

Investigating the role of NGOs in assisting Asylum Seekers, Refugees and Migrants

The achievements of the Scalabrini Centre of Cape Town

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1. Context and Investigating Method and Tools

This conference paper is a section from the original paper which includes a case study on the Italian Reception System. It combines practice and research as it is rooted in the experience of the Scalabrini Centre of Cape Town (also known as SCCT). The Centre specialises in working with Asylum Seekers, Refugees and Migrants¹ and their programmes constitute an example of best practices in South Africa. I received invaluable assistance from the Centre team, especially the now former Director, Miranda Madikane.²

The case study illustrates how the Scalabrini Centre supports the integration of Asylum Seekers, Refugees and Migrants; contributes to strengthening Asylum Seekers, Refugees and Migrants protection at policy level; assists documented migrants to find placement in the local labour market; and finally how the Centre faced the Covid-19 emergency.

Drawing mainly on the Scalabrini Case Study, this paper also explores the intersection between migration, the informal economy and the protection of Asylum Seekers, Refugees and Migrants. *Informal* means that grey area that cannot be adequately captured by statistics and official sources in general, and thus it is rather elusive. *Informal* and *undocumented* are realities represented 'by subtraction', and yet many Asylum Seekers, Refugees and Migrants in South Africa, in Italy (and elsewhere) appear to live in this milieu.

In an attempt to unravel migration dynamics in a semi submersed reality, research was conducted in strict collaboration with the Scalabrini Centre team. Moreover, I am currently in Italy and thus I had the opportunity to research the Italian Reception System, at the time when Covid-19 first and biggest wave

¹ Asylum Seekers, Refugees and Migrants, I am using these three categories because the word *migrant* generally refers to economic migrant, a category hardly contemplated by legislation both in South Africa and internationally, which is **presently** mainly oriented towards Asylum Seekers and Refugees.

² Miranda Madikane is former Director of the Centre. After 17 years, Madikane stepped down from directorship as of 16 April 2021; Prof Olivier principal investigator of the STIAS Migration and Social Security Project, whom commissioned the research from which I am drawing this paper, has established a relationship with her incumbent, Father Filippo Ferraro and his current team.

hit my Country. However in this version of my original paper, the Italian experience will be mentioned *only* to support the Case Study on the Scalabrini Centre, where applicable, as it exceeds the ILERA Regional Congress scope. Both case studies are eminently practical and exploratory, as they are part of a research project in progress, nonetheless the key findings show the importance of the NGOs role in enhancing the protection and the integration of Asylum Seekers, Refugees and Migrants.

I partly relied on up to date information from several sources³ and mostly on interviewing sector operators and other researchers, as well as my own experience in this sector, both as a researcher and as 'returned migrant'. Interviewing respondents in socio economic research is a well established method, used in migration studies since the late sixties. The migratory process produced a wealth of literature and several theoretical approaches. This paper reflects theories such as income differential⁴, interaction between sending and receiving countries⁵, dual labour market⁶ and Piore's fragmented international labour market analysis. In particular Piore's model strives to be comprehensive, to provide an explanation for the migratory phenomenon as a whole, regardless of the diversity of specific migratory experiences.⁷

With the impact of globalisation income differential between countries has sharpened, the gap between markets worldwide has widened with a consequent increased migration between poor and rich countries, which in response keep on tightening the opportunities to enter legally for those who are not eligible for asylum, meaning low skilled labour migrants. Thus migrants are often *forced* to find informal routes of access.⁸ And/Or, at least in South Africa (and in Italy), to conform their applications to the Refugee Act requirements, in order to gain legal access to work and/or study.

³ For example, information from the Scalabrini websites, mostly from <https://www.scalabrini.org.za>, Sentences, Circulars, News and in progress research conducted by Scalabrini. Several reports mostly used in the long paper that includes the Italian case study, here are hardly mentioned.

⁴Piore, Michael, J. "The Shifting Grounds for Immigration' in *The Annals of the American Academy of Politics and Social Science*, Vol. 485, May 1986, 25.

⁵ See, for example, Heisler, Martin O. "Transnational Migration as a Small Window on the Diminished Autonomy of the Modern Democratic State" *The Annals of the American Academy of Political and Social Science*, Vol. 485, May 1986.

⁶Gordon, David, M. *Segmented Workers. Divided Workers. The Historical Transformation of Labour in the USA*. (Cambridge, 1982).

⁷ Piore, Michael, J. *Birds of Passage. Migrant Labour and Industrial Society*. (Cambridge, 1979). At the time Migrant was the word used in most literature.

⁸ See for example John K. Akokpari "Globalisation and Migration in Africa" in *African Sociological Review*, 4,(2),2000, 72-92.

In 2002 and in 2004, Piore explained how he has been using interviews since his pioneer work in the late sixties: "*Using a research "methodology" centered on unstructured, open-ended interviews with economic actors, my work has addressed a range of issues including labor markets, migration (Piore 1979a), adjustment to trade (Piore 1998), technological change (Piore 1968), trade union decline (Piore 1983) "*".⁹

I follow his footsteps.¹⁰ Interviews are people centred, thus it is a method of investigation in line with a human right based approach. Like Piore, I realised that the more open ended and unstructured the interviews, the more information respondents provided, *as migrants wish to tell their story*. As my interviews proceeded I realised that migration is a *narrative*, and precisely a *mosaic* composed by the story of each migrant. As Piore (2004) points out, this open-ended interview method poses the challenge of how to interpret and incorporate findings into a coherent format befitting theory. It also poses the question of truth and honesty of respondents. In my case this challenge was reduced because I interviewed second level informants, meaning those who work with migrants as operators, researcher or lawyers. Thus the interviews do not pose serious interpretation problems, and my first hand knowledge in this field helps to verify their accuracy.

2. The experience of Scalabrini Centre of Cape Town

During the last 17 years, the Scalabrini Centre has effectively provided support, assistance, and training on a daily basis, for around 2,000 clients¹¹ per month. Asylum Seeker, Refugees and *documented* and *undocumented* Migrants that approach the Centre for assistance are referred to as clients. Concurrent to offering individual clients practical assistance, the Centre's team intentionally record experiences, circumstances, barriers and challenges shared by Asylum Seeker, Refugees and Migrants. The database not only provides a description of the clients, most important it allows to a) keep track of and manage their interaction with the Centre and b) track and identify trends; for example, a recurring lack of implementation of the law or a gap in terms of policy or law that would (if implemented) ensure their

⁹ Piore "Qualitative Research: Does it fit in economics?" Conference Paper. (Massachusetts Institute of Technology, 2004), 2.

¹⁰ I used Piore's dual market theory with case study methodology for the first time when I interviewed several Italian migrants in Cape Town for my PhD. At the time I wasn't aware that while following Piore's footsteps I was having exactly the same experience.

¹¹ Scalabrini deliberately chose a terminology that transcends people's legal status, such as "Clients" and "People on the Move". Both terms are people centred and all-inclusive definitions for Asylum Seekers, Refugees and Migrants, as well as displaced people in general, including internal migrants.

protection. When appropriate, team members conduct further research to understand the specific root causes and circumstances behind such trends and to assess their impact. This evidence based learning is translated into action by either improving internal programme design and/or by sharing the outcomes with relevant stakeholders to begin to advocate for systemic change.¹²

This paper briefly describes each programme and focuses on issues the Scalabrini Centre has been recently addressing. Specifically

- The Angolan Cessation
- Access to online Permit Renewal
- Covid-19 Social Relief Distress Grant
- Unemployment Insurance Fund
- Access to the South African Healthcare system
- Challenges around the Refugees Amendment Act
- The impact of border closures on Remittances
- The joint activities of Employment Desk and the English School play a pivotal role in fostering integration.

Drawing on international experience, the Scalabrini Centre was set up in 2002 with the specific objective of assisting Asylum Seeker, Refugees and Migrants and developed into one of the main NGOs in South Africa specialised in migration. Historically the Scalabrini Fathers is an order of the Roman Catholic Church focused on assisting Italian migrants abroad¹³. The Italian diaspora was of a significant number and spread in many countries¹⁴, thus the Fathers set up missions and subsequently created a worldwide network, which gathered experience in working with migrants and over time developed also Study Centres.¹⁵ When by the mid seventies Italian mass migration ended, the Scalabrini Fathers continued their activities by assisting migrants of any nationality. The link between migration and the church, especially catholic and waldesian, remains very strong in Italy, in fact church

¹² Information provided by Madikane, who actively collaborated to writing this paper by dedicating a lot of her own time.

¹³ This organisation was founded by the Missionaries of Saint Charles, informally referred to as the Scalabrini Fathers, see <https://www.scalabriniani.org/en/scalabrini-international-migration-network-simn/>

¹⁴ Italy was historically a sending country, with a total emigration balance of about 27 million half of whom permanently abroad. Simona Mosala *The Immigration Experience of The Italian Community in South Africa*, PhD Thesis, 17

¹⁵ The Rome based Centro Studi Emigrazione (CSER) set up by the Scalabrini Fathers publishes the International Journal of Migration Studies/Studi Emigrazione – Quarterly, since 1964.

backed organisations have been very active in creating, implementing the running the Italian Reception System.¹⁶

The Centre's holistic and multi programme approach is an interesting reflection of the experience of Asylum Seeker, Refugees and Migrants' integration into local society, which I attempt to illustrate with the major contribution of the former director, Miranda Madikane, her staff – Hylton Bergh in particular –, as well as using the very extensive website and the programmes database. Madikane and I wrote most of this paper together thanks to her thorough knowledge and months of correspondence between us; thus I included her contribution in the main text. I used the quotation format only when she is expressing her personal opinion.

2.2 The Database

The Database is the result of many years of practice and manages the interaction between clients and the various services that cater for their needs, and in also includes some disadvantaged locals. It is a working tool originally created to keep in contact with clients and to keep track of their activities within the Centre. Six out of eight programmes now use this database. At the time of writing this paper a total 34,545 entries captured represent the number of visits paid by clients who approached the Centre since 2015 and were recorded on the system.

Madikane explains how the database works and highlights come unavoidable gaps in the data collection. Only the last three years provide a realistic picture of clients' participation in the Centre programmes. Before, not all programmes recorded information into a database. The information on the current database collected before 2018 was transferred from two previous databases used by the Employment Access and Advocacy programmes, so not all clients' interactions are captured before 2018, and some entries dating back to 2016 may be duplicates if clients attended both Employment Access and Advocacy. Over the years, the Centre has improved its data collection system, which is still evolving. Almost every day new clients contact the Centre, thus the number of entries constantly grows. Not all information fields are captured as not all are required for all programmes. For some programmes, like the English School, legal status is not needed. So we don't record status until maybe

¹⁶ My forthcoming paper 'Gaining insight into Migration and social Protection, Two case Studies Italy and South Africa', provides a critical review of the Italian Reception System.

the same clients joins another programme, which required status or if we review our database and we add missing information.

The database provides information on the clients' demographics. Country of Origin is recorded in detail, although, for example, both Congo and Congo Brazzaville are mentioned (both referring to Brazzaville), while DRC is specified. In fact figures show that DRC and Zimbabwe are the most represented nationalities. Gender is available for 55% of clients only; of these 25% are women and 30% men. Unsurprisingly the majority of clients approaching the Centre fall between the mid twenties and the mid forties. Just below 30% are between 25 and 34, and just above 30% are between 35 and 34; another significant amount, 13% falls between 45 and 54; the younger group between 18 and 24 amounts to 5.7% and those below 17 are only 0,65. The latter figure makes perfect sense as minors are captured under their guardian's name¹⁷. Finally for 17% age is unknown.

Legal Status is recorded for just under two thirds of clients, documents are divided in several categories, some of them possibly overlapping. Only about 10% attained Refugees Status, while 23% are Asylum Seekers. About 9% are Undocumented but Unknown and Blank together add up to more than 40%. While Quota, Work, Residence and Business Permits cumulatively reach about 5%. In our database, explains Madikane, it is hard to differentiate between Unknown and Blank, which could also include Undocumented. Our Centre is open to clients regardless of status, although status is crucial to migrants' integration into society, which is our ultimate aim. Some of our programmes don't record legal status, for instance the English School or the Women Platform and Welfare, because it is of no consequence to the service they provide. Also Gender is not always recorded, because apart from the Women Platform, our programmes are not gender specific.

The clients demographics and legal status figures proved to be in line with migration trends to South Africa, but figures alone do not add much in depth information on their life experience. The real value of the database is that it supports each individual programme. Namely Paralegal Desk, which feeds into Advocacy, Welfare, Employment Access, Language School, Women Platform and Youth, as well as supporting internal and external research, such as this paper. The *virtuous relationship* between Advocacy and other programmes informs and strengthens the content of a challenge to the courts

¹⁷ As assistance for minors is captured on their guardian's profile. For minors without a guardian - either unaccompanied or separated – a hard copy file is created and captured on a spreadsheet.

and/or lobbying at policy level to enhance the protection and the integration of Asylum Seeker, Refugees and Migrants.

2.3 The Programmes

This section briefly describes each programme and zooms in on specific issues that the Scalabrini Centre regularly deals with and/or has been recently addressing.

Advocacy is pivotal as it aims to protect, promote and advance Asylum Seeker, Refugees and Migrants rights and freedoms. The number of visits amounts to 10,638 in total. Not surprisingly, the majority of Undocumented Migrants approaching the Centre visit the Paralegal Desk.

As the Scalabrini website¹⁸ explains Advocacy provides assistance to clients in overcoming barriers to access documentation and the Department of Home Affairs (thereafter DHA or Home Affairs) immigration and asylum systems; access to public services such as education and healthcare; access to justice for victims of xenophobic violence, hate crimes, and other protection related issues; assistance to unaccompanied and separated foreign minors; and advice and assistance with cases of detention and deportation. Moreover, the Advocacy Team works to drive deeper systemic change in the South African society, immigration, and asylum systems. The work is informed by and responsive to direct engagement with individual clients and the particular problems that they experience. This work includes commenting on draft legislation, policies and implementation to government and international bodies; raising awareness through online communications, newsprint and documentary making; providing trainings to government officials, civil society, citizens, and Asylum Seeker, Refugees and Migrant; conducting and publishing research; engaging in strategic litigation; and finding durable solutions to specific issues, like the cessation of refugee status.

Madikane comments that the Advocacy programme's multi-pronged approach is perfectly illustrated by the work around their influencing government's management of the Angolan cessation from refugee status. Angolans were amongst the first refugees to arrive in South Africa in the 1990s and to receive protection under the then new Refugees Act. Following the signing of the Lusaka Protocol, in 2002 the 27 year civil war in Angola ended and in 2009 the Commissioner of the UNHCR recommended that the Cessation Clause for all Angolan refugees around the world be invoked. In 2013 Home Affairs

¹⁸ Scalabrini website <https://www.scalabrini.org.za/service/paralegal-and-advocacy/>

announced South Africa's intention to proceed with the Cessation Clause. Advocacy's paralegal desk reported Angolan clients' concern that despite deep family, social and economic roots in South Africa they would be offered no pathway to legalise their stay in South Africa now that their refugee status would cease.

Since this was the first ever invocation of the Cessation Clause in South Africa, Advocacy requested a legal opinion on what relevant national legislation, the Geneva Convention 1951, the African Unity Convention 1969 required when invoking Cessation and weighing this against the recommendations of the UNHCR¹⁹. Simultaneously the Advocacy team invited affected Angolans to participate in a research collecting data to better understand the depth of their social, cultural and economic integration into South Africa. The resulting paper was shared with Home Affairs and used as a lobbying tool to advocate for an alternative residence status for these former refugees. However despite this evidence and recommendations from the UNHCR around the management of cessation, Home Affairs seemed intent on forcing the former refugees to return to an Angola that was no longer their home. As irregular immigration status loomed large for these former refugees now moved to a non-renewable 2 year visa, the Advocacy team submitted a group exemption application under section 31(2)(b) of the Immigration Act requesting Permanent Residency. No response to the exemption application was ever received. On the strength of the legal opinion, the research, and no response from the Minister on the 31(2)(b) application, strategic litigation was launched²⁰ seeking a decision from the Minister on the Permanent Residence application. The matter was finally settled out of court in 2017 and all applicants were given "temporary" permanent residence activated through a 5 year special dispensation visa expiring in December 2020.

In January 2019, an Angolan Cessation Committee was formed following two community meetings and an application process. This committee worked with the Advocacy team to draft a letter to the Minister and Deputy Minister of Home Affairs, the Deputy Minister, Head of Waivers and Exemptions and the Chairperson of Standing Committee for Refugee Affairs, requesting clarity on the likelihood of an extension of their permits, the request to include spouses and children in the qualifying criteria of their permits, and to include Angolan nationals who previously held refugee status but were for

¹⁹ UN High Commissioner for Refugees (UNHCR), Cessation of Status, 9 October 1992, No. 69 (XLIII) - 1992, available at: <http://www.refworld.org/docid/3ae68c431c.html> [accessed 27 August 2015].

²⁰ Though the Legal Resource Centre lead by William Kerfoot <https://lrc.org.za/> and Advocate Suzannah Harvey.

whatever reason excluded from the Cessation process. No formal response was ever received to this letter, however the Angolan community made a significant step forward in their fight to continue living in South Africa, as Home Affairs recently announced the extension of their existing permits validity period to 30th September 2021 and opened an application process for a longer term visa that for the first time includes spouses, children and those former refugees previously excluded.

Madikane provided other examples of actions that further illustrates how Advocacy works in practice. These are actions around ensuring access to grants, health and education, which are amongst the basic requirements for a decent life for all clients. She explained that even if a client has documents securing legal right to stay, work and study, it is still not easy to access the social rights and benefits to which they are entitled by law. Often Asylum Seekers, Refugees and Migrants will face additional barriers before being able to access a service. An example of a common barrier is the requirement for a permit to be validated before a service can be accessed. Home Affairs can take many months to validate a single permit. Such barriers can usually be overcome through submissions to the relevant authorities or eventually through litigation, ensuring that the right to a service is effectively applied. It is important to realise that all rights and public services flow from access to documentation, and apart from attaining status the next crucial step is to gain access to a 13-digit ID number, which is necessary to access both services and rights.

The opening of the class of people eligible to apply for the COVID19 Social Relief of Distress grant (thereafter SRD grant) to include those with Asylum Seeker permits and those on Special Dispensation Permits,²¹ represents one of the latest strategic litigation victory by the Scalabrini Centre and its legal partners.²² As explained below it is a case in point of how advocacy activities start from the clients specific needs to promote legal actions able to make societal changes

On 22nd May 2020, the Scalabrini Centre, launched an urgent litigation in the Pretoria High Court regarding the exclusion of people on Asylum Seeker and Special Permit status from the Covid19 SRD

²¹ Madikane explained that refugees already had the right to apply for this grant, and the Scalabrini team and their advisors decided that adding undocumented would much reduce the likelihood of success, and complicate the argument.

²² Rose Nortan Fullbright Attorneys <https://www.nortonrosefulbright.com/en-za>

grant, which was only initially available to those with Refugee Permits.²³ Through various joint letters and comments, the Centre expressed that an effective approach to fighting Covid19 must be *inclusive*. Covid19 affects people regardless of their nationality and/or legal status: South Africa's response to it should be the same for all. The Centre argued that suffering for Asylum Seekers and Special Permit holders was particularly severe because their permits expired during lockdown, which meant they often faced dismissal from work, no income, and frozen bank accounts. The Centre pointed out that this class was excluded from the majority of governmental financial relief packages and many were even excluded from governmental food parcels, as a 13-digit ID number was required to register. Moreover Unemployment Insurance Fund (UIF) applications for non-South Africans are subject to delays relating to permit verification, further heightening their vulnerability. Madikane adds: *"We were deeply concerned since we experienced a very high volume of requests for help; 1,400 people called in the first eight weeks of lockdown requesting assistance with food, rental or electricity. Given this high level of vulnerability, we asked the Court to confirm that persons with Asylum Seeker Status, or Special Permits, whose documentation was valid at the time the National State of Disaster was declared, be eligible to apply for the Covid19 SRD grant."*

On 19th June the Scalabrini Centre won a Court Order that opened the path for South Africa's Asylum Seekers and Special Permit holders to apply for the Covid19 SRD grant with the same eligibility criteria as citizens.²⁴ The Court Order indicates that the Minister of Social Development must, within five days of the order being granted, calculate the cost of the inclusion, and make the necessary changes to the legislation to facilitate such inclusion.

Madikane explains how ongoing advocacy was conducted to ensure the Court Order was effectively implemented. When the Court Order was issued, the Department of Social Development (thereafter DSD) was working with Home Affairs on designing the content of the grant application form, and determining what information should be collected in order to facilitate permit verification. The Centre's advocacy team worked closely with DSD offering input into how questions around permits on the grant application form were posed so both client and official understood exactly what was being asked. This ensured that the application process for people on Special Dispensation and Asylum Seekers did not itself become a barrier. The team also prepared a FAQ for clients to access when filling their

²³ This was available for 6 months from May 2020, then it was extended for another 3 month and terminated on 30th April 2021 and then further extended to March 2022.

²⁴ There are about 450,000 Asylum Seekers and Special Dispensation permit holders in South Africa. The SRD is a temporary provision of assistance intended for persons in such dire material need that they are unable to meet their or their families' most basic needs. For Eligibility Details see <https://www.sassa.gov.za/Pages/Social-Relief-of-Distress-Grant.aspx>

application forms. After a couple of months we were made aware of 1133 applications successfully being submitted. We also had a lot of media coverage 1043 articles.²⁵ More than 11 months later, we have not received another report issued to Parliament's Portfolio Committee on the total number of Asylum Seekers or Special Dispensation clients who applied for the SRD grant, the last recorded figure remains 1311. However, we do know that no payments were processed for the 1311 clients before mid February 2021. These applications were submitted in July/August 2020. The delay in payment was caused by waiting for permit verification, which needed to be conducted by Home Affairs. Once the permits were verified and the claim finalised and ready for payment, clients faced another barrier when approaching the Post Office for their grant payment because their permits were all expired due to the lockdown. This denial of payment occurred despite clients having a Directive from Home Affairs, which states that any permit expired after the 17th March 2020 should be considered valid. It took conversations between the DSD, the South African Social Security Agency (thereafter SASSA) and our Advocacy team before the Post Office finally processed grant payments.

Madikane also shed light on the question of the Unemployment Insurance Fund²⁶ as Asylum Seeker, Refugees and Migrants with an employment contract should have the same access to benefits as locals, but only recently have Asylum Seeker/Refugees and Migrants been able to claim from the UIF. This following the Court Order obtained in February 2019 by Dakalo Singo at Werksmans²⁷ and despite the fact that companies have always been compelled to pay and deduct UIF from asylum seeker, refugees and migrant employees' salaries. Prior to the court victory, UIF applications could not be processed without a 13-digit ID number. The court order stipulated that the Department of Employment and Labour (thereafter DEL) accept visa and permit numbers to process UIF claims. The Centre is still tracking the implementation of the court order to allow eligible non-ID holders to process UIF claims. It appears the main barrier is that the DEL requires the DHA to verify permits or visas before releasing payment. This can take months. Out of approximately eleven clients who made application for UIF

²⁵ See for example Sowetan <https://www.sowetanlive.co.za/news/south-africa/2020-06-19-asylum-seekers-may-apply-for-covid-19-relief-grant/>

²⁶ [UIF pre and post lockdown http://www.labour.gov.za/uif-to-process-covid-19-ters-benefit-to-assist-employers-and-workers-during-coronavirus-\(covid-19\)-lockdown](http://www.labour.gov.za/uif-to-process-covid-19-ters-benefit-to-assist-employers-and-workers-during-coronavirus-(covid-19)-lockdown)

²⁷ <https://www.werksmans.com/legal-updates-and-opinions/a-brief-retrospective-on-two-cases-about-uif-and-asylum-seekers/>

since the court victory, only three had received the payout months later. Now the same barrier and associated delays exist for those working on permits or visas when claiming from UIF-Ters.²⁸

Education should be available to clients regardless of status and documents, as established by Section 29 of the Constitution. However, in some instances, children of undocumented parents are precluded from attending school. This led to a court case resulting in the Phakamisa Judgment²⁹, which established that: *"The Department of Basic Education (thereafter DBE) and the Provincial Department are acting unconstitutionally in not permitting children to continue receiving education in public schools purely by reason of the fact that they lack identification documents."*³⁰

The Centre furthered the impact of the Phakamisa Judgment by issuing the DBE Circular³¹ to all clients suffering from this exclusion and directly to any school principal if necessary. This resulted in the enrolment of a backlog of undocumented learners who had previously been denied placement in schools.

The rights of Asylum Seeker, Refugees and Migrants to access the South African healthcare system is another complex matter. Laws and policies clash, and medical staff are left confused – especially as implementation of these laws differ depending on both clinic and staff. Meanwhile, the healthcare system struggles, in some areas, to provide sufficient medical care to any person, regardless of their nationality or status. In South Africa, the public healthcare system is structured in different levels.

Madikane summed up the challenges faced of Asylum Seeker, Refugees and Migrants and the actions taken by the Advocacy team:

"As you can see for all areas where Asylum Seekers, Refugees and Migrants have rights the same pattern emerges. A discord between law, policies, and implementation. Regulations to various laws are not harmonised; creating confusion amongst Asylum Seekers, Refugees and Migrants and public services staff, such as teachers and medical practitioners. We are in direct touch with matters affecting Asylum Seekers, Refugees and Migrants. We monitor the effects, and in

²⁸ This article explains UIF Ters, <https://www.rsm.global/southafrica/news/relief-employers-through-covid-19-temporary-employee-relief-scheme>

²⁹ <https://section27.org.za/wp-content/uploads/2020/01/Phakamisa-Judgment12Dec19.pdf>

³⁰ Centre for Child Law and Others v Minister of Basic Education and Others (2840/2017) [2019] ZAECGHC 126 <https://citizenshiprightsafrika.org/south-africa-centre-for-child-law-and-others-v-minister-of-basic-education-and-others>

³¹ <https://section27.org.za/wp-content/uploads/2020/02/Circular-1-of-2020-Undocumented-Learners.pdf>

collaboration with partner organisations, we raise issues through phone calls, letters to authorities and public service officials, litigation, submissions to Parliament and comments on amendments to legislation, regulations or policy. We aim to remove barriers. Both our on the ground activities and our advocacy activities are ongoing. Looking forward our worry now is the introduction of the Refugee Amendment Act that reduced access to rights considerably. This came into effect on the 1st January 2020."

Under the Refugees Amendment Act 2020, Asylum Seekers, no longer have the *automatic* right to work and study, as Refugees do have. This right needs to be "endorsed" on an asylum permit following an assessment process to determine whether applicants are able to support themselves in any way (including with UNHCR's support). If not, they should have the right to work endorsed – but they would need to show proof of employment within two weeks, or risk their employer facing a hefty fine. For those who are studying, the Refugees Amendment Act and Draft Regulations are also confusing, as an asylum applicant must supply proof of studying at a South African education institution, which creates the implication that the right to study is not automatically granted.³² Madikane concludes:

"It is not yet clear, practically, how the reduction in rights reflected in the Amendment Act and its Regulations will be enforced as the lockdown has seen the Refugee Reception Offices closed since 16th March 2020. In the meantime, our submissions to the Portfolio Committee of Home Affairs raised deep concerns over the changes to Asylum Seekers' right to work and study and a slew of other reduction in rights or new barriers. However, just before South Africa went into Level 5 lockdown in March 2020, the Centre launched an urgent application against Home Affairs requesting the High Court to declare sections of the Act and Regulations unconstitutional and strike them out. The matter focuses on what we call the Abandonment Clauses³³ relating to the automatic deeming of an Asylum Permit as abandoned and the deeming of the Asylum Seeker, as an illegal foreigner if their permit has expired for a period of more than 30 days. So far, we won the first round and this means that Home Affairs cannot implement the clauses until Part B of the matter is heard. Home Affairs are appealing. In the meantime the Refugee Reception Offices remain closed, but last week an online renewal process became available, which was suggested as a solution before but never introduced. Now it depends on Home Affairs capacity to implement this online renewal."

2.4 The Other Programmes

Apart from removing systemic barriers that affect Asylum Seekers, Refugees and Migrants, the Centre runs programmes that assist migrants directly and promote integration. The Welfare Programme practically assists individual clients to access the services they need. Services include home visits to the

³² <https://scalabrini.org.za/news/refugee-amendment-act/>

³³ Refugee Act 130, 1997, Section 22(12) and 22(12) as well as Regulation 9 of the Refugee Regulation, 2018.

homes of our most vulnerable clients. The Welfare Desk also manages a limited assistance programme, which offers direct support to emergency and special cases. Welfare clients must demonstrate a willingness to work alongside the Welfare team, by supporting change in their own life circumstances. Most importantly, Madikane comments that:

"This service is open to all migrants regardless of migration status, and includes direct financial assistance for, food, rent electricity, health, school fees, transport, funeral and others. It includes referral to either another NGOs, or shelter or hospital, or schools. The programme also assists eligible Refugees to access South African Social Security Agency SASSA grant, providing they meet the grants criteria just like any citizen."

The programme manager added that:

"This year with Covid19 the programme assisted Asylum Seekers, Refugees and Migrants mainly with food and rent, while health, transport, clothes and school fees were quite minimal, obviously because of the lockdown. This programme usually has a budget of about 35,000 rand a month, which is never enough. We help clients regardless of legal status, documented and undocumented migrants alike ask for assistance."

The English School and the Employment Access programmes are the tools the Centre uses to promote and achieve integration. Language is a serious hurdle for adult Asylum Seekers, Refugees and Migrants, in South Africa and elsewhere. Asylum Seekers, Refugees and Migrants who lack English language skills face even greater barriers in adjusting to life in South Africa, accessing social services, and securing employment. To address this need, the Centre provides a specialised English language school to promote empowerment, integration, and students' success. Students originate from more than eight African countries, creating a diverse learning environment for over 1000 students a year. The school shares its curriculum and methodology with partners, four to date. In terms of teaching other skills it does so vicariously – for example, using a language lesson to discuss CVs. It costs ZAR300 to register, everyone must pay, if a client is so vulnerable they cannot pay, it is possible to get a bursary from our Welfare Desk. A manager, an assistant, and volunteer teachers deliver the programme. At the end of each term, a survey is administered aimed at determining increased level of integration because of improved communication skills. Over 90% of students report improved integration due to improved ability to introduce themselves, explain feelings of ill health, assist children with homework, explain their professional skills and send text messages.

The Employment Access programme acts as a gateway to employment by supporting foreign nationals who are legally entitled to look for work in South Africa. It provides a combination of skills training,

professional development and resources needed for success in the job market. Hylton Bergh, the manager, explains how the programme works:

"The process starts with collecting information and assessing the clients' readiness to enter the labour market, often the weakest point is lack of fluency in English and in this case they are referred to the English School. Some clients accept and some do not, if they do not the process stops, at least for the time being. It really depends on each individual's readiness and willingness. Some, once they received assistance to compile a CV, don't come back, and just use the CV to try to get a job. For those who follow the full programme we offer a two and half days workshop to build the professional confidence and self-esteem necessary to apply for work, focusing on, self-image, strengths and skills/experience, interview preparation and interview skills, and phone etiquette."

The programme manages to place about 350/400 migrants a year in employment in a variety of fields. For example, in the last year most placements were in restaurant and catering with 69 migrants placed as kitchen staff and bartenders, 11 of which as chefs, other 30 migrants were placed as house assistance, another 18 as drivers, 17 in security, 14 in nail care and 10 as general workers. There are also occasional placements in highly qualified job such translator, teacher, interior designer. The Manager added that:

"These programme act as a bridge between formal and informal economy. Finding a job is key to integration and self-sustainability. We follow up with monitoring and evaluation and what we find as a main problem is that some of the jobs are a short-term contract, and thus don't provide a medium or long-term solution. It is very difficult to find jobs for older migrants, while there are real possibilities for the youth. The second generation grew up here, they speak the language and they can be supported to study. However a 30% successful placement, when comparing the number of placements with the number of participants per year, roughly a 1000 migrants, is high. Thus the success of the programme itself is very high."

Madikane is very positive about Asylum Seekers, Refugees and Migrants in the informal economy:

"Many open businesses in the townships, kiosks fixing cell phones and selling data, hair salons, nail care, craft, clothes, retail, catering, child care and tutoring are also activities that Asylum Seekers, Refugees and Migrants perform quite successfully. These micro enterprises is a thriving sector where Asylum Seekers, Refugees and Migrants display much initiative. Sure, these are backyard businesses, which struggle to get funding for expansion. This is why we would like to initiate a micro financing programme. Our Women Platform is a very successful business incubator promoting business development."

In 2016 the Centre ventured into their first research about remittances conducting an in-house study on their clients' experiences. Albeit eminently exploratory, this study points to important questions about

how government's policies and practices, banks, employers, and private businesses are directly and indirectly hampering migrants' capacities to remit.³⁴

The outcome is that a) the most formidable obstacle are barriers to earning, so that clients can gain the capacity to remit in the first place. Economic exclusion is a challenge faced by many Asylum Seekers, Refugees and Migrants and locals alike in a struggling economy characterised by high unemployment and inequality; b) barriers to sending money, including the cost and reliability of informal remitting, the inability of many to remit through formal channels, as well as the cost of formal channels for those who can use them; c) the personal costs and pressures to remit plays an crucial role, Asylum Seekers, Refugees and Migrants are expected to remit, and this is often a huge burden.³⁵

This study, Madikane explains, was aimed solely at understanding clients' behaviour. Generally clients strive to send money home and contribute to the betterment of their families' lives. They send money whenever possible to help meet their families' immediate and basic needs, including school fees, food, health care, clothing, and shelter. Most send money through informal channels. For example, sending money with family, friends or a driver who are travelling home. Informal channels are preferred because the cost of remitting via formal channels is prohibitive with it costing at most 13.5% at one Authorised Dealer with Limited Authority (ADLA). The United Nations General Assembly set up the Sustainable Development Goals (SDG) in 2015 with the aim to achieve them by 2030. "*Goal 10 (Reduced Inequalities) Target 10 c is: Reduce to less than 3 per cent the transaction costs of migrant remittances and eliminate remittance corridors with costs higher than 5 per cent.*"³⁶ However, according to the Organisation for Economic Cooperation and Development (OECD) report, developing countries are facing a shortfall of USD 1.7 trillion in financing needed to keep them on track for the SDG 2030. It seems quite likely that working towards achieving the SDG will not be a priority for the immediate future. This is not good news for migrants remitting to their homes. The Finmark Trust's

³⁴ The Centre decided to start exploring remittances because they play a central role in migration and development and because of South Africa's commitments towards the Goals of the 2030 Sustainable Development Agenda.

³⁵ Many studies conducted in Italy show that remittances are a huge burden on Asylum Seekers, Refugees and Migrants, including keeping them in a sort of slavery. The case of Nigerians prostitutes is emblematic, see inter alia Isoke Aikpitanyi, *Le Ragazze di Benin City/The Girls from Benin City*, Milano 2007 and Rita Giaretta, *Non più Schiave /No longer Slaves*, Salerno, 2007 (the English titles are my translations).

³⁶ https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/201802_unpd_cm16_chen_sdg_indicators.pdf

report “*Effects of COVID-19 on domestic and cross border payments and remittances in SADC*”³⁷ shows that while remitting from South Africa to SADC dropped substantially in April 2021, in May 2021 the total amount remitted was 10% higher than the average for the first quarter of 2021. This statistic might seem strange given the economic lockdown South Africa experienced, but the most likely reason for this increase is that informal channels of remitting were closed (as borders were closed to travellers), forcing migrants to use more expensive formal digital channels. With travel restrictions still in place, lobbying for a reduction in the cost of remitting via formal channels is more needed than ever given the lack of the cheaper alternative.

Here is a summary of Scalabrini achievements for quick reference. Advocacy managed to successfully assist with Angolan Cessation and visas renewal, broadening of Healthcare, extending benefits such as SDG Grant/UIF and extending Education access for Minors. The Language Schools and the Employment desk jointly manage a 30% success rate in job placements, the Women Platform boosts micro enterprises and the Academic programme provides University Education (not addressed here). Moreover the Centre is involved in a wide range of action research including this paper, STIAS Migration and Social Protection paper, and papers on Foreign Children in Care (no addressed here), Remittances and Angolan Cessation. Finally the Scalabrini has introduced aspects of the nineties NGOs led Italian reception model, albeit Scalabrini maintained its independence from the State managed model, with which it cooperates only when required.³⁸

3. Considerations

The Scalabrini Centre’s experience (and the Case Study on the Italian Reception System) show that NGOs play a crucial role in the life of Asylum Seeker, Refugees and Migrants, as they facilitate access to documents, work, health, education and social protection, as well as implementing *effective strategies* and *good practices*.

This case study highlights the policy and legislative challenges that Asylum Seekers, Refugees and Migrants face in South Africa and that NGOs strive to overcome. Both in South Africa and in Italy, the consensus of my sources, be researchers, NGOs staff, or lawyers is that *the ease and pathway of the life*

³⁷ <http://finmark.org.za/dedi517.jnb2.host-h.net/effects-of-covid-19-on-domestic-payments-and-cross-border-remittances-in-the-sadc-region/>

³⁸ See note 16, about my long paper.

of a migrant in the host country is determined by their legal status. The reason for migrating is almost irrelevant. Being a low skilled economic migrant is not contemplated by the legislation of most receiving countries, including South Africa and it is not grounds for an application within the Refugees Act. Thus those who migrate hoping to find better life prospects can only obtain legal right to work and stay in South Africa (and in Italy) by applying for asylum. To protect the integrity of the Asylum Management System the need for channels allowing migrants to legally enter as low skilled workers is acute.

Moreover, this paper explores loopholes and technicalities that further reduce the chances of successful entry, the reasons why documents do not guarantee the fruition of rights, as many challenges lie in the procedure to register with (the municipality in Italy) and the Department of Home Affairs in South Africa to finally obtaining a local Identification Document. Because of the way migration is controlled and structured, most Asylum Seekers, Refugees and Migrants, spend months, or most likely years, in the informal economy, relying on their own social networks, the NGOs sector assistance if available and/or living in the streets and on the edge of criminality. It also show that like the cases in point (and in Italy, as well) the Scalabrini Centre in South Africa, and the NGO sector offer programmes that are crucial in providing integration and fruition of rights, as it is difficult even for documented Asylum Seekers, Refugees and low skilled Migrants to find a job and integrate into the host society. The Scalabrini Centre as a whole plays a pivotal role constantly monitoring law application and either challenging the constitutionality of law in court, or the state's failure to apply it to assure some level of migrants' *inclusion*.

Unfortunately in the course of research it also emerged that assisting migrants is costly, regardless of whether funding is private or public, which is a significant drawback causing criticism, or worse fierce opposition, towards the right based approach within local societies. In Italy where the Reception System is subsidised by EU funds, channelled through the State towards the Municipalities and from the latter to the profit and non profit organisations managing the Reception Structures the total cost was 1,6 billion in 2016/17 and 2,7 billion in 2019.³⁹

³⁹ OpenPolis Report, August 2019 <https://www.openpolis.it/esercizi/la-stretta-del-decreto-sicurezza-al-sistema-di-accoglienza/>

Most important, both in South Africa and Italy documents are not a guarantee of finding placement in a segmented labour market plagued by high unemployment rates that are destined to grow. Although not included in this paper and in Track 4, a burning issue is that of Covid-19 related job loss and the acceleration of 4IR, with its push towards automation, critical factors (playing themselves out as I write) that challenge society as we know it. The eventual negative impact on migrants calls for urgent investigation and response.

As the ILERA Regional Congress is a concrete opportunity for me to contribute to take investigation on migration one step forward, with the contribution of Madikane, I attempt to suggest a way forward for research.

4. The Way Forward

The experience of the Scalabrini Centre amply demonstrates how practice and research feed into each other to overcome some of the loopholes and hurdles in the implementing machinery, thus showing that NGOs play a crucial role in the life of Asylum Seekers, Refugees and Migrants, as they facilitate access to documents, work, health, education and social protection, as well as implementing *effective strategies* and *good practices*.

Both in South Africa and in Italy the NGOs show an incredible ability to find creative solutions when faced with constraints, and promoting small micro enterprise, by removing red tape and hurdles.

I would like to point out that my deliberate choice was that of presenting a virtuous example, as it serves as a model. However in South Africa there are about 50 organisations that work with Asylum Seekers, Refugees and Migrants in some capacity and in Italy there over 700 involved in the Reception System, and others like the Scalabrini that follow a similar model, but maintain their independence from the State. The way forward, Madikane suggests, should be to further *investigate* the specialised NPO/NGOs sector to *assess* and *evaluate* the impact, sustainability and replicability of their practice and strategies. Stakeholders in some of these organisations could be contacted and interviewed, first of all migrant leaders and individual migrants, as well as member of NGOs management teams. Migration consultants, lawyers, researchers, as well as portfolio committee members and government official are other interesting prospective respondents. It would also be useful exploring the micro enterprise sector to identify strategies to promote and boost migrants' entrepreneurship. An effective method would be

holding focus *groups* on specific issues, such as for example, the impact of fear of xenophobic violence on the Asylum Seekers, Refugees and Migrants sense of integration, level of migrant self-sustainability, and how that sustainability is structured (formal, informal, money received from home, NGO support, state social security), level of effective implementation of court victories for migrant communities, how policy/law supports regional development.

Once this suggested second round of interviews/focus groups will be completed, indicators should be developed to assess and evaluate the *best practices* emerged so that they can be broadened and replicated. The following is a list of *common factors*, as Piore defines them, from which such *indicators* can be derived.

Set of Indicators means the questions to be ask in order to develop proper Indicators in the next phase of research. Thus those included in the table below are exemplificative and not exhaustive.

Factor	Set of Indicators to be developed	Indicators To be completed
Factor 0 Adherence to international tools, Sending and Receiving Countries dynamics appear to clash against economic imperatives	SET of INDICATOR 0 suitable to understand why and how improvements can be made at Policy Level.	
Factor 1 Reason for migrating is irrelevant only legal status counts, with the consequent exclusion of low skills economic migrants from legally entering Italy and South Africa, except the small percentage regulated by Quota 4/5% and Seasonal and Family Reunification	SET of INDICATORS 1 How many migrants fall into illegal/undocumented because of these provision? What are their characteristic?	Figures Percentages Ratio
Factor 2 The contradictory nature of Implementing Machine slows down the fruition of rights	SET of INDICATORS 2 Comparison with how Implementing Machine works for low skilled, low salary/unemployed citizens in applying Social Protection	
Factor 3 Interaction Sending/Receiving favours some countries and penalises others. This changes over time, why, how?	SET of INDICATORS 3 What determined changes in Italy since 1976 and in South Africa since 1994? To be developed jointly with Factor 1 INDICATOR 1.	
Factor 4 Law vs Interpretations	SET of INDICATORS 4 What influences Interpretation?	
Factor 5 Implementing Machine chronic backlog, Rules and Regulation contradicting the Law	SET of INDICATORS 5 measure the Implementing Machine capacity jointly with Factor2/Indicator 2	
Factor 6 Specific Loopholes and Hurdles to be further removed	SET of INDICATORS 6 How many migrants are rejected because of incorrect Entry Form/Procedures? How many migrants are refused asylum and become Overstayers, meaning their documents expires without possibility of renewal? How many documented migrants manage to claim the benefits to which they are entitled?	
Factor 7 Migrants vulnerability, especially undocumented migrants falling in informal economy, submersed economy and crime, and temporarily documented seasonal work	SET of INDICATORS 7 What type of migrants end up where? Is this a strategy to assure a reserve of cheap labour? How can informal activities be financed and boosted?	