of 1998).

Regional migration statistics in the year 2015 showed that there were approximately 450,000 Congolese forced migrants in other African countries as of March 2016 (UNHCR, 2015 cited in Flahaux and Schoumaker, 2016). African countries therefore, in general host the majority of Congolese forced and voluntary migrants with their numbers exponentially increasing over the last 40 years. During those four decades, South Africa has also received a significant share of Congolese forced migrants. The Migration between Africa and Europe (MAFE) survey conducted in Kinshasa in 2009 showed that South Africa and Angola alone received more than half of the migrants leaving the Kinshasa region in the 2000`s (Flahaux and Schoumaker, 2016). As intervening factors in forced migration, these two countries refugee policies as indicated in the previous Chapter, are the most progressive in the SADC region. Apart from having a free settlement system, the right to employment is also automatically granted after refugee status determination (Klaaren and Rutinwa, 2004: p.89; Kavuro, 2015). Resultantly, Angola and South Africa in the year 2015 alone received a total of 119,740 Congolese forced migrants. In 2014 a report by the UNHCR showed that there were 232 211 asylum seekers and 65 881 forced migrants in South Africa with most being from the DRC, as well as other countries such as Somalia, Burundi, Ethiopia, Rwanda and Zimbabwe (UNHCR, 2014 cited in Stupart, 2016).

Table 4. Congolese migrants in African Regions, 1990, 2000, and 2015

Destination Region and Country	1990	2000	2015
World	401,707	831,179	1,403,757
Africa	340,970	729,658	1,192,697
Eastern Africa	216,199	470,644	874,013
Burundi	36,654	37,951	167,768
Eritrea	407	1,224	1,688
Ethiopia	48	90	102
Kenya	394	235	11,292
Malawi	1,338	2,389	2,210
Mozambique	186	1,174	2,337
Rwanda	62,526	163,420	230,622
South Sudan	N/A	N/A	82,755
Uganda	67,995	95,138	303,580
United Republic of Tanzania	19,354	110,786	58,250
Zambia	27,297	58,237	13,409
Middle Africa	95,515	232,083	239,985
Angola	12,178	17,735	43,192
Cameroon	(no data)	(no data)	3,134
Central African Republic	13,173	260,65	17,219
Chad	98	301	306
Congo	67,316	183,780	170,368
Gabon	2,750	4,202	5,766
Northern Africa	16,237	12,794	1,380
Egypt	99	96	146
Libya	283	320	434
Sudan	15,855	12,378	800
Southern Africa	12,695	13,726	76,548
Botswana	526	1,261	3,391
Namibia	4,707	4,179	2,918
South Africa	7,456	8,208	70,077
Swaziland	6	78	162
Western Africa	324	411	771
Ghana	16	18	30
Mauritania	31	42	90
Togo	277	351	651

Source: United Nations Department of Economic and Social Affairs (UNDESA) (cited in Flahaux and Schoumaker, 2016)

From table 4, South Africa between the years 1990, 2000 and 2015 can be seen as having the largest DRC forced and voluntary migrant population in the Southern African Development Committee region.

3.4 SADC AS A REFUGEE PRODUCING REGION FOR SOUTH AFRICA

The wars of independence against colonial governments throughout Africa (1960-1990), led to large-scale forced migration movements within the SADC region (Makhema, 2009). Since South Africa only attained its independence in 1994, most of these forced migrants rarely made their way to the country due to the exclusionary migration policies of the apartheid regime at the time (Peberdy and Crush, 1998; Crush, 2008). South Africa therefore only became a significant asylum seeker destination in the period after the attainment of its independence. Although by this time there were not that many active conflicts in the region, fellow SADC member states were nevertheless producing many economic and political forced migrants (Maharaj, 2002; Makhema, 2009; Flahaux and Schoumaker, 2016). In most of these states unemployment averaged statistics of over 50% with informal employment as high as 90% (Olivier, 2002). As a consequence, given the economic attraction that South Africa presented itself as, most citizens from the SADC nations found their way to the country (Morris, 1998; Karbo and Mutisi, 2011; Tevera and Zinyama cited in Hungwe, 2013; UNHCR, 2014 cited in Stupart, 2016). Given this backdrop, reasons shaping migration trends towards South Africa have often been influenced by not only the country`s peace and political stability but its standing as an economic powerhouse within the region (Olivier, 2002; Landau, 2006: p.323; SADC, 2014).

3.4.1 Regional Factors Influencing Migration towards South Africa

In as much as the combination of economic, political and structural challenges facing regional states has influenced migration towards South Africa, armed conflicts have equally been a significant cause of such movements (Makhema, 2009: p. 7; Flahaux and Schoumaker, 2016). These include the almost 20 year old civil war in Mozambique between the Frente de Libertação de Moçambique (FRELIMO) and the Resistência Nacional Moçambicana (RENAMO). The Mozambican war has displaced an estimated 1.3 million people since 1986, while the DRC ethnic based conflict has also displaced several millions (Amnesty international, 2004 cited in Coghlan, 2004: p.3; Lunstrum, 2009; BBC, 10 October 2013). Due to its status as the epitome of stability, democracy and egalitarianism on the continent,

South Africa is positioned as an attractive asylum seeker destination for many of the said forced migrants. By 2016, a community survey revealed how these two countries (DRC and Mozambique), are now the biggest refugee contributing states to South Africa in the region. A survey of South Africa by Africa Check discovered how in 2016 there were around 293,405 Mozambicans and 31,504 Congolese in the country (Meny and Chiumia, 2016). As illustrated by the diagram below, the post-independence period in South Africa corresponds with an exponential rise in the number of both forced and voluntary migrants immigrating into the country.

Diagram 1: Illustration of immigrants as a proportion of the population, 1998–2010 in Western Cape (WC) and the rest of the country (SA)
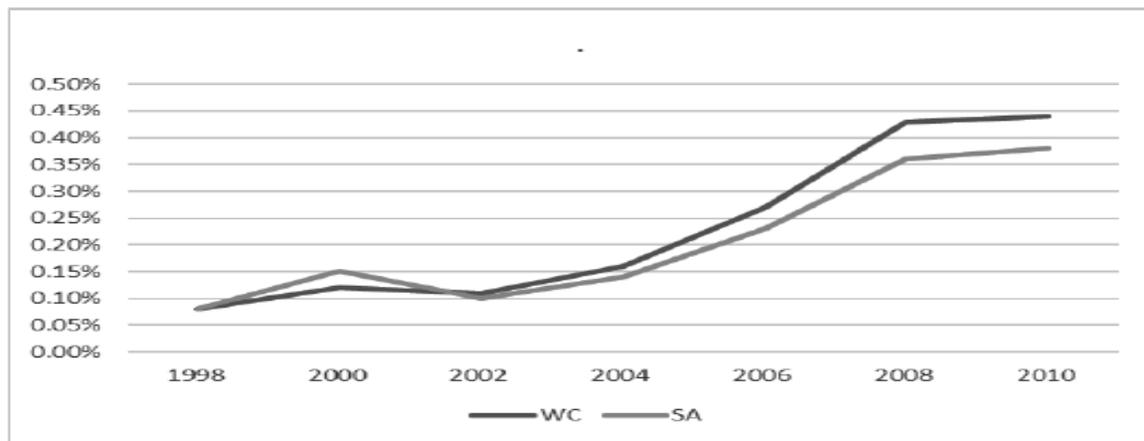
Source: Comparing migration data from post-apartheid censuses: A challenge for longitudinal research immigrants as proportion of population, 1998–2010 (Ziehl, 2008: p.21)

It is a result of the above mentioned factors influencing both forced and voluntary migration in the SADC region, that South Africa now hosts the second highest number of migrants on the African continent (Manicom and Mullagee, 2010; U.N. International Migration Report, 2015; Flahaux and Schoumaker, 2016). In 2014 alone there were 232 211 asylum seekers and 65 881 forced migrants in South Africa with most being from the DRC, Somalia, Burundi, Ethiopia, Rwanda and Zimbabwe (Morris,1998; Tevera and Zinyama cited in Hungwe, 2013; UNHCR, 2014 cited in Stupart, 2016). These migrants range from individuals taking up contract labour to work within the mining and agricultural sectors (voluntary migrants) to

persons seeking protection from persecution, human rights violations and armed conflict (forced migrants) (Handmaker and Parsley, 2001).

In addition to the prolonged turmoil and instability that has become a defining feature in the majority of Southern African states, the SADC region also has characteristically high levels of poverty and unemployment. Resultantly, Meny and Chiumia (2016) argue that 75% of the migrants in South Africa (mostly economic migrants), come from other African countries. In 1990 the World Bank defined the 'extremely poor' as those who are individually living on less than 1 USD per day (World Development Report, 1990 cited in Banerjee and Duflo, 2007). In 2014, eleven out of the fifteen SADC member states had 32% of their populations living on less than 1 USD a day with unemployment rates hovering above 51%. In 2002 the regional undernourished population in the case of nine SADC member states was above 30% and as high as 49% in Zambia and 71% in the DRC (Olivier, 2002; SADC, 2014; Ionescu, 2016).

Due to the poverty and high unemployment rates, countries such as Zimbabwe have contributed 574 047 economic migrants to South Africa (Makhema, 2009; Meny and Chiumia, 2016). Countries in the SADC region have therefore found themselves being concomitantly dependent and linked to South Africa as the main economic hub within the region, resulting in an influx of predominantly economic and political forced migrants in the country (Maharaj, 2002; Makhema, 2009; Tevera and Zinyama cited in Hungwe, 2013; UNHCR, 2014 cited in Stupart, 2016). In pursuit of the protection and recognition of forced migrants` rights, this study is therefore delimited to the study of South Africa as a major destination of forced migrants in the region and the continent. The study thus examines South Africa`s refugee policy framework, the principal and derivative forms of closure influencing forced migrants access to such rights and the country`s overall humanitarian response to coerced movements in the region.

3.5 CONCLUSION

The importance of this Chapter can be seen in how it provides a historical background and contextual understanding of the issues under study, as well as tracing Congolese forced migrants` movements from the DRC to South Africa. Through such an analysis, the plight of vulnerable groups such as women and children in conflict situations were specifically highlighted. The socio-political issues (root, proximate and intervening factors), that coerce the movement of these forced migrants from the DRC to South Africa and the rest of the world, have also been examined. The Chapter also illuminated on the problem of how such forced migrations are not place specific to the DRC but are a regional issue. The examining of such a regional phenomenon was essential due to how the SADC region is riddled with several political and predominantly economic challenges, making it a refugee producing region. Such regional socio-economic dynamics (push and pull factors), are conceptualised in the study as largely contributing to the influx of forced migrants towards South Africa

CHAPTER 4: CONCEPTUAL AND THEORETICAL FRAMEWORK

4.1 INTRODUCTION

The Chapter examines the concept of social exclusion within the context of regional developing countries and particularly assesses its prevalence amongst Congolese forced migrants in South Africa. Such an analysis of the asylum application system is done in cognisance of how it is through this process that all asylum seekers prior to being granted refugee status in the country, must go through (Refugee Act 130 of 1998: p.4). Therefore, all the challenges encountered across the stages of the refugee application system are examined in the Chapter. These numerous stages include the process of application for asylum, refugee status determination, declaration and so forth. Forced migrants` access to legal rights and entitlements after the said status determination, is also examined in the Chapter. The Chapter furthermore analyses the degree to which the refugee policy framework facilitates for the social cohesion and inclusion of forced migrants in South Africa.

The Chapter analyses the three contending models on social exclusion and examines their applicability to South Africa and the bulk of other developing states in the SADC region as well as beyond. This comparison is done in recognition of the importance in generalising and applying the phenomenon of social exclusion, as found in South Africa to other developing countries on the continent. The issue of forced migrants` social exclusion is interrogated through an examination of a host of conceptual frameworks relating to the area while contrasting these to the main theory guiding the study. The chosen theoretical framework for the study was thus informed by the need to adequately examine all four dimensions of social exclusion, as identified by the study. This Chapter therefore carries out a discussion of the chosen principal theory in examining the multi-dimensionality of social exclusion. The theory informs the study`s methods of data collection as it articulates on the various aspects through which social exclusion can be manifest. Through this theory, the study critically examines Congolese forced migrants access to socio-economic rights, documentation, shelter, employment, legal protection and social services.

4.1.2 South Africa`s History of Social Inequities: Challenges to the Equal Access to Rights

The challenges Congolese forced migrants face in accessing an array of social protections in South Africa need to be put in the context of the country`s history and current socio-economic situation. The challenges forced migrants face are not independent of an already failing system where even South African citizens have failed to benefit from health, education, shelter and employment. Such historically imbedded inequities in the country are evidenced by the serious shortages of low income housing for South African citizens, especially within the historically black areas (Battersby, 2016). The structural and primary cultural barriers migrants face are thus all part of the uneven development, marginalization and exclusion that citizens of South Africa also face. An improvement in the situation of forced migrants therefore requires strong efforts in addressing structural gaps.

Forced migrants` failure to access certain sectors such as the labour market in South Africa originate from a historically prejudicial social system and inequalities created during the apartheid era. Such inequalities have inadvertently created competition within the labour market (especially the unskilled sector), where according to Maisonave et al (2016: p. 215), because of the structural nature of unemployment in South Africa, there is a statistical disjuncture between the high number of unskilled workers and a shortage of skilled personnel. Such a disjuncture can be attributed to the high illiteracy rates in the country of over 26% in 2015 (Rich et al, 2015). Such high illiteracy rates mean that a high number of black South Africans are not qualified to seek employment within the skilled labour sector. As a result, the demand for unskilled forms of work is heightened along with an increase in hostilities and primary cultural prejudices within the unskilled sector. This has adversely intensified the victimisation, prejudice and social exclusion faced by forced migrants` in the South African labour market (Mario and Wodon, 2001).

Challenges in accessing an array of rights and social protections in South Africa for Congolese forced migrants are also closely associated with the high dependency on the limited social service amenities in the country. A high demand and dependency rate on social

grants in South Africa mainly originates from the high rates of unemployment and socio-economic inequities affecting both citizens and migrants in the country (Prinsloo, 2016; Maisonave et al, 2016). In 2003, the poverty prevalence rate stood at over 48.5% (21, 9 million) and unemployment was above 30% (UNDP, 2016; Prinsloo, 2016). These structural challenges are thus not only conterminous with conditions of poverty but they also make issues of access to services such as health, education, and shelter a challenge for both citizens and migrants (Scorgie et al, 2015; Baldry, 2016; UNDP, 2016; Prinsloo, 2016; Maisonave et al, 2016: p. 215).

4.2 STRUCTURAL BARRIERS: ACCESSING REFUGEE ACT 130 OF 1998

4.2.1 Legal Documentation

Through adequate documentation (Section 22 or Section 24 permits), social exclusion and other deprivations associated with being undocumented can be prevented. The right to legal documentation is also enshrined in the 1951 Convention Relating to the Status of Refugees through its stipulation of forced migrants` rights to "documentation, including a refugee travel document in passport form" (UNHCR, 1959: p.3). However, due to structural barriers access to legal documentation has been a challenge for forced migrants in South Africa. The UNHCR (2015) submits that in 2015 South Africa had the highest reported number of applications pending at any stage of the asylum procedure with over a million (1,096,100) asylum claims pending (UNHCR, 2015: p.44-45). The impact structural impediments have had in denying forced migrants` access to legal documentation in South Africa is also evidenced by a Wits Tufts survey carried out in 2005 (Landau, 2005). The study identified how almost one-third of forced migrant participants reported waiting at least 18 months for a decision from the Department of Home Affairs, all the while living without access to social protection and social services (Landau, 2005: p.1112; HRW, 2013 cited in Manicom, 2010: p.176).

Researchers such as Bhalla, and Lapeyre (1997), argue that the rights facilitated by the availing of documentation (legal status) to forced migrants are strongly associated with the political aspects of exclusion such as civil and political rights as well as citizenship. Such a

nexus therefore, "outlines a relationship between individuals and the state as well as between society and the individual" (Bhalla and Lapeyre, 1997; p.418). Commenting on the importance of citizenship as a panacea to deprivations associated with social exclusion, Silver (1994 cited in Hickey and Du Toit, 2007; p.9) notes that citizenship is held to constitute an inherently progressive form of "political status, associated with the rule of law, secure property rights, democratisation and empowerment." Having legal documentation or legal status is therefore essential because one can then make claim of the various socio-economic, political and civil rights available to the majority (Marshall, 1964).

In South Africa, forced migrants have been unable to access the above mentioned rights to legal documentation (Section 22 and Section 24 permits) as guaranteed by the Refugee Act 130 of 1998 owing to a spectrum of structural limitations (Amisi and Ballard, 2005; Landau et al, 2005 cited in Rugunanan, 2011: p.709; Namukaso, 2015). Despite Regulation 29 (1) in the Refugee Act 130 of 1998 stipulation of a six month waiting period for Section 22 permits in the adjudication of an asylum claim, the process generally takes several years (Amisi and Ballard, 2005; Landau et al., 2005 cited in Rugunanan, 2011: p.709; Namukaso, 2015). Studies carried out in Britain, France and Germany by Sen (2000) also found that migrants face similar structural challenges and delays in naturalising and securing requisite documentation. Sen`s (2000: p.16) study, identified structural bottlenecks and systematic delays as having contributed to forced migrants` political as well as active exclusion. In the case of South Africa, structural bottlenecks have also inhibited forced migrants` complete naturalisation through demands that only Section 24 permit holders (who have been in the country for not less than 5 years), are eligible to apply for citizenship (Section 27 permit). Scholars such as Bhalla and Lapeyre (1997: p.420), also identify the debilitating effect of such structural bottlenecks and exclusionary rules through their conceptualisation of social exclusion as an outcome of incomplete naturalisation.

In light of the structural challenges forced migrants face in acquiring legal documentation in South Africa, Handmaker and Parsley (2001), submit that in its implementation, the Refugee Act 130 of 1998 has thus failed to provide adequate due process guarantees to its applicants.

Building on the concept of the mobilisation of institutional bias by Lukes (1974), institutional bias can equally be seen to exclude individuals or groups, perceived to be a threat to the status quo. Kabeer (2000: p.21) also argues that institutional bias can be perpetuated "without conscious decisions being taken by those who represent that status quo, or any awareness on their part that they are under threat." Such institutional bias inhibiting forced migrants from acquiring legal documentation, has been most prominent through the Department of Home Affairs conduct. According to Amit (2012: p.7), such institutional bias has partly manifested itself through:

> "…a series of office closures. It has shut down its refugee reception offices in Johannesburg, Port Elizabeth, and Cape Town, forcing asylum seekers in these areas to travel extended distances to apply for asylum or to renew their asylum permits while awaiting final determination of their claims. Recognised forced migrants needing to renew their refugee permits must now also travel long distances, effectively limiting where they can live, what jobs they can take, and their ability to fully integrate into South African society."

The above situation was identified in a 2017 study by Crush et al (2017: p.758), as still obtaining in the country with only three refugee reception offices remaining open countrywide (Musina, Durban and Pretoria). In addition to the above mentioned institutional biases, the Department of Home Affairs adherence to an individualised form of refugee status determination has also impeded the ease of accessing legal documentation. Within a 'prima facie' refugee status determination system, refugee status is homogeneously conferred to a specific group of applicants upon adjudication by the responsible minister or regulatory authority. However, in an individualised status determination (as found in South Africa), each applicant is separately examined. Faced with overwhelming numbers of both forced and mostly voluntary migrants in South Africa (Morris, 1998; Tevera and Zinyama cited in Hungwe, 2013: p.5; UNHCR, 2014 cited in Stupart, 2016), the individualised status determination system has thus faced several challenges. Such challenges have mostly been related to capacity and budgetary constraints, adversely translating into backlogs and an inability to provide requisite documentation to forced migrants (Amisi and Ballard, 2005; Landau et al., 2005 cited in Rugunanan, 2011: p.709; Namukaso, 2015).

Structural issues ranging from budgetary, human resource, technical capacity and general aptitude shortcomings within the Department of Home Affairs, have thus created a host of negative outcomes (Handmaker and Parsley, 2001; Worth, 2006 cited in Bollaert, 2008). As a consequence of the challenges in securing legal documents, forced migrants in South Africa face difficulties in accessing a spectrum of essential services. Legal documentation, as a proof of legal status facilitates forced migrants` access to a host of entitlements such as employment and education in South Africa (Bhalla and Lapeyre, 1997). Inadvertently, the superficial queues emanating from the delays in service provisioning have fueled tensions affixed on the premise that the country is overrun by migrants. This misconception is however dispelled by a UNHCR (2011 cited in Lawyers for Human Rights, 2013: p.18) report:

> "South Africa is at the top of the UNHCR's list of new asylum seeker receiving countries because it counts all arrivals as individual asylum applications rather than conferring group status…other countries hosted much larger numbers of forced migrants in 2011, but did not figure on the same UNHCR list (although they top other lists) because they categorise new arrivals differently. Some of these countries are the Democratic Republic of the Congo (hosting 2,700,000 displaced persons), Kenya (921,000), and Guinea (754,000)."

Another structural impediment to forced migrants` access to documentation comes in the form of illegitimate applications for asylum and associated system manipulations. Due to having no other conventional way to immigrate and naturalise in South Africa, many voluntary migrants exploit the system's inefficiencies by lodging illegitimate asylum claims. This became prominent after the year 2002 when the law in South Africa began according all asylum seekers the right to work during the waiting period for Section 22 permits, as an important aspect of protecting their human dignity (Manicom and Mullagee, 2010). The system abuse, has adversely resulted in many South Asians and a host of other groups from relatively stable nations, lodging unlawful claims for asylum (Landau, 2006; Manicom and Mullagee, 2010). Studies carried out in 2017 in areas such as Cape Town by Velcamp et al (2017: p.3), also identify the existence of 'illicit markets', where such legal documents are illegitimately acquired. Such a system manipulation in South Africa has resulted in a limited

protection of genuine asylum seekers emanating from increased state inefficiencies, stretched resources, proliferated graft and worsened delays in documentation processing.

This study recognises the above mentioned structural challenges as partly responsible for failures in the provisioning (within the prescribed timeframe), of asylum seeker permits (Section 22 and 24), to forced migrants. Such shortcomings have thus been tantamount to a limitation in implementing the Refugee Act 130 of 1998 due to how such codifications can only be accessed through possession of requisite legal documents. During the lengthy waiting period, forced migrants are victims of institutional bottlenecks and are socially ostracised from participation in numerous areas of activity. Structural obstacles that Congolese forced migrants face in obtaining legal documentation are a significant cause for their social exclusion. This is so, due to how such areas of activity are essential in securing integration, social cohesion and realising the social 'functioning's' and 'necessaries' which are analogous with the aversion of poverty, extension of rights, employment, education and shelter (Sen, 1992 cited in Bhalla, and Lapeyre, 1997: p.416; Smith, 1996 cited in Sen, 2000: p.7; Burchardt et al., 2002; Levitas, 2004; Bourdieu, 1986 cited in Cederberg, 2012: p.61).

In a nutshell, there are several challenges emanating from the failure to access legal documentation or proof of legal status. These challenges include forced migrants` failure to access banking services, healthcare services, public education, shelter, formal employment and so forth. Due to a failure in accessing legal documentation, the Human Rights Watch (2013 cited in Kleinsmidt and Manicom, 2010: p.176), also found that asylum seekers in South Africa are surviving on the sidelines without access to education, social services and employment. Studies carried out in Johannesburg also found the challenges faced by forced migrants in accessing legal documentation, as constituting a serious threat to their social protection. Due to being undocumented and having no claim to the public education system, the Johannesburg study discovered that around 70% of the interviewed forced migrant children, were not attending school (Peberdy and Majodina 2000 cited in Landau, 2006: p.319).

4.2.2 Shelter, Health and Education

The access to shelter as well as other essential social services such as health and education for Congolese forced migrants is extremely crucial in the preservation of their human rights and social inclusion. There are no clear policies on the rights to housing for non-South African citizens in the country with the Refugee Act 130 of 1998 also not mentioning anything on forced migrants` entitlements to shelter (McDonald, 1998: p.450; Nyenti, 2007). In South Africa only forced migrants who have effectively naturalised (in possession of section 27 permits), can therefore make claim of the right to housing which is by law, a preserve for citizens. This study however explores forced migrants` access to shelter in cognisance of how the right to shelter for all is enshrined in the South African Constitution (South African constitution 1996-Article 26[1-3]) as well as the Universal Declaration of Human Rights (UN, 1948: p.52).

According to Lipton (1996 cited in de Haan, 1999: p.14), vulnerable people achieve "durable progress only when they can meet several requirements in life such as income, health and education jointly." Due to structural or distributive factors however, Congolese forced migrants in South Africa have had difficulties in accessing such requirements as enshrined in the Refugee Act 130 of 1998. Studies carried out further afield in India by Byrne and Chakravarti (2009), have also revealed how social exclusion is reflected through an apparent lack of access (or unequal access) to public services such as education, health care and so forth. The 2005 Human Rights Watch report also submitted that forced migrants face considerable challenges accessing opportunities such as education in South Africa (Manicom, 2010: p.176). The 1951 Convention Relating to the Status of Refugees (article 22 and 24), to which South Africa is signatory also acknowledges refugee rights to education and shelter (UNHCR, 1959: p.24):

> "As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to forced migrants lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances."

> "1. The Contracting States shall accord to forced migrants the same treatment as is accorded to nationals with respect to elementary education."

> "2. The Contracting States shall accord to forced migrants` treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships."

In South Africa, Congolese forced migrants` inability to access the entitlements enshrined in the Refugee Act 130 of 1998 as well as the 1951 Convention relating to the Status of Refugees, has remained a structural challenge. This has been characterised by a systematic failure by forced migrants in securing access to shelter, a basic human need enshrined in the South African Constitution. Other legal entitlements include basic health and education which forced migrants have also failed to access. According to Sibanda et al (2012), this emanates from the different interpretations by line ministries with regards to the protections that should be availed to migrants. Research carried out in the Gauteng province, the Western Cape and Limpopo also found poor coordination amongst government departments, line ministries, municipalities and other implementing partners as a challenge. Such poor coordination, indirectly constitutes a structural impediment to forced migrants` access to the social functioning's and necessaries in Regulation 27 (G) of the Refugee Act 130 of 1998 (basic health and education). Sibanda et al (2012: p.37), concur with this claim and argue that:

> "…there is very little coordination between various governmental departments that exercise governance over education rights…a range of participants also describe a general lack of confidence in the South African Government's will and capacity to fulfill the Constitutional mandate of right to education."

The above mentioned structural impediments have therefore obstructed forced migrants from benefiting from the legal rights articulated in the Refugee Act 130 of 1998. Other studies carried out in Asia have also revealed how due to unfavorable structural arrangements, entire sections of the population can be excluded from accessing public health services provided by

the government (Berlinguer, 1996 cited in Sen, 2000: p.43). In South Africa, such unfavourable structural arrangements include poor bureaucratic coordination discernible through governments` failure to provide forced migrants with a host of social services (Landau, 2006; Polzer, 2007; 2008; Vearey, 2008; Sibanda et al, 2012). Structural factors have therefore been a substantial impediment to the implementation of the Refugee Act 130 of 1998. Additionally, a 2012 study carried out in the Gauteng province revealed how there is a lack of sensitisation on forced migrant rights in the province resulting in a lack of awareness regarding education rights amongst the migrants, government officials, school administrators and teachers (Sibanda et al, 2012: p.37).

The absence of a Monitoring and Evaluation apparatus to ensure coherence amongst stake holders such as respective government departments, line ministries, municipalities, civil society and so forth, in the adoption of the Refugee Act 130 of 1998 in South Africa has been problematic. Such a vacuum is identified in this study as not only structurally contributing to the social exclusion of vulnerable Congolese forced migrants but equally obstructing the implementation of the Refugee Act 130 of 1998. As abovementioned, this discernibly manifests itself as a lack of coordination and inconsistent alignment of refugee policy edicts across sectors (Sibanda et al, 2012). In a study by Palmary (2003: p.6), these sentiments were echoed by a city official who indicated how the provisioning of services (such as shelter), to forced migrants should be the responsibility of the DHA and not the municipalities:

> "There is no land for these migrants…they're taking every piece of land they can get and occupying it …They occupy city-owned land illegally. So we take action against them. We're trying to get central government to take full responsibility for this. Because the city does not have the resources or the manpower to deal with this. Tonight I've got to go again, go deal with the immigrants."

Palmary (2003), also makes similar submissions and argues that the implementation of the Refugee Act 130 of 1998 in South Africa, is stifled by a lack of awareness on forced migrants` rights by respective local governments. Such a lack of awareness, has adversely resulted in there being no plans towards ensuring service provisioning for forced migrants from the same service points as citizens. This can be attributed to how although the said rights and

entitlements are recognised through national laws, their implementation largely remains the responsibility of respective municipalities. In recognition of such bureaucracy, the South African constitution mandates all local governments to align their respective by-laws within the precincts of national policy (South African constitution 1996-Article 156[3]). The social protections that local governments are responsible for providing forced migrants include the provisioning of social protections, trading licenses, municipal trading sites, low income housing and so forth (Amisi and Ballard, 2005). Studies carried out in Latin America by Mario and Wodon (2001; p.45), also identify "municipal programs in health and education as pivotal in providing safety nets to vulnerable communities."

Although the Refugee Act 130 of 1998 accords forced migrant rights to health services, primary education and so forth, due to alignment constraints, different policy interpretations and institutional biases, such rights remain inaccessible. Challenges in accessing these rights are further compounded by the high demand and dependency on the limited social service amenities in a country with a high unemployment rate and socio-economic inequities. These challenges inadvertently make issues of access to services such as health, education, and shelter a challenge, even for South African citizens (Scorgie et al, 2015; Baldry, 2016; UNDP, 2016; Prinsloo, 2016; Maisonave et al, 2016: p. 215). This study argues how these challenges heighten the difficulties forced migrants face in securing their social service rights, a situation constituting a structural impediment to the successful implementation of the Refugee Act 130 of 1998.

Based on arguments from Saunders et al (2008) definition of social exclusion as a condition partially characterised by service exclusion, Congolese forced migrants inability to access the above mentioned services can be seen as constituting a state of social exclusion. This study acknowledges that due to budgetary and economic constraints, South African citizens also face similar challenges accessing basic rights and services (Prinsloo, 2016; Maisonave et al, 2016). However, the study conceptualises forced migrant challenges in accessing public services as being different from that of citizens. Forced migrants failure to secure services is hypothesised in the study as a condition emanating from biases, closure and opportunity

hoarding (service exclusion). Such services forced migrants are unable to access include trading licenses, municipal trading sites, legal documentation as well as basic healthcare and education (Palmary, 2003; Amisi and Bollard, 2005; Landau, 2006; Polzer, 2007; 2008; Vearey, 2008; Sibanda et al, 2012).

4.2.3 Employment and Livelihoods

According to Sen (2000), the right to earn a living is one of the most essential human social functioning's. This right is not only an integral aspect of protecting forced migrants` human dignity but it is also essential in "protecting them from social exclusion and ensuring that they can live a decent life" (Sen, 2000: p.30). Gijsbers and Vrooman (2008), also argue that despite the prevalence of other risk factors that contribute to social exclusion, the European Union still recognises access to income and employment as essential. Social relations are therefore influenced by such economic factors and are indispensable in shaping a clear understanding of social exclusion as a concept. In a study carried out in Brazil by Singer (1997 cited in Bhalla, and Lapeyre, 1997: p.418), a great majority of the socially excluded in the South American country were found to be consisting of mainly those people who were excluded from the main sources of income. Such findings clearly indicate the nexus between economic social exclusion and the inability to participate in wage earning (through formal and informal employment) (Gijsbers and Vrooman, 2008: p.3).

Bhalla and Lapeyre, (1997), in their economic approach to exclusion, also focus on questions of income and production. They examine the issue of access to goods and services (commodity bundles) from which some people are excluded and others are not. This economic approach to social exclusion focuses on how individuals may be excluded from "income and livelihood opportunities as well as employment and other labour market sectors" (Bhalla and Lapeyre, 1997: p.418). Mario and Wodon, (2001) observe the economic and income generating deprivations emanating from social exclusion as the adverse effects of cumulative risk factors. A prolongation of such, results in a multiplicity of risks, one of them being the lack of income, which is directly associated with "a permanent state of deprivation and destitution" (Mario and Wodon, 2001: p.3).

Unemployment rates in South Africa amongst the youth in the country are significantly higher than the national average and according to Levinsohn et al (2014 cited in Oluwajodu et al, 2015: p.2), by 2012 youth unemployment (for ages 20-24) was higher than 60%. Although this study recognises that the deprivations confronting forced migrants in South Africa can also be generalised to the majority of citizens, forced migrants` access to the labour market is conceptualised as having been impeded by the debilitating power relations in South Africa (Hickey and Du Toit, 2007: p.4). As a consequence, Congolese forced migrants` poverty and state of social exclusion in the country then becomes an issue corresponding with structural prejudices and their failures in securing formal employment.

The Human Rights Watch (2013 cited in Manicom, 2010: p.176), in a 2005 report on South African forced migrants also discovered that forced migrants in the country face considerable challenges accessing employment opportunities. According to Taylor (2004: p.5), although the nexus between social exclusion and poverty has been theorised in numerous ways, poverty is nevertheless a principal characteristic of social exclusion. Authorities such as Gorz (1994 cited in Bhalla and Lapeyre, 1997: p.419), also identify the relationship between social risks such as social exclusion and the inability to access income:

> "…lack of employment not only denies income and output to those who are excluded; it also fails to recognise their productive role as human beings in society…employment provides social legitimacy and social status as well as access to income. Access to the labour market entitles individuals to awards and economic rights which are prerequisites for full citizenship. It brings with it human dignity which should alleviate the harmful effects of exclusion on human beings and increase the scope for social integration."

Onuoha (2006), argues that employment provides forced migrants with a means of livelihood and subsistence to support themselves as well as their families. It also provides them with access to other opportunities such as prestige, upward mobility and social status. Gainful employment therefore not only grants economic emancipation to forced migrants but also allows them to contribute to national economic development (Onuoha, 2006: p.100). The significance of livelihood opportunities to vulnerable groups such as forced migrants can thus be understood as being consonant to social safety nets that guard against social exclusion.

Commenting on the importance of employment to forced migrants` Kavuro (2015: p.234) argues that "work will enable them to participate fully in their host community, thereby lifting themselves out of poverty, protecting themselves against economic shocks and restoring their dignity". In South Africa however, through structural limitations within the implementation of the Refugee Act 130 of 1998, the authorities have failed to guarantee forced migrants such economic independence. The 1951 Geneva Convention Relating to the Status of Refugees (UNHCR, 1951: p.22), in recognition of the importance of wage earning (employment and livelihoods), equally makes reference (in Article 17) to how it is a fundamental right for forced migrants:

> "The Contracting State shall accord to forced migrants lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage earning employment."

The Refugee Act 130 of 1998 Regulation 27 (F) as an adaptation of Article 17 of the 1951 Convention Relating to the Status of Refugees, affords forced migrants the right to seek formal employment. However, it does so passively and does not articulate on how this can be operationalised thus creating a disjuncture between that which is legally prescribed and its implementation. In addition, the socio-economic problems in South Africa, have further exacerbated the challenges facing forced migrants in accessing formal employment. Such socio-economic challenges, are signified by a marked decline in the country`s Human Development Index (HDI) (Prinsloo, 2016). Apart from social exclusion, such socio-economic indicators are considerable factors, autonomously contributing to the structural impediments hindering forced migrants` access to livelihood opportunities in South Africa.

Another structural impediment to forced migrants` access to employment and livelihood opportunities is South Africa`s self-settlement system. This system possesses several merits, inclusive of but not confined to how it allows for the free movement and integration of forced migrants into the market economy. However it has also been criticised for worsening forced migrants` vulnerability index (Handmaker and Parsley, 2002; Amisi and Ballard, 2005). The self-settlement system has been criticised for how it places a greater need for forced migrants

to independently attain self-sustenance and economic independence. This results in what Betts (1981: p.214) refers to as 'spontaneous integration', a situation whereby due to the conditions of migration, forced migrants are exposed to poverty and heightened vulnerability. Due to spontaneous integration, Congolese forced migrants in the country are unable to tap into the local, pre-existing social networks, essential in the attainment of employment. The fairness and effectiveness of the self-settlement system in South Africa has also been critiqued with claims that it unfairly expects forced migrants to compete with citizens (Handmaker and Parsley, 2002: p.321; Amisi and Ballard, 2005). Other researchers such as Nyaoro (2004: p.135), also discovered that although forced migrants are allowed to work in South Africa, the Department of Home Affairs continued to issue documents clearly indicating that forced migrants were prohibited from working.

Apart from the highly competitive and prejudiced labour market in South Africa, within which forced migrants are expected to compete for livelihoods with citizens, forced migrants are also confronted with other structural challenges. These challenges include their lack of critical skills and qualifications, relevant to the South African labour market. Studies done in Uruguay and Brazil on the social exclusion of vulnerable groups also identified a lack of skills as a major constraint barring vulnerable groups from securing employment (Aguirre et al, 1999 cited in Mario and Wodon, 2001: p.79). By absolving itself of any responsibility to equip forced migrants with livelihoods and requisite life skills, the South African government has rendered them unskilled and unemployable. Due to such structural challenges Congolese forced migrants find themselves having to compete for jobs in the more hostile and unskilled labour sector, where there is even greater competition and structural biases (Maisonave et al, 2016; Maisonave et al, 2016: p.215).

Despite the structural challenges in attaining job skills, studies on forced migrants in South Africa also reveal the existence of other factors affecting their capacity to obtain employment in the country. These challenges include institutional biases, whereby an in access to banking accounts which are a pre-requisite for some forms of work, constitutes a structural impediment to forced migrants` access to employment (Kabeer, 2000; Landau et al., 2005:

p.22; Rulashe, 2009; CDE, 2010 cited in Rugunana and Smit, 2011: p.709). The inability to attain employment can also be understood as emanating from an unavailability of certificates, to prove ones qualifications. According to Nyaoro (2010: p.127), this can be due to the arbitrary nature of forced migration, whereby "most forced migrants hardly carry anything during their flight," resulting in the misplacement and loss of qualifications. A combination of structural issues resulting in an apparent lack of skills as well as the unavailability of certificates means that the forced migrants are rendered unemployed, socially excluded and vulnerable.

4.3 PRIMARY CULTURAL BARRIERS: ACCESSING REFUGEE ACT 130 OF 1998

4.3.1 Legal Documentation

Apart from the structural factors contributing to forced migrants` inability to obtain relevant legal documentation in South Africa (Section 22 and Section 24 permits), there are also primary cultural factors. According to Handmaker and Parsley (2001: p.43), the xenophobic and exclusionary activities of public service staff in South Africa are a significant primary cultural impediment to the attainment of the above mentioned legal documents. Exclusionary actions, discernible through harassments, intentional delays, graft and corruption, have been partially responsible for forced migrant groups` inability to access legal documents (Landau, 2006: p.323; Velcamp et al, 2017). As a consequence, many Congolese forced migrants have been in the country for periods reaching up to decades but are still without permanent residence status (Section 27 permits) or any proof of refugee legal status (Section 24 permits) (Amisi and Ballard, 2005; Landau et al., 2005 cited in Rugunanan, 2011: p.709; Namukaso, 2015). Challenges in securing legal documentation, due to primary cultural exclusion by unruly refugee reception office staff, is identified in the study as a probable cause for forced migrants groups` social exclusion.

A 2012 study was carried out by the African Centre for Migration and Society in Cape Town, Musina and the two Pretoria offices (Tshwane Interim refugee reception office [TIRRO] and Marabastad). In all instances, the study discovered that corruption (as a primary cultural

factor), was the prominent cause of forced migrants` inability to acquire requisite documentation. This was demonstrated through an interview with a former interpreter at Marabastad (Amit, 2012: p.56):

> "I know just how corrupt the Department of Home Affairs is. Early in the morning is when it mostly happens. Newcomers are targets for corrupt officials. With money, you can buy forms from the managers...those forced migrants from poorer places like DRC cannot get the status…. Corruption goes from the door right to the top."

The above practices by government employees (primary cultural forms of exclusion), have also resulted in an accumulation of pending applications at the DHA (Landau, 2006: p.323; Bollaert, 2008). This is evidenced by a study on forced migrants and racism in South Africa where tactical delays in the provisioning of services to forced migrants were identified as a phenomenon closely associated with civil servants exclusionary behaviour (Handmaker, 2001). Evidence of this conduct, is also provided by a 2012 study by the African Centre for Migration and Society (ACMS). The findings of the study revealed that some refugee reception officers (RROs) were refusing access to individuals without transit permits, despite there being no lawful requirements for this. In addition, 50% of the study participants complained that before the start of the status determination interviews, the RRO`s never explained to them issues of procedure and associated regulations (Amit, 2012: p.10-12). Nyaoro (2010: p.135), also concurs and argues that the slow determination process in South Africa has been exacerbated by the unruly conduct of the Department of Home Affairs staff, a situation which has created the artificial shortage of legal documents for the majority of forced migrants.

Researchers such as Kabeer (2000 cited in Hungwe, 2013: p.61), submit that social exclusion is an issue of concern in public institutions and government departments due to how such sectors "are officially contracted to meet the social needs and address social exclusion within the community." Unruly practices as primary cultural mediums through which social exclusion is perpetuated, are therefore much more likely to adversely apply in the public service sector. In a way, other scholars argue that the social closure and unruly practices of

staff within the public service, mirrors the general South African citizenry`s attitudes towards migrants (Morris, 1998; Handmaker and Parsley, 2001; Harris, 2002; Amisi and Ballard, 2005; Crush et al, 2013). A survey done by the South African Migration Program supports this assertion as it discovered that 85% of South Africans wanted a total ban on both voluntary and forced migrants, a figure higher than any other country surveyed in the world (Crush et al, 2013). Home affairs employees are therefore said to act in a malevolent manner towards forced migrants, in a bid to frustrate them from applying for asylum seeker permits (Section 22 permits). Such a conduct also provides evidence on the xenophobia experienced daily by forced migrants in government institutions and public settings (Bahamjee and Klaaren, 2004).

In light of the above, this study recognises how primary cultural factors are therefore partly responsible for effecting social closure. Social closure occurs when groups seek to heighten their situational advantage by monopolising resources while simultaneously restricting outside groups access (Kabeer, 2000; Weber, 1978 cited by Tholen, 2016: p.3). For that reason, this study argues that the very same service points from where forced migrants are supposed to be receiving documentation, are socially closed off to them due to the exclusionary and unruly conduct of employees within these institutions (Kabeer, 2000 cited in Hungwe, 2013: p.61).

It is also important to note that problems faced by forced migrants in South Africa are not only confined to the procurement of legal documentation. These problems are also discernible through an added failure by public service officials to recognise such proof of legal status (Section 22 permits and Section 24 permits). This has mostly been perpetrated by unruly and xenophobic law enforcement agents who disregard, confiscate and deface legally provisioned documents. Such actions by members of the public service, substantiate Lukes (1974) concept on the mobilisation of biases where he identifies biases as something which is operationalised through the conscious efforts of those benefiting from them (Kabeer, 2000: p.91). Other researchers also identify the said destruction or confiscation of identity documents by public service officials as causing serious suffering to the victims (Groot, 2010; Nyaoro, 2010: p.126). After the confiscation of the documentation (as a primary cultural form of

perpetuating exclusion), the lives of forced migrants are further complicated, forcing many of them to survive in a state of heightened fear and vulnerability.

4.3.2 Shelter, Health and Education

In South Africa, both social closure and unruly practices (on a primary cultural level), have been pivotal in perpetuating the apparent state of Congolese forced migrants` social exclusion. Through social closure and unruly conduct, Congolese forced migrants in South Africa have been denied access to a host of social services accessible from municipalities. These include access to shelter, public healthcare, primary education as well as sanitation and housing. Due to how South Africa has a largely urban-based refugee population (as opposed to a rural or camp setting), basic services should be provided to forced migrants in the same way as to all citizens (Palmary, 2003). By virtue of being a freely settled and urban based refugee population, Congolese forced migrants are therefore highly vulnerable to the primary cultural elements inhibiting their access to shelter, basic health and education.

In cognisance of the above, this study identifies the existence of exclusionary predilections amongst municipality employees as constituting a primary cultural impediment to forced migrants` rights. Compounding this issue, are also the South African host communities exclusionary predilections. Without any legal sanction, citizens have closed off forced migrants` access to the legal rights and services accorded in the Refugee Act 130 of 1998. Crush et al (2013: p.8), also concurs and argues that despite the existence of an enabling refugee policy framework in South Africa, the same rights have been inaccessible to forced migrants due to the systematic restrictions imposed by host communities. These restrictions are exacerbated by the challenges citizens also face in securing basic services such as housing, health and education (Scorgie et al, 2015; Baldry; 2016; UNDP, 2016; Prinsloo, 2016; Maisonave et al, 2016: p. 215). In a Southern African Migration Program (SAMP) study, most participants highlighted their insecurities with migrants. The insecurities mostly bordered around fears of competition for social services. In the same study, 55% of participants highlighted their disgruntlement with migrants` use of South African health services while 52% indicated their fears of migrants benefiting from the Reconstruction and

Development housing Program (RDP) (Crush et al, 2013). Another study examining unruly conduct and social closure as impediments to forced migrants` access to municipal services, was carried out in Cape Town. The study identified how real-estate agencies often act as 'gatekeepers', systematically closing off migrants` access to shelter (Palmary, 2003: p.10).

Studies carried out in Chile, Argentina and Uruguay, discovered that due to a spectrum of exclusionary rules, some members of society can be excluded from accessing the social service rights that they are entitled to (Mario and Wodon, 2001). Unruly actions, are perpetuated through the imposition of exclusionary terms and conditions, disqualifying other members from access (Mario and Wodon, 2001: p.60; Kabeer, 2000 cited in Hungwe, 2013: p.61). Similarly in South Africa, due to such exclusionary rules, Congolese forced migrants find themselves disaffiliated and unable to access basic social services. Service exclusion is mostly perpetuated by unruly frontline service providers through their demand for supplementary documentation. Examples of supplementary documents include consumer bills and bank statements, which are often difficult for Congolese forced migrants to secure (Jacobsen and Bailey, 2004 cited in Landau, 2005: p.23). Although such requirements are standard practice especially within the banking sector and are an extension of the FIC Act 38 of 2001 ((West, 2017), their impact on forced migrants is nevertheless debilitating.

Without access to supplementary documentation, forced migrants` admittance to healthcare institutions is further complicated. Crush and Tawodzera (2014), argue that social closure from medical facilities in South Africa is effected through exclusionary and unruly actions. In the public healthcare sector, those who cannot produce the above mentioned supplementary documents, chief amongst which being proof of legal status, are often denied treatment or "turned away from government hospitals and clinics, no matter how sick they are" (Crush and Tawodzera, 2014: p.27). A study of inner city Johannesburg by Vearey (2008), also discovered that even in the case of chronic illnesses such as HIV, anti-retroviral treatment was systematically withheld from migrants. Due to the unruly conduct of medical practitioners in the sector, only 22% of the sub-sample of migrants were found to be receiving anti-retroviral treatment at public facilities. The rest were forced to access services either

from the more expensive private facilities or the NGO sector (Vearey and Richter, 2008: p.369 cited in Crush and Tawodzera, 2014: p.662). Due to low incomes and high unemployment rates amongst forced migrants, their exclusion from the more affordable public healthcare facilities becomes a humanitarian issue (Peberdy and Majodina, 2000). Medical social closure is perpetrated in contravention of the Refugee Act 130 of 1998 proclamations that govern this sector. These edicts include Section 27 (G), which makes special mention on the healthcare rights of forced migrants. Section 27 (3) of the South African Constitution also declares that no one regardless of nationality, documentation, or residency status may be refused emergency medical treatment (Landau, 2005).

Despite Section 5(1) of the South African Schools Act 84 of 1996 declaring that public schools must admit learners without unfairly discriminating in any way, social exclusion is nonetheless prominent in this sector (Landau, 2005). A study carried out in the Johannesburg area by the Education Research Project (ERP), also discovered that 30% of the sub-sample of forced migrants` children were not going to school (Sibanda et al, 2012: p.8). Through the actions of unruly headmasters and other school administrators, forced migrant pupils are frequently "denied access to school because of outright discrimination, often justified on the basis of their age (they may be older than the mean for their grade) or language" (Landau, 2005: p.27). Another study of Johannesburg and Cape Town by Crush and Tawodzera (2011 cited in Hungwe, 2013: p.61), also discovered that school headmasters were often making claims that schools were full so as to avoid recruiting migrant children. Such exclusionary actions, according Sibanda et al, (2012: p.33), are thus a major primary cultural cause of the social exclusion impeding migrant groups from accessing their right to education:

> "In Limpopo, migrant learners reported feeling humiliated by teachers when they attempted to participate in class and struggled to articulate their answers in English. One learner in Limpopo reported her experiences of being targeted by her teachers for her nationality"

Researchers also argue that in South Africa, open access to education is guaranteed by the Constitutions Bill of Rights (Chapter 2, section 29) and regulated by the South African Schools Act no 84 of 1996 (Sibanda et al, 2012). These regulations prohibit any kind of

discrimination or exclusion. Regardless of this legislation however, as illustrated above, primary cultural forms of closure still exclude forced migrants from accessing the sector. Unruly conduct not only contradicts the prohibition on refusing learners admission to public schools based on parents' inability to pay (Sibanda et al, 2012: p.24), but it is also an obstruction to education rights based on migrants nationality and dialectical differences. According to Bhamjee and Klaaren (2004 cited in Landau, 2005: p.21), discrimination based on the parents' inability to pay is exclusionary particularly to forced migrants who are typically without the right or opportunity to work (Bhamjee and Klaaren, 2004 cited in Landau, 2005: p.21).

4.3.3 Employment and Livelihoods

Primary cultural factors (through socially established hierarchies), can play a hand in systematically closing off other social groups from social mobility, employment and economic opportunities. As aforementioned in the study, the right to employment is enshrined in numerous international conventions and legislations. Such international legislations now form "part of global customary laws and serve as a basis for constitutional states" (Kavuro, 2015: p.235). As a constitutional state, South Africa also guarantees such rights and entitlements to forced migrants through the Refugee Act 130 of 1998. However, as argued by Bwalya (2012 cited in Namukaso, 2015: p.18), one of the major challenges affecting forced migrants in South Africa "is the contradiction of a society that prides itself with an impeccable constitution favourable to forced migrants but is not willing to observe the framework." Such a contradiction has meant that due to primary culturally exclusionary factors, forced migrants entitlements to employment have been denied.

According to Landau (2005), there are many occasions when exclusionary South African employers and organisations have sought to exclude foreigners from working in particular areas. This is partly illustrated by "the litigation challenging the Security Industry Regulation Authority's (SIRA) refusal to register foreign security personnel" (Landau, 2005: p.22). Studies done further afield in Asia also prove that socio-cultural (relational) factors such as ethnicity or caste are closely associated with inescapable forms of economic disadvantage.

An example of this can be observed through the deprivations found amongst the lower caste groups in India (Kabeer, 2000 cited in Hickey and Du Toit, 2007: p.18). Studies done in Uruguay also give evidence of the negative ways in which primary cultural factors (the lack of social networks) can inhibit vulnerable groups from securing employment. In their study of Uruguay, Mario and Wodon, (2001: p.79) argue that such impediments to livelihoods and employment originate from a need for strong family and social networks in securing unskilled forms of work. Such a situation whereby a specific social group is denied the right to work, is therefore tantamount to an imposition of destitution and suffering (Kavuro, 2015). In the case of South Africa, primary cultural interferences by the employers, are therefore a considerable cause for Congolese forced migrants` exclusion from the South African labour market.

Another impediment to forced migrants` access to the labour market has come in the form of employers` ignorance regarding forced migrants` legal entitlements, as enshrined in the Refugee act 130 of 1998. Such entitlements are legally tenable through Section 22, Section 24 and Section 27 permits (Department of Home Affairs, 2017). Employers in South Africa therefore impose the restrictive measures on forced migrants because they have not received requisite training and sensitisation regarding such rights (Mazzocchini, 2008 cited in Kavuro, 2015: p.248). Reasons given by employers for not employing forced migrants included issues of how forced migrants are not South African citizens, not in possession of the South African identification booklet or not in possession of work permits. In a study by Onuoha (2006: p.102), forced migrant participants who were unemployed also complained of applying for work several times with no success, despite their high levels of education. Primary cultural impediments to forced migrants` access to work within the South African formal sector are very prominent with a high employer indifference to engage forced migrants in contractual work. Amisi and Ballard (2005: p.21) also argue that, prior to the red document which forced migrants are now issued with, they were initially given "an A4 piece of paper to acknowledge their refugee status, which was not recognised by potential employers nor banks."

Individual employers in South Africa have also expressed skepticism on accepting non-national identity papers and qualifications, which are generally viewed as either inferior or counterfeit. This constitutes a substantial hurdle to forced migrants` access to the labour market (Landau et al., 2005: p.22; Rulashe, 2009). According to Mazzocchini (2008 cited in Kavuro, 2015: p.256), this challenge emanates from how the Department of Home Affairs issues forced migrants with the maroon coloured identification cards instead of the more familiar, green bar-coded identity cards granted to South Africans and permanent residents:

> "…the employers of labour seem to doubt the authenticity of asylum and refugee permits, and as well find it very difficult to employ people whose permanent stay in the country is not assured and may not like to enter into a contract that will violate the labour law"

Faced with social exclusion from the South African formal labour market, as a coping mechanism, Congolese forced migrants are highly visible in the informal sector engaging in petty enterprises, street trading, hawking, security work and so forth (Onuoha, 2006). Studies done in South America on informally employed vulnerable groups, who fail to penetrate the formal labour market, discovered a plethora of deprivations. One of the studies revealed that such groups remained disadvantaged and vulnerable due to how "they were not protected by any social benefits, nor by labour legislation in this sector" (Mario and Wodon, 2001: p.79). Within the South African informal sector, Congolese forced migrants are also confronted by daily challenges. Such challenges mainly have to do with the fact that by virtue of this being a free enterprise sector within public spaces, turf wars are often perpetuated by exclusionary citizens as well as municipal police who discriminatively apply the law. These exclusionary actions can be exemplified by the October 23, 1997 street protests by some 500 street-traders in Johannesburg insisting on a boycott on migrants merchandise as well as their deportation (Palmary et al, 2002: p.112 cited in Landau, 2005: p.22).

A study of Cape Town by Palmary (2003), also revealed another primary cultural impediment to forced migrants access to employment and livelihoods. In the study, public opinions were of the view that foreigners were not allowed to trade in the city. The city's vagrancy unit, (a specialised group of by-law enforcement agents) seemed unaware that forced migrants were

equally entitled to work in South Africa. Studies done further afield on Iraq refugees in Sweden by Cederberg (2012: p.64), discovered how such co-ethnic, "dense relations of trust and reciprocity are riddled with relations of power, control and internal hierarchies." In the same manner, the study of Cape Town also identified the aforementioned hierarchical power relations as common. This was mainly discernible through the actions of a team coordinated by the municipality for determining the criteria of informal trade within the town known as the Business Areas Management team (BAM). This team was seen to be intentionally, socially excluding forced migrants from areas of commerce. Some of the officials within the BAM, believed that only South Africans qualified for trading licenses, or that South Africans are "entitled to preferential consideration and should be prioritised when allocating trading space" (Palmary, 2003: p.11).

4.4 CONCEPTUALISING SOCIAL EXCLUSION: SADC REGION

Social exclusion, as a study area has been largely viewed as Eurocentric with the majority of studies on the area being modelled after the first world societies (Bhalla and Lapeyre, 1997; Sen, 2000: p.23; Saunders et al, 2008; Popay, 2010; Khan et al, 2015). As a result, the bulk of perspectives and arguments brought forward have been more Western or Eurocentric. These studies, focusing on issues pertinent to welfare economies have thus been premised around the social exclusion of the elderly, women, drug addicts, the unemployed and the youth (Barry, 1998; Jackson, 1999; Kabeer, 2000; Sen, 2000; Burchardt et al, 2000; Kieselbach, 2003; March et al, 2005; Musterd et al, 2006; Saunders et al, 2008; Gijsbers and Vrooman, 2008). From a global perspective, although there has been some work done on studying deprivations and social exclusion amongst migrant groups, such work has mostly been based on examining free population movements or voluntary migration. These studies include those done in Brazil, Uruguay, Bangladesh, India as well as East Asia (Hong Kong, Beijing, Seoul and Taipei).

Studies carried out on free voluntary migration in the above mentioned states mainly focused on social exclusion within caste systems, amongst widows as well as low income migrants. In their examination of social exclusion, the authors studies were confined to internal (rural

to urban) migration and the exclusionary effects of government migration policies (policy formulation) (Mario and Wodon, 2001; Kothari, 2002; Kabeer, 2000 cited in Hickey and Du Toit, 2007; Byrne and Chakravarti, 2009; Ngan et al, 2013). There are also studies done in West and East Africa examining how power relations perpetuate inequality and poverty as well as how cultural proximity can either alleviate or exacerbate immigrant exclusion. These studies were done with a specific focus on the primary cultural relations between the Nigerian Hausa and Yoruba immigrants and their host populations in urban Ghana, Benin as well as Niger (Moncrieffe, 2008; Adida, 2011). Although drawing closer to issues of migrants and social exclusion, none of these studies looked at forced migrants` social exclusion in the developing world. Furthermore, none of the reviewed studies examined the link between social exclusion and the limitations in the implementation of refugee policy.

In an attempt to address the above mentioned literature gaps, this study examines the pervasiveness of social exclusion not in the context of the first world but rather amongst developing states. The study therefore focuses on forced migrants` social exclusion in South Africa, as a developing state within the African continent. Through a model based approach, the study conceptualises social exclusion in the context of developing states as being different from how social exclusion is conceptualised in the developed world. According to Levitas (2004), social exclusion can be defined under three models that sum up how social exclusion was conceptualised in 19th century Britain. Under the banners RED (redistributive discourse), SID (social integration discourse) and MUD (moral underclass discourse), different implicit meanings of social exclusion were used.

Under the RED model, the poor and excluded were seen as lacking material resources, in the SID model they lacked paid work whilst in the MUD model they were perceived as lacking the moral values attributed to the rest of society (Levitas, 2004: p.44). Through an assessment of these three models, this study examines how social exclusion as a predominantly European concept can be re-conceptualised. Such a re-conceptualisation is done so as to make this Eurocentric concept (Saunders et al, 2008; Popay, 2010; Khan et al, 2015), applicable and relevant to South Africa and other developing states in Sub-Saharan Africa. In

conceptualising social exclusion within developing states, this study identifies the redistributive model as capturing all of the conditions under which social exclusion is channeled. Such conditions in the developing states, as submitted by the RED model have to do with the numerous risk factors and inequalities which are a prominent feature of most developing states in the region (Mario and Wodon, 2001: p.3; Booysen et al, 2008; Fosu, 2009; Gupta et al, 2009; Makhema, 2009). The study therefore identifies the other two discourses as being Eurocentric and thus unable to encapsulate social exclusion not only in the context of South Africa but other developing states in the region.

4.4.1 Applicability of the MUD and SID Models

The Social Integration Discourse (SID), was mostly adopted in the European Union in the early 19th century. During this time the antonym of exclusion was integration as opposed to the contemporary concept of inclusion. Such integration could be achieved by facilitating the participation of those who are excluded from paid employment (European Commission, 1994 cited in Levitas 2004: p.44). As aforementioned in Chapter one, the SID has however been criticised for being Eurocentric and overemphasising employment as a prominent feature of social exclusion. By being Eurocentric in its employment bias, the approach inadvertently disregards the existence of exploitative employment models, common in the developing world (Manzo, 2005; Du Toit et al, 2007; Oya, 2013). The model therefore overlooks how not all forms of integration or inclusion are advantageous. Through 'adverse incorporation', economic, social and political relations can be driven by inequalities of power, proving how not all forms of inclusion are favourable (Hickey and Du Toit, 2007: p.4). Adverse incorporation can therefore be seen at both micro and macro levels, at the micro level it can debilitate individuals through exploitative labour regimes and social arrangements (Bracking, 2003; Dutoit, 2004; Mosse, 2010; Phillips, 2011). The limitations in this approach also include its lack of consideration for how paid work may exacerbate exclusion through long asocial working hours, impeding participation and social connectedness (Putman, 2001: p.406; Bracking, 2003; Hungwe, 2013).

This study observes the SID as most befitting in the developed world as opposed to developing states such as South Africa. The model is most suitable for welfare states such as the United Kingdom whereby, unemployment is closely associated with social exclusion but not necessarily synonymous with severe cases of poverty (Muffels, 2002: p.111). According to official information on Britain, despite a modest peak in unemployment statistics in 2011 to 8.4%, figures have been historically low. In 2014, the unemployment rate was only 5.5% while 2005 recorded an all-time low of 4. 7% (Gregg et al, 2014). This is different from the developing world states where unemployment generally tends to be as high as 50% and informal employment as high as 90% (Potts, 2000; Olivier, 2002; McConnell, 2009; Ionescu 2016). Due to how social exclusion affects those in the minority (Barry, 2002), the SID is more suitable within the developed states where the majority are economically productive and the unemployed minority constitutes the socially disaffiliated or excluded class.

Another model which does not capture the conditions promoting social exclusion especially in the context of most developing states is the MUD. This approach presents the socially excluded as a group that is morally different. It identifies the social safety nets availed in helping the excluded, as a cause for deep seated dependency. The MUD model also focuses on the behaviour of the poor rather than the process of the society. The model thus profiles those at risk as comprising of idle, potentially criminal young men as well as single mothers (Katz, 1993; Murray, 1994 cited in Levitas, 2004: p.45). Katz (1993 cited in Hickey and Du Toit, 2007: p.5), argues that the term underclass was being used in the United States of America where it became a metaphor in association with drugs, crime, teenage pregnancy, and high unemployment. Research carried out in Denmark, also identified the MUD as relevant and applicable due to how the socially excluded in that country were those exhibiting deviant behaviours. Such unorthodox groups included drug addicts, criminals and the mentally ill (Atkinson and Divaudi, 2000 cited in Hungwe, 2013: p.54). The MUD approach therefore conceptualises and identifies the socially excluded, as those that display deviant behaviours (Katz, 1993; Hungwe, 2013: p.54). This attempt to associate the poor with a lack of moral qualities is similar to Murray's behavioural definition of an 'underclass', discernible

through socially undesirable behaviour such as drug-taking, crime, illegitimacy, casual violence and so forth (Murray, 1996: p.19).

The MUD`s generalised approach in attributing fault towards victims of exclusion however, runs the risk of encouraging prejudice. Murray`s (1996), conceptualisation of the causes of poverty and social exclusion such as drug and alcohol abuse, teenage pregnancies, delinquency as well as criminal tendencies, are also Eurocentric and only reflective of the problems dominating social policy discourse and debates the welfare states (Gilvarry, 2000; Weitoft, 2003; Papadopoulos et al, 2006). Apart from individual decision making, poverty (as the case in most developing states) can also emanate from a lack of opportunities, structural inequalities, social capital and exploitive economic, social and political relations (De Haan, 1999; Mario and Wodon, 2001; Hickey and Du Toit, 2007; Levitas et al, 2007; Saunders et al, 2008).

The MUD model also overlooks how deviant behaviour in some instances is not the cause but rather the result of social exclusion (Barry, 2002: p.20). Studies carried out in South Africa on crime and prostitution amongst coloureds, also revealed how such deviant traits are indicators of a sustained state of disadvantage (Leggett, 1999, 2006). According to Joseph (1972), prolonged deprivation and discrimination against a social group, embeds and perpetuates the deprivation elements, thus creating a cycle of inter-generational deprivation and distinct social attributes such as drug addiction, prostitution, crime and so forth. The MUD model is therefore inapplicable to developing states due to its disregard for how certain negative traits amongst the 'underclass', are manifestations of a prolonged state of poverty and disadvantage.

4.4.2 The Redistributive Discourse

This study partially derives its originality from its examination of social exclusion in the developing world (Sub-Saharan Africa), a geographic area with a significant dearth of related literature. A literature search using search engines such as Bing, Google scholar, PubMed and Popline reveals how only a few studies were carried out in the Sub Saharan region. These

studies present important findings on the nexus between social exclusion and poverty, gender, transport, migrant identities, mobile internet access and so forth (Tilly, 1998; Du Toit, 2004; Amisi and Ballard, 2005; Adato, 2006; Chigona et al, 2009; Landau and Freemantle, 2010; Lucas, 2011; Hungwe, 2013).

According to Bhalla and Lapeyre (1979: p.430), social exclusion as a concept "has economic, social and political dimensions which are often not explicitly stated in the vast literature on poverty in developing countries." A multi-faceted applicability of social exclusion is thus crucial due to how the meaning ascribed to social exclusion is always relative to the context (Silver 1994 cited in Khan, 2015: p.4). In support of this, Townsend (1979 cited in Levitas, 2004: p. 44) argues that due to how the standard of living within societies is always different, the meaning ascribed to the term also becomes subjective. The contextual meaning of social exclusion is therefore dependent on the linear level of economic development of the society under focus. In its examination of forced migrants` social exclusion in developing states (focusing on South Africa), this study identifies the redistributive model (RED) as most appropriate to the issues shaping the social exclusion debate in Africa.

According to Baxter and Jack (2008: p.544), a good case study method is one that allows for a single phenomenon to be examined and understood from multiple facets or lenses. This study therefore recognises the importance in being able to generalise the phenomenon of social exclusion as found in South Africa, to other developing states with similar socio-economic profiles. Relatively similar to South Africa, such countries not only have comparable socio-economic attributes but are also signatories of the 1951 Geneva Convention relating to the Status of Refugees and its 1967 Protocol. Most states in the SADC region also have fairly similar refugee policy frameworks and free settlement models, as also found in South Africa. The existence of free settlement models, means that forced migrants in the region are also exposed to the same risks of 'spontaneous integration', as the case in South Africa (Betts, 1981: p.214).

Regional states with a free settlement model include Angola, DRC, Lesotho and Swaziland (Klaaren and Rutinwa, 2004; Makhema, 2009: p.114). In studying social exclusion in South

Africa as a developing state, this study therefore identifies the RED model as most suitable due to its acknowledgement of the nexus between poverty, inequality and social exclusion. The RED model also conceptualises social exclusion as emanating from high levels of economic inequality due to unfair systems of resource distribution based on gender, ethnicity, nationality, race, political affiliation and so forth (Levitas, 2004: p.44; Gijsbers and Vrooman, 2008). Unlike in the Anglo Saxon tradition, whereby social exclusion was viewed as existing separately from poverty, RED views social exclusion as a consequence of poverty (De Haan, 1999: p.4).

According to Levitas (2004), the RED approach argues for an extension of citizenship rights, reduction in inequality and redistribution through the reallocation of economic resources (as solutions to social exclusion). However, the RED model has often been criticised due to how economic resource and opportunity redistribution alone has often failed to reduce poverty and bring about social equality particularly in Africa. This can be witnessed in post-apartheid South Africa where despite affirmative action and a spectrum of proportional representation policies, the Human Development Index (HDI) and Gini coefficient still confirm serious economic inequities within the country, especially along racial lines (Scorgie et al, 2015; Baldry, 2016; UNDP, 2016; Prinsloo, 2016; Maisonave et al, 2016: p. 215).

Despite the above criticism however, the RED model still presents a sufficient illustration of the extraneous conditions influencing social exclusion as well as the existing nexus between social disaffiliation and poverty. Hickey and Du Toit (2007: p.5) concur and argue that, although social exclusion does not exist exclusively alongside poverty (it is possible to be excluded without being poor), most socially excluded people are however poor. There is therefore a strong relationship between chronic poverty on the one hand and the processes of social exclusion on the other hand (Shaw et al, 1999; Taylor, 2004: p.5; Hickey and Du Toit, 2007: p.1). Most developing states, as epitomised by South Africa, Zimbabwe, Mozambique and Zambia all register for negative socio-economic indicators, thereby making the risks attributed to in the RED model equally applicable to all of them. Regionally, the SADC poverty growth rate is pegged at 3% per annum with countries such as Malawi having a

poverty prevalence rate of over 51% (Perry, 2003; Demombynes and Ozler, 2005; USAID, 2009; World Bank, 2010). Issues of unfair systems of resource distribution or discrimination based on gender, ethnicity, nationality, race, political affiliation and so forth are thus quite pronounced in the region. Economic inequality is also rife in the region and according to the UNHCR (2013), income inequality in South Africa increased from 0.60 in 1995 to 0.63 in 2001 (Nattrass, and Seekings, 2001; Demombynes and Özler, 2005; Leibbrandt et al 2010). In cognisance of these indicators, this study identifies the redistributive discourse (RED), as most applicable to the majority of developing states within the region.

The RED model is therefore particularly relevant to the study as it encapsulates Congolese forced migrants` social exclusion and how as a result of such exclusion, they have been exposed to a spectrum of deprivations. Studies carried out in Australia on forced migrant groups by Taylor (2004: p.5), also revealed how "poverty is a key attribute of social exclusion." Scholars such as Kabeer (2000) also subscribe to this concept of how social exclusion emanates from the deep seated imbalances within the provisioning of opportunities for all. The RED model recognises such deprivations as not only a ubiquitous feature within the developing world but also as symptoms of social injustices and exclusion from educational and self-actualisation opportunities (Barry, 2002: p.20). Amongst the Congolese forced migrants in South Africa, such deprivations have manifested themselves through a denial of social 'necessaries' and 'functionings' such as health, education, employment, documentation and other legally prescribed rights in the Refugee Act 130 of 1998, (Palmary, 2003; Bahamjee and Klaaren, 2004; Vearey and Richter, 2008; Crush et al, 2013). Informed by the RED model, the study therefore examines the role of social rights as well as social participation deprivations in perpetuating social exclusion (De Haan, 1999; Saunders et al, 2008; Levitas et al, 2007; Gijsbers and Vrooman, 2008; Fischer, 2011: p.3).

4.5 CONCEPTUALISING FORCED MIGRANTS SOCIAL EXCLUSION IN SOUTH AFRICA

4.5.1 Capability Approach

Social exclusion is perceived as a socially constructed model with issues pertaining to its identification being reliant upon the subjective ideas of what is considered normal within a particular social context (Silver, 1994 cited in Khan, 2015: p.4). Informed by the capability approach and its ideas on social functioning's and capabilities (Sen, 1983), the study examines social exclusion amongst Congolese forced migrants in South Africa. This approach highlights the role of external factors in either negatively or positively influencing individual's potential capacity to actualise and achieve their desired life goals. According to Sen (1993: p.27), a capability can thus be understood as "the range of desires which it enables a person to satisfy…definitive of a normal existence whose absence spells non-satisfaction of need."

In the capability approach functioning's refer to the collective activities and accomplishments in whose social engagement, individuals derive a sense of fulfillment such as having a healthy body, being educated, participating in community life and so forth. On the other hand, capabilities refer to a combination of the said functioning's "which allow an individual to lead the kind of life he values" (Saith, 2001 cited in Khan, 2015: p.4). Capabilities can therefore be understood as what people are actually able to do or to be, provided conducive conditions are availed in ensuring the realisation of such ends (Nussbaum, 2011 cited in Benhura, 2016: p.73). Therefore any direct or indirect inhibitions on any group`s ability to convert these potentials (functioning vectors), can be interpreted as a negative externality. Such functioning vectors can be understood as including issues of having self-respect, being educated, participating in community life, being employed, having health security and so forth. The RED model, as indicated in the previous section, also recognises the inability to realise the said functioning vectors as not only being indicative of social injustices but as also pointing to symptoms of social exclusion.

Sen`s (1983), capability approach and its appreciation of the role of negative externalities in imbedding deprivations, is understood by this study as a useful way of identifying social exclusion. According to Saith (2001 cited in Khan 2015: p.4), viewed analogously with the capability approach, social exclusion can be seen as a process leading to a state in which it is more difficult for certain groups to achieve the said functioning's. The relational or structural inhibitions constraining individuals from realising those functioning vectors, adversely leads to a state of deprivation. Therefore, the actual condition of social exclusion can be understood as an amalgamation of deprivations (Saith, 2001 cited in Khan 2015: p.4). In examining Congolese forced migrants` social exclusion in South Africa, this study argues that there are numerous structural factors impeding their access to civil rights. Such structural issues dictate forced migrants` access to resources, rights, goods and services (necessaries) and their ability to participate in the relationships and activities (functioning's) available to the majority (Sen, 1983; Duffy, 1995; Smith, 1996 cited in Sen, 2000: p.7; Handmaker and Parsley, 2001; Levitas et al, 2007; Nyaoro, 2010: p.127). Fischer (2011: p.3), concurs and explains how there is a nexus between social closure and the existence of prejudicial, repulsive or obstructive institutions. Such an approach in identifying or determining social exclusion also validates Khan`s (2015:p.7) submission:

> "Different approaches have been adopted to define social exclusion in developing countries. These include efforts to determine whether people benefit from opportunities or whether they fall below average achievements. They may also be based on preconceived ideas about which groups are excluded (e.g. people living in remote areas or tribal groups) or on surveys assessing which groups are perceived to be excluded."

The Congolese forced migrants inability to exercise the abovementioned functioning vectors, is identified by this study as undistinguishable from a normative state of social exclusion (Levitas, 2004; Saith, 2001 cited in Khan, 2015: p.4). An inability to exercise the said social functioning's is also conterminous with forced migrants` failure to convert the Refugee Act 130 of 1998 tenets into palpable benefits. Informed by Fraser`s (1997), conceptual spectrum of injustices, the study identifies the multi-dimensionality of deprivations amongst forced migrants as contributing to their social exclusion. Fraser`s analysis (1997 cited in Kabeer,

2000: p.84), suggests a conceptual spectrum stretching from primarily economic forms of injustice on one end, to primarily cultural forms of injustice on the other. Gijsbers and Vrooman, (2008) articulate such deprivations into four categories, two of these dimensions (material deprivation and social rights) are of a structural nature while the other two (social participation and normative integration) pertain to subcultural factors. The multi dimensionality of social exclusion is also supported by Khan et al (2015: p.3), in their submissions on how social exclusion encompasses social, political, cultural and economic dimensions, and operates at various social levels:

> "It is dynamic, in that it impacts people in various ways and to differing degrees over time. It is also relational: it is the product of unequal power relations in social interactions. It can produce ruptures in relationships between people and society, which result in a lack of social participation, social protection, social integration and power."

Due to the multi-dimensionality of social exclusion, this study utilises Grootaert and Basterlaer`s (2001) arguments on the negative externalities of social capital, to examine Congolese forced migrants` social exclusion in South Africa. Through the said arguments, the study illustrates the primary cultural issues that can lead to social exclusion. In contrast, so as to emphasise on the discriminative structural factors influencing social exclusion, the study utilises Saunders et al`s (2008) conceptual framework. In their multi-dimensional concept, Saunders et al (2008), submit that unfavourable institutional structures (as well as community attitudes), can cumulatively result in social exclusion (De Haan, 1999; Mario and Wodon, 2001; Hickey and Du Toit, 2007; Levitas et al, 2007; Saunders et al, 2008; Gijsbers and Vrooman, 2008; Fischer, 2011: p.3). By merging both submissions, the study analyses all the dimensions within which social functioning's and necessaries are closed off from Congolese forced migrants in South Africa.

4.5.2 Social Capital: Examining Congolese Forced Migrants` Social Exclusion

Social exclusion amongst forced migrants as a study area has only been partially explored with the majority of mainstream studies focusing on principally two main constellations, an excluded and included group. In most of these studies the two groups are culturally, racially

and ethnically homogeneous, separated mostly by the excluded groups` economic class, age, gender, employment status, drug habits or caste (Mario and Wodon, 2001; Kothari, 2002; Kieselbach, 2003; March et al, 2005; Musterd et al, 2006; Kabeer, 2000 cited in Hickey and Du Toit, 2007; Saunders et al, 2008; Gijsbers and Vrooman, 2008; Byrne and Chakravarti, 2009; Ngan et al, 2013). In this study however, the social exclusion of Congolese forced migrants in South Africa is conceptualised as a different physiognomy, perpetuated on the grounds of their cultural, dialectal and ethnic deviances. The study argues that the refugee rights enshrined in the Refugee Act 130 of 1998, which entail access to employment of, healthcare and legal documentation (necessaries) as well as the right to work, learn and integrate (social functioning's), can only be accessed within the confines of social capital networks (Sen, 1992 cited in Bhalla, and Lapeyre, 1997: p.416; Smith, 1996 cited in Sen, 2000: p.7).

In the aversion of social exclusion, this study therefore recognises the importance of having access to social capital and social networks. According to Mario and Wodon (2001: p.84), social capital and social networks "can provide an important link for individuals and groups to society, and serve as a coping mechanism against vulnerability and exclusion." Exclusion from social relations, can adversely lead to a multiplicity of risks, further limiting individuals living opportunities within society (Sen, 2000: p.5; Mario and Wodon, 2001: p.3). The social capital of a society can therefore be defined as including both the "institutions, the relationships, the attitudes and values that govern interactions among people and contribute to their socio-economic growth" (Grootaert and Bastelaer, 2001: p.4). Through negative externalities, social capital may not benefit non-members of a social group but instead, it is limited to a privileged circle within society (Putman, 1994; Bourdieu, 1986 cited in Cederberg, 2012: p.61). Poverty, as a distinct outcome originating from a failure to assimilate into essential social networks, has been a notable attribute amongst Congolese forced migrants in South Africa. The forced migrants are not only poor but socially marginalised, frequently falling outside such networks of controlled association activity (Silver, 1994 cited in De Haan, 1999: p.11; Taylor, 2004). This study therefore recognises the proliferation of

social exclusion as an outcome of deprivations exemplified through forced migrant groups` failure to access their legal rights in South Africa (Saunders, et al, 2008).

Silver (1994 cited in De Haan, 1999: p.11), also argues that the concept of social capital, is essential in capturing both exclusion and inclusion within social networks. The inability of the Congolese forced migrants to penetrate South African social networks, has inadvertently transmuted into an unattainability of all three forms of capital. These three forms of capital refer to social capital, cultural capital and symbolic capital (Bourdieu, 1986 cited in Cederberg, 2012: p.61). Other researchers also opine that in such co-ethnic arrangements as the case in South Africa, downward levelling norms are very prominent and often negatively impact on individuals. Such negative impacts may be apparent through a lack of valuable social contacts and a lack of encouragement as well as social knowledge amongst the excluded (Sen, 2000: p.14; Portes and Landholt, 1996 cited in Cederberg, 2012: p.64). Congolese forced migrants` isolation from South African communities, is therefore another debilitating factor. According to Sibanda et al (2012: p.23), the measure of a groups isolation from South African communities is essential because "it is an indicator of families social interactions and these patterns build social capital through networks that provide important information for migrants in securing rights and access to services." Such rights, which are also the main focus of this study, include access to socio-economic entitlements, documentation, shelter, employment, legal protection, social services and so forth.

4.6 THEORETICAL FRAMEWORK

The conceptual originality of this study is partly justified by how it produces a hypothesis based account of Congolese forced migrants` social exclusion in South Africa through an exegesis of relevant theory. The studies focusing on forced migrants in South Africa, the Refugee Act 130 of 1998 as well as those centering on social exclusion as a concept (Leggett, 1999; Adato, 2006; Landau, 2006; Leggett, 2006; Landau, 2010; Manicom and Mullagee, 2010; Sibanda et al, 2012), do not discuss such within the precincts of a clearly established theoretical framework. Through an exegesis of relevant theory, this study attempts to close such literature gaps by examining the risk factors confronting Congolese forced migrants in

South Africa. The nexus between the risk factors (Gijsbers and Vrooman, 2008) and the issue of forced migrants` social exclusion, is also examined thereafter. On the importance of theory in research work, Maxwell (2005: p.29) submits that:

> "A useful high-level theory gives you a framework for making sense of what you see. Particular pieces of data, which otherwise might seem unconnected or irrelevant to one another or to your research questions, can be related by fitting them into the theory…"

A conceptual framework can also be understood as a system of concepts, assumptions, expectations, beliefs, and theories that support and inform a research (Miles and Huberman, 1994; Maxwell, 2005). Through the use of the monopolisation and exclusion theory by Murphy (1986; 1988), the study examines all four dimensions within which social exclusion is perpetuated. These dimensions as noted earlier in the study pertain to material deprivations and social rights (structural) as well as social participation and normative integration (primary-cultural) (De Haan, 1999; Levitas et al, 2007; Saunders et al, 2008; Gijsbers and Vrooman, 2008; Fischer, 2011: p.3). Informed by a sound conceptual framework, the study examines the Congolese forced migrants access to socio-economic rights, documentation, shelter, employment, legal protection and social services within South Africa.

4.6.1 Theory of Monopolisation and Exclusion (Murphy, 1986; 1988)

The bulk of the reviewed literature in the study mainly focused on the role of education in reducing migrant stereotypes, refugee livelihood strategies and the role of theology in the furtherance of refugee welfare issues (Amisi and Ballard, 2005; Sibanda, 2012; Namukaso, 2015). It is for this reason the authors made use of theoretical concepts such as the Integrated Threat Theory (2008), Theory on Social Analysis (1980) and the Historical Structural Theory (1998). This particular study adopted Social Closure; Theory of monopolisation and exclusion by Murphy (1986; 1988), as it best elucidates on the arguments that are canvassed within the study. These arguments have to do with the role of both sub-cultural and structural (multi-dimensional) cogency's, in obstructing forced migrants` access to their civil rights in South Africa (Duffy, 1995; Taylor, 2004; Amisi and Ballard, 2005; Bustamante, 2011).

According to Swartz (1990) and Morrow (1990), the Social Closure; Theory of monopolisation and exclusion borrows from the social closure tradition of Weber (1978), Parkin (1979) and Collins (1968; 1971; 1975; 1979; 1980) as well as Marx`s submissions on class (Marx 1895). Weber (1978 cited in Murphy 1986: p.23) used the term closure to refer to the process of subordination whereby one group monopolises advantages by "closing off opportunities to another group of outsiders beneath it." Such closure is perpetuated out of the in groups perception of the outgroup as inferior and ineligible on account of their race, language, social origin, religion, gender and so forth (Weber, 1968: p.342; Weber, 1978 cited in Murphy 1986: p.23; Swartz, 1990: p.480; Kabeer, 2000; Weber, 1978 cited by Tholen, 2016: p.3). On the other hand, Parkin (1974), bases his arguments on the collective responses of excluded groups to closure through what he termed solidarism. He conceptualises social closure as consisting of two reciprocal modes (exclusion and usurpation), with both being a means for mobilising power to enhance or defend a group's share of resources. Parkin (1974: p.5), argues that whereas exclusion is a form of closure that stabilises the stratification order, solidarism challenges the inequities within systems of resource and opportunity distribution, through possible usurpation. Drawing from Weber for a general theory of domination and power, Parkin (1974: p.5) argues that:

> "…the language of closure can be translated into the language of power.
> Modes of closure can be thought of as different means of mobilising power
> for purposes of staking claims to resources and opportunities."

Social closure can therefore be said to encapsulate different degrees of closure and conditions of participation, with participation being dependent upon an appropriated right. Methods of closure governing such participation also vary from a relative to an absolute form of regulation (Weber, 1978: p.128; Weber, 1978: p.45; Swartz, 1990: p.480; De Haan, 1999; Khan et al, 2015). Murphy (1986) however acknowledged exclusion from all means of life as infrequently existent. He identified social exclusion as predominantly confined to material monopolisations such as property, income generating areas or those areas that directly or indirectly facilitate access to such (Murphy, 1986: p.25). Murphy`s theory (1988), therefore argues for a closure perspective of exploitation which is fundamentally more inclusive than

that of Marxism. According to Morrow (1990), Murphy's distinctive contribution goes beyond all previous closure theory and is evident in his effort to elaborate on the interactions between rules of closure and their structure.

Both Parkin (1974; 1979) and Collins (1968; 1971; 1975; 1979; 1980) fail to take into account the vastly different power and advantages, accruing into credentials as well as property. This is particularly important to acknowledge in the case of South Africa where hostilities against perceived outside groups have been perpetuated in a bid to secure the in group`s advantages and credentials. These advantages include RDP houses, informal economic zones, social service grants and so forth (Palmary, 2003: p.10; Crush et al, 2013). According to Morrow (1990: p.478), the two theorists also fail to take into account "the unequal importance of the two as rules of exclusion under capitalism." In response to this shortcoming, Murphy (1988), offers a threefold distinction between the three forms of exclusion (principal, derivative and contingent forms of exclusion). These three forms of exclusion, are identified by this particular study as not only illuminating on the multi-dimensionality of social exclusion, but also shedding light on the existing rules of closure as well as their structure. Therefore, through an examination of Murphy`s (1988), three forms of exclusion, this study analyses their prevalence and possible influence in perpetuating social exclusion amongst Congolese forced migrants in South Africa.

4.6.2 Principal Forms of Exclusion (Murphy, 1986; 1988)

According to Murphy (1988), principal forms of exclusion and monopolisation are enforced by the apparatus of the state through legal and ultimately coercive sanctions that exclude certain groups from power, resources and opportunities within society. Principal forms of exclusion are also acknowledged as socially discernible by Gijsbers and Vrooman (2008) in their four dimensional concept of social exclusion which elucidates on the nexus between structural arrangements, material deprivations and social rights. According to Gijsbers and Vrooman (2008), two of these dimensions (material deprivation and social rights) are of a structural nature. Fraser's analysis (1997 cited in Kabeer, 2000: p.84) of different forms of injustice also offers a useful way of integrating different forms of disadvantage and

acknowledges the manifestation of numerous principal forms of exclusion as alluded to by Murphy (1988). The approach articulates on the different forms of injustice, through its use of a conceptual spectrum partially consisting of primarily economic (structural) forms of injustice.

In conflict transformation studies, there is also an acknowledgement of the negative effects of power based inequities (Galtung, 1969). Prominent scholars within the field such as Galtung (1969; 1971; 1990 cited by Barnett, 2008: p.78) and Ho (2007) also view systems of unequal power distribution that imbed group disparities (principal forms of exclusion), as a structural violation of individual human rights. Building on the concept of the mobilisation of institutional bias (Lukes, 1974), structural or distributive externalities can be seen as another manifestation of Murphy`s (1988) principal forms of exclusion. Mobilisation of institutional bias as a concept, observes such biases as being perpetuated without the individual and conscious efforts of those directly benefiting from the bias (Lukes, 1974; Fraser, 1989; Kabeer, 2000: p.21).

In South Africa, top down hierarchies, through state institutions such as the Department of Home Affairs, municipalities, public health and education system have been systematically used to further group monopolisations and exclusionary nodes against forced migrants (Peberdy and Majodina 2000, cited in Landau, 2006: p.9; Amit, 2012: p.319). Such structurally imposed deprivations have been in direct defiance of the Refugee Act 130 of 1998 inclusionary tenets as well as the Republic of South Africa`s Bill of Rights. As a result, Congolese forced migrants have been socially closed off from accessing their entitlements to legal documentation, protection, healthcare and a spectrum of other necessaries and social functioning's (Sen, 1983; Smith, 1996 cited in Sen, 2000: p.7; Palmary, 2003; Bahamjee and Klaaren, 2004; Vearey and Richter, 2008; Crush et al, 2013).

Weber (1978 cited in Swartz, 1990: p.480), also submits that there can be a monopolisation of both property advantages and forms of prestige. In South Africa, monopolisations of forms of prestige are discernible through restrictive measures obstructing forced migrants` access to legal status or documentation (Section 22, Section 24 and Section 27 permits). Legal status

in South Africa is often seen as a determinant of inclusion or exclusion (prestige) and thus it becomes a monopolised commodity (Amisi and Ballard, 2005; Landau et al, 2005 cited in Rugunanan, 2011: p.709; Namukaso, 2015). Restrictions and delays in provisioning forced migrants with legal documentation are in contravention of Regulation 29 (1) of the Refugee Act 130 of 1998 stipulation of a six month waiting period for Section 22 permits. Within the six month period, government is expected to have adjudicated on a claim for asylum and made requisite documentation available, however the process has been known to often extend well into several years (Amisi and Ballard, 2005; Landau et al., 2005 cited in Rugunanan, 2011: p.709; Namukaso, 2015; Department of Home Affairs, 2017). During such a lengthy waiting period, Congolese forced migrants are faced with considerable challenges in accessing the economic and social sectors that require proof of legal status. Scholars such as Groot (2004) concur and argue that it is only with the possession of legal documentation that forced migrants in South Africa can make claim to government services such as health, education, work and protection.

4.6.3 Derivative and Contingent Forms of Exclusion (Murphy, 1986; 1988)

According to Murphy (1988), derivative forms of exclusion often overlap with contingent forms of exclusion. Although they are derived from the primary forms of exclusion, they are often not identical to these. Morrow (1990), also makes a submission that derivative forms of exclusion frequently operate in an informal manner, without legal sanction. Derivative forms of exclusion therefore derive their basis for exclusion from primary cultural factors and these include racial, ethnic, religious, gender as well as the individualistic forms of credentialism (Murphy, 1988 cited in Morrow, 1990: p.478). Derivative forms of exclusion, operating at an interpersonal level can therefore manifest themselves as the subcultural impediments to social participation and normative integration in the four dimensional conceptual framework of exclusion. Derivative forms of exclusion are also acknowledged in Fraser's (1997 cited in Kabeer, 2000: p.84) conceptual spectrum of disadvantage and injustice whereby primarily cultural elements are seen as puissant. Building on the concept of unruly practices (Kabeer, 2000: p.92), primary cultural forms of closure and credentialism can also be seen as another manifestation of Murphy`s (1988) derivative forms of exclusion.

Frasers (1989) concept of unruly practices, accounts for the "gap between rules and their selective implementation, occurring in all institutional domains" (Kabeer, 2000: p.92). This is supported by Weber`s (1968) micro theory of class stratification which views legal rational authority as being at threat from traditional and historical prejudices. In South Africa, unruly practices have resulted in a situation whereby legal rational authority (Refugee Act 130 of 1998) is undermined by an exclusionary traditional authority, perpetuated by individuals within offices of public service. Unruly practices within the public service institutions (derivative forms of exclusion), can therefore be seen in South Africa through what Crush and Tawodzera (2014 cited in Hungwe, 2013: p.6) termed "medical xenophobia." Similarly, other exclusionary nodes can also be seen through the unruly actions of the police and other civil servants in the execution of their duties (Kabeer, 2000; Handmaker and Parsley, 2001; Palmary, 2003; Bahamjee and Klaaren, 2004; Amisi and Ballard, 2005; Nyaoro, 2010: p.127; HRW, 2013 cited by Manicom, 2010 p.176; Sibanda et al, 2012; Crush et al, 2013 p.8).

Murphy (1988), submits that traditional and historical prejudices (derivative forms of exclusion), can obstruct the realisation of an inclusionary legal rational authority. Such an obstruction is done on the basis of any group attribute ranging from race, ethnicity, religion, language and so forth. Bourdieu, (1986 cited in Cederberg, 2012: p.61) equally sites the absence of "social, symbolic and cultural capital attributes" within a social group such as the Congolese forced migrants, as reason enough for them to be socially excluded. Based on such attributes, perceived out-groups are closed off from accessing socio-economic entitlements (Weber, 1968; Weber, 1978; Murphy 1986; Murphy, 1988). Studies done by Johnson (2000 cited in Taylor, 2004: p.5), on Ethiopian forced migrants in Australia also revealed that, "if somebody is a stranger and he does not have a social network, no relatives, new in the country… then he is poor." In support of this, Taylor (2004) also identifies racism, discrimination and dialectal differences as substantial impediments to forced migrants` social inclusion and integration.

As displayed earlier in the Chapter, in South Africa, traditional and historical prejudices (derivative forms of exclusion) have resulted in the denial of Congolese forced migrants`

rights to healthcare, shelter, employment, education and so forth, despite the existence of a progressive refugee policy framework (Palmary, 2003; Bahamjee and Klaaren, 2004; Amisi and Ballard, 2005; HRW, 2013 cited by Manicom, 2010 p.176; Crush et al, 2013 p.8). Murphy`s (1986: p.37), theory therefore fits into the study due to how it enlarges the focus of closure and monopolisation from the "laws of private property to other forms of monopolisation and exclusion such as credentialism, racial, sexual, ethnic and religious monopolisation and exclusion."

4.6.4 Social Exclusion in South Africa: A Multi-Dimensional Concept

As shown by the theoretical framework above, social exclusion is a multi-dimensional phenomenon (Murphy, 1988; Bhalla and Lapeyre, 1997: p.430; Fraser, 1997 cited in Kabeer, 2000: p.84; Gijsbers and Vrooman, 2008). The concept of social exclusion and how it is perpetuated can thus be understood in terms of both a primary cultural (inter-relational) and structural continuum. In that regard, this study examines the social exclusion of Congolese forced migrants within such a framework. The study identifies primary cultural and structural impediments to forced migrants` access to their legal rights, as conterminous with their state of social exclusion in South Africa (Duffy, 1995; Sen, 2000; Taylor, 2004; Amisi and Ballard, 2005; Bustamante, 2011). Some structurally exclusionary factors contributing to the deprivations forced migrants face, have to do with discriminative policies implemented towards the preservation of special socio-economic sectors for citizens. Kavuro (2015), agrees and argues that sovereign states enjoy the right to determine the manner in which they safeguard their resources with regards to resident foreign nationals.

In the case of South Africa, these structural impediments to social inclusion and rights access then become bureaucratic or institutional. As a result, non-citizens are thus admitted into the country under the immigration policy regulations, which by design relate to socio-economic exclusion. The Refugee Act 130 of 1998 however, "exempts forced migrants the said rule through mechanisms that accord them the basic entitlements enshrined in the Bill of Rights, including socio-economic rights" (Kavuro, 2015: p.250). The Refugee Act 130 of 1998 is thus the primary legal instrument upon which forced migrant groups claim to social inclusion,

integration and cohesion derives its lawful legitimacy. The study therefore examines Congolese forced migrants` social exclusion as contingent with both structural and relational (multi-dimensional) injustices. The theory of monopolisation and exclusion (Murphy, 1986; 1988) is thus used in the study to elucidate on the said injustices.

The theory of monopolisation and exclusion (Murphy, 1986; 1988), is particularly useful and relevant to the study due to its recognition of the said role of discriminative institutional arrangements in proliferating social inequalities, prejudice and exclusion. Furthermore, the theory not only highlights but also gives credence to the influence of primary cultural (relational) agents in entrenching social exclusion and other forms of disaffiliation. For that reason, this theory helps the study explore the relationship between structurally imposed inequities (through policy or the lack thereof), and the existing inequalities permeating through primary-cultural nodes.

4.7 CONCLUSION

The purpose of this Chapter was to provide an exegesis of relevant and contemporary literature on the research topic. In that regard, an analysis of a host of empirical publications and legislation centering on forced migrants` social exclusion was carried out. Using various models, the Chapter examined how social exclusion as a European concept can be re-intellectualised, so as to fit in the context of non-welfare states in the SADC region such as South Africa. In this regard, the redistributive discourse (RED) was found as least Eurocentric and thus most relevant not only to South Africa but the rest of the developing states in the region and further afield. The Chapter was thus crucial as it addressed the issue of how social protection and exclusionary nodes are not place specific (they are not a South African phenomenon alone), but are a result of general factors which inform forced migrants` experiences within developing states. In examining forced migrants` social exclusion in South Africa, the Chapter drew parallels between policy implementation shortcomings and forced migrants` exclusion.

An examination of forced migrants` ability to convert their rights into entitlements was done in recognition of refugee policy as the medium through which they can enjoy social inclusion, cohesion and social protection. The Chapter also provided the conceptual framework of the study as well as a justification behind the choice of theory which went on to make up the study`s theoretical framework. The choice of theory for the study (Theory of monopolisation and exclusion), was chosen and justified in the Chapter as being suitable for the study due its elucidation on the multi-dimensionality of social exclusion but goes on to capture all the said dimensions within which social exclusion is conveyed. All of the other arguments in the literature review of the Chapter, for instance the existence of numerous spectrums through which service and social exclusion is perpetrated (unruly practices, institutional bias, institutional xenophobia and so forth) are also supported through the use of theory. The theory of monopolisation and exclusion (Murphy, 1986; 1988), enabled the study to examine Congolese forced migrants` access to socio-economic rights, documentation, shelter, employment, legal protection and social services in South Africa.

CHAPTER 5: RESEARCH METHODOLOGY AND METHODS

5.1 INTRODUCTION

In examining forced migrants social exclusion, this study utilised a qualitative research paradigm. It examined the way forced migrants attach meaning to their subjective reality with regards to their state of social exclusion and the accessibility of civil rights in South Africa. For this reason, the study adopted an interpretive research design technique (Thorne et al, 1997; Denzin and Lincoln, 1998; Wahyuni, 2012; Stephens, 2013). In carrying out this study certain risk mitigating protocols and procedures had to be observed, bearing in mind the level of psychological trauma the Congolese forced migrants were most likely exposed to in the conflict areas from which they fled. However, this particular study was neither potentially traumatic, physically endangering nor based on the participants past stressful experiences in the DRC. Nevertheless, ethical issues applicable when handling a vulnerable population were upheld throughout the study (Demi and Warren, 1995; Orb et al, 2001; Fritz, 2008). In examining the codifications in the Refugee Act 130 of 1998 and their conversion into effective protections for Congolese forced migrants in South Africa, this study was thus exploratory in nature. This was influenced by how exploratory studies are most suitable for examining meanings to social phenomena by asking questions, as experienced by the individuals in their natural contexts (Malterud, 2001; Gray, 2004).

The choice to use a qualitative research approach as well as selecting forced migrant grassroots associations, as opposed to the umbrella bodies, was informed by the research overall objectives. This choice was also informed by how qualitative research places a lot of emphasis on the social construction of knowledge and reality which is derived through the close interactions a researcher forms with the participants (Golafshani, 2003). Furthermore, although there are other formal organisations in existence, acting as the umbrella bodies of the informal social movements such as the Congolese Solidarity Campaign (CSC), Hope Initiative and so forth, these typically do not operate at a grassroots or community level. Such organisations therefore tend to be detached from some of the issues confronting the length and breadth of their membership. Although informal associations face challenges regarding

issues of recognition by policy makers and constantly have their legitimacy undermined by frontline service providers, they are often more proactive and cognizant of the issues confronting their membership. To that effect, the researcher took time to consciously build rapport, trust and understanding with the informal Congolese Refugees Association's membership and leadership.

The civil society sample was purposively drawn using expert sampling whilst the forced migrant participants were drawn using a homogenous sampling method (Patton, 2002; Suri, 2011). One of the issues that became apparent to the researcher, which was also a central theme in the study is the problem of how the Congolese forced migrants in South Africa are socially disaffiliated. Apart from the 'bonding networks' and social capital which they form out of necessity, the forced migrants have little else to rely on in terms of support and social security (Amisi and Ballard, 2005; Putman, 2000 cited in Cederberg, 2012: p.65). As a coping mechanism against such social disaffiliation, Congolese forced migrants "social networks purposely emerge in organised communities in the form of refugee associations and ethnic or tribal organisations" (Simone, 2001; Amisi and Ballard, 2005: p.2). The majority of these organisations appear as informal and unregistered associations. This study identified challenges in registration as originating from the bureaucratic hurdles involved in the formalisation procedure. The law in South Africa demands for citizenship and other documentation for the registration of Trusts and non-profit organisations, which are often outside the reach of Congolese forced migrants (South Africa non-profit Organisations Act, 1997; Amisi and Ballard, 2005: p.28).

Challenges in accessing the abovementioned associations were surmounted by how the Congolese forced migrant associations are mostly inconspicuous and socially excluded. Therefore, knowledge of their existence and functions was mostly confined to fellow forced migrants. Other researchers concur and argue that it can be very challenging for a researcher to access elusive and difficult to find (socially excluded) populations for the purposes of carrying out research (Emmel, 2007; Hungwe, 2013: p.92). Harrell and Voutira, (2007), in their exegesis of research work focusing on forced migrants in Sierra Leone, Sudan, Egypt,

Kenya, Greece and the Former Soviet Union, also discovered how forced migrants can be inconspicuous. As a result of being socially disaffiliated, forced migrants in contemporary times have been reduced to invisibility (minimal social contact and interaction). Such a state of invincibility, significantly restricts the ease of accessing them especially for purposes of carrying out research (Mackenzie, et al 2007; Harrell and Voutira, 2007; Emmel, 2007; Hungwe, 2013: p.92). These issues therefore informed the researcher in selecting a most suitable research design that would best mitigate against the potential challenges, common in research work involving vulnerable populations.

5.2 RESEARCH DESIGN

A research design is fundamentally a detailed outline of how a particular study will be carried out. A research design will therefore typically comprise of the basic plan of the research as well as the rationality behind it, the research design holds all the various parts and phases of the inquiry together (Maxwell, 2012; Lewis, 2015). In most studies the research design typically includes how data is to be collected, what instruments will be employed in the study, how the relevant instruments will be utilised and the intended techniques for analysing the collected data (Polit and Hungler, 1999; Sarantakos 2005). It is therefore important to integrate within the research design, aspects of how the researcher will document throughout the study, procedures and steps involved in carrying out the study (Yin 2009, cited in Creswell, 2014, p.204). Regarding the issue of procedures involved in the carrying out of research work, Kothari (1998: p.12) submits that:

> "One should remember that the various steps involved in a research process are not mutually exclusive; nor are they separate and distinct. They do not necessarily follow each other in any specific order and the researcher has to be constantly anticipating at each step in the research process the requirements of the subsequent steps."

In choosing a research method this particular study was faced with two different choices (a qualitative and quantitative research methodology). Quantitative research methods deal with numbers and anything that is measurable in a systematic way of investigating a given phenomenon (Creswell, 2002; Mikkelsen, 2004; Vogt, 2007). According to Leedy (1993),

quantitative research methods (positivist epistemological approaches) are used to answer questions on relationships within measurable variables. Such measurable variables are analysed with an intention to explain, predict and control a specified phenomenon (Hudson and Ozanne, 1988; Carson et al, 2001). Two defining characteristics of studies in which quantitative research methods are suitably applicable are that firstly, the particular study will be dealing with numbers (statistics) and secondly, the phenomenon under study has to be measurable. According to Hungwe (2013: p.94), "if a researcher intends to proffer understanding into a large population`s current status quo, then a quantitative large scale sample survey is most appropriate."

This particular study did not however employ the use of a quantitative research design technique but made use of a qualitative research methodology. This choice of technique was informed by the non-quantifiable nature of the phenomenon under investigation. Such unmeasurable variables under investigation were namely the perceptions of the Congolese forced migrants on the issue of their social exclusion and access to rights such as legal documentation, shelter, employment and others as enshrined in the Refugee Act 130 of 1998. The study therefore attempted to go past the typical accounts that merely examine the manifest characteristics of individual's circumstances. To capture such non-quantifiable data, the study thus adopted a qualitative research paradigm. Hickey and Du Toit (2007: p.2), also argue that deprivations, social exclusion and poverty are best examined qualitatively:

> "…there is the need to move beyond accounts that merely look, myopically, at the characteristics of individuals or 'households' and then seek to concoct 'explanatory' accounts based on the correlation of variables. Such accounts very often fail to go far beyond stating the obvious (for example that chronic poverty is highly correlated with multiple deprivation…and fail to consider the underlying contextual factors that explain why some experience these conditions and vulnerabilities while others do not"

In assessing the Congolese forced migrants` lived experiences in converting the said rights into effective protections, this study was exploratory in nature as it used an interpretivist epistemological approach. According to Malterud (2001), exploratory studies are flexible research models that analyse meanings to empirical social phenomena, as experienced by the

participants. Exploratory studies can also be defined as enquiry based studies with their overall objective being to generate answers in the face of specific research questions (Stebbins, 2001; Gray, 2004; Creswell and Clark, 2007; Yin, 2013). There are numerous differences between quantitative (positivist epistemological) and qualitative (interpretivist epistemological) research methods (Hudson and Ozanne, 1988; Carson et al, 2001; Neuman, 2013). It is such dissimilarities that informed this study in its choice of methodology. Some of the variations between the two approaches are illustrated in the table below:

Table 5: Comparison of quantitative and qualitative research approaches

Comparison of quantitative and qualitative research approaches		
	Quantitative	Qualitative
General framework	Seek to confirm hypotheses about phenomena	Seek to explore phenomena
	Instruments use more rigid style of eliciting and categorizing responses to questions	Instruments use more flexible, iterative style of eliciting and categorizing responses to questions
	Use highly structured methods such as questionnaires, surveys, and structured observation	Use semi-structured methods such as in-depth interviews, focus groups, and participant observation
Analytical objectives	To quantify variation	To describe variation
	To predict causal relationships	To describe and explain relationships
	To describe characteristics of a population	To describe individual experiences
		To describe group norms
Question format	Closed-ended	Open-ended
Data format	Numerical (obtained by assigning numerical values to responses)	Textual (obtained from audiotapes, videotapes, and field notes)
Flexibility in study design	Study design is stable from beginning to end	Some aspects of the study are flexible (for example, the addition, exclusion, or wording of particular interview questions)
	Participant responses do not influence or determine how and which questions researchers ask next	Participant responses affect how and which questions researchers ask next
	Study design is subject to statistical assumptions and conditions	Study design is iterative, that is, data collection and research questions are adjusted according to what is learned

Source: Qualitative research methods: a data collector's field guide (Mack et al, 2005: p.4)

As mentioned in the previous paragraph, in selecting an interpretive (qualitative) research design technique this study was informed by how it intended to examine the way forced migrants attach meaning to their subjective reality. A qualitative approach was also most suitable due to how most scholars argue that social exclusion is a multi-dimensional concept and thus cannot be analysed quantitatively (Mario and Wodon, 2001: p.70). In that regard, using an interpretive approach, the study incorporated the grassroots Congolese forced migrants` social movements, with whom rapport was natured through routine visits and consultations.

In carrying out an enquiry based study that analyses peoples` sentiments, opinions and so forth, a qualitative sampling method, involving a small sample is most suitable. Other researchers such as Hungwe (2013), also acknowledge the importance of having a smaller sample and argue that such samples allow for a deeper examination of the phenomenon under study. There are five qualitative approaches in qualitative research and these are namely ethnographic, phenomenological, case study, grounded theory and narrative research (Burgess, 1984; Lincoln and Guba, 1985; Delamont, 1992; Stake, 1995; Hammersley and Atkinson, 1995; Travers, 2001; Bryman, 2001). In ethnography, the researcher is expected to familiarise with the philosophies and ways of life of their study group by engrossing oneself into their ethos. Such familiarisation can be achieved by spending prolonged periods within the intended community of study. By investing as much of his/her time as possible building rapport and affinity with the community, the researcher will be intending to bring about a level of reliability and credibility within their findings (Cetina, 1983; Ellen, 1984; Kozinets, 2010). By spending protracted periods of time on the ground, the researcher develops a rich appreciation and understanding of the phenomenon under study (Creswell, 2014: p.204).

However, due to a number of considerations, this study did not utilise an ethnographic approach. This was partly influenced by how there is a lot of distrust and fear amongst the generality of forced migrant communities (Jacobsen and Landau, 2003; Rodgers, 2004; Harrel, 2007; Mackenzie, 2007). Such fear as also noticed amongst the Congolese forced migrants in South Africa, could be attributed to how they have been victims of xenophobic

experiences in the past (Simone, 2001; Bahamjee and Klaaren, 2004; Nyaoro, 2010; Crush et al, 2013). Other researchers dealing with forced migrants in South Africa also identified a level of distrust and fear amongst Congolese forced migrants to engage research workers (Ballard and Amisi, 2005: p.18). Prolonged interaction with the researcher could have therefore, adversely influenced the research outcomes.

The study also refrained from taking an ethnographic approach so as to prevent what Creswell (2014), terms bias in qualitative research. Prolonged interaction with the participants in the Congolese forced migrant communities could have influenced the researcher's perceptions of them. According to Creswell (2014), credible qualitative research resonates with comments by the researchers on how their interpretation of the findings is influenced by their gender, cultural, political, religious and historical background. This disclosure is done so as to create an open and honest narrative that will resonate well with readers. In this particular research, the researcher was however not a member of any of the Congolese forced migrant communities under examination. In cognisance of all the objectives canvased within the research, the study therefore settled for a non-ethnographic qualitative case study framework, choosing Pietermaritzburg in KwaZulu-Natal, South Africa as the delimited area of study.

5.2.1 Rationale for choosing Pietermaritzburg

In qualitative case studies, the concept of reality is conceptualised as a social construct (Merriam, 1988; Golafshani, 2003; Baxter and Jack, 2008). Within this framework however, the concept of objectivity is also recognised as prevalent. One of the benefits in the recognition of how realities are social constructs, is the close association between the person conducting the research and the participants whom he provides a platform to share their experiences (Baxter, 2013: p.545; Benhura, 2016: p.69). Through these stories, the participants are able to share their views of reality which enables the researcher to understand and derive meaning from such accounts (Lather, 1992 cited in Baxter, 2013: p.545). A qualitative case study framework was thus used in this study through an examination of Pietermaritzburg, a refugee-receiving town in the KwaZulu-Natal province. The town and its Congolese forced migrant population, was examined as a case that is not only "holistic and

bounded but also suitable for the purposes of research and scientific exploration" (Benbasat et al., 1987: p.371; Merriam, 1988; Hungwe, 2013: p.81; Yin, 2013).

In comparison to the other provinces in South Africa, the KwaZulu-Natal province under which Pietermaritzburg falls, has been known as not only the host of thousands of forced migrants but also a hotbed of hostilities targeting migrant groups. According to Buckley (1997), from the year 1850 going onwards, Pietermaritzburg went through a rapid structural and policy transformation that greatly influenced the migration trends. Between the years 1849-1851 the numerous immigration schemes (notably that of J.C, Byrne and Company), heralded the coming in of thousands of new immigrants to the province of Natal (Buckley, 1997 cited in Namukaso, 2015: p.2). Within the generality of the country, by the beginning of the year 2007 there were 42 258 asylum applications that were pending and towards the end of the same year the number had escalated to 78 029. According to Bollaert (2008), a large portion of these applications were from the KwaZulu-Natal province. A closer look at the provincial forced migration statistics for KwaZulu-Natal alone, reveals that in 2008 the province registered a total of 35 137 asylum applications at the Durban refugee reception office with 27 539 being designated as pending (Bollaert, 2008; Manicom and Mullagee, 2010).

In choosing Pietermaritzburg as a case study the researcher was attempting to create new knowledge by addressing the existing gaps within the forced migration and social exclusion literature. Furthermore, the study was also attempting to buttress the existing findings within the academic body of knowledge. Through an examination of contemporary studies focusing on forced migrants in South Africa, the study identified how such literature correspondingly attests to the persistence of the challenges under investigation in the research (Mario and Wodon, 2001; Hategekimana, 2007 cited in Namukaso 2015: p.23).

The prevalence of exclusionary predilections in Pietermaritzburg as a town within the KwaZulu-Natal province was also principal in influencing the choice of case study. In 2008 due to the said exclusionary forces, 135 foreigners in Pietermaritzburg were reported to have fled their homes only to be housed by the municipality at Dale's Park (PACSA, 2016). A

study carried out in 2013 by the Human Sciences Research Council (HSRC) also identified exclusionary attitudes as a cause for concern in the province. The study reported that people in the KwaZulu-Natal province were less welcoming to both forced and voluntary migrants. According to the findings of HSRC, xenophobic and exclusionary tendencies were more pronounced in the province than many other provinces in South Africa. Less than 17% of the interviewed participants indicated some intention to welcome migrants (Gordon et al, 2015). It is a result of such issues that this qualitative case study identified Pietermaritzburg, a town estimated to be home to more than 2000 legal forced migrants in 2007 (Bollaert, 2008), as suitable in the exegesis of forced migrants` social exclusion. Although the number of forced migrants in the town have since grown, the most recent statistics for both KwaZulu Natal and Pietermaritzburg are unclear (Wyller, 2016). Such a challenge in ascertaining the forced migrants` population may be as a result of how such populations are difficult to access especially for purposes of carrying out research (Mackenzie, et al 2007; Harrell and Voutira, 2007; Emmel, 2007; Hungwe, 2013: p.92).

5.2.2 Rationale for choosing Congolese Forced Migrants

The choice of Congolese forced migrants in the study was principally informed by their suitability as a target group in meeting the key characteristics of a forced migrant population. This criteria was essential as it best elucidated on the central themes canvassed in the research. As aforementioned in Chapter one, in defining and identifying forced migrants the study was informed by Turton`s (2006) definition of forced migrants as including "forced migrants who by the Geneva (1951) definition, have left their own countries due to prosecution or violence on account of race, religion and nationality…" (UNHCR, 1951; Turton 2006, cited in Maystadt, 2010: p.13). Therefore, as articulated by these definitions, the Congolese forced migrants in Pietermaritzburg qualified for study and designation as a forced migration population.

In choosing the Congolese forced migrants as a study group for the research, the study did so in cognisance of several issues. Most importantly as mentioned in Chapter two, was the issue of how South Africa, between the years 1990, 2000 and 2015 received the largest population

of both forced and voluntary Congolese migrants in the SADC region (UNHCR, 2014 cited in Stupart, 2016; Flahaux and Schoumaker, 2016). In 1994 when the war in the Congo was at its peak, out of the 152 414 applications for asylum received by the Department of Home Affairs, the largest group were forced migrants from the Democratic Republic of Congo (Groot 2004: p.38). The study was therefore particularly drawn to the Congolese forced migrants in Pietermaritzburg due to how other countries previously contributing forced migrants to South Africa such as Rwanda, Angola, Burundi and others, have since attained relative stability.

Although there is still some level of active conflict in Somalia and other African states such as the Central African Republic, the study purposively opted for the DRC. This was done in cognisance of how the DRC best elucidates on South Africa`s humanitarian responses to conflicts within the SADC region, as a fellow member state. As mentioned in Chapter two, the war in the DRC has generated thousands of forced migrants and caused the deaths of millions between the years 1998 and 2008 alone (Amnesty international, 2004 cited in Coghlan, 2004: p.3; Karbo and Mutisi, 2011; BBC, 10 October 2013; UNHCR, 2015 cited in Flahaux and Schoumaker, 2016). As a result of the conflict in the Congo, which has for decades made it a refugee producing state, there is consequently a substantial Congolese forced migrant population in South Africa. In studying the issues of coerced migration, the DRC conflict, described as one of the vilest conflicts the SADC region has seen in recent years, presented itself as a suitable case study area for the study.

As the case in all research case studies, the wellbeing and social welfare of the Congolese forced migrants involved in the study do not necessarily depict that of the generality of forced migrants in South Africa. Rather, the circumstances of the participants involved in the study serve only as an instrumental case (Stake, 1995; Baxter and Jack, 2008; Hyett et al, 2014; Zainal, 2017). An instrumental case study either serves the purpose of providing valuable insight into a specific issue or aids in refining a theory (Baxter and Jack, 2008; Creswell, 2012 cited in Benhura, 2016: p.84-85). Congolese forced migrants were thus chosen as an instrumental case suitable for exploration in the examination of social exclusion due to how

they fall outside the networks of controlled association activity within South Africa (Handmaker and Parsley, 2001; Taylor, 2004; Levitas et al, 2007; UNHCR, 2012). Other researchers such as Amisi and Ballard (2005: p.1) also argue that Congolese forced migrants in South Africa face hardships, "with scant livelihood opportunities, inability to access services such as health and education, poor provision of documentation…and xenophobia experienced daily in institutions and public settings." Most importantly, Congolese forced migrants were also identified as appropriate for the study due to how they constitute one of the most visible refugee minority groups in South Africa (Honorine, 2012).

5.3 SAMPLE DESIGN AND SAMPLE SIZE

In other sampling methods such as census inquiry, all of the elements within the population under study are surveyed with a zero component of chance (Kothari, 1998; Mugenda and Mugenda, 1999). However in this method of enquiry, there is no technique for guarding against bias. During the research stages such as data collection and data analysis, bias can be understood as any deviations in honesty which may compromise the credibility and outcome of the study. Census enquiry methods also demand considerable resources inclusive of but not confined to money, time as well as human labour. As a result of such demands involved in carrying out census inquiries, "only a few items end up being selected from the universe for examination" (Kothari, 1998: p.14). In the interest of accuracy and the need to work within the confines of a limited monetary budget, this particular study opted for a purposive sampling method of inquiry (Guarte and Barrios, 2006; Tongco, 2007).

Mack et al (2005), argue that in a bid to obtain valid findings during a study, it is not obligatory to gather data from every item within the universe. They also argue that in qualitative research work, only a subset from a given population is delineated for the purposes of conducting a given study. According to Mack et al, (2005: p.5), the study's research objectives and the "characteristics of the study population (such as size and diversity) determine which and how many people to select." This particular study`s specific research objectives were centered on exploring the lived experiences of Congolese forced migrants as well as the insights from relevant civil society organisations on the issues under study.

Scholars such as Trost (1986) and Sandelowski, (1995), define a sample as constituting a portion of a certain population, sufficient enough to provide a saturated description of the phenomenon under investigation. In that regard, the study`s research objectives not only informed the researcher on the level of diversity required in the sample (forced migrants from the Congo and civil society representatives), but also on the possible size of the sample. In addition, the size and nature of the sample were equally influenced by a preference for purposive sampling amongst qualitative researchers. This is mostly due to how qualitative researchers need to work with participants who not only possess the required information but can also be located within the environment under study.

Other researchers such as Gray (2004), submit that a sample design can be understood as an assured plan for obtaining a sample from a given population and can either be probability or non-probability based. Probability samples are those based on simple random sampling, systematic sampling, stratified sampling and cluster/area sampling. Non-probability samples however, are those based on convenience sampling, judgement sampling and quota sampling techniques (Schillewaert, et al 1998; Kothari, 1998). Other qualitative non-probability sampling methods include typical case, maximum variation or heterogeneity, snowballing, purposive, deviant (extreme case) as well as convenience sampling methods. According to Hungwe (2013: p.92), probability sampling methods cannot be used in a situation where there is no sampling frame and one is working with an inconspicuous or elusive population. As mentioned earlier in the Chapter, the Congolese forced migrants under examination constitute an elusive population due to their mistrust of outsiders as well as fear of victimisation (Stake, 1995; Ballard and Amisi, 2005; Baxter and Jack, 2008; Hyett et al, 2014; Zainal, 2017). In that regard, a non-probability (purposive) sampling technique was appropriate for the study (Harrell and Voutira, 2007; Emmel, 2007; Hungwe, 2013: p.92).

5.3.1 Focus Group Discussion (FGD)

According to Amisi (2005: p.2), forced migrants "social networks purposely emerge in organised communities in the form of refugee associations and ethnic organisations." As aforementioned in Chapter three, this study identifies such bonding networks as a form of

coping mechanism to social disaffiliation or exclusion (Simone, 2001; Amisi and Ballard, 2005: p.2; Putman, 2000 cited in Cederberg, 2012: p.65). Parkin (1974: p.5), concurs and argues that one of the collective responses of excluded groups to closure may manifest itself through what he termed 'solidarism'. This study therefore interviewed part of the members of an informal Congolese Refugees Association.

Due to how the DRC is highly polarised along ethnic, tribal and ideological lines (Devisch, 1995; Shearer, 1999: p.102; James, 2000: p. 153), the bonding networks the Congolese forced migrants form once in South Africa, are seldom based on either being from the same country or on being from the same province. Instead, issues of membership and affiliation are largely dictated by the politics of similarities in language groups, in which case these become tribal or ethnic organisations. These groups include the Bembe, Foliro, Vira, Rega, Baluba, Bashi, Bakongo, Kusu, Zimba and Bango tribe (Amisi and Ballard, 2005). The purpose of such associations which Putman (2000), termed 'bonding networks' vary from providing health insurance to members, to providing funeral cover (burial societies). These associations also serve the purpose of networking members to livelihood and income generating information, clandestinely acquiring requisite documentation or trading license's, counselling the youth on crime, drug and substance abuse and so forth.

The Congolese refugee association from which forced migrant participants were drawn for the study has a total membership of 50 Congolese (30 men and women 20 women), informally employed as vendors scattered throughout the Pietermaritzburg business district and beyond. This particular Congolese association was principally selected through both convenience and homogeneous sampling. Etikan et al, (2016), defines homogeneous sampling as a sampling method that focuses on candidates who share similar traits. In purposively selecting this group, the study was therefore factoring in how the group, through its membership (constituting entirely of Congolese forced migrants), fitted the criteria of participants required by the study (Congolese victims of coerced migration). Other reasons informing the choice of sample included the Congolese associations close proximity to the

researcher`s institution of study as well as the associations representative's willingness to participate in the study.

Stratified purposeful sampling, was thereafter utilised to obtain a subset from the given population to interview, and this comprised of participants from the Congolese Refugee Association membership (Patton and Cochran, 2002; Mack et al, 2005). Stratification by gender was important to the study given how scholars such as Onwuegbuzie (2007) argue that interpretivist epistemological research can simultaneously explore the various divergent attributes ascribed to the research participants. The criteria used to purposively select participants in this instance was once again their willingness and availability of time from their personal schedules, to voluntarily participate in the study. This was important due to how most Congolese forced migrants are either vendors or contract night time security guards (Amisi and Ballard, 2005: p.9), making it a challenge to coordinate a conducive time for all participants.

In coming up with the Congolese forced migrants sample, the study was not intending to provide a numerical depiction of the Congolese forced migrants in Pietermaritzburg and South Africa (as the case in a probability sampling technique). Instead, the research was interested in examining meanings to social phenomena by asking questions, as experienced by the individuals in their natural contexts (Stake, 1995; Malterud, 2001; Gray, 2004; Baxter and Jack, 2008; Hyett et al, 2014; Zainal, 2017). Hence the small but effectively representative five males and three females was derived from the Congolese refugee group on the basis of them being an association of Congolese forced migrants in South Africa, willing to openly participate and contribute in the study.

5.3.2 In-depth Interviews: Life History

In an attempt to consolidate the findings from the focus group discussions, the study further purposively selected two participants from the FGDs to participate in two life history interviews. Due to the qualitative nature of the research and how it aimed to investigate on peoples lived experiences, expectations and circumstances, the undertaking of life history

interviews was essential in probing such issues (Strauss, 1990; Malterud, 2001; Gray, 2004; Mack et al, 2005: p.4). In that regard, the participants for the life history interviews were again purposively selected from the focus group discussions sample. The criterion used to purposively select life history interview participants for the study were thus the participants durations of sojourn within South Africa (from the moment of first acquiring a Section 23 permit). The lengthiest period was most preferred by the researcher as this indirectly implied that the participants possessed a greater knowledge of the issues under discussion.

5.3.3 In-depth Interviews: Key Organisations/ Non-governmental Organisations

In obtaining a sample from the non-governmental organisations this study utilised a purposive, expert sampling technique. Through this technique, the study chose the participant organisations based on their respective involvement in forced migrant issues. Such involvement included but was not confined to human rights activism, social justice and social equality in Pietermaritzburg, the KwaZulu-Natal province and the country at large (Oescher, 2007). In assessing the expertise of the organisations, the study examined their programs focus areas and overall social impact, such information was readily accessed on the respective organisational websites. As a result, the participants obtained and interviewed for this research were well-informed regarding the issues affecting the Congolese forced migrants. The sample was also knowledgeable on the Refugee Act 130 of 1998 and associated South African refugee policy frameworks. The study therefore purposively came up with a sample of three organisations comprising of the Congolese Refugees Association, Lawyers for Human Rights and the KwaZulu-Natal Christian Council. The choice of sampling technique in the study (non-probability purposive expert sampling), was therefore suitable for the study. It is a result of the said sampling technique that vital stakeholders to the state, such as non-governmental organisations, were incorporated in the study (Bebbington et al, 2008; Dongier et al, 2013).

In purposively coming up with a single participant from each of the selected organisations, the study utilised a triangulation approach. According to Adami and Kiger (2005), triangulation involves the concurrent employ of several techniques in the gathering of

research data and the selection of samples. In this particular study, such triangulation involved the use of both expert as well as convenience sampling in coming up with a limited number of participants (Cochran, 2007). Through this method, participants from the non-governmental organisations were purposively chosen by virtue of being the most knowledgeable person in forced migrant programs. As a result, from the Lawyers for Human Rights the study interviewed the human rights attorney responsible for the Refugee and Migrant Rights Program. From the KwaZulu-Natal Christian Council the study interviewed the coordinator for the Migration, Anti-Xenophobia and Social Cohesion Program while from the Congolese Refugees Association the study interviewed the president of the association. Participants were also chosen based on availability, as allocated by their organisations.

In coming up with a single participant from the three selected organisations, the study was not intending to provide a numerical representation of the organisations dealing with forced migrant rights issues in the Province of KwaZulu-Natal nor South Africa. Instead, the sizes were guided by how purposive sample sizes are influenced by the concept of theoretical saturation. Theoretical saturation can be understood as the point in data collection when new data, presented in response to the research questions no longer generates original insights (Sandelowski, 1995; Mack et al, 2005; Hungwe, 2013: p.94). Therefore the in-depth interview sample size was meant to effectively examine meanings to issues, not only prevalent in the area of study but also mimetic of the broader issues canvassed in the research. Such issues had to do with forced migrant groups` social exclusion and the implementation of the Refugee Act 130 of 1998 in South Africa. Through expert sampling, participants from the following Organisations, were therefore purposively selected and interviewed;

- **KwaZulu-Natal Christian Council** (delivery of social services to the marginalised)

- **Lawyers for Human Rights** (experts in international law, civil rights and policy)

- **Congolese Refugees Association** (uplifting the quality of life for forced migrants)

Table 6: Research sample

Number of participants	Designation	Types of instrument
Single participant	KZNCC	In-depth Interviews
Single participant	LHR	In-depth Interviews
Single participant	CRA	In-depth Interviews
5 males and 3 females	Forced migrants	FGDs
Two participants	Forced migrants	Life history Interviews

5.4 DATA COLLECTION

5.4.1 Document Analysis

Data for the research was gathered from both primary and secondary sources. According to O'Leary (2004: p.118), methods used for data collection and analysis are seldom limited to a single approach, in deriving rich qualitative data they are often "multi method and rely on interviews, observation and document analysis." Document analysis in research work also has two main purposes that function simultaneously by serving both as a repository as well as an agent in research (Silverman, 2011 cited in Benhura, 2016: p.90). Documents, wherever relevant are therefore a very rich source of information within qualitative studies and can be used alongside other sources of data such as in-depth interviews and focus group discussions. In cognisance of the importance of document analysis in qualitative research work, this study also employed the use of documents. Through content analysis, which can be defined as the study of content within texts (pictures, meanings and words), this study examined a wide range of documentary evidence (Sarantakos, 2005: p.299). Such documents included national and international policy papers as well as statistical compilations, elucidating on the globally prevailing trends. South African national legislative documents as well as official and non-official publications were equally made use of in the study. Such documents were identified by the study as an imperative resource in providing a lot of data regarding the implementation

of the Refugee Act 130 of 1998 and the question of forced migrants` social exclusion (Needleman and Needleman, 1996).

The task of content analysis can also be understood as the detailed process undertaken towards the interpretation and intellectualisation of raw information. Scholars such as Best and Khan (2006 cited in Vosloo, 2014: p. 355) define content analysis as representing "the application of deductive and inductive logic to a research." This study therefore made a methodical and manual analysis of documents relevant to the study with relevant undertones, inferences and connotations being detected from the data. The emerging themes on the question of the social exclusion of Congolese forced migrants and the limitations in the enactment of the Refugee Act 130 of 1998 were then systematically identified throughout the documentary sources (Sarantakos, 2005; Benhura, 2016: p.96). The examined legal documents included the Refugee Act 130 of 1998 upon which the entire study is based and the Aliens Control Act (forerunner to the Refugee Act 130 of 1998). Additionally, the South African Bill of Rights as well as the Republic of South Africa`s national Constitution were also examined.

These above mentioned documents were analysed in the study so as to develop an appreciation of the historical evolution of South Africa`s legal obligations to forced migrant groups in the country. In addition, the study analysed regional as well as international regulations to which South Africa is signatory, so as to establish the international standards upon which all refugee legal rights are globally centered. Through an analysis of these documents, the study was able to assess how South Africa is fairing in the implementation of such regional and international humanitarian precepts. These documents included but were not confined to, The Universal Declaration of Human Rights (1948), The 1951 Convention relating to the Status of Refugees and its 1967 Protocol as well as The 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.

5.4.2 Focus Group Discussions

Other researchers examining poverty and social inequities such as Mario and Wodon (2001: p.53), argue that the limitation in the bulk of the research work that has been carried out on social exclusion is the absence of close consultations with the victims of the social disaffiliation and disadvantage. As a result, this qualitative study incorporated focus group discussions with the Congolese forced migrants so as to incorporate their views and opinions as victims of discrimination, exclusion and other risks under investigation. According to Morgan (1998), focus group discussions are excellent when trying to understand social situations as well as complex behaviour and motivations behind a given phenomenon. Focus group discussions involve a focus on specific issues, with a pre-determined group of people, participating in an interactive discussion (Fontana and Frey, 1994; Sandelowski, 1995; Edmunds, 2000; Hennink, 2013). Focus group discussions are therefore most efficient in investigating issues pertaining to a groups societal norms. Mack et al (2005: p.2), submit that the derived responses from the group discussions are then utilised "to generate broad overviews of issues of concern to the cultural groups represented."

The primary intention behind the focus groups discussions was thus to analyse a host of perspectives on the research topic and generate a comprehension of the issues from the participants lived experiences (Atkinson, 1998; Edmunds, 2000; Hennink, 2013: p.2). The study therefore proceeded to make use of focus group discussions with Congolese forced migrants in a bid to identify their perceptions regarding their access to rights and the issue of social exclusion. A schedule guide for the focus group discussions was prepared beforehand and the template contained semi-structured questions specifically for the Congolese forced migrants in Pietermaritzburg. The semi-structured questions were open ended and were designed to reveal the Congolese forced migrants` perceptions regarding issues of their awareness to refugee rights as contained in the Refugee Act 130 of 1998. The questions were also meant to disclose forced migrants` access to their legally enshrined rights, the barriers to such as well as whether or not they experience social exclusion.

In conducting the focus group discussions, language barriers were overcame and addressed through translation of English into the main language spoken in the Democratic Republic of Congo (French), wherever it was seen necessary through the aid of a local skilled recruiter and translator (Krueger and King, 1998). Initially the study had proposed to utilise a stratified purposeful sampling method and divide the refugee focus groups into two gender based strata, so as to obtain gender balance, with no particular focus on age but with all participants being above the legal age of consent (Patton, 2002). However, due to some of the aforementioned challenges associated with working with vulnerable groups, the study faced challenges in recruiting female participants (Jacobsen and Landau, 2003; Rodgers, 2004; Harrel, 2007; Mackenzie, 2007). The study identified this challenge as being exacerbated by some of the previously mentioned fears and insecurities amongst Congolese forced migrants (Ballard and Amisi, 2005: p.18). Such fears were thus identified by the study as being more pronounced amongst the female forced migrants, as indicated by their 'invincibility' and reluctance to participate in the study (Demi and Warren, 1995; Orb et al, 2001; Bahamjee and Klaaren, 2004; Fritz, 2008; Nyaoro, 2010; Crush et al, 2013).

As a result of the above mentioned challenges the study ended up having a single focus group discussion with the Congolese forced migrants, comprising of three females and five males. This was viewed as a satisfactory sample for the focus group discussions as Morgan, (1997) recommends a total number of focus group discussion participants ranging between six to eight people. The focus group discussion lasted a total duration of 110 minutes and was representative of both male and female Congolese forced migrants` perceptions on the issues under discussion. During the focus group discussions, the researcher was cautious to prevent any patriarchal dominations and hierarchies from becoming manifest. Such dominations could have adversely supressed the expressiveness and participation of other participants. Such unwanted dominations were thus avoided by the facilitator through ensuring that everyone in the group had an equal chance to contribute. Furthermore, in avoiding any negative interplays and intimidations within group settings such as focus group discussions (gender based or otherwise), the facilitator managed anyone who attempted to dominate the discussions (Michell, 1999; Horner, 2000; Downs et al, 2011).

The research conceptually identified social exclusion as manifest when groups are denied participation in specific areas of activity. Such areas of activity were identified by this study as being essential in fostering integration and social cohesion, making them directly analogous with the attainment of social functioning's and necessaries. Such social functioning's and necessaries are identified in the study as vital in the aversion of poverty, extension of rights, employment, education, shelter and so forth. (Sen, 1992 cited in Bhalla, and Lapeyre, 1997: p.416; Smith, 1996 cited in Sen, 2000: p.7; Burchardt et al., 2002; Levitas, 2004; Bourdieu, 1986 cited in Cederberg, 2012: p.61). Therefore, the focus group discussions were designed to ascertain Congolese forced migrants` perceptions regarding such issues, based on their own life experiences (Burchardt et al., 2002; Levitas, 2004; Bourdieu, 1986 cited in Cederberg, 2012: p.61). Permission to employ the use of audio equipment, video recording equipment as well as the use of photographic equipment was sought beforehand from the participants through informed consent letters which were made available for voluntary signing (Beauchamp and Childress, 1983 cited in Patton and Cochran, 2002: p.5: Babbie, 2004). Data captured through such equipment was then afterwards transcribed in verbatim during the data presentation and analysis phase.

5.4.3 Life History Interviews

Due to how some participants may feel intimidated in a group setting such as focus group discussions (Michell, 1999), the study also conducted life history interviews with two purposively selected Congolese forced migrants. This was done so as to consolidate the findings from the focus group discussions, primarily undertaken with the Congolese forced migrants. In qualitative research work, researchers can "compare subgroups on more than a single attribute such as age, gender, education, religion" and so forth (Onwuegbuzie, 2007: p.245). Therefore the participants for the life history interviews were not only chosen by virtue of having sojourned in the Republic of South Africa the longest but they were also purposively chosen with a focus on their sexes so as to produce a gender balanced sample. This was done by stratifying the participants based on gender (two stratums) and further selecting them based on their length of stay in each stratum. Ensuring that participants were of a different gender from one another was purposively done so as to obtain results

illuminative of any gender dynamics regarding the deprivations under study. While working with vulnerable Iranian female forced migrants in the Netherlands and the United States of America, Ghorashi (2007: p.117) discovered that:

> "…life stories in particular created the necessary space to listen to the often untold stories of forced migrants. This has enabled the researcher to go beyond the expressed words in order to understand different layers of expression within the narratives."

In support of the above arguments, scholars such as Atkinson (1998: p.5), also submit that life history interviews provide the researcher with a pragmatic and comprehensive approach to the collection of first person lived experiences. In this particular study, life history interview topics for the two purposively selected, gender representative participants, were thus conducted and lasted between 45-60 minutes each. As aforementioned in the Chapter, in purposively selecting the two participants from the focus group sample, the study considered the duration they had been in South Africa. The participants with the lengthiest period in South Africa, since attainment of the Section 23 permit were most preferred. The life history interviews in their design, were essentially aimed at revealing Congolese forced migrants experiences regarding the issue of their social exclusion, knowledge of rights, access to rights and what they identified as the barriers to these.

5.4.4 In-depth Interviews

The study also utilised face to face semi structured in-depth interviews so as to obtain input from the non-governmental organisations participants. As proven experts in the topics under examination, the study attempted to fore-ground their opinions in the form of professional as well as expert experiences. According to Mack et al (2005: p.2), in-depth interviews are most suitable for gathering data on "sensitive topics through concisely documenting the accounts of individuals personal histories, standpoints and experiences." In that regard, face to face semi structured in-depth interviews were used in the study as they are an important instrument in providing crucial data in the understanding of human opinions (Westbrrok, 1994; Sandelowski, 1995; Guest et al, 2012). Other scholars such as Hall and Rist (1999: p.8) also argue that in-depth interviews have the advantage of removing the potential problem of group

conformity. Face to face semi structured in-depth interviews were also opted for, as opposed to the conventional questionnaire method. This choice was informed by how the face to face semi structured in-depth interviews allowed the researcher to observe reactions, emotions, temperaments and general feelings of the selected participants during the interview process.

Through the use of face to face semi structured in-depth interviews the researcher was then able to ask follow-up questions so as to obtain clarification on unclear issues (Mack et al, 2005; Malterud, 2001; Guest et al, 2012; Creswell, 2013). Face to face semi-structured in-depth interviews (30-45 minutes each), were thus conducted with the staff from the selected civil society groups. The chosen organisations were also chosen due to their knowledge of not only the Refugee Act 130 of 1998 but other contiguous refugee policy frameworks in South Africa. The pattern of interviews was open-ended as these require lengthier answers from the participants, enabling the researcher to obtain more data on the issues of forced migrants exclusion and the Refugee Act 130 of 1998 implementation (Salant and Dillman, 1994; Britten, 1995; Patton, 2002; Turner, 2010). Scholars such as Mack et al (2005: p.4), also identify the effectiveness of open ended questions as a method of enquiry and argue that:

> "Qualitative methods are more flexible…they allow greater spontaneity and adaptation of the interaction between the researcher and the study participant. For example, qualitative methods ask mostly "open-ended" questions that are not necessarily worded in exactly the same way with each participant. With open-ended questions, participants are free to respond in their own words, and these responses tend to be more complex…"

Interview schedules, for both the life history interviews and the face to face semi structured in-depth interviews were designed beforehand, with the intention to reveal the participants perceptions on the issues under study. These in-depth interview schedules, respectively contained questions for both the forced migrant participants as well as the members from the civil society. The life history interview questions for the forced migrants were designed to provoke a generalised dialogue, classifiable however into specific themes relevant to the study. These themes were appositely linked to forced migrant groups` experiences in South Africa and knowledge of their rights and entitlements as enshrined in the Refugee Act 130 of 1998. The themes were also designed to reveal the ease and feasibility of accessing rights for

forced migrants as well as the pervasiveness of social exclusion as experienced by the participants. As a contingency plan, in the event that the researcher would require further information after carrying out the interviews the participants were informed of the possibility of repeat interviews (Vincent, 2013: p. 343). Such a mitigation in the form of repeat interviews would be geared at enhancing the research findings or establishing clarification on key areas of interest.

Interview schedules for the non-governmental (civil society) community, contained questions ranging from their perceptions on the issue of forced migrants` social exclusion and what should be done by the civil society in alleviating such deprivations. The questions also probed into the nature of civil society`s working relationship with the government in implementing the Refugee Act 130 of 1998. Organisations that were interviewed included the Lawyers for Human rights in South Africa (Refugee and Migrant Rights Program), KwaZulu-Natal Christian Council (Migration, Anti-Xenophobia and Social Cohesion Program) and the informal forced migrants` community representative group, Congolese Refugees Association.

5.5 DATA ANALYSIS

Data analysis in qualitative research is the process of reviewing data obtained in light of a research question (Silverman, 2010). Data analysis can also be understood as a process of examining the information collected and transforming it into a coherent account of what was found (Green et al, 2007 cited in Benhura, 2016: p.94). In interpreting the data a study can either be deductive in nature (hypothesis testing) or inductive (hypothesis generating). However, Schwandt (1997) submits that good qualitative data often requires access to a full range of both these strategies. In this particular qualitative research, the data corpus comprised of the collective body of data constituting of the findings after face to face in-depth interviews, life history interviews, focus group discussions and so forth. The data set constituted of the select data from the corpus for analysis. The data item comprised of the individual sources from which data for the study was derived as exemplified by the interview excerpts with the human rights attorney. According to Braun and Clark (2006: p.79), "data

items cumulatively comprise of the data set whilst the data extract refers to individually coded chunks of data, extracted from the data item." As with the bulk of interpretive research design techniques employing the use of thematic analysis, it is from the individual coding of data extracts that this qualitative research developed themes and then made its final analysis (Lacey and Luff, 2009).

Miles and Huberman (1994), argue that the processes of data collection and analysis in a good interpretive research design technique, tend to occur concurrently and are often difficult to separate from one another. The inseparability of the data collection and analysis procedures emanates from how in qualitative research work (from the interview process, transcription and analysis), the researcher has to be consistently analytic. Therefore to simultaneously incorporate the two (data collection and analysis), within the interview process, the researcher had to be perceptive of all arising themes within the data corpus. Submissions by other authorities in qualitative research work such as Thorne, (2000: p.68) also validate how data analysis is not only confined to the final stages of the research but rather:

> "…the theoretical lens from which the researcher approaches the phenomenon, the strategies that the researcher uses to collect or construct data, and the understandings that the researcher has about what might count as relevant or important data in answering the research question are all analytic processes that influence the data."

5.5.1 Focus Group Discussions and Life History Interviews

Information from the Focus group discussions and life history interviews for this particular study was digitally recorded and the gathered data was then afterwards transcribed in verbatim, cleaned and then coded into different themes. The simultaneous handling and analysis of this information was necessitated by how the two data corpuses were from the same sample, namely the Congolese forced migrants and therefore conveyed the same themes. Rubin and Rubin (1995 cited in Braun and Clarke, 2006: p.80) define a theme as something important about the data which makes analysis interesting due to how new themes and ideas are constantly being discovered throughout the transcripts. Thematic analysis can be defined as a qualitative analytic method for identifying, analysing and reporting patterns

(themes) within data. In this study, the manifest themes throughout the collected data from the Congolese forced migrants` sample were systematically analogous with issues of forced migrants` social exclusion, protection, unemployment and so forth.

Through the use of thematic analysis, the researcher was also careful not to bring into the study any pre-conceived themes or dispositions (Braune and Clarke, 2006). Other scholars in qualitative research work submit that in producing a transcript for thematic analysis, it requires a thorough orthographic transcript or a verbatim account of all verbal (and sometimes nonverbal) utterances (Agar, 1996; Schegloff, 1997; Cameron, 2001). Oliver et al (2005: p.1), argues that transcription consists of two main modes and these include "naturalism, in which every utterance is transcribed in as much detail as possible, and denaturalism, in which idiosyncratic elements of speech (such as stutters, pauses, nonverbal, involuntary vocalisations) are removed." This particular study therefore opted for a 'naturalism' continuum in handling the life history and focus group discussion data. This was done in the study so as to capture as much detail from the research participants as possible without the removal of voiced innuendo`s and undertones which could have possibly conveyed meaning.

In carrying out the study, the researcher made thoughtful attempts to be as concise and objective as possible. According to Creswell (2014: p.204), in qualitative research the researcher is recommended to do rudimentary checks of his collected data. This is done so as to inspect for general errors and obvious mistakes that have the potential of affecting the final results of the study. Apart from simultaneously utilising thematic analysis and content analysis in the examination of data, this study also observed the basic principal of objectivity in qualitative research. This issue of objectivity as well as accuracy was ensured through the use of Nvivo computer software. This software was utilised so as to assist the researcher in classifying, sorting, arranging and examining relationships within the collected data. The software therefore allowed the researcher to effectively identify trends and cross-examine collected data sets.

5.5.2 In-depth Interviews

The data obtained from the in-depth interviews in the study was analysed separately from the focus group discussions and life history interviews. This was necessitated by how the in-depth interviews were conducted with the civil society representatives and thus represented a divergent data corpus from the one involving Congolese forced migrants. In-depth interviews with civil society representatives were therefore digitally recorded with the gathered data being transcribed in verbatim, cleaned and coded into themes as with the focus group discussions. According to Thorne (2000), qualitative researchers are additionally expected to be evermore rigorously involved in the analytic process of transforming raw data into new findings, throughout the duration of the research. The reading, understanding and interpreting (individual coding) of data extracts for this research, thus formed an important part of developing and identifying new themes for the study (Thorne, 2000: p.68). The emerging patterns were ascertained through identifying the frequency of their recurrence (Yang, 2008). The identified themes, in the in-depth interview scripts with civil society participants, thereafter generated several nodes that were reflective of civil society roles in forced migrants` social exclusion, working relationship with the state and so forth.

The choice of a thematic analytic approach was also informed by how the method greatly differs from other analytic methods that seek to describe patterns across qualitative data. According to Boyatzis (1998), such analytic methods include thematic DA, thematic decomposition analysis, Interpretive Phenomenological Analysis (IPA) and grounded theory. Braun and Clarke (2006: p.79), argue that thematic analysis as a foundational method for qualitative analysis is advantageous in qualitative research work as it "minimally organises and describes your data set in (rich) detail and interprets various aspects of the research topic." Thematic analysis is thus not only a data synthesis technique but it can also be used to interpret various aspects of the research topic (Boyatzis, 1998). A thematic analytic approach was therefore most suitable for the in-depth interviews as it helped the researcher interpret interview data (through thematic coding) and derive meaning (Ryan and Benard, 2000). Although Nvivo computer software was also used in the analysis of in-depth interview data, such qualitative data analysis computer software packages were only applied as aids in

sorting and organising the data. This was in cognisance of how the Nvivo data analysis software is not capable of the intellectual processes required in the transformation of raw data from the lengthy in-depth interviews into new and meaningful findings (Thorne, 2000).

5.5.3 Documentary Analysis

Content analysis, a method mostly used in carrying out unobtrusive research work was also used in the study so as to compliment thematic analysis. According to Kothari (1998: p.110), content analysis consists of analysing the contents of "documentary materials such as books, magazines, newspapers, websites and the contents of all other verbal materials which can be either spoken or printed." In conceptual content analysis, the researcher analyses the form and substance of communication. The underlying meanings and ideas are systematically revealed through analysing the frequency of patterns in elements of the text, such as words or concepts (Agar, 1996; Schegloff, 1997; Cameron, 2001; Yang, 2008). In this particular qualitative research, in order to examine the issue of forced migrants` rights and the issue of their social exclusion, document analysis of relevant policy documents as well as a host of relevant literature on social exclusion was done. Content analysis of documents such as the Refugee Act 130 of 1998, Aliens Control Act (forerunner to the Refugee Act 130 of 1998), the South African Bill of Rights and the Republic of South Africa`s national Constitution was carried out. As aforementioned in the Chapter, the study also analysed a host of regional as well as international regulatory documents, conventions and instruments to which South Africa is signatory.

According to Graneheim and Lundman, (2004) in content analysis, there are basically two types of content and these are namely manifest content as well as latent content. Manifest content refers to the perceptible content that the researcher can see and observe within the text whilst latent content refers to the underlying meaning of content (Holsti, 1969; Wamboldt, 1992; Hsieh, 2005; Elo and Kyngas, 2008). Rourke et al (2001), conceptualise manifest content as that particular content that resides on the surface of communication and is therefore easily distinguishable. The choice taken in this qualitative study to meticulously examine a considerable amount of latent content as opposed to the manifest material, was

informed by the need to generate groundbreaking and valuable data to the academic body of knowledge. Therefore, in carrying out documentary analysis, this study was interested in revealing the important (though hidden) "facets of individual and social cognition as projected by the authors rather than assessing that which is most easily measured" (Rourke et al, 2001: p.9).

5.6 ETHICAL CONSIDERATIONS

5.6.1 Trustworthiness and Credibility

As utilised by other researchers, the use of numerous research guidelines and instruments in the study was intended to introduce trustworthiness and credibility in the study. Trustworthiness and credibility in interpretive studies are essential and can be understood as having to do with the truthfulness and rigor in one form of interpretation over another (Schwandt, 2007: p.11). Schwandt (2007: p.16), defines rigor as the "exploration of the truth value of the inquiry or evaluation and its applicability, its consistency and its neutrality (objectivity)." The use of several research methods (within-method triangulation), was therefore intended to also bring about a degree of rigor and credibility.

Furthermore, the study also made attempts to ensure thoroughness in the collection as well as the analysis of data. Through the use of computer software packages such as Nvivo during the data analysis phase, the researcher was attempting to minimise bias and the statistical likelihoods for human error (Davey et al, 2010). In a further attempt to ensure and guarantee the impeccability and trustworthiness of the study as well as its findings, an external auditor as recommended by Creswell (2014), was also used throughout the entire research project.

According to Creswell (2014: p. p.201-204, 210-211), an external auditor in research work is an individual who "is not directly involved in the data collection of the research and can be objective in the assessment of the overall research work." This particular study was therefore audited by the research supervisor, who was not only more experienced in research methodological work but was not involved in the data collection, transcription and analysis phases. Guidelines in preserving credibility, trustworthiness and rigor in the research work

as prescribed by the University of KwaZulu-Natal Human and Social Sciences Research Ethics committee (HSSRC) were also incorporated throughout the study.

5.6.2 Informed Consent: Transparency

As aforementioned in the Chapter, bearing in mind how the Congolese forced migrants qualify as a group that has experienced traumatic life circumstances, the research was particularly cautious and adhered to a host of ethical guidelines. In this regard, in seeking the forced migrants informed consent, the nature of the research was explained to them beforehand and any identified areas the participants found as being offensive, were established and avoided. This was done to ensure their cooperation, autonomy and voluntary participation in the study (Orb et al, 2001). In accordance with the ethical principle of informed consent, consent forms were distributed to the participants for signing before the interviews (Beauchamp, 1982). The participants were therefore informed that the findings of the research were to be disclosed to them after analysis and completion of the research work. Feedback with the non-governmental organisation participants after completion of the study was established through the use of their work email addresses. The forced migrant participants were also communicated to through the Congolese Refugee Group representative`s email address.

Due to how research in social sciences is now contemporarily recognised as a risk-producing endeavor (Haggerty, 2004; p.75), the researcher had to categorically weigh the scientific benefits of carrying out the research. After weighing such scientific benefits, the researcher ascertained whether they outweighed the possible harm the research could have posed to the Congolese forced migrant participants (Creswell, 2009: 88). In cognisance of this fact, this particular research was conducted in strict accordance with the ethical guidelines governing research work in a bid to reduce any form of the said risk towards the participants. In essence, the research work`s scientific benefits were substantiated by how the research itself was neither potentially traumatic, physically endangering nor based on the participants past stressful experiences in the DRC.

The capturing of the face to face semi-structured in-depth interviews, life history interviews as well as the focus group discussion proceedings was also done transparently. The study therefore sought the participant's permission to use recording devices (audio and video), beforehand (Denzin and Lincoln, 1998). As posited by Beauchamp and Childress (1983 cited in Patton and Cochran, 2002: p.5), the study also observed all the paramount principles in research and these include autonomy, beneficence, informed consent, confidentiality (anonymity) as well as privacy. Autonomy in qualitative research can be understood as the respect of participants' rights, including the right to be informed about the study, the right to freely decide on participation and the right to withdraw without penalty (Orb et al, 2001). Beneficence pertains to the principle of doing well for the participants and preventing any harm while informed consent encapsulates participant's privacy and confidentiality. Informed consent in research on the other hand is aimed at protecting the participant's rights to be knowledgeable about the study, the right to decide on participation and the right to withdraw at any given time (Kvale, 1996 cited in Orb et al, 2001: p.95).

5.6.3 Confidentiality

To guarantee the participants confidentiality in the study and prevent any political or other forms of victimisation towards them (Beauchamp et al., 1982), anonymity was ensured ahead of time with no names being used in the data collection, analysis and interpretation phases. In place of the participants` actual names, pseudonyms were used throughout the study with the main determinant in their employ being their gender, for instance John for a male and Mary for a female. In vulnerable population studies, ethical research guidelines encourage the adoption of this technique in the preservation of participants` anonymity (Corti et al, 2000; Kaiser, 2009; Guenther, 2009). As adopted by other researchers such as Benhura (2016: p.97), the pseudonyms are identifiable in the data presentation and analysis Chapters through the use of asterisks. Participants were informed that the results of the study were to be solely used for academic purposes and they would not be held to account for their views. To ensure their autonomy, it was also stated to them that they were neither under coercion to participate nor answer certain questions during the interviews. Lack of any financial incentive for participation in the study, also helped to uphold the research principles. Permission to conduct

the study with the forced migrants from the Democratic Republic of Congo was sought through the facilitation of non-governmental organisations and Faith Based Organisations that work with them and thus possess a pre-existing form of rapport.

The study also sought clearance from the University of KwaZulu-Natal Human and Social Sciences Research Ethics committee (HSSRC) and only commenced data collection after permission had been granted. Letters were dispatched to the targeted institutions so as to attain their written consent and support for participation in the study. These involved authorities and gate keepers in the refugee rights discourse such as the Lawyers for Human Rights (Refugee and Migrants Rights Program) and the KwaZulu-Natal Christian Council (KZNCC). A letter of participation consent was equally dispatched to the community representative organ of the Congolese forced migrants in Pietermaritzburg, responsible for the preservation of forced migrants rights and social wellbeing (the Congolese Refugees Association). The study did not involve any minors and all participants directly or indirectly involved in the study were all above the legal age of consent (18 years of age).

5.7 CONCLUSION

The Chapter contained a precise account and methodological explanation of the choice of qualitative research paradigm as used in the study. A qualitative study as opposed to a quantitative one, was explained in the Chapter partly as being most befitting due to its interpretive qualities. Furthermore an interpretive research design technique was also justified as suitable for the study due to the non-quantifiable nature of the phenomenon under investigation. The research design and methods for the study therefore had to be in tandem with these non-quantifiable variables. In addition, the Chapter also explained the steps and procedures that were carried out in selecting the participants for the study. Simultaneously, the Chapter also carried out a justification for how it did not opt for a probability sampling method. The adoption of a non-probability sampling method in the study was thus explained, the specific choice of the non-probability sampling methods (expert sampling and homogeneous sampling) was also elaborated on. Key members from the non-governmental organisations as well as faith based organisations constituted the main participants of the

study. In addition, the participants also comprised of the forced migrants from the Democratic of Congo who are located in Pietermaritzburg the area of case study. The data generated from the focus group discussions, life history interviews and the face to face semi-structured in-depth interviews was presented in Chapter six and seven of this study and analysed through thematic and content analysis.

CHAPTER 6: FINDINGS AND DISCUSSION: CONGOLESE FORCED MIGRANTS` NARRATIVES AND LIVED EXPERIENCES

6.1 INTRODUCTION

This Chapter presents the research findings and discussions on the Congolese forced migrants` cognisance of their constitutionally enshrined rights in South Africa. Through the use of semi-structured interviews, life history interviews as well as focus group discussions with purposively selected participants, the Chapter foregrounds Congolese forced migrants` narratives and lived experiences in South Africa. During this process the researcher`s role was confined to listening and documenting the provided data.

The Chapter is principally designed to answer these key issues: To what extent do forced migrants feel socially included? To what extent are they aware of their legally enshrined rights? To what extent do they have access to such rights? In what ways do non-governmental organisations as well as the government lessen their challenges? Based on the participant`s narratives of their lived experiences as Congolese forced migrants in South Africa, the study demonstrates that the experiences of this group are a representation of living conditions for similar groups in similar conditions within the country (Stake, 1995; Baxter and Jack, 2008; Hyett et al, 2014; Zainal, 2017). The Theory of monopolisation and exclusion as well as other conceptual frameworks such as institutional bias, unruly practices, opportunity hoarding and so forth are also used in the Chapter to augment the understanding of Congolese forced migrants` social exclusion within South Africa.

6.2 LEGAL RIGHTS AWARENESS

As aforementioned in Chapter one, social exclusion is used to refer to a process of social disaffiliation whereby a particular group is disfranchised from the publicly available social protections and social security (Bhalla and Lapeyre, 1997: p.414; Hickey and Du Toit, 2007: p.2; Hungwe, 2013: p.52). Social exclusion and the denial of social, constitutional rights are therefore products of the barriers inadvertently created by both institutional structures and community attitudes (De Haan, 1999; Mario and Wodon, 2001; Hickey and Du Toit, 2007;

Saunders et al, 2008; Gijsbers and Vrooman, 2008; Fischer, 2011: p.3). This study therefore examines forced migrants` awareness of their legal rights or the lack thereof, as a primary cultural impediment to their access to social inclusion and social protections within South Africa.

Through examining forced migrant groups` awareness of their legal rights, the study aimed to establish the existing impediments to their social protection, rights awareness and social inclusion (Thorat and Sadana, 2009; Makhema, 2009). This was particularly important given how scholars such as Saunders et al (2008), identify a nexus between vulnerable groups civil rights access and their capacity to evade the three dimensions of social exclusion which are namely disengagement, service exclusion and economic exclusion (Saunders et al, 2008). Other scholars such as Maier et al (2008 cited in Khan et al, 2015: p.45) concur and also argue that issues of social inclusion require "awareness raising and a change of consciousness." Therefore, during the interviews the Congolese participants were allowed to articulate on their awareness of the constitutional entitlements to shelter, healthcare, education, documentation and employment in South Africa. Generated responses from the life history interviews, face to face semi structured in-depth interviews and focus group discussions were then divided into two main constellations. It is from those two main patterns that this research was informed on forced migrants` awareness or lack of awareness of their legal rights in South Africa.

6.2.1 Forced Migrants` Rights: Sensitisation and Awareness

The forced migrant participants seemed aware of their legal rights as contained in the Refugee Act 130 of 1998 and demonstrated an in-depth understanding of their legal entitlements not only to education, employment and documentation but also other social protection amenities that the researcher had not posed for discussion. Although enshrined in the 1948 Universal Declaration for Human Rights (UN, 1948: p.46, 52), social welfare protection services (except for health and primary education) are not included in Regulation 27 of the Refugee Act 138 of 1998. Forced migrants` entitlements to this right to social welfare and protection

is therefore a result of the litigations filed against the South African government by human rights activist groups (Landau, 2005; Nyenti, 2007; Manicom and Mullagee, 2010).

The social protection amenities availed to forced migrants` after the 2003 court case against the Director and Minister of Social development include forced migrant rights to access services provided by the South African Social Security Agencies (SASSA). Forced migrants with refugee status papers in the country therefore enjoy access to social grants for their South African born children. This is in accordance with the 1948 Universal Declaration of Human Rights guidelines on the provisioning of "special care and assistance to motherhood and childhood for all" (UN, 1948: p.52). Other researchers such as Balgopal (2000: p.213) argue that the availability of such social safety nets are essential considering the high vulnerability index of forced migrant groups. Most of the interviewed Congolese forced migrants` knowledge on the entitlements to legal documentation was thus hinged on how such paperwork facilitated their access to employment, education, shelter as well as the popular South African social security agencies.

From the interviews, the Congolese forced migrants indicated that their knowledge of refugee legal entitlements or the lack thereof, was not necessarily the cause of their failure to convert such into tangible social security benefits. The participants displayed an awareness of their legal rights and repeatedly quoted how South Africa was a signatory of the 1951 Geneva Convention Relating to the Status of Refugees. The forced migrant participants went on to identify other impediments, which they observed as being the actual reasons for their failure to convert their legal entitlements into protections in South Africa. The varied responses extracted from the interview excerpts are indicated below:

> **Forced migrants` response on legal rights awareness 1**. *'We are also aware that there are these things called SASSA`s, if you have children and they have refugee status you can still have money.'*
>
> **Forced migrants` response on legal rights awareness 2**.*'As forced migrants we are aware of the importance of having documentation. The problem is on the side of the government, it is not really an issue of awareness.'*

Forced migrants` response on legal rights awareness 3. *'We are aware of the rights to employment but the problem becomes the office where you are going to apply.'*

Forced migrants` response on legal rights awareness 4. *'We are aware of these rights but government is trying to restrict these rights. So the hindrance to refugee rights in South Africa is government.'*

Forced migrants` response on legal rights awareness 5. *'I am working as a social worker for refugee social services… we have some workshops and before that I did not know that the social grants were a right.'*

From the above excerpts, it can be concluded that the issue of rights awareness is not the main impediment to their realisation of such entitlements. As mentioned in Chapter three, intervening factors in forced migration relate to the liberal nature and progressiveness of a country`s refugee policy framework. In most cases, before embarking on the journey forced migrant groups are often knowledgeable on the respective push and pull factors found within potential destination countries (Stouffer, 1960; Lee, 1966; Zolberg et al, 1992; Renaud et al, 2007). Impediments to forced migrants` access to their legal rights were therefore identified during the interviews as an issue not related to their lack of rights sensitisation but rather an issue identifiable with the offices from which the services and entitlements are secured (government offices and line ministries). Forced migrants knowledge of their legal entitlements is further substantiated by how migration trends within the SADC region are often biased towards the more asylum friendly states. These patterns provide evidence that forced migrants do possess information regarding their rights and legal entitlements (Klaaren and Rutinwa, 2004: p.93).

Another issue that came to light during the interviews was the issue of apathy, mostly discernable through Congolese forced migrants reluctance to pursue their legal entitlements. The interviews revealed how such apathy is caused by some of the impediments within the public service sector. Scholars such as Hyndman and McLean (2006), concur and argue that it is challenging for forced migrants to make claim of their rights under the dramatically new and exclusionary conditions in the host state. In South Africa, those impediments inadvertently frustrate forced migrants from securing their legal entitlements to shelter,

healthcare, employment, education and so forth (Sen, 1983; Smith, 1996 cited in Sen, 2000: p.7; Palmary, 2003; Bahamjee and Klaaren, 2004; Vearey and Richter, 2008; Crush et al, 2013). One participant complained during the interviews that '*people limit themselves they don't want to know more, they say even if you know what will it do, because I won`t get it.*'

The interviews therefore revealed how despite being aware of their legal rights to formal jobs, free healthcare and so forth, pursuing such ends in South Africa often proves problematic. Due to such challenges and the ensuing fatigue or apathy, most forced migrants as identified during the interviews, were predominantly inactive in the formal job sector with informal employment being preferred as the path of least resistance (Onuoha, 2006). These sentiments were also echoed by two Congolese forced migrant participants during the focus group discussions:

> '*...you know when some people arrive in S.A, they just don't want to know more about their rights. For them, the fact of being here and having a small job that is generating income then you are happy with that, you don't want to know what is next since you are able to pay rent, save money and so forth.*'

> '*We are aware of these rights but government is trying to restrict these rights. So the hindrance to our refugee rights in South Africa is government.*'

6.2.2 Rights Sensitisation and Impediments: Language Barriers

One of the main impediments to forced migrants` realisation of their legal rights was an unavailability of any means of petition or appeal, in the event that they encountered challenges in securing those rights. Such an established channel is essential given how forced migrant groups may fail to fully access legal rights as decreed by the host state (Davidson et al, 2004; Hyndman and Mclean, 2006).

From the focus group discussions some participants did however show a lack of knowledge with regards to their legal rights and entitlements. Some of the reasons provided were issues of language barriers and the inability to communicate in local languages including English. Language, then becomes an exclusionary node as most Congolese forced migrants can only

speak French, Swahili or Lingala. During the life history interview, Angela* a female Congolese forced migrant said the following:

> *'I wanted to talk about the language, as a refugee everywhere you go when they see that you are a black person they expect you to speak in Zulu. Even in the SASSA meeting that I went to today, there were white people, Indians etc. but they were speaking in Zulu and we were there, we don't know Zulu. So it was difficult, we had to follow them and start asking questions and you see that they do not even want to hear what you are saying.'*

The above sentiments substantiate the findings from other studies carried out in different provinces of South Africa such as Gauteng. In accessing such knowledge, the Congolese forced migrants often tend to over rely on the NGO workshops as well as 'bonding networks' (Putman, 2000 cited in Cederberg, 2012: p.65). The failure to provide Human Rights Education (HRE), in languages forced migrants are conversant with, thus constitutes a form of closure and cause for social disaffiliation (Balgopal, 2000: p.230; Davidson et al, 2004). This was common at the Department of Home Affairs offices where Congolese forced migrants were provided with English translators who often incorrectly decoded or translated their given refugee accounts. Due to the attention in detail required by the Refugee Status Determination Officers (RSDO) in individual status determination systems, the incorrect transcriptions and translations often result in unfavourable adjudications for forced migrants (Klaaren and Rutinwa, 2004 cited in Kleinsmidt and Manicom, 2010: p.167; Department of Home Affairs, 2017).

The literature reviewed in the study predominantly focused on harassments, corruption, and intentional delays as causes for forced migrant groups` failure to access legal documentation from the Department of Home Affairs (Handmaker, 2001; Landau, 2006; Amit, 2012). This study however, discovered that most unfavourable outcomes or rejections of refugee status applications are a consequence of wrongly translated forced migrant accounts. The UNHCR, in their examination of Dari speaking forced migrants in Macedonia also discovered the prevalence of such challenges in language barriers as negatively affecting the translation and transcription of forced migrant accounts (Drew, 2016). This has also been the case for Congolese forced migrants in South Africa as illuminated in the interview excerpt below:

'Many people are having asylum seeker permits today, if you ask what happened they will say my sister if you listen to my story I didn't say all these things here, I said other things but they wrote something else because of the language I cannot communicate. The DHA does not want to change anything. Most people when they come they don't speak English, but when DHA is organising translators those people are saying things that are not said by asylum seekers, leading to rejections.'

Murphy (1988), identified government shortcomings in addressing language barriers as constituting a principal form of exclusion and monopolisation with certain groups being directly or indirectly excluded from power, resources and opportunities in society. Kabeer (2000 cited in Khan et al, 2015: p.27) also acknowledges how "state institutions may cause exclusion when they deliberately discriminate in their laws, policies or programs." Other researchers such as Taylor (2004) concur and identify racism, discrimination and language differences as causes for social closure. As a form of cultural capital, language differences can inadvertently disaffiliate and disadvantage minority groups (Weber, 1978 cited in Murphy 1986: p.23; Bourdieu, 1986 cited in Cederberg, 2012: p.61). A study carried out in Nepal by Haider (2009), also revealed how the imposition of a dominant groups language can result in the social disaffiliation of minority groups though an in access of political, economic and social rights.

The above interview excerpt also illuminates on the role of structural issues as a challenge and a barrier to integration. Scholars such as Khan et al (2015: p.25), identify the inability of government to provide language assistance as "cyclical with structural exclusion driving low educational attainment, low employment and vulnerability." Other studies carried out by Kothari (1998) in Bangladesh, India, Sri Lanka, Uganda and South Africa also identify language as a barrier to minority groups` social cohesion and integration. Migrant groups therefore face "injustice, cultural devaluation, disadvantage and are also blocked from the social patterns of representation, interpretation and communication" (Kabeer 2000 cited in Kothari, 1998: p.12).

6.2.3 Rights Sensitisation and Impediments: Misconceptions

The interviews also revealed that due to some of the exclusionary attitudes and demands by South African employers for permanent residence or citizenship, some forced migrants believed the Section 22 and Section 24 permits did not entitle them to work. This misconception was also exacerbated by potential employers` lack of willingness to employ forced migrants due to how they view their permits with suspicion and mistrust (Landau et al., 2005: p.22; Rulashe, 2009). Maria*, a Congolese forced migrant expressed her sentiments and said:

> '*I am training to be a nurse but now the law says that you have to be a permanent resident to get a job, which I do not have so I do not think I will find work with my refugee status.*'

The abovementioned fears and misconceptions amongst forced migrants were not confined to issues of employment alone but entailed a loss of goodwill with the refugee policy framework in South Africa. There were misconceptions to the effect that the Refugee Act 130 of 1998 does not recognise forced migrant rights to social services, social protection and so forth, indicating a general lack of awareness on forced migrants legal rights and entitlements. Despite the rights to documentation, employment and a host of social services enshrined in Regulation 27 (G), Regulation 27 (F), Regulation 27 (B) and Regulation 27 (D) of the Refugee Act 130 of 1998, some participants believed they had no entitlement to them. One participant complained that:

> '*...the Refugee Act 130 of 1998 is not recognising these rights to shelter, proper documentation, employment and so forth, so we cannot say the new Refugee Act 130 of 1998 is helping forced migrants.*'

Through the interviews and focus group discussions, it was also noted that there are misconceptions amongst the Congolese forced migrants with regards to their entitlements to the Reconstruction and Development Housing Program (RDP). Forced migrants who have naturalised (in possession of section 27 permits), although legible for low income housing in South Africa (Palmary, 2003; Amisi and Bollard, 2005; Landau, 2006; Polzer, 2007; 2008; Vearey, 2008; Sibanda et al, 2012), they are however not legible for the RDP scheme.

Without citizenship, the South African government has made no provisions for the allocation of housing to forced migrants. Other researchers such as McDonald (1998: p.450), argue that there is no policy framework in South Africa outlining non-citizens entitlements to housing. Entitlements to housing for non-citizens would equally be difficult to secure even if they were articulated in the policy framework due to the serious shortages of low income housing for South African citizens, especially within the historically black areas (Battersby, 2016). The Refugee Act 130 of 1998 accords no entitlements to shelter for forced migrants and such an entitlement is only enshrined through the South African Constitution (South African constitution 1996-Article 26[1-3]) and the 1948 Universal Declaration of Human Rights (UN, 1948: p.52).

Forced migrants however displayed a lack of knowledge over how naturalisation, was one of the only ways they could attain citizenship rights in South Africa along with low income housing and other entitlements. Scholars such as Silver (1994 cited in Hickey and Du Toit, 2007; p.9) concur with how citizenship is important in facilitating access to entitlements, inclusive of but not confined to secure property rights. During the focus group discussions other forced migrant participants indicated how they were uninformed of this legislation:

> *'...in terms of shelter people are not aware because the government has never tried to create awareness or it's a challenging issue which can create conflicts between forced migrants and citizens. We only know that you can rent but in terms of owning a house people are not aware.'*

Such a lack of knowledge amongst forced migrants regarding the issue of housing once again exposes the South African government inadequacies in the area of forced migrant rights, information dissemination and human rights education (HRE). This failure by government then inadvertently constitutes a principal form of exclusion (Murphy, 1988), that has contributed to the current status quo whereby forced migrants` legal entitlements in South Africa have remained largely intangible (Klaaren and Ramji, 2001; Palmary, 2003; Landau, 2004; Amisi and Ballard, 2005; Landau, 2006; Buckland 2011; Crush et al, 2013: p.8; Bwalya, 2012 cited in Namukaso, 2015: p.18).

6.3 FORCED MIGRANTS` ACCESS TO LEGAL DOCUMENTATION

Although the right to identity papers and travel documents for forced migrants is observed in the 1951 Convention (Article 12-30) as well as Regulation 29 (1) of the Refugee Act 130 of 1998, Congolese forced migrants expressed challenges in securing such rights. The information gathered through the life history interviews and focus group discussions revealed that attaining and renewing the asylum seeker permits from the Department of Home Affairs was generally challenging. However, the task of acquiring a refugee status (transition from an asylum seeker to a recognised refugee), was significantly more challenging. These problems were emanating from the Department of Home Affairs failure to rectify delays within the finalisation of applications and issues within the standing committee for refugee affairs as well as the refugee appeal board.

The participants expressed how they felt that the system is structurally designed to bottleneck applicants, such that only a few can attain refugee status (Section 24 permits) with even fewer forced migrants naturalising (Section 27 permits). Other studies carried out in South Africa have also demonstrated how forced migrant groups encounter challenges in acquiring legal documents (Amisi and Ballard, 2005; Landau et al., 2005 cited in Rugunanan, 2011: p.709; Namukaso, 2015). An interview participant who had struggled to secure legal documents said the following:

> *'The challenge we face with documentation is the issue of refugee status… to be changed from asylum seeker to refugee it is taking too long, that is the challenge, most of us have been on the waiting list for a long time...'*

As a consequence of the structural forms of closure illustrated above, forced migrant groups in South Africa are not fully benefitting from the full protections and benefits of the Refugee Act 130 of 1998 as many claimed not to possess the refugee status papers (Section 24 permits) and were thus not legally recognised as refugees in the country. Such a situation has adversely closed them off from accessing the entitlements to which the Section 24 as well as Section 27 permits accord (Palmary, 2003; Amisi and Bollard, 2005; Landau, 2006; Polzer, 2007; 2008; Vearey, 2008; Sibanda et al, 2012).

Obstructions to accessing legal documents for forced migrants can be interpreted as an indirect way of limiting their access to a host of socio-economic entitlements that the documentation facilitates. In support of this, one participant complained that, '*A refugee is someone who has the refugee status, but many of us do not have it, so are we considered refugees? So people are always thinking what are they doing in our country.*' Due to the upward mobility and social security facilitated by the possession of legal documents, such documents become a form of 'prestige'. Weber (1978 cited in Swartz, 1990: p.480), argues that there can be monopolisation of both property advantages and forms of prestige. Murphy (1986: p.25), goes on to term closure from legal documents and the accompanying commodity bundles one can access with such, as "material monopolisations." Another interview participant also expressed the following concerns:

> *'The access to documentation…is a problem. As I said before, policies put in place by the government don't facilitate forced migrants to get documentation. As a consequence, it is very difficult to get a job or to get shelter. So what I can say, it is not easy to get proper documentation as forced migrants in South Africa, same with shelter, education and so forth.'*

6.3.1 Challenges in Accessing Refugee Reception Offices and Inefficient Appeal Systems

The interviews with the Lawyers for Human Rights highlighted the structural exclusions in obtaining Section 24 permits. The interviews revealed that as a result of this, many forced migrants in South Africa are not legally recognised as forced migrants. Amongst a host of other shortcomings, the appeals against the rejected refugee status applications were also taking several years to be adjudicated on, thereby incapacitating the entire system. The structural inefficiencies within the state, are therefore a cause for concern (Gijsbers and Vrooman, 2008). Murphy, (1988) refers to such forms of closure emanating from distributive (structural) systems as principal forms of exclusion. Other scholars as analysed in the literature review concur that the provisioning of Section 24 permits for forced migrant groups in South Africa, has been known to take several years (Amisi and Ballard, 2005; Landau et al., 2005 cited in Rugunanan, 2011: p.709; Namukaso, 2015; Department of Home Affairs,

2017). During the interviews, the following account from a Congolese forced migrant supports the above claims:

> '...opportunities at that time were not many, apart from getting money from my work there was nothing else. I did not know where to go, by that time I was still using an asylum seeker permit for several years which was not giving me any access to offices so there were no opportunities at that time.'

Another structural form of exclusion includes the impediments to forced migrants access to the refugee reception offices. The interviews revealed how the forced migrants in South Africa, have to travel considerable distances to renew their Section 22 and Section 24 permits. Government's closure of the bulk of refugee reception offices nationwide, has meant that only four remain open countrywide. This has inadvertently translated into high financial costs for forced migrants as they are forced to travel longer distances. This issue therefore not only constitutes a form of institutionalised discrimination but it is also a significant structural impediment to forced migrants` access to documentation in South Africa (Amit, 2012). The concept of the mobilisation of institutional bias identifies such structural impediments to legal documents access as a cause for vulnerability (Lukes, 1974; Fraser, 1989; Kabeer, 2000: p.21). During a life history interview, Dikembe* demonstrated the challenges he faced in in accessing the refugee reception offices:

> '...firstly when i arrived in South Africa I did not know what to do, where to get documentation, and this became a serious problem because the Refugee Reception offices are very few, for instance for refugees living in PMB, some of us need to travel to Durban, some need to travel to from PMB to Mussina which is near the border of Zimbabwe and South Africa. Because of lack of means of transport, we cannot make that journey and as a consequence we find ourselves undocumented. So documentation is a serious challenge for us.'

6.3.2 Debilitating Adjudication Process

Another structural impediment or principal form of exclusion within the Department of Home Affairs relates to how the Section 24 permit applications for forced migrants from the same family are processed separately (filed separately and thus adjudicated on individually). In the event that one application is accepted and another is rejected, this approach has the adverse

effect of separating families. By adjudicating on applications separately, the South African authorities effectively undermine the forced migrants` right to dignity as enshrined in Chapter 1 of the national constitution. Furthermore, such an injustice contradicts the principle of unity of the family as enshrined in the 1951 Convention Relating to the Status of Refugees. The 1951 Convention (UNHCR, 1951: p.10), specifically mentions how contracting states should endeavour to preserve the unity of the forced migrants family "particularly in cases where the head of the family has fulfilled the necessary conditions for admission to a particular country." Due to a breakdown in the South African asylum seeker system however, the government has failed to safeguard such rights for forced migrants. Most of the studies analysed in this study focusing on forced migrants` challenges in South Africa, especially with regards to access to legal documentation (Palmary, 2003; Bahamjee and Klaaren, 2004; Vearey and Richter, 2008; Crush et al, 2013), do not shed light on the right to family. A Congolese forced migrant participant made the following comment during the interviews:

> *'...when people flee they don't always flee as a family. So maybe the father arrives first then the wife and the kids follow. So what happens at the DHA, they are supposed to process one application and join that family together to the father as the first applicant who was here, but they refuse to do that.'*

Although other studies examined in the research do not review the issue of forced migrant applicants under the age of 18, this study identifies a spectrum of structural issues impeding their access to legal documentation. In the interviews, the study found that the Department of Home Affairs was not in keeping with the guidelines laid out in the 1951 Convention Relating to the Status of Refugees. The 1951 Convention makes specific mention on the "protection of forced migrants who are minors, particularly unaccompanied children and girls, with special reference to guardianship and adoption" (UNHCR, 1951: p.11). The 1991 Convention of the Rights of the Child (Article 22) also accords the same rights to protection for refugee children. The Refugee Act 130 of 1998 (Regulation 33) however only goes in as far as to acknowledge how such children`s applications may be made for them by a parent or legal guardian, implying that the two may be considered simultaneously. In practice however, the interviews revealed that without DNA proof of paternity the Department of Home Affairs was prohibiting such parents from making applications on behalf of their minors. Due to how

most forced migrants cannot afford the costs involved in DNA testing, the minors end up having their own individual files. This adversely places parents and their children at risk of separation in the event that one of the applicant`s papers are rejected. In reference to this, one participant said:

> '*When it comes to children, they say it is mandatory to have a DNA test done, most forced migrants cannot afford DNA testing, Now you find families having two separate files. Which means if one gets rejected, their spouse application may still be pending meaning that there is potential for family separation again.'*

This study identifies the above structural manipulation of policy and laid out systems as a systematic way of effecting closure and exclusion against forced migrant groups in South Africa. Other scholars refer to such a manipulation of regulations designed to disadvantage an outside group, as an alteration of the "conditions of participation" (Weber, 1978: p.128; Weber, 1978: p.45; Swartz, 1990: p.480; De Haan, 1999; Khan et al, 2015).

6.4 FORCED MIGRANTS` ACCESS TO SOCIAL SERVICES

According to Saunders et al (2008), one of the primary forms within which social exclusion exists is through service exclusion (the inability to access key social services). This study identified two categories of impediments that inhibit Congolese forced migrants from accessing their legal rights to social services in South Africa and these are institutional arrangements (structural) as well as primary-cultural (inter-relational) barriers (Fraser, 1997 cited in Kabeer, 2000: p.84; Gijsbers and Vrooman, 2008). Identifying such obstructions to forced migrants` access to their legal rights was essential and a significant determinant of their access to political protection, assistance and integration (Ricca, 1998). The findings reaffirmed the numerous submissions contained in the literature review on how social exclusion and deprivations in general, can be multi-dimensional (Murphy, 1986; 1988; Bhalla and Lapeyre, 1997: p.430; Fraser, 1997 cited in Kabeer, 2000: p.84; Gijsbers and Vrooman, 2008).

6.4.1 'Unruly practices' (Kabeer, 2000): Controlled Association

Despite forced migrant groups awareness of their legal entitlements, the study established how there are considerable primary cultural impediments that inhibit their ability to convert those legal entitlements into tangible benefits (Amisi and Ballard, 2005; Williams, 2008 cited in Stemmett, 2008: p.55). Most Congolese forced migrants during the interviews complained how the public office workers in South Africa were hostile towards them, in many instances choosing to serve South African citizens first. These concerns were echoed in the interview excerpt below:

> *'There are these files created for forced migrants if you want social grants for your children called 777, for forced migrants. When you are going to register your children those workers do not want to assist you because it is quite complicated. I do not know how many files they need to create just to register your child. It means there are many processes to register your child as a refugee making you feel unwelcome in the office. They will even serve other people first before you.'*

Researchers such as Kabeer, (2000 cited in Hungwe, 2013: p.61) concur that primary cultural factors such as unruly practices, are prominent within the public service sector. The categorisation of application files for forced migrants under specific codes at public offices has resulted in a dual system whereby the conditions of service for forced migrants are different from those provided to South African citizens. This has inadvertently promoted institutionalised biases in the implementation of refugee policy in the country. Studies carried out in India and China also discovered how institutional bias is a major cause of exclusion and deprivations (Ngan and Chan, 2013; Tam and Jiang, 2015). Scholars such as Fraser (1989), also identify the existence of such practices, through his concept of unruly practices. According to Kabeer (2000: p.92), such unruly practices are what accounts for the "gap between rules and their selective implementation, occurring in all institutional domains." This especially applies when the institutions in question are the ones responsible for meeting the integration and social needs of vulnerable groups. In support of this, Thomas*, a middle aged Congolese forced migrant said that:

'Another challenge we face is that when you are given a refugee I.D book, the maroon ones, it expires after four years so after that you have to re-apply and sometimes it comes out after three years, if lucky it will come out after six months but sometimes it comes out expired already and then imagine if having a bank account you opened with a refugee I.D book, when the I.D expires you get a bank message saying you have to bring us a new copy of your I.D otherwise you won`t get access to our services. So imagine your I.D expires today then you have to apply and then after three years maybe that's when you will get another, all the while without access to the money in the bank, so how are we going to survive? The same thing applies with SASSA when your I.D expires and you are receiving money from them, they cut the money until you bring another I.D book which may take again three years and they won't give you any money that they owe you for that time, which does not apply to South Africans.'

The social levels of tolerance and intolerance within the South African communities are also a significant element to consider when examining forced migrant groups access to social services. Responding to the question on what challenges she faces in trying to secure her rights, Martha*, a female Congolese forced migrant disclosed a significant primary cultural challenge in the form of some South African citizens` detestation of foreigners. Other studies examined in the literature review concur with such findings and also identify the exclusionary nature of South African citizens as a cause for concern (Bahamjee and Klaaren, 2004; Konanani and Odeku, 2013; Crush, 2013: p.12). Regarding the challenges in gaining access to the South African social security agencies, Martha* said the following:

'...there were these ladies who were saying you guys are not South Africans, you are not citizens, how come you are having this money? We don't like you, so if we go to your country will you be able to give us like we are giving you? So we ended up feeling like it was something that we did not deserve. It is only later after some workshops that we realised that no it is your right as a refugee to benefit from the social grants.'

The above interview excerpt highlights the complaints raised by several forced migrants regarding the prevalence of primary cultural barriers inhibiting their access to civil rights from public service offices. Scholars such as Khan et al (2015: p.14), identify a nexus between derivative forms of exclusion and a group`s "social status or identity." The above findings also demonstrate how there is a nexus between the unruly practices of staff within

the public service and the exclusionary attitudes of South African citizens (Morris, 1998; Handmaker and Parsley, 2001; Harris, 2002; Amisi and Ballard, 2005; Crush et al, 2013).

Regarding the South African social security agencies, the study also showed how there are structural factors inhibiting forced migrants` access to such social grants. The concept on the mobilisation of institutional bias and opportunity hoarding (Lukes, 1974; Fraser, 1989; Kabeer, 2000: p.21; Tilly, 2000 cited in Mosse, 2007: p.18), identifies such forms of closure and group monopolisations as an attempt to effect social exclusion (Peberdy and Majodina 2000 cited in Landau, 2006: p.319; Amit, 2012: p.7). It is due to such structural arrangements that other researchers identify forced migrants in South Africa as not only poor but also socially marginalised (Silver, 1994 cited in De Haan, 1999: p.11; Taylor, 2004).

6.4.2 Closure and Prejudice: Adverse Conditions of Participation

The focus group discussions revealed how other participants felt that they were not able to fully benefit from essential social services such as the right to accommodation. Inhibitions to accessing accommodation included the unruly practices by some landlords who charged forced migrants higher rentals than South Africans. Studies by Kobi and Cranfield, (2009 cited in Idris, 2017: p.6) as well as those carried out in Cape Town by Palmary (2003), also identified a similar exploitation of forced migrant groups by landlords. Such an exploitation can be interpreted as a derivative form of exclusion based on forced migrant groups` foreign identity (Khan et al, 2015: p.14). Other studies examined in the literature review also concur with how unruly practices are primary cultural mediums through which social exclusion is perpetuated (Kabeer, 2000 cited in Hungwe, 2013: p.61; Ngan and Chan, 2013; Tam and Jiang, 2015).

Forced migrant groups access to shelter under however unfair conditions of participation illustrates how there are various degrees of closure. Weber (1978), also identifies how closure can be effected in different degrees ranging from relative to absolute closure (Weber, 1978: p.128; Weber, 1978: p.45; Swartz, 1990: p.480; De Haan, 1999; Khan et al, 2015). Robert*,

a middle aged Congolese forced migrant provided a narrative of how their rights to accommodation are impeded through relative forms of closure:

> '*There are many challenges, for instance in terms of shelter, I just discovered recently that at the place where I stay I pay more money in terms of rent compared to South Africans while we are all in the same premises. So South Africans pay less and I pay more. When I tried to find out why, I was told that that's how the system is. So I do not know where to go there is no way for me to change the situation.*'

Accessing shelter for forced migrants is not only impeded by primary cultural factors but also structural factors. Due to how the Refugee Act 130 of 1998 is not explicit on forced migrant groups` entitlements to shelter in South Africa, they can only benefit from this right upon naturalisation. Through naturalisation, forced migrants can then also enjoy the full protections of the South African constitution, including the rights to low income housing (South African constitution 1996-Article 26[1-3]). Although the right to decent housing is also enshrined in the 1951 Convention Relating to Status of Refugees (UNHCR, 1959: p.24), forced migrants barely ever qualify for full citizenship. In obtaining permanent residence (Section 27 permit), the South African constitution only identifies as eligible, refugee status holders (Section 24 permit) who have been in the country for no less than five years (Department of Home Affairs, 2017). This becomes an exclusionary rule and impediment to forced migrants` access to low income housing (a stable and confirmable address), in South Africa. One participant complained that:

> '*It is not easy as a refugee, you are trying but in your mind you know you have like 80 percent chance of failure. There is no chance for us as forced migrants, we don't have a chance to own a house because I must have permanent residence which I do not have.*'

Other researchers concur with these findings and also identify the inability to attain citizenship (incomplete naturalisation) as incapacitating forced migrants from accessing citizenship rights such as socio-economic rights, political rights and civil rights (Marshall, 1964; Bhalla, and Lapeyre, 1997: p.420).

6.4.3 Historical Prejudices and Forced Migrant Rights Unawareness

An additional challenge to forced migrants` access to social services is the failure by staff within public service offices to recognise their legal documents. The participants expressed concern over how government departments often reject identity documents that were issued by the state. James*, a middle aged Congolese forced migrant complained how the Section 22 and Section 24 permits were not being recognised within government departments:

> '…yes it is written there you can study and work but when you go with it in any institution they will not accept you. They will say no, we do not recognise this document.'

Departments that were notorious for this unruly conduct included the South African Police Services (SAPS), with one forced migrant participant complaining that:

> '…those papers are issued by the DHA, imagine some departments when you go with the same paper issued by the DHA, the officials do not know that document. So this is something that we do not understand, a document issued by officials in S.A is not recognised by some officials.'

Another Congolese forced migrant complained over how the legitimacy of their documents is constantly questioned, even within the private sector:

> 'our documents are viewed as suspicious by all offices, if I want to receive money from overseas they are going to tell me that we have to verify with DHA, then maybe you will receive your money after…how can they verify you when you have documents? Even to send money through Western Union it is a big problem with this permit, they do not even know it.'

> 'You will find that somebody from let`s say SAPS, a document has been issued by the DHA but now when someone meets the police and presents their papers, you find that the police do not know such, where does it come from?'

This study conceptualises the disregard of progressive laws (legal rational authority) and requisite documentation (Section 22 and Section 24 permits), as a derivative form of exclusion (Murphy, 1988; Kabeer, 2000 cited in Hungwe, 2013: p.61; Ngan and Chan, 2013; Tam and Jiang, 2015). Scholars such as Weber (1968), refer to such exclusionary nodes as a primary cultural form of exclusion citing how it constitutes a form traditional and historical

prejudice. Nyaoro (2010:p. 126) concurs and argues that such practices within the South African public service have not only led to the disregard but also the confiscation and defacing of forced migrants legal documents.

Through the interviews, public service officials` lack of knowledge on forced migrant groups` legal entitlements was also identified as another challenge. Such a lack of knowledge regarding such issues amongst public service staff can be attributed to inadequate training (Handmaker and Parsley, 2001: p.43). Faith based organisation participants also displayed a similar lack of knowledge on what rights are enshrined in the Refugee Act 130 of 1998. From those participants also came responses on how forced migrants were having challenges accessing RDP houses, when in actual fact the South African law only accords such rights to citizens (McDonald, 1998; Nyenti, 2007; Rubin, 2011; Sangonet, 2015). A failure to possess knowledge on the policy governing the specific aspects of forced migrants in South Africa, debilitated stakeholder efforts in promoting those rights. It is as a consequence of this, Maria* a Congolese forced migrant expressed their disappointment with such organisations:

> *'The civil society does not even care about forced migrants, it`s only when there is this issue of xenophobia that's when you see them rising but after that you do not see them. They do not say anything about forced migrants in South Africa, we do not get any assistance from any civil society organisation.'*

The study also identified similar challenges within the institutions of public service. In this sector, public service employees` unfamiliarity with forced migrant rights and legal documentation inadvertently resulted in a denial of services. Fabrigas*, a Congolese forced migrant reported how they were being turned away from public service offices, *'Recognition of our asylum permit and forced migrant I.D depends on the person you are dealing with.'*

6.5 ACCESS TO EDUCATION

The interviews and focus group discussions revealed that Congolese forced migrants do not identify any challenges to accessing education within the primary education sector. However, they indicated how they are socially closed off and thus unable to access institutions of higher and tertiary education in South Africa. Although Regulation 27 of the Refugee Act 130 of

1998 only proclaims rights to primary education, access to tertiary education is an important aspect of ensuring forced migrants employability and is also enshrined in the 1951 Convention Relating to the Status of Refugees (UNHCR, 1959: p.24; Milburn, 2012). Scholars such as Khan et al (2015: p.14), argue that educational status "can be an important cause of exclusion from the labour market." However, in South Africa, as discovered through the interviews a significant number of institutions refuse admission to forced migrants. Reasons provided for this included the issue of how tertiary institutions in South Africa do not recognise Section 22 and Section 24 permits as identification documents. As a consequence, forced migrants` children face challenges in accessing university education.

6.5.1 Institutional Biases and Opportunity Hoarding: Tertiary Education

Through an examination of studies in South Africa, this research identified how little has been done in analysing forced migrant groups access to tertiary institutions in the country. The majority of the studies focus on primary and secondary school education access and the issue of xenophobic or exclusionary staff within the sector (Bhamjee and Klaaren, 2004 cited in Landau, 2005: p.21; Landau, 2005; Crush and Tawodzera, 2011 cited in Hungwe, 2013: p.61; Sibanda et al, 2012).

This study however, identifies structural impediments (principal forms of exclusion and institutional biases) as barriers to forced migrants` access to tertiary institutions (Lukes, 1974; Murphy; 1988; Fraser, 1989; Kabeer, 2000: p.21). Other studies carried out in India categorise such forms of closure as a form of 'opportunity hoarding', mainly occurring when "the use of a value producing resource is limited to members of an in-group" (Tilly, 2000 cited in Mosse, 2007: p.18). One participant complained that:

> *'...when it comes to studying especially for our children, they do their primary school, Secondary and when they finish their grade 12 they can`t go to university with the refugee documents so it becomes an obstacle. Then that is why we have a lot of our children with matrics but they don't have access to university because the paper that they hold does not allow them to have further studies, which is contrary to what is written in the papers.'*

In some instances, even after having overcame the obstacles barring them from tertiary education institutions, forced migrants struggle to secure financial support to fund their studies. The deprivations confronting Congolese forced migrants in financing their university education emanate mainly from their inability to access loans from banks (Jacobsen and Bailey, 2004 cited in Landau, 2005: p.23). The challenge in self-financing their tertiary education is also compounded by how universities in the country do not recognise them as citizens (even with Section 24 permits). This inadvertently inhibits them from accessing the available avenues of funding such as the National Student Financial Aid Scheme (NSFAS).

According to Nyenti et al (2007: p.3), although Section 24 permit holders are legally entitled to access the NSFAS funding, Section 22 permit holders (asylum seekers) cannot benefit from that facility. This study however found that those with refugee status (Section 24 permits) also failed to secure funding from the said government facility, a situation exacerbated by limited government resources and a high dependency amongst South African learners for government funding (Levinsohn et al, 2014 cited in Oluwajodu et al, 2015: p.2; Prinsloo, 2016). Forced migrants failure to secure funding facilities is however in contravention of the 1951 Convention Relating to the Status of Refugees (article 22 and 24) which states that contracting states shall facilitate access to studies through "the remission of fees, charges and the award of scholarships." The Universal Declaration of Human Rights (Article 26) also concurs with those codifications and safeguards the right to access higher education only on the basis of merit (UN, 1948: p.54).

As discussed in Chapter two, the above mentioned top down hierarchies within the education system have been used to exclude forced migrants from the sector (Peberdy and Majodina 2000 cited in Landau, 2004: p.9; Amit, 2012: p.7). Furthermore, the decree that only Section 24 permit holders may access funding, disadvantages the majority of forced migrants in the country who do not have Section 24 permits (Handmaker and Parsley, 2001; Amisi and Ballard, 2005; Landau et al., 2005 cited in Rugunanan, 2011: p.709; Namukaso, 2015). In elucidating on the nature of the challenges within the tertiary education sector, three participants made the following comments:

'Legally I am having the same problems that all forced migrants are having, my papers are not recognised by some officials and I am also denied my rights just because I am a refugee. I cannot get a loan from the bank, I cannot get funding from the university. I would like to pursue my studies but I do not have money to support myself.'

'They are pushing us to the exit door without saying it. Our children instead of going to University they are in the streets, they have become vendors and the government is doing nothing.'

'In terms of education, it is quite complicated especially when it comes to the level of University. For me as a refugee I am allowed to have NSFAS but when I made an application I used my refugee status and they said my status cannot allow me to have financial aid until I got refugee I.D and I was told that I cannot get aid because this line of refugee is blocked already and until now I am using my own means to support and educate myself while the constitution is allowing me to have those rights. When I am using my account to pay their fees they tell me that I must use as a local, that means that there are two accounts for international students and the locals. So I am considered as a local but I am not given those rights of a citizen with my refugee status.'

6.5.2 Prejudice and Discrimination: Primary and Secondary Education

The participants also disclosed how some forced migrants` children within the primary and secondary education sector experience forms of exclusion and prejudice. These challenges however seemed to be more primary cultural (derivative) than structural (Murphy, 1988). The interviews revealed that some of the forced migrants` children complain that their peers call them derogatory names because they are migrants. During the interviews, one of the participants said that, '…*our children at school also do not feel integrated they will come and say papa, someone was calling me kwerekwere, my friend was calling me kwerekwere.'* Such derogatory names are used to indicate the lack of 'symbolic capital' and a diminished identity associated with not only forced migrants but all black migrants in South Africa (De Haan, 1999: p.9; Scheen, 2011; Hungwe, 2013; Kilgore, 2014).

Other researchers such as Taylor (2004) argue that racism, discrimination and dialectal differences can constitute substantial impediments to forced migrants` social inclusion and integration. Such discrimination is however in contravention of the 1951 Convention stipulation on the non-discrimination of forced migrants, applicable without racial, religious

or gender discrimination (UNHCR, 1951: p.3). Sidanda et al`s study (2012), concurs with the above findings and identifies cultural as well as dialectical differences as causes of prejudice, discrimination and the creation of hostile learning environments for migrant leaners. Such exclusionary actions are in contravention of the 1948 Universal Declaration of Human Rights on the right to education for all (UN, 1948: p.54) and article 2 and 28 of the 1991 United Nations Convention on the Rights of the Child (UNICEF, 1991). As a result, pupils often felt "humiliated by teachers when they…struggled to articulate their answers in English. One learner reported her experiences of being targeted by her teachers for her nationality" (Sibanda et al, 2012: p.33). Social exclusion of this nature, is therefore perpetuated on account of one group possessing deviant social traits such as race, language, social origin, religion and so forth (Weber, 1968: p.342; Weber, 1978 cited in Murphy 1986: p.23; Swartz, 1990: p.480; Kabeer, 2000; Khan et al, 2015: p.14; Weber, 1978 cited by Tholen, 2016: p.3).

6.6 ACCESS TO EMPLOYMENT: SOCIO-ECONOMIC ZONES

The challenges that inhibit Congolese forced migrant groups from accessing university education also constrain their capacity to secure skilled forms of employment (Milburn, 2012). Other studies carried out with forced migrant groups in Uruguay and Brazil also identify a lack of skills and qualifications as a major constraint barring vulnerable groups from finding employment (Aguirre et al, 1999 cited in Mario and Wodon, 2001: p.79). Access to income for vulnerable minority groups is therefore particularly essential due to how in its absence, their prospects of achieving integration into the regular social life is compromised (Sen, 2000).

In South Africa, soon after forced migrants` children complete their matric education they often resort to selling confectionary and other merchandise on the streets. Interview participants indicated how this situation was due to an unavailability of livelihood skills and technical training for forced migrant children. One participant complained that, *'…we see no other form of support from government since our children cannot go to university and getting jobs has become a nightmare.'* This study recognises the inaccessibility of university education as an impediment to forced migrant groups` access to employment and social

mobility (Sen, 1983; Duffy, 1995; Smith, 1996 cited in Sen, 2000: p.7; Handmaker and Parsley, 2001; Levitas et al, 2007; Nyaoro, 2010: p.127).

6.6.1 Recognition of Forced Migrants` Legal Documents: Rights to Employment

Another challenge to forced migrant groups` access to work is the issue of documentation. The right to work given to asylum seekers in South Africa after 2002 was in recognition of the 1948 Universal Declaration of Human Rights (UN, 1948: p.48). Prior to this proclamation however, the right to employment in South Africa had long been a preserve for refugee permit holders, citizens and permanent residents only (Landau, 2005; Nyenti, 2007; Manicom and Mullagee, 2010). The Section 22 and Section 24 permits are therefore a form of legal guarantee to the constitutional right for forced migrants to secure work as enshrined in Regulation 27 (F) of the Refugee Act 130 of 1998 and the 1951 Convention (UNHCR, 1959: p.24).

However, the information gathered through the focus group discussions and life history interviews in the study indicated that employers were not recognising the Section 22 and Section 24 permits. Employers were said to be refusing to engage forced migrants in contractual work and thus in the process rendering them unemployed. One participant complained that:

> '*These documents do not help us, maybe just to produce when the police arrest you but in terms of work you cannot access it'.* Another interviewee also said, '*…it is very difficult, on that document it says that you can work and study and so forth but it is very difficult to find a job with refugee papers.'*

Other researchers examined in the study attribute such employer attitudes to a basic unfamiliarity with the documents and forced migrant rights (Landau et al., 2005: p.22; Amisi and Ballard, 2005; Mazzocchini, 2008 cited in Kavuro, 2015: p.248; Rulashe, 2009). Adam*, who was once gainfully employed but was dismissed over his refugee status papers said the following:

'I lost my job when I was working in Free-State at Uni-Transport, they employed me with an asylum seeker permit and I worked for five years. It came a time when my manager said we are trying to put your asylum seeker number on the system but we cannot. She tried to protect me for 3 months but it did not work until she decided to release me. For me this problem of documentation did not help me...'

6.6.2 Challenges in Accrediting Qualifications and Attaining Secure Tenure

As shown in the Chapter, challenges in attaining secure tenure mainly affects those who are holders of the asylum seeker (Section 22) permits. The study established that due to how Section 22 Permits were renewed quarterly, this constituted an inconvenience to employers. Such an inconvenience emanated from how there are only four refugee reception offices left in South Africa (Amit, 2012: p.7). This has meant that applicants have to spend long periods away from work, queueing for permit renewals. Although refugee permit holders have more secure tenure due to how the Section 24 permit is renewed once every four years, many forced migrants are not in possession of such permits (Amisi and Ballard, 2005; Landau et al., 2005 cited in Rugunanan, 2011: p.709; Namukaso, 2015). In cognisance of these challenges, this study argues that governments failure to guarantee the timely adjudication of refugee status applications and appeals has entrenched forced migrant groups` vulnerabilities in South Africa (Landau, 2005: p.1112; HRW, 2013 cited in Manicom, 2010: p.176).

While the challenges in attaining documentation are due to structural or distributive factors, the ensuing exclusionary attitudes displayed by South African employers are primary cultural. The challenges in renewing and securing documentation therefore lead to a "multiplicity of risks" for forced migrant groups and these include difficulties in securing formal employment (Sen, 2000: p.5; Mario and Wodon, 2001: p.3). This study therefore identifies the prevailing exclusionary nodes as constituting both derivative as well as principal forms of exclusion (multi-dimensional) (Saunders et al, 2008; Gijsbers and Vrooman, 2008; Khan et al, 2015).

Another impediment to Congolese forced migrants access to employment was the issue of how they do not have the money to pay towards accrediting their academic qualifications.

Such a requirement is in accordance with the South African National Qualifications Framework, Act 67 of 2008 (Vorwerk, 2005; S.A.Q, 2012). Although this regulation applies to all, including South African citizens who have qualifications that were attained abroad it becomes particularly disadvantageous to forced migrants. This is principally so given how the 1951 Convention Relating to the Status of Refugees (article 22 and 24), stipulates that contracting states should "recognise forced migrants foreign school certificates, diplomas and degrees" (UNHCR, 1959: p.24). Citing the challenges forced migrants face in getting their qualifications accredited (mostly due to financial constraints), forced migrant participants said the following:

> '...my papers are not accepted in South Africa and accreditation is a challenge for me because I do not have the money.'

> '...most of us choose to be self-employed due to challenges sometimes of qualifications, getting them accredited with SAQA...'

Although other studies focusing on forced migrants` failure to accessing employment in South Africa mainly looked at qualification issues, the accessibility of the accreditation institutions was never examined. The bulk of the literature on this issue did not draw a nexus between poverty (forced migrant groups financial means) and unemployment due to the arising challenges in paying for the accreditation of qualifications (Shaw et al, 1999; Taylor, 2004: p.5; Landau et al., 2005: p.22; Hickey and Du Toit, 2007: p.1; Rulashe, 2009; Nyaoro, 2010).

6.6.3 Exploitive forms of Employment: Adverse Incorporation

Exploitive forms of employment are also another challenge for Congolese forced migrant groups in South Africa. The study demonstrates that in the event that forced migrants attain employment, they are usually subjected to remuneration and working conditions lower than those available to South African citizens. As mentioned in the literature review, the concept of "adverse incorporation", concurs with how economic and social relations can be driven by imbalances of power (Hickey and Du Toit, 2007: p.4). Adverse incorporation is therefore experienced through exploitative forms of employment. Such exploitive forms of

employment are characterised by uneven conditions of participation amongst groups engaged in the same line of work (through unequal salaries, longer working hours and so forth). In such situations, adverse incorporation then entrenches deprivations while increasing social inequities amongst groups (Bracking, 2003; Dutoit, 2004; Mosse, 2010; Phillips, 2011).

Exploitive forms of employment are also worsened by the high levels of unemployment in South Africa (Ulicki and Crush, 2000; Manzo, 2005). Such unemployment and competition for the sparsely available employment and labour opportunities adversely results in the diminishment of working conditions and salaries. This particularly applies to the unskilled labour sector where migrants often work for paltry wages (Maisonave et al 2016; UNDP, 2016; Prinsloo, 2016). In a study of South Africa, Tilly (1998 cited in Khan et al, 2015: p.28) discovered such forms of adverse incorporation as dominant through gender pay inequality and minority rights imbalances. Forced migrant participants also indicated how soon after their arrival in South Africa, they faced exploitation in the formal sector such as the security services where the salaries were below minimum wage (Onuoha, 2006). During the life history interviews, the two participants Adam* and Angela* indicated how the menial jobs available not only exploit them through paltry salaries but also expose them to dangers:

> *'After that I was enticed by a friend to go and do security because he said it was paying better than being a car guard. So I went and became a security, then after an armed robbery attack in the shops where I was working I decided to quit the job because I feared to be killed. The experience was so strange for me to see a gun being pointed at me. I went into the saloon industry afterwards, where I was a barber. Those are some of the challenges that I faced when I arrived in the country.'*

> *'For me this problem forced me to just do small jobs like security, which doesn't allow me to go far. Even now in those small jobs like security it is again a problem.'*

6.6.4 Monopolisations and Opportunity Hoarding

Due to the challenges forced migrants face in penetrating the formal labour market, they are mostly visible within the informal zones (Onuoha, 2006). The study showed that there are also a number of problems forced migrants face within the free enterprise sector as

exemplified by the turf wars with South African citizens. During the interviews, some councilors within certain municipalities were reported as saying they no longer want any foreign nationals operating in their wards. Murphy (1986: p.25) in his theory of monopolisation and exclusion identifies such 'material monopolisations', as most prominent within socio-economic sectors. Other studies identify the monopolisation of value producing resources as a form of 'opportunity hoarding' (Tilly, 2000 cited in Mosse, 2007: p.18). Studies carried out on forced migrant groups in South Africa also identified hostile relations between locals and the generality of migrant groups in the informal sector (Palmary, et al, 2003: p.112 cited in Landau, 2005: p.22). As a primary cultural or derivative form of exclusion, forced migrant groups are therefore excluded from social participation in the informal sector (through xenophobic protests and sometimes violent means) (Fraser 1997 cited in Kabeer, 2000: p.84).

Issues to do with challenges in attracting South African customers in the free enterprise zones were also highlighted during the interviews. According to the findings, South African customers were said to intentionally shun forced migrant ran enterprises in preference of Zulu speaking entrepreneurs. This study identifies such discrimination as emanating from Congolese forced migrants` lack of what De Haan, (1999: p.9) refers to as 'symbolic and cultural capital'. Due to their diminished identity and deviant cultural norms, Congolese forced migrants succumb to prejudice and primary cultural biases within the free enterprise zones (Palmary, 2002). Bourdieu, (1986 cited in Cederberg, 2012: p.61) concurs and sites the absence of "social, symbolic and cultural capital attributes" within a social group such as the Congolese forced migrants, as reason for their social exclusion. One participant complained that:

> *'...we have different saloons where we share space with some who are South Africans, while I am not. Even if I am better than you in terms of service, people will go to you because you are South African and you will talk to them in Zulu. People will tend to come to you than to me and this is the problem that we tend to have in terms of business.'*

In examining Congolese forced migrants` access to the socio-economic zones, the study also analysed their admittance to the banking sector in South Africa. The study identified the issues limiting Congolese forced migrants from accessing this sector as being largely due to international banking practice norms such as the FIC Act 38 of 2001 (West, 2017). These requirements and preconditions however become structural impediments, inadvertently closing off forced migrants from accessing the banking sector. Other researchers identified the said impediments as being mostly imbedded within the institutional policies of exclusion and closure in the South African banking sector (Jacobsen and Bailey, 2004 cited in Landau, 2005: p.23). This economically disaffiliates forced migrants due to how banks facilitate access not only to educational loans but also micro-financing for entrepreneurial ventures and so forth (Saith, 2001 cited in Khan, 2015: p.4). One participant complained that:

> '…*we as forced migrants find it very difficult to open bank accounts. You can have a refugee status or a refugee I.D but still the bank will refuse to open your bank account because sometimes they say that you have to come with papers that you will never get such as employee letters, showing that you work. Most of us are not working, we are self-employed so where are you going to get an employee letter. This means that you won`t get a bank account and you have to keep the money in the house which is very dangerous because criminals are always watching and anytime they can always get into your house and harm you. So it is a very serious issue that we are having with banks.'*

Other studies carried out in South Africa also identify institutional biases in the banking sector as the cause for forced migrants` failure to access formal work where bank accounts may be a requirement (Kabeer, 2000; Landau et al., 2005: p.22; Rulashe, 2009; CDE, 2010 cited in Rugunana and Smit, 2011: p.709). An inability to access the South African banking sector thus negatively impacts on Congolese forced migrants` socio-economic wellbeing, living potentials and social mobility (Sen, 1983; Nussbaum, 2011 cited in Benhura, 2016: p.73). Failure to avail that essential right is a contravention of the Universal Declaration of Human Rights (UN, 1948: p.42), assertion on the economic, social and cultural rights for all, "obligatory in the preservation of human dignity and the free development of their personality as a fundamental right."

6.7 POLICY LIMITATIONS AND SOCIAL EXCLUSION: EXAMINING THE NEXUS

This study conceptualised social exclusion as a condition emanating from an inability to effectively participate in specific areas of activity. The study identified the areas of activity as not only essential in facilitating the integration and social cohesion of forced migrants but also the aversion of poverty, extension of human rights and so forth (Burchardt et al., 2002; Levitas, 2004; Bourdieu, 1986 cited in Cederberg, 2012: p.61). The interviews with the Congolese forced migrants identified several issues that substantiated the above hypothesis. Throughout the study, the participants highlighted their feelings of exclusion (disfranchisement) and how this has had a bearing on their inability to secure certain constitutional rights. Such disadvantages therefore bordered on the limitations within the Refugee Act 130 of 1998 and how such limitations have proliferated conditions of vulnerability amongst forced migrants. Studies carried out on forced migrants in Italy and the Netherlands, concur with how social integration is concomitant with "functional issues as well as social participation in the wider community" (Korac, 2003: p.51).

Responding to whether or not the Refugee Act 130 of 1998 has facilitated for their social inclusion, the research participants elaborated on its failures. They argued that such failures were discernible through the policy`s incapacity to guarantee their rights to work. In a way, the right to work was therefore understood by the Congolese forced migrants as an important part of their social integration within South Africa. Other researchers examined in the literature review concur with how employment is essential in the aversion of social exclusion, dependency and vulnerability amongst vulnerable groups such as forced migrants (Gorz, 1994 cited in Bhalla and Lapeyre, 1997: p.419; Cholewinski, 1998 cited in Handmaker and Parsley, 2001: p.44; Mario and Wodon, 2001; Onuoha, 2006; Kavuro, 2015). Therefore, as a human right, paid work and other entitlements in the Refugee Act 130 of 1998, is consonant with the social safety nets that guard against social exclusion. When asked on how far the Refugee Act 130 of 1998 had gone in securing their social inclusion, one participant said that:

> *'It is not really facilitating integration into the communities but what I know,*
> *when you do have that opportunity to work you feel that you are living in an*

environment where people are accepting you. But this is not the case for everyone, this is not the case for those who don't have the opportunity to have proper documentation. But for those who have proper documentation, they feel integrated in their work places, even in the places where they live they feel integrated.'

6.7.1 Polarised Communities and Language Barriers

According to Gill (2014: p.9), local integration through "residence and acceptance into the local community where a refugee first arrives, is the practical realisation of asylum." However, this study discovered how the living patterns within low income South African communities reflect a highly segmented settlement pattern, stratified along the lines of either being a citizen or a migrant. Such linear patterns could be partly attributed to South Africa`s free settlement policy whereby the government assumes no responsibility on forced migrants` settlement and integration upon entry into the country. As a result, scholars such as Massey (1988 cited in Schmeidl, 1997: p.289) discovered how forced migrants in South Africa are not fully socially integrated due to how they mostly prefer to settle amongst fellow migrants. This study identified Congolese forced migrant groups as mostly absent from the high density townships and similar settlements where the likelihood of exclusion and xenophobia was often higher (Abdi, 2013; Konanani and Odeku, 2013). This arrangement however limits the degree of social contact and integration for forced migrants within South African communities, with many of them living in seclusion (Sibanda et al, 2012). Studies carried out by Johnson (2000 cited in Taylor, 2004: p.5), on Ethiopian forced migrants in Australia indicate that a lack of social network for forced migrants adversely increases their vulnerability index.

Sibanda et al (2012) also argues how an understanding of forced migrants` degree of social contact with South African communities provides an accurate illustration of social interactions which in turn yields social capital. Social capital is an integral aspect in accruing networks that provide forced migrants with knowledge on how to access rights and services (Sen, 1992 cited in Bhalla, and Lapeyre, 1997: p.416; Smith, 1996 cited in Sen, 2000: p.7; Hebbani and Peisker, 2012). The interviews revealed how Congolese forced migrants` level of social contact and integration was limited due to how most of them often confined

themselves to rented apartments within the CBD and surrounding areas. According to Mutombo* a middle aged Congolese forced migrant, reasons for this were linked to issues of personal safety and security:

> *'The configuration of South Africa where we have these townships, locations and so forth, you can see the difference. For you a refugee to go and stay in these places it is not easy to integrate in those communities since you cannot properly speak their language, you don't eat like them and so forth. These are the hindrances that are not allowing us to be part of the South African communities.'*

Language barriers were also identified in this study as a serious impediment to Congolese forced migrants` social inclusion. Other researchers concur and identify cultural differences and the inability to converse in vernacular for forced migrants as impediments to social integration within host communities (Balgopal, 2000: p.213; Davidson et al, 2004; Hebbani, and Peisker, 2012). The Refugee Act 130 of 1998 does not cite any state responsibility in providing language skills training for forced migrants. This is however despite the issue of how language assistance is concomitant with social integration and in its absence, "migrant and immigrant populations can be discriminated against" (Khan, 2015: p.25). Korac, (2013: p.51) in his studies of forced migrants in Italy and Netherlands also identified how policy should "recognise forced migrants as social actors and not mere policy objects." This he argued, could be done through incorporating issues of compulsory language training into policy frameworks, as an important aspect of the forced migrants integration process. Compulsory language training can be seen in countries such as Germany through what they term a 'national law on integration', which makes the learning of local languages for forced migrants obligatory (Huggler, 2016).

Due to the above mentioned language barriers, the French, Swahili and Lingala speaking Congolese forced migrants complained how they face integration challenges in South Africa. The arising challenges in communication and networking, impede their social cohesion and inclusion within communities of residence. The study therefore identified how language barriers have heightened the invincibility and exclusion of Congolese forced migrants in the country. Congolese forced migrants inability to establish South African networks

inadvertently means that they do not have access to what Putman (2000 cited in Cederberg, 2012: p.65) termed "bridging forms of social capital." Scholars such as Das, (2009) and Bourdieu, (1986 cited in Cederberg, 2012: p.61) also submit that exclusion can often assume a binary form with attributes such as language being used to effect closure. Two participants complained that:

> *'…as a refugee everywhere you go when they see that you are a black person they expect you to speak in Zulu. Even in the SASSA meeting that I went to today, there were white people, Indians and so forth but they were speaking in Zulu and we were there, we don't know Zulu. So it was difficult, we had to follow them and start asking questions and you see that they do not even want to hear what you are saying.'*

> *'…it is very difficult for me personally because I do not know how to speak Zulu, so once I am outside my home I do not know what to do.'*

> *'Forced migrants are being asked why are you speaking apartheid language if they speak English because they cannot speak Zulu.'*

The failure to avail language training opportunities to Congolese forced migrants in South Africa, has also inhibited their knowledge of refugee legal rights in South Africa. Due to how most of the public service information is translated into languages they do not understand such as Zulu, Xhosa and so forth, some participants complained how they were not knowledgeable of their legal rights. As a result, Congolese forced migrants found themselves unable to make claim of entitlements to healthcare, documentation, employment and so forth.

A study carried out on South East Asian forced migrants in Canada also identified there to be a direct correlation between the "protective effects of language and the risk-inducing effects of unemployment" (Beiser and Hou, 2001: p.1321). The Refugee Act 130 of 1998 has thus only been partially implemented in South Africa, due to how its intended beneficiaries are unfamiliar with its edicts. Several studies also concur with these findings, as they argue that forced migrant groups in South Africa are unable to effectively convert their legal entitlements into effective protections (Peberdy and Majodina, 2000; Klaaren and Ramji, 2001; Palmary, 2003; Landau, 2004; Landau, 2006; Buckland, 2011). However, this research identified how none of the said studies examined the nexus between the challenges forced

migrant groups face in accessing such legal entitlements and their proficiency in interpreting and comprehending refugee policy framework. During the interviews, a Congolese forced migrant said that:

> '*The majority of us we are not informed about our rights, because of all the information provided in terms of the rights, they are in the local languages. The majority of forced migrants do not speak those languages so it`s very difficult for us to understand. If all this information could be provided in the languages forced migrants understand it would be easier for to understand our rights.*'

6.7.2 Public Service Institutions

The study discovered that the Refugee Act 130 of 1998 has failed to facilitate for the integration of forced migrants due to how public service employees are not knowledgeable of its edicts. Personnel within public offices, responsible for the provisioning of forced migrant rights to social services, documentation, healthcare and so forth, often seemed out of touch and uninformed on forced migrants` legal entitlements. The researcher also noted with concern how during the interviews, some personnel from civil society organisations representing forced migrants displayed limited knowledge on the Refugee Act 130 of 1998 tenets. Researchers such as Eyben et al (2008), also discovered how development actors in other parts of the world often lack awareness on some critical information concerning vulnerable groups. In concurrence with this, a Congolese forced migrant participant complained that their legal documents were not recognised by some public service officials:

> '*Our children, since they are not South Africans they are using different papers. So anytime I show their papers they ask what is this? So this is embarrassing for me.*'

Other studies carried out in South Africa also recognise a failure to sensitise stakeholders and service providers on forced migrants` legal rights as a major limitation in the implementation of the Refugee Act 130 of 1998 (Mazzocchini, 2008 cited in Kavuro, 2015: p.248). The interviews also revealed how during the sensitisation workshops hosted by some of the organisations interviewed in the study, government workers confessed ignorance on forced migrant legal rights. One participant said:

'most of the nurses were saying it's a matter of not knowing that actually when someone comes for a service you are supposed to offer that service without asking for documentation and so forth.'

Participants often directed attention to how they do not feel the Refugee Act 130 of 1998 facilitates for their social inclusion in South Africa. This was attributed to how there are so many structural bottlenecks inhibiting them from securing their full legal entitlements. Despite being in possession of the Section 24 permits (refugee I.D), Congolese forced migrants were still falling victim to monopolisation, closure and opportunity hoarding (Lukes, 1974; Fraser, 1989; Kabeer, 2000: p.21; Tilly, 2000 cited in Mosse, 2007: p.18).

Participants also complained of how they are often subjected to different terms of service from South African citizens within areas of public service. Angela*, a Congolese female participant described how such a system made them feel excluded and different, *'The children`s birth certificates are different from citizens. Our I.D`s are different from citizens, so it is embarrassing and everyone will look at you like you are not legal in this country'.* Failure to fully benefit from the rights to work, education, healthcare and other socio-economic sectors, (despite possessing requisite documentation) was also another cause of forced migrants feeling of social disaffiliation. The measure of the Refugee Act 130 of 1998 effectiveness in facilitating forced migrants` social integration, was therefore understood by the participants as having to do with its capacity to accord them access to 'commodity bundles' (Bhalla and Lapeyre, 1997: p.418). One participant indicated how the systems in place do not encourage social cohesion:

> '*Since there is a huge gap between forced migrants and South Africans, in terms of economic and social rights, we feel like we are totally out of the communities. We are different from South Africans because I cannot get access to loans, shelter and so forth so how will I feel integrated. Even though sometimes we meet but we always feel like we are different, like we are not part and parcel of the community.*

6.7.3 Spontaneous Integration

Due to how South Africa has a free settlement refugee model, the Refugee Act 130 of 1998 was thus designed to have forced migrants` access their rights, from the same service points

as South African citizens. However, this has inadvertently exposed forced migrants to the prejudice and service exclusion prominent within such areas of public service (Kabeer, 2000 cited in Hungwe, 2013: p.61). Scholars such as Betts (1981: p.214) also argue that through a self-settlement policy, forced migrant groups are exposed to deprivations and insecurity due to what he termed "spontaneous integration." The Refugee Act 130 of 1998 has therefore failed to guarantee forced migrant groups` social inclusion. With regards to upholding forced migrants` legal entitlements, the interviews revealed how government officials often neglected their responsibilities, arguing that the available resources were a preserve for South African citizens. One participant said that:

> *'...the government does not listen to our challenges. They are very clear, they say we have to help those who voted for us so they are busy doing for those who voted for them. For us, do you think they are going to think about us? I am not sure.'*

The above sentiments displayed by representatives of the government represent the multi-dimensional causes of deprivations and forced migrants` social exclusion through both principal forms of exclusion as well as institutional biases (Lukes, 1974; Murphy, 1988; Fraser, 1989; Kabeer, 2000: p.21). Exclusionary nodes of a structural or distributive nature (experienced within government and public service offices), are particularly debilitating and have thus been used to further group monopolisations against forced migrants in South Africa (Peberdy and Majodina 2000 cited in Landau, 2006: p.319; Amit, 2012: p.7).

The interview participants also raised complaints over how the Refugee Act 130 of 1998 is not explicit regarding the official path of communication between them as forced migrants and the South African government. As a consequence, whenever forced migrants encounter prejudice, closure, unruly conduct, biases and victimisation they often found themselves without any procedure with which to seek recourse from the government. Other researchers have also argued that the absence of such communication channels within top down hierarchies of power, potentially proliferate structural violence (Galtung, 1969; 1971; 1990 cited by Barnett, 2008: p.78; Peberdy and Majodina 2000 cited in Landau, 2006: p.319; Amit, 2012: p.7). During the interviews, one participant made reference to this challenge:

> *'…forced migrants in South Africa are under the responsibility of the government, since we are under their responsibility we don't know where to go and address the problems that we have. I think the channel is not clear on that one…'*

Another Congolese forced migrant participant also mentioned how they often do not know who to approach in addressing the many challenges confronting them as forced migrants. The participant commented saying:

> '…*there is no mechanism put in place by the government to interact with forced migrants, sometimes we don't know where to go. The only place we can go when we have a problem is the police station, but the police station cannot solve our problems with documentation.*

Other studies focusing on forced migrants welfare as analysed in the literature, did not examine the issue of administrative vacuums within South Africa (Palmary, 2003; Landau, 2006; Bahamjee and Klaaren, 2004; Amisi and Ballard, 2005; Polzer, 2007, 2008; Vearey, 2008; Sibanda et al, 2012; Crush et al, 2013). This study however identified how such a vacuum has heightened the vulnerability index and exclusion of forced migrant groups in South Africa.

6.8 CONCLUSION

The Chapter examined the main barriers inhibiting forced migrant groups from accessing their legal rights to documentation, shelter, employment and social services (basic health and education) as enshrined in the Refugee Act 130 of 1998. The Chapter was therefore an analysis of data collected from both the Congolese forced migrant groups in Pietermaritzburg as well as the civil society representatives. Face to face semi structured in-depth interviews, life history interviews and focus group discussions (FGDs) were the principal methods employed in collecting the data for the study. Several issues were identified as contributing not only to the challenges in implementing the Refugee Act 130 of 1998 but also towards forced migrant groups` social exclusion. These issues included forced migrants challenges in accessing the refugee reception offices, inefficient appeal systems, unruly practices, controlled association, closure and prejudice, adverse participation, historical prejudices,

institutional biases, monopolization, opportunity hoarding and so forth. As an important concept in forced migration studies, spontaneous integration as a concept and its effects within free settlement systems such as the one found in South Africa was also examined. In essence, the Chapter was dedicated towards generating new findings in the social exclusion discourse by giving forced migrant groups a voice and then identifying insightful meanings from such data.

CHAPTER 7: FINDINGS AND DISCUSSION: SITUATING THE STATE AND NON-GOVERNMENTAL ORGANISATIONS

7.1 INTRODUCTION

The examination of government and civil society`s role in the aversion of vulnerabilities contributing to social exclusion was particularly essential to the study. Apart from contributing to the study`s originality, this helped elucidate on how a multi-sectoral approach was applicable in the aversion of vulnerable groups social exclusion as well as the facilitation of their access to constitutional rights (De Haan, 1999; Mario and Wodon, 2001; Hickey and Du Toit, 2007; Saunders et al, 2008; Gijsbers and Vrooman, 2008; Fischer, 2011: p.3). This study therefore views non-state players as essential stakeholders to government in national policy implementation (Bebbington et al, 2008; Dongier et al, 2013). Scholars such as Chambers and Kopstein (2006: p.364), concur and argue that civil society and state relations basically assume six binary forms whereby civil society is either "apart, against, in support, in dialogue, in partnership or beyond the state." Along such a paradigm, this Chapter examines the relationship between the civil society and the government in not only the implementation of refugee policy but also the aversion of social exclusion. The Chapter also examines civil society`s rapport with the Congolese forced migrants in alleviating the threats of 'cumulative risks' emanating from social exclusion (Mario and Wodon, 2001: p.3).

In examining Congolese forced migrants` social exclusion in South Africa, the Chapter analyses the role of the government in the provisioning and protection of forced migrants` legal rights as prescribed in the Refugee Act 130 of 1998. In that regard, the Chapter presents, discusses, and analyses the findings from interviews carried out with sample NGO and FBO groups as well as the Congolese forced migrants in South Africa. Such a presentation, discussion and analysis of findings in the Chapter is done along the framework of the major research questions guiding the study. Furthermore, directed by the same research questions, the central issues in the study are addressed by examining the limitations of the Refugee Act 130 of 1998 and the nexus between such limitations and forced migrants` social exclusion. The themes that the Chapter attempts to specifically address are: What has been the role of

the government and non-governmental organisations in implementing the Refugee Act 130 of 1998? What has been the working relationship between the government and non-governmental organisations in implementing the Refugee Act 130 of 1998?

7.2 REFUGEE POLICY IMPLEMENTATION: LOCATING THE STATE

7.2.1 State Assisted Integration

By interviewing Congolese forced migrants, the study was attempting to establish the extent to which government has facilitated for their social protection and inclusion in South Africa. The role of government in the preservation of vulnerable groups social security and social inclusion is also substantiated by other scholars who argue that "government policies targeting inequality and favouring social solidarity can promote integrated societies" (Mario and Wodon, 2001; Barry, 1998 cited in Khan et al, 2015: p.6). In assessing the limitations in implementing the Refugee Act 130 of 1998, the study utilised a bottom-up approach whereby the study participants purposively consisted of the beneficiaries of the refugee policy under examination. During the interviews, forced migrants indicated how they feel the South African government is not doing enough in the creation of tolerant communities. This is especially challenging in the midst of South Africa`s class and racial tensions which proliferate exclusionary nodes, prejudices and xenophobia (Morris, 1998; Handmaker and Parsley, 2001; Harris, 2002; Amisi and Ballard, 2005; Crush et al, 2013).

A considerable impediment to the model of state assisted integration for forced migrants in South Africa is discernable through a series of antagonistic policy amendments that have been blamed for advancing exclusionary nodes. This has been exemplified by the states declaration that if one is an asylum seeker (one still has a temporary permit and their application is pending), they cannot get married to a refugee. Declarations of this nature infringe not only on forced migrants attempts to feel integrated but also their rights to family and the preservation of their dignity as enshrined in Article 12 of the 1951 Convention and Article 16 of the UDHR (UN, 1948: p.34; UNHCR, 1951: p.10, 20). Similar declarations also include the barring of forced migrants from the security services sector and cordoning it off as a special economic zone for citizens only (Landau, 2005; Berg and Gabi, 2011: p.9).

Structural or distributive impediments to forced migrants` social inclusion are therefore what partly constitutes the principal forms of exclusion in South Africa. Murphy (1988) and Galtung (1969) concur and argue that principal forms of exclusion and monopolisation can be enforced by the state machinery through legal and eventually coercive prohibitions (Galtung, 1969; Murphy, 1988).

The interviews also revealed how the Congolese forced migrants expect the government to be pivotal in facilitating their integration in South Africa. This was mostly due to how their legal rights in South Africa should be enforceable by the state as they are an Act of parliament recognised through Regulation 27 (G), Regulation 27 (F), Regulation 27 (B) and Regulation 27 (D) of the Refugee Act 130 of 1998. Forced migrants also expected state assisted integration, given how the government is the sole custodian of forced migrant rights in the country as guided by the constitution and the rights set aside in the Bill of Rights (Chapter 2, article 9 and 11). The interviews therefore revealed how in comparison to the civil society, the Congolese forced migrants expected the preservation of their legal rights and social cohesion to come from the government. A Congolese Refugees Association representative said the following:

> *'I think only government can improve my situation in this country I don't want to rely on NGOs, currently seeing If the doors of employment could be opened that could improve life but since we have to be excluded from work because we are refugees, wherever you go and ask for a job…So if that can be removed whereby if our skills can be taken into account and be given a job it would be better.'*

Establishing the role of government (state assisted integration), in the preclusion of forced migrants` social exclusion was important to the study due to how one of the dimensions within which exclusionary nodes are conveyed is through distributive or structural dynamics (Fraser's, 1997 cited in Kabeer, 2000: p.84; Gijsbers and Vrooman, 2008). The role of the government in preventing forced migrants` social exclusion presented a key area of examination for the study given the government`s constitutional mandates in ensuring forced migrants` social protection and security (UN, 1948: p.46, 52; Tilly, 2000 cited in Mosse, 2007: p.18; Saunders et al 2008). The study interviews also revealed that on the part of some

government departments such as the department of education, there was a considerable level of progress in providing state assisted integration. Such progress was characterised by the engagement of primary and secondary schools on refugee and asylum seeker rights to study in the country.

7.2.2 Challenges to State Assisted Integration in South Africa

According to Weber`s (1968) micro theory on class stratification, exclusionary traditional and historical prejudices can adversely subvert the effectiveness of a progressive legal authority. Such a subversion may manifest itself through unruly practices, biases, monopolisations, closure and so forth (Luke's, 1974; Fraser, 1989; Kabeer, 2000: p.92; Handmaker and Parsley, 2001; Harris, 2002; Amisi and Ballard, 2005; Bourdieu, 1986 cited in Cederberg, 2012: p.61; Crush et al, 2013). This has also been a significant challenge in the South African forced migrant rights discourse. The interview data revealed a disjuncture between progressive policy formulation and its implementation. Although the legislative arms of state were progressive (through liberal policy formulation), such reforms were however undermined by the existence of an exclusionary traditional authority.

One interview participant from the Lawyers for Human rights mentioned how the issues exacerbating forced migrant groups vulnerability and derivative exclusion (Murphy, 1988), are not at the policy making level but are more administrative. Administrative shortcomings could be witnessed within the DHA as well as other government departments. The human rights attorney said the following:

> *...the right to access application has been limited enormously. The Durban refugee reception office is not taking any new applications until January next year and they have officially communicated this which means that basically if you are in and around Durban and you are a new comer, you will be undocumented until next year unless you have the resources to go and apply Pretoria or Mussina and most people do not have those resources. We have got huge backlogs of applications that have not been finalized. People are sitting on temporary asylum seekers for 5 years, 8 years, 10 years and in terms of the Refugee Act an application was supposed to be finalised within 3 months, but people have pending applications dating back to 2002-2003'*

'The refugee appeal board only constitutes of three members, these three are supposed to chair appeals nationally, that is a problem. There is nowhere that 3 people could have chaired rejections and sat on appeals across all provinces. So what then happens is that there is also a backlog of people who have applied and have been rejected, who are awaiting. Some are waiting for appeals, some have had their appeals but have not had a decision. The refugee appeal board this year has only sat about twice in Durban but there are thousands of appeals and I don't think they are going to sit until next year.'

'…we are only currently seeing rejections, we hardly see an application that has been successful in granting refugee status. If we look at those decisions, they are a copy and paste job, the law hasn't been properly applied and legislation has been misquoted or quoted out of context to suite the rejection.'

The interviews also revealed how the MEC`s (member of executive council) for safety and liaison routinely organise for people to come and discuss on issues related to forced migrants, signifying a level of tolerance and inclusion. Such an inclusive gesture was however not reflective of the social attitudes in South Africa, which scholars such as Crush et al (2013), describe as exclusionary. This study identified such exclusionary attitudes as being influenced by the high levels of poverty, unemployment and deprivations amongst South African citizens (Ulicki and Crush, 2000; Manzo, 2005), which inadvertently promote hostilities and a competition for resources with migrants (Sen, 2000: p.21).

As another challenge to state assisted integration, the study identified how some local officials are opposed to integrating migrants within areas of commerce. The participants revealed how those unruly councilors were socially closing off migrants based on their deviant group attributes such as class, race, ethnicity, language and so forth (Bourdieu, 1986 cited in Cederberg, 2012: p.61). A representative from the Congolese Refugees Association complained that, *'There are some councilors who are saying we no longer want any foreign nationals to operate here'*. Through Murphy`s (1986: p.37), theory such forms of closure and prejudices working in defiance of pre-existing progressive laws, can be seen as being perpetuated on the grounds of credentialism and monopolisation.

As a consequence of government`s failure to effectively facilitate for their integration, Congolese forced migrants expressed their displeasure at the issue of their vulnerability

within South Africa. This was mainly attributed to how the government has confined its role to providing forced migrants with legal documentation only, without availing support mechanisms to facilitate for their social inclusion. Other researchers such as Crush et al, (2013: p.8) concur with this assertion and argue that despite the existence of an enabling refugee policy framework in the country, forced migrants are not able to translate the entitlements to benefits.

Social cohesion and integration programs are therefore often effective in the facilitation of forced migrants` social inclusion. Examples of countries with these programs include Germany (through their national law on integration), as well as Sweden, Italy, Netherlands and Norway through state assisted integration programs (Korac, 2003; Valenta and Bunar, 2010; Valenta and Strabac, 2011; Huggler, 2016). Other studies focusing on forced migrants in South Africa, do not shed light on such issues which are indicative of the nexus between governments shortcomings and forced migrants` social exclusion (Palmary, 2003; Bahamjee and Klaaren, 2004; Vearey and Richter, 2008; Crush et al, 2013). During the interviews, one representative from a faith based organisation representing forced migrants said the following:

> '*The government should not just end at giving documentation but they should talk about it to the people even on national media, SABC, News and so forth they should talk about the forced migrants in the country, why they are in the country and so forth, workshops should also be done on the rights of forced migrants nationwide, this is very important because there are a lot of people who do not know about the rights of forced migrants or the issues of forced migrants.*'

Although there has been a considerable level of progress with regards to state facilitated integration in other state departments such as the department of education, this has however not been the case in other ministries. Although access to tertiary education is not enshrined in the Refugee Act 130 of 1998, it is nevertheless an essential entitlement for all including forced migrant groups (Milburn, 2012; Khan et al, 2015: p.14). It is for that purpose that the equal right to tertiary education is also enshrined in Article 26 of the UDHR (UN, 1948: p.54). The interviews carried out revealed that Congolese forced migrants in South Africa

have faced several challenges in accessing not only this sector but a range of others due to closure, institutional biases and exclusion (Kabeer, 2000; Handmaker and Parsley, 2001; Palmary, 2003; Bahamjee and Klaaren, 2004; Amisi and Ballard, 2005; Nyaoro, 2010: p.127; HRW, 2013 cited by Manicom, 2010 p.176; Sibanda et al, 2012; Crush et al, 2013 p.8).

Such closure and exclusion within government departments is conceptualised in this study as not only a structural issue but a primary cultural one (multi-dimensional). The study also identifies forced migrants` service exclusion from government departments as discernible through what Murphy (1988), termed derivative forms of exclusion. Through the interviews, structural or principal forms of exclusion were identified as the most prominent in South Africa (Murphy, 1988; Kabeer, 2000; Gijsbers and Vrooman, 2008). The leader of the Congolese Refugees Association complained over the victimisation of forced migrants:

> '*Most refugees are being victimised by the SAPS, you will be at your place at night and the police officers will just pop in pretending that they are looking for illegal immigrants. So when you open they will start asking for papers for furniture, television license and so forth and if you don't have receipts for furniture they will threaten to take you to the police station until you come and prove that you bought it in the shop. It can also happen even at the place of work, they will come in the saloons and say all of you present your papers, whoever does not have they take him to a corner where you have to pay bribe and be released.*'

The above unruly conduct where workers within the public service disregard refugee policy guidelines to pursue exclusionary ends, constitutes an unruly practice and an impediment to state assisted integration (Fraser, 1989; Kabeer, 2000: p.92; Ngan and Chan, 2013; Tam and Jiang, 2015). Unruly practices can also be understood as another manifestation of Murphy`s (1988) derivative forms of exclusion. The interviews revealed how forced migrants` have expectations for the government to address the exclusionary nodes within South African communities as well as the civil service. The interviews also revealed how public service employees' ignorance of refugee policy impeded forced migrants` access to their rights (Mazzocchini, 2008 cited in Kavuro, 2015: p.248). Other studies also concur with the findings and argue that exclusionary nodes within the public service staff exacerbates forced migrants` deprivations and vulnerability (Peberdy and Majodina 2000 cited in Landau, 2006:

p.319; Nyaoro, 2010; Amit, 2012: p.7). The issue of forced migrants facing deprivations due to social exclusion were confirmed by the following responses from the civil society participants:

> *'When it comes to social services there is the belief that forced migrants are dirty, there are certain mindsets that should be changed with regards to frontline service providers who deal with forced migrants. The moment somebody struggles with your name, you already see the face and approach.'*

> *'...in the trainings that we have, the government officials will come in the open and say we don't know these things, which means they are not alone they are a lot out there and maybe some forced migrants can be disadvantaged because somebody doesn't know.'*

In addressing the above challenges, participants suggested a sensitisation and refresher course program for all public service employees. Other researchers concur with this and argue that issues of social inclusion require awareness campaigns and a change of consciousness (Thorat and Sadana, 2009; Makhema, 2009). Maier et al (2008 cited in Khan et al, 2015: p.45) concur and argue that such a change of consciousness should be evoked amongst all stake holders so as to promote effective interventions at different levels (Maier et al, 2008 cited in Khan et al, 2015: p.45). Dikembe*, a male Congolese forced migrant said the following, *'What the government and civil society should do is to create awareness. People should know why forced migrants are in South Africa'.* The civil servants working within government are in that sense identified by this study as the key players in the (state assisted) aversion of social exclusion within South African communities and public offices (Kabeer, 2000 cited in Hungwe, 2013: p.61).

7.3 REFUGEE POLICY IMPLEMENTATION: CIVIL SOCIETY

7.3.1 Social Protection: Solidarism and Mediation

The study recognises non-governmental organisations as essential players in the implementation of the Refugee Act 130 of 1998. The study focuses on civil society organisations as it recognises their role in availing social protection rights to forced migrant groups. Through civil society assistance, social protection can be provisioned through the

facilitating of both the bridging as well as bonding forms of social capital, necessary for forced migrant groups welfare (Putman, 2000 cited in Cederberg, 2012: p.65; Hebbani, and Peisker, 2012). Scholars such as Benequista and Gaventa, (2011 cited in Khan et al, 2015: p.59) also acknowledge the importance of social movements and argue that "they can act as the first steps towards developing a sense of self-identity, which does not necessarily emerge through engagement with the state." According to Harbeson et al (1994: p.90), civility as a model advocates for equitable rights and entitlements within all human societies. It is in that regard this study identifies civil society organisations as essential stakeholders in the social exclusion discourse.

In determining the role of civil society in facilitating for Congolese forced migrants` social inclusion and social protection, the study examined their experiences by interviewing the association representing their interests. Fukuyama, (2001: p.11), acknowledges the importance of such civil organisations amongst vulnerable groups and argues that by coming together they establish a form of cohesion and unity of purpose. According to Parkin (1974), civil action groups formed by vulnerable groups (such as the Congolese Refugee Association) are a form of solidarism symbolising a combined response to the challenges affecting them. As a means of mobilising power to enhance or defend a group's share of resources, solidarism contests the pre-existing, prejudicial power relations (Parkin, 1974: p.5). During the xenophobic attacks in South Africa 2015, a lot of displacements, killings and purges occurred against forced migrants and it is the civil society that was proactive in the provisioning of aid and resolution of conflicts (Bahamjee and Klaaren, 2004; Konanani and Odeku, 2013; Crush, 2013: p.12).

The interviews also revealed how after the forced migrants had fled their homes for Hope Farm, civil society organisations were responsible for reintegrating them back to their respective communities. This was achieved by playing a mediatory role between the forced migrants, citizens and community leaders. Civil society organisations also assumed the role of providing counselling services for those forced migrants who had been traumatised by the violence. Furthermore, civil society personnel also explained how humanitarian work during

the time additionally involved ferrying forced migrants to Edendale and other clinics in Entshanga. The interviews discovered how the Congolese forced migrants are convinced that the civil society organisations in South Africa are trying to alleviate their challenges in securing social protection in the country. Maria*, a Congolese forced migrant said:

> '*We have some NGOs that are helping us, for instance Lawyers for Human Rights, they are trying to mediate and we have private lawyers who are also trying, some churches, International institutions and so forth all trying to convince the government to give forced migrants proper papers, which will help them to work and study. But up till now, nothing has come up to help forced migrants.*'

7.3.2 Social Cohesion and Engagement

Civil society participants also provided information on how they have made several inroads in addressing the challenges confronting forced migrants in South Africa. Regarding the issue of social inclusion, a participant from a faith based organisation highlighted how they have what they term 'social cohesion activities'. These programs mainly involve the coordination of activities involving both citizens and migrants with the purpose of nurturing social relations, cultural tolerance and unity. This was quite crucial in the fight against social exclusion as this facilitated the creation of what Putman (2000 cited in Cederberg, 2012: p.65), named "bridging forms of social capital."

Through 'bridging forms of capital', disadvantaged groups could overcome their group identities, and go beyond the tribal, racial and cultural boundaries. By transcending such barriers, forced migrants can then benefit from other groups strategic monopolies over the means of production (Hebbani and Peisker, 2012). Another form of social cohesion program was one whereby civil society organisations micro financed income generating projects that were being jointly implemented by forced migrants and South African citizens. The study recognises the importance of such activities in the preclusion of social exclusion due to how one of the primary dimensions social exclusion manifests itself through is social disengagement (a lack of participation in social activities) (Saunders et al 2008; Fozdar, 2012).

The ability for groups to harness cultural capital as well as symbolic capital is essential in the deterrence of social exclusion (De Haan, 1999: p.9; Bourdieu 1986 cited in Cederberg, 2012: p.61; Hebbani, and Peisker, 2012). This is particularly so due to how social capital cannot be examined far from social exclusion due to its focus on the role of networks and human interactions as resources (Mario and Wodon, 2001). Studies carried out in South Africa and further afield also indicate that a lack of certain forms of capital (cultural and symbolic), can increase forced migrants` vulnerability (Johnson, 2000 cited in Taylor, 2004: p.5; Sibanda et al, 2012). Therefore, the importance of such programs cannot be underestimated due to how they help improve the level of social contact between migrants and citizens. In reference to these social cohesion activities, one representative from a faith based organisation said that:

> *'...we bring together foreign nationals and locals to engage in similar activities. We have games and the act of playing these games helps to bond and build relationships and realise that other than being foreign or local we are one. We also do social cohesion activities whereby we were celebrating cultural diversity on the African continent, but at the end of it all we are one, so we together, playing together, there were some girls doing a Zulu dance, eating together African food and so forth. This is very important because when I know this person, the moment I see people attacking that person I will say no.'*

Scholars such as Putman, (2000 cited in Cederberg, 2012: p.65) also argue that grassroots networks are very important due to how they provide support and opportunities for people experiencing social exclusion. The interviews also revealed that civil society, particularly the faith based organisations, were embarking on paradigm shift programs aimed at creating bonding forms of social capital for forced migrants. Given the exclusionary nature of South African communities, (Crush et al, 2013) the faith based organisations revealed how they regularly host community workshops to encourage mindset shifts. The community workshops (themed along topics of acceptance and tolerance), have thus helped pacify some of the negative societal perceptions towards forced migrants that inadvertently impede their social integration (Kabeer, 2000; Davidson et al, 2004; Leggett, 2006; Weber, 1978; cited by Tholen, 2016: p.3). A participant representing a faith based organisation said that theology was important in inculcating acceptance and tolerance amongst South African citizens. On

the question of how they alleviate some of the challenges forced migrants face regarding integration and social cohesion, the FBO participant said that:

> *'...we normally have workshops and we have presenters who talk about the theology of strangers, the theology of migration that all humans are in the image of God regardless of nationality, race, and so forth. So if churches can emphasise the message of how all are in the image of God regardless of where you are coming from, let us accept one another that will help reduce the friction.'*

7.3.3 Advocacy and Rights Sensitisation

Issues of Human Rights Education (HRE) are principally important and the failures in effectively sensitising the public on such significant topics can be viewed analogously with the limitations in implementing refugee policy (Amisi and Ballard, 2005; Crush et al, 2013: p.8; Bwalya, 2012 cited in Namukaso, 2015: p.18). In South Africa, there is a lack of knowledge on such fundamental rights not only amongst the forced migrants but government workers included (Mazzocchini, 2008 cited in Kavuro, 2015: p.248). During the interviews, civil society organisations in South Africa mentioned how they routinely hold sensitisation workshops, focusing on forced migrant rights within their communities of operation. Through such workshops, the civil society invites forced migrants and frontline service providers to have discussions focusing on the legal rights and entitlements of forced migrants in the country. Mihr (2009), also recognises the pivotal role of civil society in the field of Human Rights Education (HRE) and the creation of inclusively accommodative communities. A participant from the non-governmental sector supported this claim, arguing that it is only after such workshops that individuals from government become aware of key issues relating to forced migrant rights:

> *'workshops should also be done on the rights of forced migrants nationwide, this is very important because there are a lot of people who do not know about the rights of forced migrants or the issues of forced migrants, you will find that only after a workshop someone will say I did not know.'*

The role of civil society in the examination of forced migrants` rights awareness is particularly essential given their indispensable role in the subject area. This is substantiated

by Mihr`s (2009: p.177) findings on how the United Nations Decade for Human Rights Education (1995–2004), triggered a rise in civil society roles in the "dissemination of human rights related ideals globally." Civil society has thus been at the forefront, with regards to human rights education in South Africa. During the interviews, the civil society participants mentioned how they often host community workshops within Pietermaritzburg and other places such as Durban and Cape Town. During the workshops, issues pertaining to forced migrant entitlements are discussed. Two interview participants from the non-governmental organisations commented on the significance of such workshops:

> '*Those we have interacted with, they are aware, we have had workshops in Pietermaritzburg, even Cape Town and forced migrants are aware of their rights.*'

> '*We have done a lot of awareness programs, workshops on refugee rights and in those workshops we invited refugee and asylum seekers from different countries, DRC included of course. In the workshops we were highlighting rights of forced migrants with reference to documentation, shelter, employment and access to services like health and education. So I will say, there are some who are now aware and who are able to, who feel that it's their right to receive a document.*'

Also interviewed was the Lawyers for Human Rights (LHR), an implementation partner for the United Nations High Commissioner for Forced migrants (UNHCR) dealing with the legal aspects of forced migrants lives in South Africa. On an advocacy level, the LHR deals mainly with the integration and social cohesion of forced migrants from a legal perspective. As already discussed in Chapter four, the Refugee Act 130 of 1998 pardons forced migrant groups from some of the restrictive policies regulating issues of migration in the country (Kavuro, 2015: p.250). However, in some instances the South African government has put in place restrictive measures that have encouraged forced migrant groups social closure and in such instances, the LHR has been instrumental in lobbying against such prejudices. Examples of principal forms of exclusion, closure and institutional bias within state departments include the systematic closure of refugee reception offices by the DHA (Lukes, 1974; Murphy, 1988; Amit, 2012: p.7). The interviews revealed how in response to such office closures which have negatively impacted on forced migrants` access to legal documentation, the LHR took the

Department of Home Affairs to the court of law. A participant representing the LHR said that:

> *'Our organisation is here to enforce and protect refugee rights in all aspects therefore where we need to litigate we will litigate against Department of Home Affairs, in fact we have an ongoing court case where we are challenging the closure of the refugee reception offices and that is at constitutional court level.'*

Other instances in South Africa where exclusionary laws have been successfully challenged through litigations by the civil society include the 2002 declaration on the right to work for asylum seekers and the 2003 legal action against the Director and Minister of Social Development (Landau, 2005; Manicom and Mullagee, 2010). Due to such lawsuits and other forms of litigations by the civil society, the 2003 lawsuit led to the availing of social protection amenities for forced migrants that are not enshrined in the Refugee Act 130 of 1998. These social protections brought about by the litigations include the South African social security agencies (SASSA), which is in line with the 1948 UDHR`s proclamation (Article 25), for the provisioning of special care and assistance to motherhood and childhood for all (UN, 1948: p.52).

The availability of the above mentioned social safety nets are essential bearing in mind that one of the dimensions through which social exclusion is discernable is through service exclusion (Balgopal, 2000: p.213; Mario and Wodon, 2001; Saunders et al 2008; Kabeer, 2000 cited in Hungwe, 2013: p.61;). A legal attorney from the Lawyers for human rights commented that, *'Recognised forced migrants can also access social grants, which was initially not in the Refugee Act 130 of 1998 but it was a case that was actually brought to the courts that then created the judicial precedence that recognises refugee access to social support grants.'* In facilitating for forced migrants inclusion and social protection in South Africa, the Lawyers for Human Rights also offer migrants free legal assistance through their four legal clinics in Durban, Johannesburg, Pretoria and Mussina. The interviews also revealed how the organisation continuously engages with the United Nations High

Commissioner for Refugees to bring about social awareness on the numerous issues confronting forced migrants in South Africa.

7.3.4 Challenges

The civil society in South Africa has made numerous attempts towards facilitating for forced migrant groups social inclusion, cohesion, social protection and the realisation of the Refugee Act 130 of 1998 tenets in the country. However, the study interviews also indicated that there are several challenges impeding such efforts. Congolese forced migrants gave sharp criticisms on how civil society in South Africa was falling behind in the fulfilment of their humanitarian mandates. Arguments were that the civil society in South Africa was at times not doing enough to facilitate for their social inclusion and cohesion as compared to other similar organisations in other African countries within the region. Some participants were rhetorically asking the researcher how such big organisations such as the Red Cross cannot be seen to be doing much in the country despite being very proactive in countries such as the Democratic Republic of Congo:

> *'The Red Cross in DRC is a big organisation that you see assisting forced migrants from the time that you are bone in a camp until you are going to school. But here in South Africa, I have never seen their offices.'*

> *'The civil society does not even care about forced migrants, it`s only when there is this issue of xenophobia that's when you see them rising but after that you do not see them. They do not say anything about forced migrants in South Africa, we do not get any assistance from any civil society organisation.'*

Other scholars however attribute the above mentioned inconsistencies to jurisdictional issues arguing that because South Africa has a free settlement refugee system, forced migrant rights are therefore enshrined in the Constitution. This inadvertently makes "the government (rather than the 'international community' or non-governmental organisations) sorely responsible for the social protection of forced migrants in the country" (Makhema, 2009: p.23). In other African states with a refugee camp policy such as Botswana, a different situation obtains with the government assuming zero to minimum responsibility over the forced migrants` welfare in the country. In such countries, faith based organisations, international institutions and other

philanthropic establishments then fully assume the responsibility over forced migrants` social welfare and protection (Abdi, 2005).

Therefore the bureaucratic arrangement in South Africa between the government and civil society, disadvantages forced migrants and exposes them to competition and hostilities in the form of resource monopolisations and primary cultural forms of exclusion (Sen, 2000: p.21). This study therefore identified how as a consequence, Congolese forced migrants throughout the interviews predominantly expressed their discontent with the non-governmental organisations in South Africa. Participants complained of not receiving any tangible support or assistance from these civil society organisations. One participant registered his discontent with the civil society organisations in South Africa and rhetorically asked:

> *'Why are forced migrants not under the responsibility of the UNHCR, because when I was in Uganda I could see the difference, I could see the way forced migrants were protected by the UNHCR…'*

7.4 THE STATE AND NGO PARTNERSHIP: POLICY IMPLEMENTATION

7.4.1 Integration and Collaboration

According to Rosenblum and Post (2002: p.410), civil society has been described as both "autonomous to the state as well as being dependent on the state". In certain instances, civil society often operates independent of the state and against the state. This is mostly so due to how such social movements often encourage groups to convert their disputes into a sense of shared injustice, thereby inspiring a collective response (Chambers and Kopstein, 2006; Benequista, and Gaventa, 2011 cited in Khan et al, 2015: p.59). In examining the working relationship between the government and non-governmental organisations, this study was attempting to establish the existing efforts and level of cordiality between the two in the implementation of refugee policy. Such an analysis was also done in recognition of the significance of non-governmental organisations in the global fight against prejudice, inequity and social exclusion (Harbeson et al, 1994).

Within the literature review, the examined studies focusing on the forced migrants in South Africa, the Refugee Act 130 of 1998 and those centering on the concept of social exclusion (Amisi, 2005; Adato, 2006; Landau, 2006; Manicom and Mullagee, 2010; Landau, 2010; Sibanda et al, 2012), do not discuss such within a comparative analytical framework. A comparative analytical framework, as contained in this study, particularly examines the role of the state as well as the non-governmental organisations (civil society) in alleviating forced migrant groups deprivations.

The interviews revealed how the partnership civil society organisations have with the government in precluding forced migrants` social exclusion and associated deprivations is mostly a collaborative one (Chambers and Kopstein, 2006: p.364). Other researchers such as Maier et al (2008 cited in Khan et al, 2015: p.45), also identify a multi-sectorial approach encompassing both the government and civil society (integration and collaborations) as an effective mode of intervention against social exclusion. Such a collaboration was best exemplified by the Department of Sport and Recreation`s donation of trophies towards some of the aforementioned social cohesion sporting activities hosted by the civil society in Pietermaritzburg. To foster information sharing, a participant from a faith based organisation mentioned how they often invite government department representatives to the community workshops that they host. This was important in reducing the communication gap between the government and the forced migrants. In the long run this also creates and maintains a channel of communication between the government and Congolese forced migrants in the country.

The above mentioned channels of communication, are identified by this study as fundamentally essential in whistle blowing against unruly practices, institutional biases and closure within areas of public service, which are sometimes effected without the knowledge of policy makers (Lukes, 1974; Fraser, 1989; Kabeer, 2000: p.21). The prevalence of exploitive structural nodes (Galtung, 1969; 1971; 1990 cited by Barnett, 2008: p.78; Peberdy and Majodina 2000 cited in Landau, 2006: p.319; Amit, 2012: p.7), can thus be deterred through the establishment of the said channels of communication between forced migrants

and government officials. In reference to such workshops done with the support of government, a civil society representative said:

> *'We are in close relations with government, the Department of Social Development, the SAPS, Department of Sport and Recreation, Department of Health, DHA, Department of Education. Officials are invited from these government departments during workshops. The relations we have as civil society with these people is opening up doors whereby key information is shared and challenges can be identified and then people can be aware of what is going on. So we invite these departments so that if say a refugee from DRC has got an issue we see in which department it fits. So we are seeing that our teaming up with all these is helping a lot because we cannot answer for them but when they are there, they can answer for themselves.'*

In rallying community attitudes against inequities, deprivations and social exclusion while at the same time facilitating social cohesion and some level of integration (Benequista, and Gaventa, 2011 cited in Khan et al, 2015: p.59), civil society organisations were seen to be quite proactive in the area of study. In keeping with what Chambers and Kopstein (2006: p.364), term as being "in dialogue with the state", the interviews revealed how civil society organisations were also engaged in facilitating communication between the forced migrant groups and local government authorities. Studies carried out in South Africa have shown how the implementation of the Refugee Act 130 of 1998 in South Africa, is sometimes stifled by a lack of awareness on forced migrant rights by respective municipalities or local governments (Palmary, 2003; Sibanda, 2012).

The forced migrant social protections municipalities are mandated to provide in South Africa are also modelled on the premise that respective local governments recognise forced migrants` constitutional rights. These entitlements include but are not confined to trading licenses, municipal trading sites, low income accommodation and so forth (Amisi and Ballard, 2005). Due to the Congolese forced migrants presence within the informal sector, their social contact with the municipal law enforcement authorities is extremely high (Onuoha, 2006). During the interviews, the Congolese forced migrants representative group mentioned how they often make efforts to ensure that refugee rights are respected and observed within areas of commerce. This was done through continuous engagements with

the local government authorities. Such engagements were done through the councilors or the office of the mayor whenever the opportunity presented itself:

> *'Recently we have approached the mayor of Msunduzi municipality to address our problems because there was a talk that had been organised to foster integration between local communities and forced migrants. So we said this is a good opportunity for us to talk about the problems faced by forced migrants and the Mayor promised us to address our problems to the National Executive Committee to see in which way they could help us. So we are still waiting for the outcome and we hope that there will be something that can help forced migrants but up until now, this is the situation.'*

> *'We even do have meetings with the councilors and they tell us that we invite forced migrants to come and be part and parcel of the communities, so that they come and air out their views, the challenges they are facing in the communities, so that the counsellors in the area would also do everything in their powers to make sure that there is peace. So to me that shows that they are accommodative, they are saying we are one family let us see how we can live together in peace so there is a culture of tolerance and where there is tolerance there is inclusion.'*

7.4.2 Autonomy and Opposition to the State: Conflictive Partnerships

Due to how some of the rights and entitlements advocated for by social movements (civil society organisations), may not be obtained through engagement with the government, relations between the two sectors at times become strained (Benequista, and Gaventa, 2011 cited in Khan et al, 2015: p.59). Areas of contention that challenge the cordiality of their working relationship can thus be attributed to a divergence in ideals. As mentioned earlier in the study, the state has to balance between having a liberal refugee policy framework and safeguarding the national interests with regards to resident foreign nationals (Kavuro, 2015). The civil society`s role however, is to curb the excesses of the state as it attempts to introduce restrictive measures on both the forced and voluntary migrants in the country. Therefore, regularly the civil society has to often contradict the state in its fight against exclusionary policies and structural nodes conveyed through the state apparatus (Galtung, 1969; Murphy, 1988; Gijsbers and Vrooman, 2008).

Several studies carried out on forced migrant groups in South Africa have criticised the government for facilitating closure and exclusion by either partially or inadequately implementing the refugee policy codifications (Amisi and Ballard, 2005; Landau, 2006; Polzer, 2007; 2008; Vearey, 2008; Landau et al., 2005 cited in Rugunanan, 2011: p.709; Namukaso, 2015). In attempting to address such limitations on behalf of the forced migrant groups, civil society representatives complained that they are often stomped out by the bureaucracy of the government. A representative from the civil society mentioned how they are always at loggerheads and thus often perceived as the enemy by government:

'...we have recommendations and support to give but at times it becomes hard to engage and have meaningful discussions that can lead to solutions.'

The interviews also revealed that the civil society is only engaged by government on issues of policy making, as stakeholders at the preliminary consultation levels. However, their input was barely regarded as often times the government would pass policies regardless of the misgivings from civil society. As a consequence, civil society groups complained how they are often left with no option but to proceed by way of litigation against such legislations. This inadvertently pits the civil society against the government, further complicating relations between the two sectors. Such conflictive relations are reflective of Chambers and Kopstein`s (2006; p.364) submissions on how the relationship of civil society towards the state can assume numerous forms with one of them being 'autonomy and opposition'. Other scholars such as Rosenblum, and Post (2002: p.410), concur and argue that civil society can act "as a bulwark towards government." One of the participants representing the civil society said that:

'Relations are strained, but where we can we try to get involved on an advocacy level…This is why now civil society has been painted as using the judiciary to achieve their goals but that is because we are left with no other alternative but to approach the courts.'

From the interviews carried out with the association representing Congolese forced migrant groups in Pietermaritzburg, the relations between them (as part of the civil society) and the state were not cordial. Through grassroots unions (such as the Congolese Refugees Association), Khan et al (2015) argue that vulnerable social groups can lobby government to

recognise their interests when confronted with inequity. Grassroots associations also represent what researchers such as Parkin (1974), refer to as a form of 'solidarism' (a united response by an excluded group to closure and social exclusion). However, achieving progress and equality has been a significant challenge for Congolese forced migrant groups in South Africa. Interview participants representing such associations complained that they were failing to effect any paradigm shifts in pursuit of integration and a host of other legal rights for forced migrants.

Participants from the Congolese Refugees Association complained that the government does not make any attempts to address the many challenges affecting their membership. Despite continuously engaging the government representatives, such as the Members of the Executive Council (MEC), very little progress had been made in resolving the deprivations facing forced migrant groups. Other studies carried out on such community based organisations in Zimbabwe and Rwanda have shown that grassroots associations are marginalised from exercising their mandates due to certain top-down power hierarchies (Minoia, 2012 cited in Khan et al, 2015: p.58). The partnerships the forced migrant associations were attempting to forge with government, were consequently failing to facilitate for the social inclusion of their members in the country. One participant from the association representing Congolese forced migrants said that:

> *'...the government is not ready to help us because they do not want to hear the challenges of forced migrants. Even if they know these challenges, they do not do anything to help forced migrants integrate into the local communities'.*

Reasons for how there are challenges in the establishment of a working relationship between forced migrant representative associations and the state are numerous. However, the principal reason for such challenges has to do with the ambiguity in the Refugee Act 130 of 1998 on how channels of communication between forced migrants and the government would be established. Although the duty of civil society is partly to engage the government in dialogue on behalf of those whom it represents (Chambers and Kopstein, 2006: p.364), this had however not been the case for the interviewed associations. During the interviews, this sentiment was echoed by a representative of the Congolese Refugees Association, '*forced*

migrants know they have such rights but probably the problem is they do not know where they can address their challenges.' Congolese forced migrants therefore have no official channel to contest any constraints impeding the realisation of their rights and entitlements as articulated in the Refugee Act 130 of 1998.

Such a void in communication has inadvertently proliferated the many challenges confronting Congolese forced migrants in South Africa ranging from poverty, closure, social exclusion and so forth (Palmary, 2003; Bahamjee and Klaaren, 2004; Vearey and Richter, 2008; Crush et al, 2013). In eliminating on the nature of their challenges in engaging the government towards a path of dialogue, a participant representing the Congolese Refugee Association said:

> *'We always try to be in touch with the officials, but nothing has come up from them. So briefly, there is no channel of communication between forced migrants and officials in government. But we would like in future if the government can create such channels where government and forced migrants can come together and solve the problems facing forced migrants.'*

7.5 CONCLUSION

The Chapter contained the discussion and analysis of findings from the face to face in-depth interviews carried out with the civil society dealing with forced migrant issues in the area of case study. The Chapter therefore presented an examination of the nature of partnership between the government of South Africa and the civil society organisations in the aversion of social exclusion amongst forced migrant groups. The Chapter identified how the nature of the working relationship between the two sectors is not binary but rather multi-dimensional (collaborative as well as conflictive). The contribution that the civil society has made towards the integration of forced migrant groups within South African communities has been highlighted with the challenges impeding these also having been underscored. Such roles can be encapsulated as consisting of mediatory functions, advocacy, engagement, sensitisation and so forth.

Furthermore, in the examination of how the cumulative risks confronting forced migrant groups in South Africa have been addressed, the Chapter looked at civil society`s rapport with the Congolese forced migrant communities. The role of government in the obviation of closure, biases and exclusion against forced migrant groups has also been discussed with specific reference to the challenges confronting state assisted integration models within South Africa. The functions of both government and civil society in the aversion of social exclusion and the provisioning of social protection and associated rights to forced migrants, are all investigated in the Chapter so as to illuminate on the limitations within the implementation of the Refugee Act 130 of 1998.

CHAPTER 8: SUMMARY CONCLUSION AND RECOMMENDATIONS

8.1 INTRODUCTION

This Chapter aims to present the concluding remarks and final analysis of the key points canvassed within the dissertation. The Chapter also provides recommendations in addressing some of the challenges impeding the successful implementation of the Refugee Act 130 of 1998 as identified through Chapter six and Chapter seven in the thesis. These recommendations include issues of stakeholder collaborative partnerships, the amendment of the refugee appeal system as well as the availing of better enactment modalities towards the social protection of forced migrants in South Africa. In addition, the Chapter also suggests potential areas for research in further examining the phenomenon of social exclusion amongst forced migrant groups. In providing a synopsis and conclusion of the thesis, the research questions are individually presented alongside a summary of the main arguments as initially discussed during data presentation.

8.2 SUMMARY AND CONCLUSION

This study was mainly aimed at examining social exclusion amongst forced migrant groups in South Africa. This is in cognisance of the limited body of literature available on the subject area in the developing world. Such a focus was motivated by the International Institute of Labour Studies (Geneva) recognition of social exclusion as a cause for concern and the need to regard issues of closure and exclusion as principal facets for examination in governance. The study was therefore justified in its focus due to how although constituting an important human capital in South Africa, forced migrants are nevertheless ostracised and socially disaffiliated.

Forced migrants` social disaffiliation, was identified by the study as owing to exclusion perpetuated through forms of closure, institutional bias, unruly practices and so forth. Other scholars concur and argue that social exclusion is intertwined with the central aspects of deprivation (it is analogous with prejudiced social relations, poverty and other risks) (De Haan, 1999). The study therefore conceptualised and examined social exclusion as a negative

externality emanating from the limitations within the enactment of refugee policy in South Africa. In the same vein, social exclusion was also identified as an impediment to forced migrants` ability to access the legal rights enshrined within the Refugee Act 130 of 1998. Social networks and social capital, were therefore not only examined as the invariable assets facilitating access to civil rights but also as the social safety nets, safeguarding against vulnerability and exclusion.

Peculiar to this study was the issue of how forced migrants` social exclusion within developing states such as South Africa is identified as manifesting itself differently from social exclusion in the first world (Silver, 1994 cited in Khan, 2015: p.4). A central point in the atypical physiognomy of social exclusion argument, was that African states, by virtue of being underdeveloped have less capacity to provide forced migrants with the same social protections as accorded in the first world states. This adversely exposes vulnerable groups to poverty, exclusion and a multiplication of other risks. The study therefore carried out a comparative examination of the contending models in the social exclusion discourse and these included the RED, SID and MUD models. After an analysis of the three, the redistributive template (RED) was identified as most applicable within the developing states.

In conceptualising Congolese forced migrants` social exclusion in the South African context, the study was informed by two conceptual frameworks which included the capability approach and that of social capital. Thereafter, through a comparison and review of literature, the social exclusion of Congolese forced migrants in South Africa was analysed as a multi-dimensional phenomenon manifest through both primary cultural and structural cogency's. Social exclusion was contrasted in the study with forced migrants` relative access to the various forms of capital (symbolic, cultural and social). Based on this analysis the main rallying points of the thesis were that there is a strong nexus between a group`s social exclusion and its inability to tap into such social capital networks. In examining the challenges outsider groups face in harnessing such a resource, the study looked at bridging as well as bonding forms of social capital. Although both approaches were plausible, bridging

forms of capital were identified in the study as the most effective means through which forced migrants can evade not only social exclusion but other forms of deprivations.

In ascertaining the prevalence of closure and exclusion amongst Congolese forced migrants, the study measured their access to key social sectors such as the public service offices, where legal documentation and shelter is provisioned. Additionally, the study also measured forced migrant groups` access to labour markets (employment) as well as the basic health and education sectors. The legal basis for forced migrants` entitlements to such rights not only in South Africa but globally, was examined through an analysis of International conventions and humanitarian laws. These included the Universal Declaration of Human Rights, the 1951 Convention Relating to the Status of Refugees as well as its 1967 Protocol. Regionally, the study also looked at forced migrant rights in the African context by examining the OAU Convention (1969) Governing the Specific Aspects of Refugee Problems in Africa. In examining the aforementioned legislative frameworks in conjunction with South Africa`s Refugee Act 130 of 1998, the study was attempting to determine their effectiveness and relevance in the forced migrants` social exclusion discourse.

Building on the hypothesis that an inability to access the rights enshrined within refugee policy, was a direct correlation of forced migrants` social exclusion, the study examined Congolese forced migrants` awareness of their legal rights. The existing challenges inhibiting forced migrants familiarisation with refugee policy and their associated legal rights in South Africa were identified and discussed in the study. The study also looked at other factors obstructing the successful conversion of forced migrants` legal rights into tangible benefits. Such fundamental benefits enshrined in the Refugee Act 130 of 1998 included rights to legal documentation, shelter, employment as well as basic health and education. In examining the nexus between the limitations in policy implementation and social exclusion, numerous issues were discussed in the study. The data collected revealed that there is a strong correlation between social exclusion and several other vulnerabilities (spontaneous integration, dialectical barriers, polarisation and so forth), arising from the limitations in policy implementation.

The study also examined the specific role of the South African government and that of civil society within the forced migrants` social exclusion discourse. Locating the two sectors within the South African social exclusion inquiry was essential in consolidating the study`s originality. In examining a multi-sectoral approach towards the obviation of forced migrants` social exclusion in the country, the study discussed issues of state assisted integration and the existing challenges to such. The role of civil society in the establishment of bridging forms of capital, solidarism and social cohesion was equally discussed. Partnerships between the two sectors in successfully implementing the refugee policy in South Africa and the potential impediments to such a partnership were also discussed in the study. The data that was generated in the study was collectively essential in the field of policy formulation and implementation at state as well as local government level. The collected data was also intended to be of use to the civil society particularly in the preparation of baselines and project planning as well as program evaluations for non-profit organisations. The data was also intended to be instructional on the possible strategies the two sectors (state and civil society), could adopt in facilitating for forced migrants` integration and social cohesion within South Africa.

In examining social exclusion within South Africa and its nexus to refugee policy framework, the rallying argument of this study was centered upon its appreciation of the Refugee Act 130 of 1998 as a progressive policy framework. This was in recognition of how the policy document duly observes the inclusionary tenets encapsulated in the SID and RED models. The liberal refugee policy framework accords forced migrants` in South Africa entitlements to healthcare, education, employment and so forth. The study therefore argued that Congolese forced migrants` inability to convert these inclusive tenets into effective protections in South Africa has inadvertently exposed them to exclusion and a number of associated risks such as poverty, exclusion, vulnerability and so forth. In the context of this study, such deprivations were thus analysed as being perpetuated by the limitations in fully implementing the Refugee Act 130 of 1998. The study utilised a central theory to encapsulate the multi-dimensionality of Congolese forced migrants` social exclusion in South Africa (derivative and principal forms of exclusion). Through the theory of monopolisation and exclusion, the study therefore

constructed arguments in response to the research questions. Such arguments included the existence of both principal and derivative forms of exclusion and their nexus to social inequalities, prejudice and exclusion. The theory of monopolisation and exclusion was thus used to address the following research questions:

1. To what extent do Congolese refugees in Pietermaritzburg feel and experience social exclusion?
2. To what degree are Congolese refugees aware of their legally enshrined rights?
3. To what extent are Congolese refugees in Pietermaritzburg able to access their legally enshrined rights? Which rights are they able to access and what do they identify as the barriers to accessing all other rights?
4. To what extent is there a relationship between refugee's experiences of social exclusion and limitations in the full implementation of the Refugee Act 130 of 1998
5. What is the nature and extent of the working relationship between the Government and Civil society (Faith based Organisations and NGOs), in implementing Act 130 of 1998 and the provision of support to forced refugees?

In providing a synopsis of the study, this Chapter draws on the major themes emerging from the findings on each research question as highlighted above and presents a final analysis. Each question is thus discussed and analysed in line with data collected through the face to face in-depth interviews, life history interviews and focus group discussions. Furthermore, a comparison and review of literature as contained in Chapter four is simultaneously incorporated against the research questions so as to provide a suitable final analysis for the thesis.

8.2.1 Research Question One

To what extent do Congolese forced migrants in Pietermaritzburg feel and experience social exclusion?

In analysing the issue of exclusion, the study was aimed at ascertaining the level social penetration Congolese forced migrants enjoy within select key sectors. Access to such sectors

was conceptualised by the study as not being only analogous with the upkeep of their human dignity but also basic human entitlements. Referred to by Smith (1996 cited in Sen, 2000: p.7) and Sen (1983) as 'necessaries' and social 'functioning's', these included (in the context of this study) access to legal documentation, employment, healthcare, education and other rights in the Refugee Act 130 of 1998. For that reason, on being asked whether they experienced any challenges due to exclusion in accessing the said 'necessaries' and performing key 'functioning's', the Congolese forced migrants provided a lot of insight. Such input was necessary in developing a clear picture of the nature and form of social exclusion they were subjectively experiencing in South Africa. Scholars such as Townsend (1979 cited in Levitas, 2004: p. 44) equally support the contextual nature of both the activities and living patterns constituting social exclusion. The emerging themes from the conducted interviews therefore affirmed social exclusion as a phenomenon being experienced by Congolese forced migrants in South Africa.

During the interviews the researcher identified how the term social exclusion was not readily comprehended by the Congolese forced migrants. However, upon clarification on the meaning of the terminology, a lot of insightful input was derived from the participants. In answering questions on whether or not they were aware of their legal rights, the responses shed a lot of light on forced migrants` experience of social exclusion in South Africa. The principal emerging theme was that despite them being aware of their legal rights, the biggest impediment to their realisation was the issue of social exclusion experienced within the public service. Such sectors where they felt they experienced social exclusion included but were not confined to public service institutions, communal areas and socio-economic zones.

Within the public service for instance, social exclusion was mainly experienced when forced migrants were subjected to different terms of service from South African citizens. Other researchers such as Saunders (2007) equally argue that one of the primary forms within which exclusion exists is through service exclusion in the public service. As a form of closure and unruly practice (Lukes, 1974; Fraser, 1989; Kabeer, 2000: p.21; Tilly, 2000 cited in Mosse, 2007: p.18), this conduct was made easier by how forced migrant children's birth certificates

and refugee ID`s are all different from South African citizens, making them more prone and vulnerable to prejudice. The dual system of infamously and distinctly coding refugee files as '777' at the social welfare offices also impeded their access to services as social workers were reluctant to attend to such files, preferring to serve citizens instead.

Information gathered from the interviews indicated that social exclusion was also experienced within the residential areas where the Congolese forced migrants reside. The interviews revealed how forced migrants intentionally avoided living amongst South Africans in the high density areas where discrimination, risk of victimisation and exclusion were reportedly higher. Due to how exclusion can assume different degrees ranging from relative to absolute forms of closure, forced migrants living with South Africans in residential town buildings mainly experienced relative forms of regulation (Weber, 1978: p.128; Weber, 1978: p.45; Swartz, 1990: p.480; De Haan, 1999; Khan et al, 2015). The interviews identified unfair conditions of participation for forced migrants sharing accommodation facilities with South African citizens (exclusionary landlords charged them higher rentals than citizens). Other participants also complained of being excluded from integrating within certain communities by unruly councillors and other officials based on them possessing deviant social attributes such as race, ethnicity, language and so forth. Such exclusionary nodes suggest a conceptual continuum extending from unruly practices, biases, monopolisations as well as closure (Luke's, 1974; Fraser, 1989; Kabeer, 2000: p.92; Handmaker and Parsley, 2001; Harris, 2002; Amisi and Ballard, 2005; Bourdieu, 1986 cited in Cederberg, 2012: p.61; Crush et al, 2013).

The language and cultural barriers also made a high level of social contact and integration more challenging between South Africans and Congolese forced migrants. Other researchers examined in Chapter seven equally submit that the existing cultural differences and the inability to converse in vernacular for forced migrants, makes social integration a challenge (Balgopal, 2000: p.213; Davidson et al, 2004; Hebbani, and Peisker, 2012). The participants mostly felt that as a result of the aforementioned differences, they could not fully integrate

into the South African communities as such dissimilarities cumulatively made them more distinguishable and vulnerable to prejudice, exclusion and xenophobia.

Murphy (1986: p.25), argues that social exclusion is mostly limited to material monopolisations as exemplified by property and income generating areas. Similarly, Congolese forced migrants` social exclusion within South African socio-economic zones was identified as a prominent phenomenon during the interviews. There were basically three forms of participation within which forced migrant groups could partake in commerce and these included skilled formal employment, unskilled formal employment as well as informal employment. As mentioned in Chapter six, the interviews revealed how due to institutional biases and closure within South African tertiary institutions, forced migrants fail to attain requisite tertiary qualifications. Challenges in attaining such training therefore restrains their 'capabilities' of participation in the skilled sector and thus largely limiting their upward social mobility (Sen, 2000; Milburn, 2012). Social exclusion was also identified as being experienced within the unskilled labour market due to the unavailability of requisite documentation or the failure by employers to recognise such legal documentation (Section 22 and 24 permits). Mario and Wodon (2001: p.79) also argue that forced migrants may experience exclusion in securing unskilled jobs due to how such jobs usually cannot be accessed without informal family and social networks. Within the informal sector where forced migrants partake in vending, social exclusion was also experienced through turf wars such as the ones in Kwamashu, Nduzuma, Inanda and so forth.

Certain unruly council officials were also declaring the informal business zones within their municipalities as a preserve for South African citizens alone and not forced migrants or the generality of foreigners. In a nutshell, the exclusionary nodes impeding forced migrant groups from accessing all three socio-economic zones were thus observed by this study as constituting both derivative as well as principal forms of exclusion (Saunders et al, 2007; Gijsbers and Vrooman, 2008; Khan et al, 2015).

8.2.2 Research Question Two

To what extent are Congolese forced migrants aware of their legally enshrined rights?

By examining forced migrants cognisance of their legally enshrined rights, the objective of the dissertation was to determine the existing impediments to a successful refugee policy framework implementation. Furthermore in doing so, the study was also attempting to establish the possible obstructions to forced migrant rights access, social protection and social inclusion (Thorat and Sadana, 2009; Makhema, 2009). The focus group discussions and life history interviews with the Congolese forced migrants therefore generated a lot of information. The participants displayed an in-depth appreciation of their legal entitlements not only to education, employment and documentation but a host of other social protections as enshrined in the Refugee Act 130 of 1998 as well as the 1948 Universal Declaration of Human Rights (UN, 1948: p.46, 48, 52, 54). Despite the proactive role of civil society in sensitising forced migrants on their rights, intervening factors also ensure that through informal bonding networks forced migrants are aware of their legal rights (Stouffer, 1960; Lee, 1966; Zolberg et al, 1992; Renaud et al, 2007).

Basing on the data from the interviews, an issue that could easily be misinterpreted as a lack of legal rights awareness amongst Congolese forced migrants was the problem of apathy. Such apathy or fatigue, emanated from the incessantly exclusionary nodes impeding forced migrants access to their legal rights. In addition to this, the unavailability of any means of petition or appeal, in the event that they encountered such impediments often contributed to the apathy. Resultantly, most Congolese forced migrants in South Africa often found themselves withdrawing to the informal employment sector and private medical institutions despite being aware of their legal rights to formal jobs, public healthcare and so forth. Interviewed participants therefore complained that the said apathy, was as a result of fatigue emanating from the sustained frustrations they face in trying to convert their legal rights into benefits. Scholars such as Hyndman and McLean (2006), concur and argue that it is challenging for forced migrants to make claim of their rights under dramatically new and exclusionary conditions within their new countries of refuge.

The interviews also revealed that some forced migrants misinterpreted the Refugee Act 130 of 1998 and thus were not adequately aware of their legal rights. Such misinterpretations emanated from how forced migrants often depended on unreliable, informal social networks to access such information. As a consequence, despite there being no policy on the rights to low income housing for aliens in the country, Congolese forced migrants still believed the law entitles them to the Reconstruction and Development Program (RDP) houses (McDonald, 1998: p.450). In addition to this, there was also the misguided notion amongst the Congolese forced migrants that the Section 22 and Section 24 permits did not entitle them to seek work in South Africa. Also contributing to the misinterpretations was the issue of language barriers, such dialectical barriers effectively inhibited Congolese forced migrants from comprehending their legal rights and entitlements as contained in the Refugee Act 130 of 1998.

Due to the South African governments shortcomings, the above mentioned dialectical challenges impeding the French, Lingala, and Swahili speaking forced migrants in interpreting their legal rights constitutes an unfair 'condition of participation' (Weber, 1978: p.128; Weber, 1978: p.45; Swartz, 1990: p.480; De Haan, 1999; Khan et al, 2015). From the findings, the forced migrants complained how public service information on legal aspects relating to their civil rights in South Africa was often disseminated in local languages, thus making it inaccessible to them. Findings from studies in Gauteng and other provinces equally support this claim and assert that there is a lack of awareness regarding education rights amongst forced migrants in South Africa (Sibanda et al, 2012). As mentioned in Chapter six, this study identifies the government`s inability to disseminate Human Rights Education (HRE) in a language forced migrants are conversant with, as not only an 'unfair condition of participation' but also a relative form of regulation or closure (Murphy, 1988; De Haan, 1999; Balgopal, 2000: p.230; Davidson et al, 2004; Khan et al, 2015).

8.2.3 Research Question Three

To what extent are Congolese forced migrants in Pietermaritzburg able to access their legally enshrined rights? Which rights are they able to access and what do they identify as the barriers to accessing all other rights?

As aforementioned in the previous Chapters, other authorities argue that social exclusion is a socially constructed concept and that ideas on how it manifests itself are thus subjective (Silver, 1994 cited in Khan, 2015: p.4). In that regard, as a way of developing an understanding of social exclusion relative to the South African forced migrants` context, this study examined the factors impeding their access to a network of legal rights and entitlements. In analysing these obstructions, the study was attempting to illuminate on their nexus to Congolese forced migrants` social exclusion. Exploring such a nexus was essential due to how the study identifies social exclusion as a consequence arising out of a palpable denial of legal rights. These rights include goods and services (necessaries) as well as the ability to participate in the normal activities (functionings), in a society (Sen, 1983; Duffy, 1995; Smith, 1996 cited in Sen, 2000: p.7; Levitas et al, 2007; Sen, 2000). From an analysis of findings, the study therefore discovered that although to a lesser extent, forced migrants had access to some legal rights, this was not however absolute. Such an access was not only relative but also characterised by some overarching barriers, inhibiting forced migrants` full benefit from a range of legal rights.

The interviews revealed that Congolese forced migrants were facing serious challenges from the Department of Home Affairs in attaining and renewing their asylum seeker permits. Furthermore, upon attainment of an asylum seeker permit (Section 22 permit) it was difficult to then obtain refugee status (Section 24 permits). Other studies carried out in South Africa also discovered that forced migrants face serious problems in attaining legal documents (Amisi and Ballard, 2005; Landau et al., 2005 cited in Rugunanan, 2011: p.709; Namukaso, 2015). From the findings in the study, such delays in issuing documentation were emanating from complications within the finalisation of applications at the Department of Home affairs. This was further compounded by problems within the standing committee for refugee affairs

and the refugee appeal board. The forced migrants also felt that such issues were as a result of exclusionary bottlenecks in the system, limiting the number of forced migrants who advance from Section 22, Section 24 up until Section 27 permits (naturalisation). As a point of originality, this study went on to further identify dialectical barriers in communicating with the Refugee Status Determination Officers (RSDOs) as an additional obstacle to forced migrants` access to legal documentation.

Other issues impeding Congolese forced migrants from accessing their legal rights as noted through the interviews, arose as an accumulation of risks originating from an unavailability of legal documents. Furthermore, in the event that such legal documents were available, a complete failure to recognise them by public service staff was another issue impeding forced migrants` access to social services. It is in that regard that the study identified both exclusionary institutional arrangements as well as primary-cultural barriers as the principal impediments to Congolese forced migrants` access to social services (Fraser, 1997 cited in Kabeer, 2000: p.84; Gijsbers and Vrooman, 2008).

Public service employees at the Social welfare offices, were also said to be contributing to forced migrants` service exclusion as exemplified by their use of vernacular in communicating and a general reluctance to assist forced migrants. Apart from the unruly conduct of public officials, the study also noted a double standard in the implementation of policy within public service institutions as an impediment to social service access (Kabeer, 2000). As an example, this was mostly experienced through the recognition of a legal document by the South African Police Services and a failure to recognise the same document by employees at public healthcare institutions. Forced migrants also complained that in attempting to renew their refugee I.D books after the four year validity period, the process takes years with the document being issued out sometimes when it has already expired. During the lengthy waiting period for permit renewals, the forced migrants are often left vulnerable and excluded, unable to access essential social services such as healthcare, South African social security agencies (SASSA), education and so forth.

Forced migrants also identified the access to higher and tertiary learning institutions as another area where they felt they did not have access in South Africa. Although the study recognises that Regulation 27 of the Refugee Act 130 of 1998 only proclaims refugee rights to primary education, access to higher education is nevertheless an essential part of forced migrants 'capabilities'. Access to tertiary education is also an important aspect of ensuring forced migrants` employability, social mobility and is enshrined in the 1951 Convention (UNHCR, 1959: p.24; Milburn, 2012). It is in light of such issues that this study accommodated the interview responses from forced migrants who cited their exclusion from this sector as an injustice. Closure from this sector was effected through South African universities refusal to recognise Section 22 and Section 24 permits as identification documents. Furthermore, a failure to access higher education was compounded by forced migrant groups` inability to access student funding such as the National Student Financial Aid Scheme (NSFAS). Such unfair 'conditions of participation' perpetuated through exclusionary structural arrangements within the education system have thus rendered the tertiary education sector inaccessible to forced migrants (Weber, 1978: p.45; Swartz, 1990: p.480; De Haan, 1999; Peberdy and Majodina 2000 cited in Landau, 2006: p.319; Amit, 2012: p.7; Khan et al, 2015).

Another legal right forced migrants felt they could not convert into a tangible benefit was the right to employment which was invariably linked to their inability to access training institutions such as universities and polytechnics. The interviews revealed that failure in accessing training institutions negatively affected their capacity to secure skilled forms of employment. In the event that forced migrants had foreign attained qualifications, inadequate monetary resources to send them to SAQA for accreditation also disqualified them from accessing skilled forms of work. As revealed by the focus group discussions, the right to employment was also impeded by some employers` refusal to recognise the validity and legitimacy of refugee legal documentation. Other studies examined in Chapter six attribute such employer attitudes to a basic unacquaintedness with the documents (Section 22, Section 24 permits) and the associated refugee entitlements (Landau et al., 2005: p.22; Amisi and Ballard, 2005; Rulashe, 2009; Mazzocchini, 2008 cited in Kavuro, 2015: p.248). The

interviews also revealed how the rate at which forced migrants legal documents are renewed (every four months for Section 22 Permits), makes employers reluctant to contractually engage them on secure tenure. The frequency at which legal documents are renewed implies that contracted forced migrants spend considerable periods away from paid work, making them less appealing to employers. Within the informal sector, forced migrants also complained of facing exclusion through turf wars and other forms of closure. Such forms of closure within socio-economic sectors, are referred to in the theory of monopolisation and exclusion as 'material monopolisations' (Murphy, 1986: p.25).

As aforementioned in Chapter four however, Murphy (1986) acknowledges social exclusion from all aspects of life as uncommonly existent but rather more palpable in the form of material monopolisations such as property and income generating areas (Murphy, 1986: p.25). It is in that regard that the Congolese forced migrants equally admitted during the interviews, to having access to certain rights and entitlements as enshrined in the Refugee Act 130 of 1998. Such rights included access to primary education, which was uninhibited with participants mentioning how their children were not facing any structural impediments from such institutions. Constraints in this sector only came in the form of primary cultural exclusion and prejudice from fellow learners who would often refer to forced migrant children using derogatory names (De Haan, 1999: p.9; Hungwe, 2013; Kilgore, 2014). Congolese forced migrants also said that they had full access to the South African social security agencies (SASSA). The interviews revealed that as long as one had their refugee status papers (Section 24 permit), they had relatively uninhibited access to social grants for their South African born children.

8.2.4 Research Question Four

To what extent is there a relationship between forced migrant's experiences of social exclusion and limitations in the full implementation of the Refugee Act 130 of 1998?

This study identifies a nexus between the limitations in sensitising forced migrants of their legal entitlements (Human Rights Education) and their ensuing state of exclusion. The level of knowledge Congolese forced migrants possess on their rights, is analogous with their capacity to convert the same rights into palpable benefits. Forced migrants cognisance of their legal rights also empowers them to evade the three notable dimensions of social exclusion which are namely disengagement, service exclusion and economic exclusion (Saunders, 2007). The issue of Human Rights Education should be targeted not only at forced migrants but also the public service officials whose knowledge in the area was found lacking. Scholars such as Mazzocchini, (2008 cited in Kavuro, 2015: p.248) concur and argue that in South Africa, there is a lack of knowledge on such rights not only amongst the forced migrants but also within government. Such a lack of knowledge then leads to the social exclusion of forced migrants from offices of public service. Social exclusion amongst Congolese forced migrants has mostly manifested itself through the denial of legal rights by public service officials as well as the inconsistencies in the implementation of policy within public offices (Kabeer, 2000; Sibanda et al 2012, Mazzocchini, 2008 cited in Kavuro, 2015: p.248). This study noted how the civil society was then making considerable efforts towards mitigating against such inconsistencies in policy enactment.

In the same vein, although HRE was important in sensitising communities on forced migrants` legal rights in South Africa, this was not enough on its own. The study further identified that stakeholders needed to be educated on the significance of forced migrants` legal documents and the accompanying rights. Failure by line ministries to comprehend what the Section 22 and Section 24 permits represented, often meant that forced migrants were socially excluded from accessing a host of services. Despite Section 22 and Section 24 permits entitling forced migrants to work as enshrined in Regulation 27 (F) of the Refugee Act 130 of 1998 and the 1951 Convention (UNHCR, 1959: p.24), employers were not

recognising these permits. The interviews revealed how similar problems were being encountered by the forced migrants with the police services, banking sector as well as some institutions of higher learning. Arrests made after the unavailability or suspicion of counterfit refugee documentation often resulted in forced migrants being forced to pay bribes by unruly police officials. There was also the existence of dual systems in public offices, with forced migrants being subjected to different terms of service (conditions of participation) from South Africans. Other researchers examined in the literature review concur and argue that there is poor coordination on refugee policy implementation in South Africa (Sibanda et al, 2012: p.37). This study argues that this has inadvertently left the forced migrant groups in the country vulnerable and excluded from mainstream society.

This study also identified how there is no official channel through which forced migrants in South Africa can petition any inhibitions to accessing their legal rights as enshrined in the Refugee Act 130 of 1998. Such limitations in fully implementing refugee policy and the subsequent frustrations and apathy amongst forced migrants, are thus viewed by this study as being closely related to forced migrants` social exclusion. Forced migrant groups apathy has inadvertently resulted in their state of social invincibility whereby they no longer pursue some of their legal entitlements. Conditions of invincibility are also recognised by other scholars as common amongst vulnerable populations as they are externally induced through structurally exploitive and prejudicial systems of inequity (Demi and Warren, 1995; Orb et al, 2001; Bahamjee and Klaaren, 2004; Fritz, 2008; Nyaoro, 2010; Crush et al, 2013). As an example of the disaffiliation emanating from such structural arrangements, the interviews discovered that after failing to obtain legal documentation forced migrants end up clandestinely remaining in the country without legal status (Peberdy and Majodina 2000 cited in Landau, 2006: p.319; Amit, 2012). This situation adversely creates a vulnerable pool of undocumented people who are not in the system and are thus socially excluded from partaking in the normal functions within society (education, employment and so forth).

Another limitation in the implementation of the Refugee Act 130 of 1998 is in the form of dialectical barriers. This study discovered that the bulk of Congolese forced migrants are not

able to speak or write English and can only communicate in French, Lingala or Swahili. Such language barriers then exclude non-English or vernacular speaking forced migrants from making claim of their legal entitlements in South Africa. Additionally, communication, networking, social cohesion and integration become a significant challenge for Congolese forced migrants in South Africa. Other researchers examined in Chapter six, concur and argue that the inability to speak in local languages for forced migrants, makes social integration a challenge (Balgopal, 2000: p.213; Davidson et al, 2004; Hebbani, and Peisker, 2012).

The study also identified that the above mentioned language barriers result in the rejection of most forced migrants` applications for Section 24 permits which inadvertently denies them access to their legal rights and social integration. The fact that the Refugee Act 130 of 1998 and associated Human Rights Education literature is only available in English or vernacular languages, is also a significant limitation that was indicated in the study interviews. This challenge was further compounded by the absence of any government funded language training programs for forced migrants in South Africa. However, such training is offered to forced migrants in other countries such as Germany in a bid to prevent dialectal discrimination and the arising challenges in integrating socially as well as interpreting refugee laws (Huggler, 2016).

Limitations in implementing the Refugee Act 130 of 1998 stipulation of a six month waiting period for Section 22 permits in the adjudication of an asylum claim have also socially excluded forced migrants. The study discovered that the national refugee appeal board only constitutes of three members who are supposed to chair cases for all the provincial appeals in South Africa. The appeal board was said to have sat on average of two times annually despite there being thousands of pending appeal cases to adjudicate on. As a result, during the interviews forced migrants claimed to be sitting on temporary asylum seekers for periods ranging between five and ten years despite a specification in the Refugee Act 130 of 1998 of a six month waiting period. Furthermore, government's closure of the majority of refugee reception offices nationwide, (leaving only four open) has inhibited the ease of renewing Section 22 and Section 24 permits for forced migrants. The study therefore noted that due to

such a relative form of regulation in the enactment of refugee policy, forced migrants remained socially excluded without access to social protection and other rights (Weber, 1978: p.45; Swartz, 1990: p.480; De Haan, 1999; Landau, 2005: p.1112; HRW, 2013 cited in Manicom, 2010: p.176).

Another way in which there is a nexus between limitations in refugee policy implementation and forced migrants` social exclusion is the manner in which the DHA adjudicates claims for Section 24 permits. The interviews revealed how legal status submissions for applicants from the same family are filed separately and thus adjudicated on individually. If the outcome produces two different results for the two claims, this system inadvertently has the tendency of separating families. This practice not only makes social integration a challenge for forced migrants but also contradicts the principle of unity of the family as well as forced migrant children's` rights to protection (UNHCR, 1951: p.10; UNICEF, 1991). Furthermore, forced migrant families' social inclusion within South Africa is further impeded by how Regulation 33 of the Refugee Act 130 of 1998 is disregarded by the DHA. This was being done through the unruly practice of demanding DNA proof of paternity from parents making applications on behalf of their children below the age of 18. In the event that forced migrants cannot afford the costs for DNA tests, the minors end up having their own individual files, placing parents and their children at risk of separation. This study thus identifies all such limitations in refugee policy implementation as contributing to Congolese forced migrants` social exclusion in South Africa.

8.2.5 Research Question Five

What is the nature and extent of the working relationship between the State and Civil society, (Faith based Organisations and Non-governmental organisations) in implementing Refugee Act 130 of 1998 and the provision of support to forced migrants?

In trying to elucidate on the existing limitations in implementing the Refugee Act 130 of 1998 in South Africa, the study examined the nature and extent of the rapport between the state and civil society. Due to how social exclusion is understood as being multi-dimensional in

the study, examining the role of both sectors in its obviation became imperative. Civil society as a sector, was of particular interest to the study due to how non-governmental organisations are globally pivotal in the aversion of prejudice, inequity and social exclusion (Harbeson et al, 1994). The study however discovered that although the nature of the working relationship between the two sectors in South Africa assumes several forms (Chambers and Kopstein, 2006: p.364), it is predominantly conflictive.

From the interviews, the main reason why the relations between the two sectors were mostly conflictive was due to how civil society has often had to petition and litigate against some of the excesses of government (Rosenblum, and Post, 2002). Government's complacency regarding forced migrants` closure and social exclusion (through unsatisfactory policy implementation), can be seen as an example of such excesses that civil society guards against (Amisi and Ballard, 2005; Landau, 2006; Polzer, 2007; Vearey, 2008; Landau et al., 2005 cited in Rugunanan, 2011: p.709; Namukaso, 2015). Representatives from the Lawyers for Human Rights mentioned how in the past they have had to open litigations against the government over numerous issues. Several rights which forced migrants now enjoy such as the South African social security agencies, are not included in the Refugee Act 138 of 1998 but are results of such litigations (Landau, 2005; Nyenti, 2007; Manicom and Mullagee, 2010). Other areas where the civil society is fighting the state include the nationwide closure of refugee reception offices and the denial of the right to family for forced migrants. Such a right to family was being denied through the states promulgation that documented forced migrants could not marry asylum seeker permit holders nor apply for refugee status determination on behalf of their infants.

Through interviewing forced migrants representative groups (Congolese Refugees Association) in Pietermaritzburg, the study identified how this group was also having a difficult time in forging a form of solidarism with the state. This was being inhibited by the non-cooperative approach displayed by government officials which made the relations between the two seem conflictive or divergent. The interviews revealed that despite there being several engagements with the MECs, government does not go on to make any attempts

to address their challenges as forced migrants` representative groups. As mentioned in Chapter seven, the relationship between the state and forced migrant associations is essential in South Africa given the states` constitutional mandates (Tilly, 2000 cited in Mosse, 2007: p.18; Saunders, 2007). Such mandates refer to the facilitation of state assisted integration (through preventing forced migrants` service exclusion, victimisation and so forth), as set aside in the Bill of Rights (Chapter 2, article 9 and 11). This study therefore recognises such a channel of communication as very essential because without it, forced migrants may fail to access their legal rights to integration and social cohesion within South Africa (Davidson et al, 2004; Hyndman and McLean, 2006).

To a lesser extent however, the study also discovered how the working relationship between the state and civil society was in some instances cordial. Several efforts have been carried out by the United Nations (UNHCR) regional office and UN country teams and these activities include:

- Providing legal support for refugees and asylum-seekers in South Africa (through the Lawyers for Human Rights).
- Building the capacity of government institutions, especially the Departments of Home Affairs through the training of RSD officials and so forth.
- Providing information on countries of origin, and offering technical advice and support to Refugee Reception Offices.
- Collaborative work with the relevant authorities to promote the local integration of some refugees in the country.

The interviews with civil society representatives also confirmed that one form their relationship with the state assumed was that of integration and collaboration. As mentioned in the previous Chapter, this was mainly achieved through maintaining close relations with various line ministries. These included the Department of Social Development, SAPS, Department of Sport and Recreation, Department of Health, DHA and the Department of Education. Civil society representatives mentioned how officials were often invited to attend workshops for the purpose of information sharing and support. Government department

official`s presence at such community workshops facilitated an essential channel of communication between the state and Congolese forced migrants in South Africa. This study identifies the importance of such channels of communication in the obviation of structural or distributive deprivations such as unruly practices, institutional biases and closure (Lukes, 1974; Murphy, 1988; Fraser, 1989). The Department of Sport and Recreation`s sponsorship of the social cohesion sporting activities hosted by the civil society in Pietermaritzburg is also an example of another form of collaborative relationship. Other researchers such as Maier et al (2008 cited in Khan et al, 2015: p.45), also identify the importance of such collaborations and refer to them as a 'multi-sectorial approach'.

Through what Chambers and Kopstein (2006: p.364), refer to as being "in dialogue with the state", the interviews also revealed how civil society was also adopting this approach. This was evidenced by the interviewed organisations facilitation of communication between the Congolese forced migrant and local government authorities. The grassroots association representing Congolese forced migrants also adopted this strategy by trying to maintain a level of rapport with local government officials. This was done through engaging not only the councilors but also the Mayor of Msunduzi municipality towards the crafting of solutions to forced migrants` challenges in Pietermaritzburg. Within the same approach of 'being in dialogue', the government through the MEC for safety and liaison also organised workshops in partnership with civil society, that included forced migrants. The interviews revealed how the workshops mainly serve to provide a platform for people to come and discuss community issues concerning them as well as forced migrants. Some councilors, in partnership with Faith based organisations were also said to be proactive in facilitating dialogue and social cohesion of forced migrants within their respective constituencies.

8.2.6 Forced Migrants` Social Integration: Towards Sustainable Panaceas

Examining how human rights, social protection and the dignity of vulnerable groups can be preserved continues to be a prerogative within humanity studies and particularly in Conflict Transformation as a discipline. The need to closely examine and improve the plight of vulnerable populations globally has been necessitated by a marked increase in ethnic

conflicts, religious and hyper nationalism, terrorism and so forth. As a result of such an escalation in both root and proximate factors influencing forced migration in the 21st century, interest on the subject matter has also increased. An increase in coerced forms of migration has simultaneously been accompanied by a multiplication of hazards and heightened vulnerabilities for the displaced. Apart from the conventional risks that have become the center of focus within the bulk of forced migration literature such as poverty, pandemics, harassments and so forth, other unconventional risks have since risen to prominence. These risks include but are not confined to social exclusion and closure, adverse incorporation and so forth. Although these are relatively new concepts in the developing world, they are nonetheless important due to how they offer new perspectives in understanding how inequities and vulnerabilities are entrenched.

Although social exclusion is a very broad concept that can be experienced in a wide range of social settings, this study only delimited its area of focus to social exclusion amongst forced migrants. Preference of the term forced migrant instead of the conventional term 'refugee' in the study, was influenced by how the former encapsulates all victims of coerced migration regardless of whether or not they have asylum seeker permits or full refugee status. Such a focus was then aimed at revealing the role of effective policy formulation and implementation in facilitating forced migrants` social inclusion in South Africa. Victims of coerced migration were of a particular importance to the study due to how they present a symbolic case representing a group with deviant social attributes and thus most prone to social exclusion. Social deviance as a group characteristic was most important to the study due to how cultural nonconformity is one of the premises upon which social exclusion is perpetuated (Weber, 1968: p.342; Weber, 1978 cited in Murphy 1986: p.23; Swartz, 1990: p.480; Kabeer, 2000; Weber, 1978 cited by Tholen, 2016: p.3). Furthermore, apart from forced migrants being a vulnerable group, delimiting the study to focus on them also emboldened the study`s originality. This was particularly important considering how the majority of literature written on the subject area, predominantly focuses on a range of other social groups and voluntary forms of movement.

Limitations in implementing the Refugee Act 130 of 1998 were conceptualised as not only being responsible for Congolese forced migrants` inability to convert their legal rights into protections but also their state of social exclusion. The findings from the study confirmed such postulations, with the forced migrant participants highlighting how they have experienced various forms of social exclusion in South Africa. Limitations in implementing the Refugee Act 130 of 1998 were then identified as a cause of the derivative forms of exclusion as exemplified by the government's inability to operationalise programs on Human Rights Education (HRE). As a result of such a vacuum in HRE, forced migrants were either not fully cognisant of their legal rights in South Africa or were facing challenges in accessing those rights. Without an emphasis on refugee rights education, social closure and material monopolisations were being systematically used on a primary cultural level to socially exclude Congolese forced migrants from areas of controlled association.

The findings from the study also affirmed how limitations in implementing the Refugee Act 130 of 1998 also resulted in the proliferation of principal forms of exclusion. Such limitations included unsatisfactory refugee rights sensitisation efforts, poor coordination as well as inadequate policy monitoring and evaluation amongst line ministries and stakeholders. The research findings revealed that due to the arising incongruences, Congolese forced migrants in South Africa were denied access to critical services which socially disaffiliated them. Additionally, the failure by the state to have a clearly laid out channel of communication with forced migrants, meant that they have no method of redress in grievance or dispute settling when faced with social closure and material monopolisations. The findings also revealed how this proliferates forced migrants exposure to unruly conduct and institutional biases within public service institutions. Congolese forced migrants` conversion of their legal rights into protections is thus impeded by the shortcomings in implementing the Refugee Act 130 of 1998.

The study also identified how a failure by the state and other stakeholders to have the Refugee Act of 1998 translated and published in the languages that forced migrants were familiar with constituted a limitation in policy enactment. The findings of the study indicated how forced

migrants` inability to access and understand refugee policy documents resulted in a lot of misinformation and overall failure to access the enshrined rights. Bureaucratic and administrative shortcomings also presented a serious limitation in the implementation of refugee policy as exemplified by the South African refugee appeal board operations and the refugee status adjudication procedures. The absence of a monitoring and evaluation mechanism was identified in the study as a principal reason for why bureaucratic shortcomings and inconsistencies often go unchecked. An unavailability of such a monitoring and evaluation mechanism within line ministries is thus recognised by this study as the reason for the poor coordination and inefficiencies found within the implementation of refugee policy framework in South Africa.

Throughout the study, civil society`s role in the deterrence of social exclusion and a host of other deprivations facing forced migrants in South Africa was examined. Although the study was cognisant of the importance of the state in provisioning social protection to forced migrants and assuring their access to socioeconomic, political and civil rights, civil society was nevertheless identified as a key player. This was in cognisance of how the study`s findings identified challenges within state assisted integration and its inability to prevent forced migrants social exclusion in South Africa. The feasibility of a tripartite collaborative partnership between the three (the state, civil society and forced migrants), was thus examined with several challenges to the collaborative model being noted. Challenges to the partnership approach in South Africa included the divergence of ideals on the refugee rights discourse between the state and civil society. Such a divergence in ideals made the feasibility of integration and collaborative partnerships between the two sectors a challenge. Although the findings of the study identified conflictive partnerships as dominant, these were nevertheless achieving positive results (to the benefit of forced migrants). Through the judiciary system, litigations, protests and so forth, civil society was seen as a vanguard championing the interests of forced migrants in South Africa.

8.4 RECOMMENDATIONS

Recommendations are designed in cognisance of the issues identified in a research. Also recommended in the section are the possible ways in which refugee policy can be better implemented to curb the vulnerabilities arising out of the noted shortcomings. This concluding section then makes submissions for further studies on the issue of forced migrants` social exclusion in Africa and further afield.

8.4.1 Establishment of a Policy Implementation, Monitoring and Evaluation System

This particular study examined the nexus between social exclusion (disfranchisement) and forced migrants inability to make claim of their legal entitlements. None of the studies focusing on forced migrants` in South Africa and the continent, comparatively analysed social exclusion and its impact in reducing forced migrants` living potentials. Examining how refugee policy could be fully implemented and thus ensuring forced migrants` social inclusion, cohesion and protection, was thus imperative to this study. The findings from the study revealed how there was little coordination amongst government ministries in the manner and extent to which they implement the refugee policy. In that regard, the study recommends the setting up of a standardized assessment framework (Dar et al, 2016), to analyse contextual factors such as adherence, alignment of respective by-laws to national policy as well as the issue of resource availability. Standardized assessment frameworks are particularly necessary in this context given how the study identified a notoriously exclusionary conduct as well as limited accountability and coordination within select line ministries, municipalities and so forth.

Exclusionary nodes were identified in the study as being mostly effected through selectively implementing the Refugee Act 130 of 1998 tenets. Some municipalities were also failing to assimilate the Refugee Act 130 of 1998 codifications into their by-laws as required by law (South African constitution 1996-Article 156[3]). As a solution to this, a policy monitoring and evaluation system, would therefore assure uniformity towards a multi-sectoral implementation of refugee policy. Further to this, in ensuring uniformity and generalizability, the study recommends the adoption of a comprehensive assessment and systematic review

approach by government (Dar et al, 2016). Such an evaluation system, superintended by the government, would also bring to account all stakeholders (development and aid partners, faith based organisations, non-governmental groups etc.) and ensure that line ministries are judiciously implementing the refugee policy.

8.4.2 Human Rights Education and Language Assistance

Although the civil society was making considerable efforts towards sensitising forced migrants on their rights, a more comprehensive and overarching multi-sectoral approach was required. The sensitisation workshops hosted by the civil society were often of a limited capacity and not fully integrative as the general citizenry usually lacked representation. In cognisance of this, this study recommends that government comprehensively embarks on forced migrant rights education programs that are all encompassing. Such programs should include the South African citizens, public officials, frontline service providers and the forced migrants themselves. The necessity of such an approach is justified in the findings where it was revealed in Chapter seven that educating the forced migrants of their rights cannot be done in a vacuum. Rather, such sensitisation on forced migrants` rights (through the distribution of informational material and refresher workshops) needs to be undertaken with the key persons charged with provisioning those same rights. Such key persons include law enforcement officials, Department of Home Affairs RSD personnel, Social welfare workers etc. Other scholars concur and argue that a failure in mapping out a clear path to the implementation of human rights education (HRE), imbeds vulnerable groups state of social exclusion (Bovenkerk, 1995; Palmary, 2003; Sibanda et al, 2012: p.37).

In the same vein, the study also recommends the unveiling of language training programs as part of the government's role in facilitating for forced migrants` social integration in South Africa. This could be done as a pre-requisite to the attainment of the refugee permit (Section 24) for new arrivals as done in Germany through their compulsory integration courses (Hugler, 2016). The study identified how language proficiency was an important form of cultural capital, indispensable in securing essential social networks and overall social inclusion. Forced migrants` failure to read and understand informational material pertaining

to their legal rights (published by government in English or vernacular), inhibited them from making claim of their constitutional rights. This practice was identified by the study as constituting a limitation in refugee policy implementation. The study therefore recommends the government to offer non-English speaking forced migrants` language assistance as this is standard practice in other countries as illustrated in the study.

8.4.3 Amending the Refugee Appeal System

This study has acknowledged the existence of a considerable amount of literature focusing on the disjuncture between the reformism of the Refugee Act 130 of 1998 and the vulnerabilities of forced migrants in South Africa. However, through an examination of such literature this study has also noted that the basis for such vulnerabilities have remained largely undetermined. In an attempt to generate answers, in the previous Chapters this study identified challenges in the manner in which the refugee appeal board was dismally processing refugee appeals. The research findings revealed how the appeal board was irrationally under-resourced particularly in terms of human capital. As a consequence, the arising delays and backlogs created in the system have proliferated the social exclusion and associated vulnerabilities facing Congolese forced migrants` in the country.

In recognition of such problems, the study then recommends that the government of South Africa, increases the number of staff sitting on the national appeal board so as to facilitate and allow for the timely adjudication of appeal cases. Furthermore the study recommends that the number of times that the board annually sits for adjudications be revised and increased as a matter of urgency. Faced with the thousands of appeals as well as new applications for refugee status adjudications, the government is recommended to channel more efforts and resources (monetary and otherwise), towards the meeting of such demands in the country.

8.4.4 Collaborative Partnerships with Civil Society

The findings from the study revealed that refugee social exclusion in South Africa is a multi-dimensional phenomenon. Although some forms of exclusion (structural or distributive) are effected within public institutions, social exclusion was also being perpetuated at a derivative

or primary cultural level. The study was however cognisant of the high social impact faith based organisations and non-governmental organisations have not only in South Africa but globally (Bebbington et al, 2008; Dongier et al, 2013; Benequista, and Gaventa, 2011 cited in Khan et al, 2015: p.59).

As a result, the study thus identified the entire civil society community as a pivotal sector to partner the state particularly in efforts to deter the derivative (primary cultural) forms of exclusion confronting forced migrants. This was particularly important in facilitating what Gerber (2011), refers to as a bottom-up approach to human rights issues. In adopting such an approach, civil society organisations such as the United Nations (UNHCR) regional office and UN country teams can offer assistance to line ministries through the implementation of capacity building programs. This is also substantiated by the discovery in Chapter seven of how state assisted integration in South Africa faces several challenges. Such challenges were conceptualised as mainly emanating from the top-down nature of such models, rendering it incapable of altering the primary culturally forms of exclusion in the country.

In his theory on bureaucracy, Weber (1947, 1968) argues that the state, in pursuit of its numerous mandates, can form partnerships with private voluntary organisations. Other scholars such as Hogwood and Gunn (1984 cited in Hill and Hupe, 2002: p.50) concur and argue that the state can assume what they term 'dependency relationships' with other organisations. This study therefore encourages the South African government to forge collaborative partnerships (dependency relationships) with civil society organisations in the country. Such multi-sectoral collaborative approaches are identified by the study as having the potential to holistically solve the issue of forced migrants` social exclusion and associated challenges not only in South Africa but further afield.

8.4.5 Methodology

The study makes recommendations to be observed by researchers focusing on invincible populations such as forced migrants and other vulnerable groups (Harrell and Voutira, 2007; Emmel, 2007; Hungwe, 2013: p.92). Due to forced migrants` social disaffiliation in South

Africa, this study encountered several challenges in recruiting female participants. Forced migrants in South Africa can be considered as an invisible population mostly due to how (as a result of being socially excluded), they are difficult to recruit particularly for the purposes of research. This is predominantly more challenging if the researcher intends to recruit female forced migrants who are often more socially retracted as compared to their male counterparts. Male forced migrants are easier to recruit for the purposes of research due to their relatively higher degree of social contact (an attribute of their menial and informal jobs within the open labour market).

In managing the fears amongst female forced migrants and thereby recruiting them as potential participants, the study recommends the use of purposive sampling techniques as these are more flexible and convenient (Cochran, 2007). Furthermore, the study recommends the use of a female recruiter in recruiting fellow female participants. This technique is also recommended by Mosher et al (2015), in their examination of the effectiveness of peer recruiters in qualitative research. The use of female peer recruiters, is particularly beneficial in not only harnessing the trust of female participants but also encouraging female participation and equal representation within the study.

8.4.6 Further Research

Having identified that there is a lack of sufficient literature focusing on the socio-economic participation of forced migrants, this study makes recommendations for further research into the issues impeding their full social cohesion within the sector. Furthermore, in recognition of the economic value of forced migrants as a human capital (their potential to be economically productive in the host states), the study recommends further inquiry into their level of incorporation within socio-economic sectors. These socio-economic sectors include the banking sector, higher and tertiary education sector, labor market (formal and informal) and so forth. There is need for further studies to be carried out on how forced migrants can realise their full socio-economic capabilities and functioning's in the aforementioned sectors. Through such a participation, perceptions of forced migrant groups as a fiscal burden on the

host states can be changed by facilitating for their active contribution towards the macro socio-economic development of the refugee receiving states.

The study also makes recommendation for further research into the issue of forced migrants` right to family (UN, 1948: p.34; UNHCR, 1951: p.10, 20). This is particularly important given how the study discovered that there is a gap in literature focusing on the subject area. The study identified how most research work focusing on forced migrants often does not examine this constitutional right and the extent to which it is being observed within the refugee receiving states. The study therefore recommends for a further inquiry into how the right to family for forced migrants in South Africa can be upheld as well as the underlying impediments and panaceas to such. The inhibitions to forced migrants right to family (as identified in this study), can be exemplified by the DHA`s refusal to process family members applications together, as well as the refusal to accept applications made by parents on behalf of their infants without proof of DNA. Further research is therefore required in examining the extent to which such injustices affect forced migrants, their copying mechanisms as well as the possible solutions to the challenges.

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APPENDICES

Appendix A: Informed Consent Form

University of KwaZulu-Natal,
Social Sciences, College of Humanities
Pietermaritzburg Campus,

Dear Participant

Informed Consent Document

My name is **Sikanyiso Masuku** (student number: 216076291). I am a PhD candidate studying at the University of KwaZulu-Natal, Pietermaritzburg Campus. The title of my research is: The implementation of the Refugee Act 130 of 1998 in South Africa and the question of the social exclusion of forced migrants; A case Study of DRC forced migrants in Pietermaritzburg. I am interested in learning on the limitations in the implementation of the Refugee Act (1998), refugee social exclusion and whether or not the enshrined legal entitlements have been converted into effective protection and benefits for refugee groups. I am interested in interviewing you so as to share your experiences and observations on the subject matter. Please note that:

- The information that you provide will be used for scholarly research only.
- Your participation is entirely voluntary. You have a choice to participate, not to participate or stop participating in the research. You will not be penalized for taking such an action.
- Your views in this interview will be presented anonymously. Neither your name nor identity will be disclosed in any form in the study.
- The interview will take about 30-45 minutes.
- The record as well as other items associated with the interview will be held in a password-protected file accessible only to myself and my supervisors. After a period of 5 years, in line with the rules of the university, it will be disposed by shredding and burning.
- If you agree to participate please sign the declaration attached to this statement (a separate sheet will be provided for signatures)

I can be contacted at: Email: sikhanyiso.masuku@gmail.com
Cell: +263774002560 or +27813864074.

My supervisor is Dr. Sharmla Rama who is located at the School of Social Sciences, Pietermaritzburg campus of the University of KwaZulu-Natal. Contact details:
Tel: 033 260 5188 E-mail: Ramas@ukzn.ac.za

You may also contact the Research Office through: Ms Phumelele Ximba
HSSREC Research Office, Tel: +27312603587 E-mail: ximbap@ukzn.ac.za

You may also contact the designate trained counsellor for the study: Miss Nomshado Zondi
Tel: +27738427964 Email: nomshado.nomshado.zondi@gmail.com

Thank you for your contribution to this research

DECLARATION

I……………………………………………………………………… (*full names of participant*) **hereby confirm that I understand the contents of this document and the nature of the research project, and I consent to participating in the research project.**

I understand that I am at liberty to withdraw from the project at any time, should I so desire. I understand the intention of the research. I hereby agree to participate.

I consent / do not consent to have this interview recorded (if applicable)

SIGNATURE OF PARTICIPANT   DATE

………………………………………………………………………………………

Thank you for your contribution to this research.

Appendix B: Informed Consent (Permission for audio and video recording)

Social Sciences, College of Humanities,
University of KwaZulu-Natal,
Pietermaritzburg Campus

Dear Participant

INFORMED CONSENT LETTER

My name is SIKANYISO MASUKU. I am a Conflict Transformation PhD candidate studying at the University of KwaZulu-Natal, Pietermaritzburg campus. I am interested in learning on the limitations in the implementation of the Refugee Act 130 of 1998, refugee social exclusion and whether or not the enshrined legal entitlements have been converted into effective protection and benefits for refugee groups. I am using the Congolese refugee population in Pietermaritzburg as my case study. To gather the information, I am interested in asking you some questions. Please note:

- Your confidentiality is guaranteed as your inputs will not be attributed to you in person, but reported only as a population member opinion.
- The interview may last for about 1 hour and may be split depending on your preference.
- Any information given by you cannot be used against you, and the collected data will be used for purposes of this research only.
- Data will be stored in secure storage and destroyed after 5 years.
- You have a choice to participate, not participate or stop participating in the research. You will not be penalized for taking such an action.
- The research aims at knowing the challenges of your community relating to resource scarcity, peoples' movement, and effects on peace.
- Your involvement is purely for academic purposes only, and there are no financial benefits involved.
- If you are willing to be interviewed, please indicate (by ticking as applicable) whether or not you are willing to allow the interview to be recorded by the following equipment:

	Willing	Not willing
Audio equipment		
Photographic equipment		
Video equipment		

I can be contacted at: Email: sikhanyiso.masuku@gmail.com
Cell: +263774002560 or +27813864074.
My supervisor is Dr. Sharmla Rama who is located at the School of Social Sciences, Pietermaritzburg campus of the University of KwaZulu-Natal.
Contact details: Tel: 033 260 5188 E-mail: Ramas@ukzn.ac.za

You may also contact the Research Office through: Ms Phumelele Ximba
HSSREC Research Office, Tel: +27312603587 E-mail: ximbap@ukzn.ac.za

You may also contact the designate trained counsellor for the study: Miss Nomshado Zondi Tel: +27738427964 Email: nomshado.nomshado.zondi@gmail.com

DECLARATION

I…………………………………………………………………… (Full names of participant) hereby confirm that I understand the contents of this document and the nature of the research project, and I consent to participating in the research project.

I understand that I am at liberty to withdraw from the project at any time, should I so desire.

SIGNATURE OF PARTICIPANT   **DATE**

…………………………………   …………………………………

Thank you for your contribution to this research.

Appendix C: Interview Schedule for Congolese Forced Migrants

University of KwaZulu-Natal,
Social Sciences, College of Humanities,
Pietermaritzburg Campus,

Dear Participant

I **SIKANYISO MASUKU**, am a student with the **University of KwaZulu-Natal, Pietermaritzburg** campus, in South Africa. I am carrying out a study entitled **"The implementation of the Refugee Act 130 of 1998 in South Africa and the question of the social exclusion of forced migrants; A case Study of DRC forced migrants in Pietermaritzburg.** The study is a policy assessment of Act 130 of 1998. It examines refugee social exclusion, the limitations in the implementation of the Act and whether or not the enshrined legal entitlements in the Act, have been converted into effective protection and benefits for forced migrants in South Africa. Could you kindly respond to this interview as honestly as possible. This is purely academic research and your response is anonymous. Results of this study will only be used for academic and not political purposes. All information will be treated with utmost confidence. The success of this study depends on your cooperation.

Interview Guide for forced migrants

1. To what extent do you feel protected as a refugee in South Africa?
2. To what extent are you aware of your legal rights to documentation, shelter, employment and social services (basic health and education) as a refugee in South Africa?
3. To what extent do you have access to your legal rights to documentation, shelter, employment and social services (basic health and education) as a refugee in South Africa?
4. In what ways do you face challenges in accessing your legal rights to documentation, shelter, employment and social services (basic health and education) as a refugee in South Africa?
5. In what ways do you feel government is lessening your challenges in accessing the legal rights to documentation, shelter, employment and social services (basic health and education)?
6. In what ways do you feel the civil society is lessening your challenges in accessing the rights to documentation, shelter, employment and social services (basic health and education)?
7. To what extent do you feel included or integrated within your South African communities of residence?
8. To what extent do you feel included or integrated within South African public, private and economic institutions?
9. How far do you feel the government has gone in facilitating for your social inclusion within South African communities, institutions and socio-economic sectors?
10. Is there anything more you would like to add that can shed more light on how your social inclusion and access to socio-economic rights, shelter, employment and social services (basic health and education) can be improved?

Thank you for your participation and time.

Appendix D: Interview Schedule for Humanitarian Organisations

UNIVERSITY OF
KWAZULU-NATAL

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YAKWAZULU-NATALI

University of KwaZulu-Natal,
Social Sciences, College of Humanities,
Pietermaritzburg Campus,

Dear Participant

I **SIKANYISO MASUKU**, am a student with the **University of KwaZulu-Natal, Pietermaritzburg** campus, in South Africa. I am carrying out a study entitled **"The implementation of the Refugee Act 130 of 1998 in South Africa and the question of the social exclusion of forced migrants; A case Study of DRC forced migrants in Pietermaritzburg.** The study is a policy assessment of Act 130 of 1998. It examines refugee social exclusion, the limitations in implementing the Acts and whether or not the enshrined legal entitlements in the Act, have been converted into effective protection and benefits for forced migrants in South Africa. Could you kindly respond to this interview as honestly as possible. This is purely academic research and your response is anonymous. Results of this study will only be used for academic and not political purposes. All information will be treated with utmost confidence. The success of this study depends on your cooperation.

Interview Guide for the civil society

1. To what extent are DRC forced migrants aware of their legal rights to documentation, shelter, employment and social services (basic health and education) as enshrined in the Refugee Act 130 of 1998?
2. To what extent do DRC forced migrants have access to documentation, shelter, employment and social services (basic health and education) as legally enshrined in the Refugee Act 130 of 1998?
3. In what ways do DRC forced migrants face challenges in accessing rights to documentation, shelter, employment and social services (basic health and education) as enshrined in the Refugee Act 130 of 1998?
4. In what ways do you help alleviate the challenges DRC forced migrants face in accessing their legal rights to documentation, shelter, employment and social services (basic health and education)?
5. To what extent do you feel that the Refugee Act 130 of 1998 is being adequately implemented?
6. To what extent does the Refugee Act 130 of 1998 facilitate for the social inclusion of DRC forced migrants and their access to legal rights such as documentation, shelter, employment and social services (basic health and education)?
7. In what ways do you think there is a relationship between DRC forced migrants` state of social exclusion and their access to socio-economic sectors, shelter, employment and social services (basic health and education)?
8. What do you think should be done by both government and civil society in fostering the social inclusion and cohesion of DRC forced migrants in South Africa?
9. What is the nature and extent of your working relationship as the civil society, with government in implementing the Refugee Act 130 of 1998?
10. Is there anything more you would like to add that can shed more light on how issues of refugee social inclusion and access to socio-economic rights, shelter, employment and social services (basic health and education) can be improved in South Africa?

Thank you for your participation and time.

Appendix E: Gate Keepers Letters

KWAZULU-NATAL CHRISTIAN COUNCIL

KZNCC

50 Longmarket Street - P.O. Box 2035 Pietermaritzburg 3200 South Africa
Tel: +27 (0) 33 3454819 Fax: +27 (0) 33 3949965 Email: info@kzncc.org.za

Dr Douglas Dziva, KZCC CEO   ddziva@kzncc.org.za

10 April 2017

HSSREC Research Office:
Institution: University of KwaZulu-Natal
Telephone number: +27312603587
Email address: ximbap@ukzn.ac.za

Re: KZNCC Research consent letter

I am confirming that through this letter, KwaZulu Natal Christian Council is giving consent for Mr Sikanyiso Masuku from the University of KwaZulu Natal to conduct a PhD thesis research on, "The implementation of the Refugee Act 130 of 1998 in South Africa and the question of the social exclusion of forced migrants; A case Study of DRC forced migrants in Pietermaritzburg" at KZNCC and its networks.

We hereby confirm that we will participate in the scheduled interviews and will assist in providing any information required during this study.

Mr Musa Zakwe cell 083 983 3524; Chenge Mzezewa – cell 071 8951899, and Ms Nomusa Shabalala cell 076 498 2430 coordinators of the KZNCC *Migration, Anti-Xenophobia and Social Cohesion Program* have been delegated to offer relevant support needed by Mr Masuku during his research.

Should you have any questions kindly contact me.

With thanks and best wishes.

Dr Douglas Dziva
KZNCC Chief Executive Officer

LAWYERS FOR
HUMAN RIGHTS

Refugee and Migrant Rights Programme
Room S104, Diakonia Centre
20 Diakonia Avenue
Durban, 4001

Tel (031) 301 0531
Fax (031) 301 0538
Web www.lhr.org.za
Email:
nomagugu@lhr.org.za

Our ref: Nomagugu Ngubane

Date: **25 April 2017**

HSSREC Research Office
University of KwaZulu-Natal
Tel: 031 260 3587
Email: ximbap@ukzn.ac.za

Dear Sirs,

RE: RESEARCH CONSENT LETTER-SIKANYISO MASUKU

This letter serves to confirm that Lawyers for Human Rights hereby gives to Mr Sikanyiso Masuku, to conduct an interview with an attorney from Lawyers for Human Rights, for the purposes of research for his PhD thesis titled: **"The implementation of the Refugee Act 130 of 1998 in South Africa and the question of the social exclusion of forced migrants; A case study of forced migrants in Pietermaritzburg."**

For any further queries kindly contact the writer hereto.

Yours Faithfully,

LAWYERS FOR HUMAN RIGHTS

PER: Nomagugu Ngubane

Congolese Refugee Association

Pietennaritzburg

Kwazulu Natal

South Africa

18 April 2017

HSSREC Research Office

University of KwaZulu-Natal

Telephone number: +27312603587

Email address: ximbap@ukzn.ac.za

Reference; Congolese Refugees Association Consent Letter

On behalf of the Congolese Refugees Association in Pietermaritzburg, I would like to express our willingness to participate in the scheduled research interviews and Focus Group Discussions on the PhD research titled "The implementation of the Refugee Act 130 of 1998 in South Africa and the question of the social exclusion of forced migrants; A case Study of DRC forced migrants in Pietermaritzburg". Through participation and provisioning of any necessary or relevant information, our group expresses delight and willingness towards assisting Sikanyiso Masuku, from the University of Kwazulu Natal, in carrying out this important research work. For any questions and further information,·please do not hesitate to contact us.

Sincerely
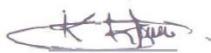
Kango Kiza
Email; kizakango@gmail.com

UNIVERSITY OF ™
KWAZULU-NATAL

INYUVESI
YAKWAZULU-NATALI

22 August 2017

Mr Sikanyiso Masuku 216076291
School of Social Sciences
Pietermaritzburg Campus

Dear Mr Masuku

Protocol reference number: HSS/0810017D
Project title: The implementation of the Refugee Act 130 of 1998 in South Africa and the question of the social exclusion of forced migrants; A case study of DRC forced migrants in Pietermaritzburg

Full Approval – Full Committee Reviewed Protocol

In response to your application received 19 June 2017, the Humanities & Social Sciences Research Ethics Committee has considered the abovementioned application and the protocol has been granted **FULL APPROVAL**.

Any alteration/s to the approved research protocol i.e. Questionnaire/Interview Schedule, Informed Consent Form, Title of the Project, Location of the Study, Research Approach and Methods must be reviewed and approved through the amendment /modification prior to its implementation. In case you have further queries, please quote the above reference number.

PLEASE NOTE: Research data should be securely stored in the discipline/department for a period of 5 years.

The ethical clearance certificate is only valid for a period of 3 years from the date of issue. Thereafter Recertification must be applied for on an annual basis.

I take this opportunity of wishing you everything of the best with your study.

Yours faithfully

....

Dr Shamila Naidoo (Deputy Chair)
Humanities & Social Sciences Research Ethics Committee

/pm .

cc. Supervisor: Dr Sharmla Rama
cc. Academic Leader Research: Professor Maheshvari
cc. School Administrator: Ms Nancy mudau and Ms Likong Shulika