"The Impact of Mixed Migration Flows on the Mozambican Asylum System"

Verfasserin
Cláudia Mega Pedrosa

angestrebter akademischer Grad
Master of Arts (MA)

Wien, 2014

Universitätslehrgang: Master of Arts in Human Rights
Studienkennzahl lt. Studienblatt: A 992 884
Betreuerin: Mag. Andrea Sölkner
“All of us bear a responsibility for ensuring that those genuinely in need of international protection receive it.”

(António Guterres, Message for World Refugee Day, 2005)
Statement of Authorship

I, Cláudia Mega Pedrosa, declare that this thesis is submitted to the Vienna Master of Arts in Human Rights and that it has not been submitted here or anywhere else for the award of any degree or diploma. Furthermore, the thesis here presented comes as a result of my own research and work. I did not make use of the work of other persons, unless duly recognised. All sources consulted in the course of this thesis have been properly acknowledged.

____________________________
Cláudia Mega Pedrosa

Vienna, 2014
# Table of Contents

List of Figures ........................................................................................................ viii
List of Acronyms ..................................................................................................... ix

I. Introduction ............................................................................................................. 1
   1. Statement of the Problem .................................................................................. 4
   2. Research Question ............................................................................................ 5
   3. Methodology ...................................................................................................... 5
   4. Definition of Terms ........................................................................................... 5
   5. Significance of the Thesis ................................................................................ 8
   6. Limitations of the Thesis ................................................................................ 9
   7. Delimitations of the Thesis ............................................................................. 9
   8. Organisation of the Thesis .............................................................................. 9

II. Mozambican Refugee Law and Asylum Procedures in Theory .................. 13
   1. International Legal Framework and Mechanisms applicable to Mozambique .... 13
   2. Regional Legal Framework and Mechanisms applicable to Mozambique ........ 19
      3.1. The Role of INAR ....................................................................................... 27
      3.2. Refugee Camps in Mozambique .............................................................. 28

III. Mozambican Migration Law and Policies ....................................................... 31
   1. The Mozambican Aliens Law ......................................................................... 31
   2. The Mozambican Migration Management System ....................................... 34
   3. International Legal Framework applicable to Mozambique ......................... 36
   4. Migration Dialogue for Southern Africa ....................................................... 40

IV. The Mixed Migration Phenomenon ................................................................. 43
   1. Refugee Protection and Mixed Migration .................................................... 44
      1.1. The 10-Point Plan of Action on Refugee Protection and Mixed Migration ... 46
   2. The Case of Southern Africa ........................................................................... 50
      2.1. Regional Conference on Refugee Protection and International Migration: Mixed
           Movements and Irregular Migration from the East and Horn of Africa and Great Lakes
           Region to Southern Africa ............................................................................. 55
      2.2. “In Pursuit of the Southern Dream: Victims of Necessity” ........................ 65
V. *Modus Operandi* in Mozambique ................................................. 67
1. Asylum Procedures in Practice .................................................. 67
2. The Impact of Mixed Migration Flows on the Asylum System .......... 71
   2.1. The 2011 Emergency .......................................................... 76
   2.2. The Integrity of the Asylum System ..................................... 79
VI. Optimal Implementation ......................................................... 83
1. National Arrangements ............................................................ 84
2. Regional Arrangements ........................................................... 97
VII. Conclusion ............................................................................. 99
References .................................................................................. 103
Abstract .................................................................................... 115
   1. English Version ................................................................. 115
   2. German Version ............................................................... 116

**List of Figures**

Figure 1 – Map of Mozambique .................................................... 11
List of Acronyms

- **10-Point Plan** – 10-Point Plan of Action on Refugee Protection and Mixed Migration
- **1951 Refugee Convention** – Convention Relating to the Status of Refugees
- **1969 OAU Convention** – OAU Convention Governing the Specific Aspects of Refugee Problems in Africa
- **ACmHPR** – African Commission on Human and Peoples’ Rights
- **Aliens Law** – Mozambique: Law no. 5/93 of 28 December 1993
- **AU** – African Union
- **Banjul Charter** – African Charter on Human and Peoples’ Rights
- **CCR** – National Eligibility Commission
- **CRC** – Convention on the Rights of the Child
- **HDI** – Human Development Index
- **ICCPR** – International Covenant on Civil and Political Rights
- **ICESCR** – International Covenant on Economic, Social and Cultural Rights
- **ICRC** – International Committee of the Red Cross
- **ICRMW** – International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
- **INAR** – Mozambican National Institute for Refugee Support
- **IOM** – International Organization for Migration
- **MIDSA** – Migration Dialogue for Southern Africa
- **MINT** – Mozambican Ministry of the Interior
- **MNEC** – Mozambican Ministry of Foreign Affairs and Cooperation
- **NGO** – Non-Governmental Organisation
- **OAU** – Organization of African Unity
- **OHCHR** – Office of the High Commissioner for Human Rights
- **RSD** – Refugee Status Determination
- **SADC** – Southern African Development Community
- **Smuggling of Migrants Protocol** – Protocol Against Smuggling of Migrants by Air, Sea or Land
- **SOPs** – Standard Operating Procedures
- **Torture Convention** – Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
- **Trafficking in Persons Protocol** – Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially in Women and Children
- **UDHR** – Universal Declaration of Human Rights
- **UN** – United Nations
- **UNDG** – United Nations Development Group
- **UNDP** – United Nations Development Programme
- **UNHCR** – United Nations High Commissioner for Refugees
- **UNICEF** – United Nations Children’s Fund
- **UNICRI** – United Nations Interregional Crime and Justice Research Institute
- **UNTOC** – UN Convention Against Transnational Organised Crime
- **UNTS** – United Nations Treaty Series
- **UPR** – Universal Periodic Review
- **WFP** – World Food Programme
I. Introduction

The country that in times was a refugee sending country has become in the recent past a host one: Mozambique is officially an independent country since June 25th 1975, after having struggled for its independence in a war that lasted almost ten years against coloniser Portugal. Afterwards, the Southeast African country endeavoured about sixteen years of civil unrest, due to clashes between the political party in power Frelimo and the anti-Government guerrilla Renamo, which only ended in 1992 with the signature of the General Peace Agreement on October 4th1. During this period (1977-1992), Mozambique became one of the major refugee-producing countries in the world, as its population was fleeing to its neighbouring countries, namely Malawi, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. Following the signature of the peace treaty, a United Nations (UN) peacekeeping operation (known as Opération des Nations Unies au Mozambique – ONUMOZ) under the Security Council Resolution 797 of December 16th 19922 was deployed with the aim of monitoring the implementation of the agreement and it stayed in the country until December 1994. Simultaneously, a repatriation programme by the UN High Commissioner for Refugees (UNHCR) started, having received and reintegrated over 1.7 million Mozambican refugees3 – which is until today regarded as a highlighted “successful and practical example for the international community in Africa”4. Hence, the cessation clause for Mozambican refugees was invoked by UNHCR on 31 December 1996, given that Mozambique was enjoying “uninterrupted peace and stability” since the signing of the General Peace Agreement5.

---

1 S/24635, 08 October 1992.  
2 S/RES/797, 16 December 1992, para. 2.  
3 EVAL/02/96, 01 February 1996.  
4 ISSN 1020-7473, 20 October 2000, p. 27.  
Albeit compared to the past population movements might have changed, Mozambique has currently a rank of 185 out of 187 countries according to the 2013 Human Development Index (HDI)\(^6\) of the UN Development Programme (UNDP), being amongst the poorest countries in the world. Nonetheless, the country attracts a considerable number of foreigners, including international investors and businessmen due to its large number of untapped natural resources. Also, many refugees, asylum-seekers and economic migrants come to the country not only due to its stable environment but also due to its geographical position – in particular but not exclusively, its proximity to South Africa.

Mozambique joined the UN on 16 September 1975. It is one of the eight pilot countries of the UN “Delivering as One” initiative, which was launched in 2007. This initiative envisages a more coherent, efficient and effective UN system, and its four guiding principles are one leader, one budget, one programme and one office\(^7\). Thus, the initiative is meant to adjust the programmes and funding of the different UN agencies, and to enable agencies which do not have a presence in the country to advice their Governments. Furthermore, Mozambique became a State party to the Organization of African Unity (OAU) (presently African Union) on 18 July 1975 and of the Southern African Development Community (SADC) on 17 August 1992. The State has mainstreamed the human rights discourse with its participation in 2011 in the Universal Periodic Review (UPR) mechanism of the UN Human Rights Council and by consistently reporting to Human Rights Treaty Bodies\(^8\). Significantly, both mechanisms have already cautioned for the risk of human rights violations

---

\(^6\) UNDP, Statistical Tables from the 2013 Human Development Report – Table 1: Human Development Index and its components, 07 December 2013, available at https://data.undp.org/dataset/Table-1-Human-Development-Index-and-its-components/wxub-qc5k [consulted on 16 May 2014].

\(^7\) UN Development Group (UNDG), Delivering as One: Making the UN system more coherent, efficient and effective, available at http://www.undg.org/content/un_reform_and_coherence/delivering_as_one [consulted on 09 July 2014].

\(^8\) Namely to the Human Rights Committee of the International Covenant on Civil and Political Rights and to the Committee Against Torture of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.
in the setting of refugee and migrant movements in the country, especially since the noticeable increase of flows.

Its geographical location fosters Mozambique to find itself mainly as a transit country in a migration flow context. The movements aiming at entering and crossing the country are primarily composed of two different routes: one coming from the Great Lakes region – Rwanda, Burundi and the Democratic Republic of the Congo – and another coming from the Horn of Africa – Ethiopia and Somalia. The envisioned destination in the majority of the cases is in fact South Africa, while other countries like Mozambique, Tanzania or Malawi are essentially gateways to achieve it. As soon as one takes a deeper glance at these flows, it is possible to realise the diversity of motives and purposes behind them. This is the so-called mixed migration phenomenon, where one can find different categories of people travelling together. Thus, it is possible to find genuine asylum-seekers sharing the same route, destination and means of transportation as an economic migrant or a victim of trafficking, in spite of the different motives and needs behind their readiness to endeavour the journey. Furthermore, many of these persons may even fall into more than one category (for example a victim of trafficking may also be a refugee).

During the first semester of 2011, Mozambique was affected by a major migration flow coming from the Horn of Africa. As its neighbouring countries closed all their borders, migrants established new routes and means of transportation in order to proceed with their journey to South Africa. Consequently, they started arriving in the north of Mozambique in small and precarious boats coming directly from Kenya. Even though these arrivals have decreased later on, there are high chances that such an emergency occurs again.
In such complex context, it is important to ensure that no denial of international protection to genuine asylum-seekers takes place. Thus, prompt action from the State concerned is required, calling for joint forces both from its asylum system and its migration management bodies, among others. A State needs to take appropriate measures in order to avoid any unlawful deportation and risk of breach of the right to asylum and of the principle of non-refoulement. Nevertheless, it is also essential to ensure that no abuse of the asylum system and mechanisms is taking place. Overall, it is important to assess the real impact of these flows on the national mechanisms of the host and/or transit country and to attempt to find efficient and effective solutions to these challenges. However, it is imperative that these solutions comply with international standards and respect simultaneously the human rights of the persons arriving and the national sovereignty of the State of Mozambique.

1. Statement of the Problem

The purpose of this thesis is to understand the scope of the phenomenon of mixed migration flows – particularly in Southern Africa – and to evaluate its impact on the Mozambican asylum system. Thus, it is necessary to examine how the national authorities are managing them, by assessing if they are dealing properly and promptly with the challenges of protecting genuine asylum-seekers amongst them. For this, it is important to analyse how the refugee law is established and applied, also in comparison with international standards. Hence, a separate analysis of the national refugee law in theoretical and in practical terms is critical, as well as an appraisal of the migration law itself. It is significant to assess how both the asylum and the migration management systems work in the country and to evaluate their effectiveness and readiness once they encounter these major groups of new arrivals. An attempt to find key implementing solutions to deal with mixed-migration flows in a protection-sensitive manner appears to be important, both at national and regional levels.
2. Research Question

*How is the asylum system in Mozambique coping with Mixed Migration Flows?*

3. Methodology

The methodology used in this thesis is qualitative research. As I have undertaken a five months internship with UNHCR Mozambique in Maputo, I have acquired some inside knowledge on the topic and thus wanted to pursue the analysis further. I have collected some documents and data from Ministries in Mozambique, UN agencies and non-governmental organisations (NGOs), which will be the foundation for my analysis and research. Also, the Mozambican asylum law and procedures will be carefully examined. During my stay in the country, I was able to contact with Government officials, officers of the different UN agencies (namely UNHCR, UNICEF and UNICRI), and NGO officers. I conducted some interviews with UNHCR officers and Government officials from both the Ministry of Foreign Affairs and Cooperation and the Ministry of the Interior, which contributed greatly to the investigation behind this thesis. As part of my last phase of the internship, I visited the refugee camp in the north of the country (Nampula), where I had the opportunity to deal directly with new arrivals, participate in screening procedures and carry out a number of interviews with asylum-seekers, which in the end facilitated my understanding of the prevailing situation and context.

4. Definition of Terms

- Mixed Migration – “complex population movements: people using the same routes and modes of transportation to travel, but moving for different reasons. The main characteristics of mixed migration flows include the multiplicity of factors driving the movement, and the different
needs and profiles of the persons involved. These mixed movements may include migrants, some of whom may have specific needs, refugees, unaccompanied and separated children, or victims of trafficking. Some individuals may fall into more than one of these categories. Mixed migration frequently occurs irregularly, without the requisite documentation, and often involves human smuggling and trafficking.\footnote{Regional Group on Protection in Mixed Migration, September 2011, p. 3.}

- **Provision** — “all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law, i.e. human rights law, international humanitarian law, and refugee law.”\footnote{Caverzasio, 2001, pp. 19-21.}

- **Refugee** — according to the 1951 Convention Relating to the Status of Refugees, a refugee is someone 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”\footnote{Convention Relating to the Status of Refugees (adopted on 28 July 1951), art. 1(A-2).} (or is outside the country of habitual residence, if stateless). Nonetheless, the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa also includes in its definition of refugee “every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order (...) is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.”\footnote{OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (adopted on 10 September 1969), art. I (2).}
- Asylum-Seeker – “someone who says he or she is a refugee, but whose claim has not yet been definitively evaluated”\textsuperscript{13}.

- Stateless Person – according to the 1954 Convention Relating to the Status of Stateless Persons, a stateless person is someone “who is not considered as a national by any State under the operation of its law”\textsuperscript{14}. UNHCR states that “although stateless people may sometimes also be refugees, the two categories are distinct and both groups are of concern to UNHCR”\textsuperscript{15}.

- Migrant – though there is no universally accepted definition at the international level, according to the International Organization for Migration (IOM) “the term migrant was usually understood to cover all cases where the decision to migrate was taken freely by the individual concerned for reasons of personal convenience and without intervention of an external compelling factor; it therefore applied to persons, and family members, moving to another country or region to better their material or social conditions and improve the prospect for themselves or their family”\textsuperscript{16}.

- Economic Migrant – an economic migrant is someone who migrates for the purpose of improving his social and material conditions, therefore to seek for better life and jobs opportunities. According to IOM, “this term is often loosely used to distinguish from refugees fleeing persecution, and is also similarly used to refer to persons attempting to enter a country


\textsuperscript{14} Convention Relating to the Status of Stateless Persons (adopted on 28 September 1954), art. 1(1).

\textsuperscript{15} UNHCR, \textit{Who We Help: Stateless People}, available at http://www.unhcr.org/pages/49c3646c155.html [consulted on 05 July 2014].

without legal permission and/or by using asylum procedures without *bona fide cause*"\(^{17}\).

- Smuggling of Migrants – “does not imply exploitation. It is the illegal crossing of national borders and entry to a country and is often organised by intermediaries and criminal networks making a financial profit”\(^{18}\).

- Trafficking in Persons – “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”\(^{19}\).

### 5. Significance of the Thesis

The phenomenon of mixed migration flows in the Southern African region has been addressed by international organisations and NGOs in several publications and studies. Nevertheless, there are, as of yet, none which specifically address the impact of this problem on the Mozambican asylum system. This thesis is meant to outline how the asylum system works in the country and to identify its prevailing difficulties in a context of mixed migration. Thus, the analysis of this phenomenon in Mozambique is highly relevant in order to find key implementing solutions which not only address this problem in a protection-sensitive manner but also guarantee a more efficient and effective asylum system in the country.


\(^{18}\) Cf. supra note 9, p. 3.

\(^{19}\) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially in Women and Children (adopted on 15 November 2000), art. 3 a).
6. Limitations of the Thesis

Due to the confidential nature of some information I had access to during my stay in Mozambique, such material could not be used on the elaboration of this thesis.

7. Delimitations of the Thesis

This thesis focuses on the Mozambican asylum system and on the phenomenon of mixed migration flows. It does not develop in depth the rights of migrants, unaccompanied and separated children, trafficked persons or stateless persons without a valid claim for asylum, as it is focused on refugees, asylum-seekers and stateless persons with a claim for asylum who were/are/will be in Mozambican territory. Thus, it does not purport to be comprehensive in relation to matters that go beyond the specific needs and motives of the latters. For the purpose of a better understanding of the prevailing situation in the country, the Mozambican migration law and policies are addressed but not comprehensively in subjects that go beyond their link with mixed migration and asylum matters. Due to its influence on mixed migration flows, the phenomenon of smuggling will be explained but not with the purpose of an in-depth analysis of its origin, characteristics and affiliations.

8. Organisation of the Thesis

This thesis is organised into seven chapters. Its chapter II studies the Mozambican Refugee Law and Asylum Procedures in Theory and it is divided into (1) international legal framework and mechanisms applicable to Mozambique, (2) regional legal framework and mechanisms applicable to Mozambique and (3) Mozambican legal and policy framework for refugee protection. This chapter gives the reader an extensive overview of the Mozambican asylum system in theory and it explains the international
obligations to which Mozambique is bonded. Chapter III deals with the Mozambican Migration Law and Policies and it is structured as (1) the Mozambican Aliens Law, (2) the Mozambican migration management system, (3) international legal framework applicable to Mozambique and (4) Migration Dialogue for Southern Africa. This chapter is meant to give the reader a general outline of the Mozambican migration system in order to facilitate the understanding of its link with asylum matters and mixed migration later on. Chapter IV analyses the Mixed Migration Phenomenon and it is divided into (1) refugee protection and mixed migration, and (2) the case of Southern Africa. This chapter explains the phenomenon of mixed migration flows in general and its implications for refugee protection. For a better understanding of the context in which Mozambique is inserted, it analyses the particular case of Southern Africa. Chapter V describes the Modus Operandi in Mozambique and it is structured as (1) asylum procedures in practice and (2) the impact of mixed migration flows on the asylum system. This chapter gives the reader a comprehensive overview of the Mozambican asylum system in practice. Thus, this thesis separates theory (chapter II) from practice and therefore only addresses the later in this chapter as it is essential for the reader to be aware first of the structure of national asylum and migration systems as well as of the range of the mixed migration phenomenon. This distinction will allow the reader to better understand the impact of mixed migration flows on the Mozambican asylum system in practice. Finally, Chapter VI proposes an Optimal Implementation and it is divided into (1) national arrangements and (2) regional arrangements. This chapter is meant to present key implementing solutions which address mixed migration flows in a protection-sensitive manner.
Figure 1 – Map of Mozambique
II. Mozambican Refugee Law and Asylum Procedures in Theory

1. International Legal Framework and Mechanisms applicable to Mozambique

Mozambique acceded to the Convention Relating to the Status of Refugees of 28 July 1951 (1951 Refugee Convention) on 16 December 1983 and to its additional Protocol of 31 January 1967 (1967 Refugee Protocol) on 1 May 1989. According to both documents, a refugee is someone 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”\(^{20}\). Outstandingly, a person is not a refugee because he is recognised as such but rather by fulfilling the criteria enumerated in the definition above. The reasons that substantiate the determination of his refugee status are the ones that made him a refugee in the first place. Thus, he would immediately be a refugee from the moment he falls under this definition and so the “recognition of his refugee status does not therefore make him a refugee but declares him to be one”\(^{21}\).

Nonetheless, paragraph C of article 1 of the 1951 Refugee Convention establishes that the refugee status shall cease to apply to a person whenever one of these situations occurs\(^{22}\): has re-availed himself of the protection of the country of his nationality; has voluntarily re-acquired his lost nationality; has acquired a new nationality and thus enjoys the protection of the country of his new nationality; has voluntarily re-established himself in the country which he

\(^{20}\) Cf. supra note 11, art. 1(A-2).


\(^{22}\) Cf. supra note 11, art. 1(C).
left or remained outside of owing to fear of persecution; and, finally, can no longer continue to refuse to avail himself of the protection of the country of his nationality – or to return to the country of his former residence, if stateless – as the circumstances that underlie his refugee status ceased to exist. Furthermore, it shall be an impediment to acquire refugee status if the person is already under protection or assistance of other organs of the UN other than UNHCR\textsuperscript{23}; if he is a national of the country\textsuperscript{24}; if “he has committed a crime against peace, a war crime, or a crime against humanity”\textsuperscript{25} or if “he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee”\textsuperscript{26}; and, finally, if “he has been guilty of acts contrary to the purposes and principles of the United Nations”\textsuperscript{27}.

Mozambique – which nowadays has a small UNHCR operation in its territory – made significant reservations to the 1951 Refugee Convention. The country made reservations to articles 13 and 22 of the Convention – respectively, right to property and right to education – as it would “take these provisions as simple recommendations not binding it to accord to refugees the same treatment as is accorded to Mozambicans with respect to elementary education and property”\textsuperscript{28}. Moreover, it also raised issues concerning the right to work – as it would interpret articles 17 and 19 “to the effect that it is not required to grant privileges from obligation to obtain a work permit”\textsuperscript{29} – and the right to association – as it would not be bound by article 15 “to accord to refugees or groups of refugees resident in its territory more extensive rights

\textsuperscript{23}Cf. supra note 11, art. 1(D).
\textsuperscript{24}Idem, art. 1(E).
\textsuperscript{25}Idem, art. 1(F a).
\textsuperscript{26}Idem, art. 1(F b).
\textsuperscript{27}Idem, art. 1(F c).
\textsuperscript{29}Idem.
than those enjoyed by nationals”\textsuperscript{30}, which either way is subject to restriction in case of national security interest. Finally, the State also reserved “its right to designate place or places for principal residence for refugees or to restrict their freedom of movement whenever considerations of national security make it advisable”\textsuperscript{31} – restricting article 26 of the Convention – and, concerning article 34 on naturalisation, it “does not consider itself bound to grant to refugees facilities greater than those granted to other categories of aliens in general”\textsuperscript{32}. Regardless of these substantial reservations, Mozambique transposed the remaining provisions of the Convention into its national legislation.

When it comes to refugees and asylum-seekers, the risk of violation of any human right is considerable, especially due to their inherent vulnerable position. Hence, it becomes imperative to have a general overview of rights that are closely linked to these people in need of international protection. Moreover, this exercise also allows a deeper understanding of the obligations and rights to which the State of Mozambique is bonded and entitled to, respectively.

By becoming a Member State of the UN and ratifying the UN Charter, Mozambique has committed itself to follow the purposes of the organisation, namely its aim “to achieve international co-operation (…) in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion”\textsuperscript{33}. The country has been substantiating its commitment to human rights by participating in the UPR mechanism of the Human Rights Council in 2011 and by consistently reporting to the different Human Rights Treaty Bodies, both under the Office of the High Commissioner for Human Rights (OHCHR). These mechanisms might have a positive impact on the Mozambican legislation and policies regarding refugee

\textsuperscript{30} Cf. supra note 28.
\textsuperscript{31} Idem.
\textsuperscript{32} Idem.
\textsuperscript{33} Charter of the United Nations (adopted on 20 December 1965), art. 1(3).
protection and asylum matters. For instance, during the draft of the working group report on the UPR mechanism (ultimately adopted on 4 February 2011), Ecuador recommended Mozambique to withdraw its reservations to the 1951 Refugee Convention.

The right to asylum constitutes a human right that shall be guaranteed to all individuals who fall under the definition of a refugee and therefore are in need of international protection. Hence, when the State of origin is not able to provide for the security and safety of the person, this right safeguards the provision of international protection by other States. The right to asylum comprehends the admission of a person in the territory of a State other than its own, its stay in the State, and the protection from *refoulement* (which will be developed further on), extradition and persecution, as well as from any action against his inherent human rights. Nonetheless, this right cannot be just deemed from the perspective of the individual seeking asylum but also from the State providing it. Thus, the right to asylum has three different aspects:

1. The right of a State to grant asylum: looking from the perspective of the State, one should consider the “principle that every sovereign State is deemed to have exclusive control over its territory and hence over persons present in its territory”\(^{36}\). Consequently, the State has the power to decide upon granting or denying asylum to an individual. Likewise, according to the non-binding UN Declaration on Territorial Asylum of 14 December 1967, “it shall rest with the State granting asylum to evaluate the grounds for the grant of asylum”\(^{37}\). Moreover, the same Declaration

---

34 A/HRC/17/16, 28 March 2011, para. 88.9.
35 Boed, 1994, p. 3, para. B.
36 Idem, pp. 3-5, para. B(1).
37 Declaration on Territorial Asylum (adopted on 14 December 1967), art. 1(3).
safeguards that other States shall respect the decision of a State to grant asylum.38

2. The right of an individual to seek asylum: this aspect of the right to asylum is mirrored in article 14 of the Universal Declaration of Human Rights (UDHR) of 10 December 1948 when it states “the right to seek and enjoy in other countries asylum from persecution”39. It relates to the right of the individual to leave his country of origin in order to seek asylum in another State whenever the situations described in the refugee definition occur. Hence, this aspect is also substantiated by article 13(2) of UDHR when it states “the right to leave any country, including his own”40.

3. The right of an individual to be granted asylum: though this aspect of the right to asylum is based upon the perspective of the individual, there is no consensus among the International Community that this is indeed a right of the individual against a particular State but somewhat that the State has still in its hands the power to decide to whom to grant asylum or not41.

Overall, though the State has the power to decide to whom to grant asylum, the individual is entitled to seek it. Notwithstanding, many more rights may be put into cause from this point on. “The most essential component of refugee status and of asylum is protection against return to a country where a person has reason to fear persecution”42. This protection is mirrored in the principle of non-refoulement, which states that no State “shall expel or return (“refouler”) a refugee in any matter whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion,
nationality, membership of a particular social group or political opinion”⁴³. Due to the inclusion of this principle in many different international instruments and national legislations – consequently, its wide acceptance –, it is “increasingly considered in jurisprudence and in the work of jurists as a generally recognised principle of international law”⁴⁴. For instance, the UN Declaration on Territorial Asylum declares that “no person (…) shall be subjected to measures such as rejection at the frontier or, if he already entered the territory in which he seeks asylum, expulsion or compulsory return to any State where he may be subjected to persecution”⁴⁵.

Other human rights that are particularly sensitive once a refugee or an asylum-seeker is in the host or transit country are the right to freedom from discrimination, right to freedom of movement, right to life, right to security of person, right to assistance, right to freedom from exploitation and abuse, right to freedom from torture and other cruel, inhuman and degrading treatment and punishment, right against arbitrary arrest and detention and, finally, right to fair trial and due process. It is worth mentioning that Mozambique is a State party to the International Covenant on Civil and Political Rights (ICCPR) of 16 December 1966, to the Convention on the Rights of the Child (CRC) of 20 November 1989 and to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Torture Convention) of 10 December 1984, which ultimately might have a positive impact on the lives of refugees and asylum-seekers living in the country.

⁴³ Cf. supra note 11, art. 33(1).
⁴⁴ Cf. supra note 42, para. 11.
⁴⁵ Cf. supra note 37, art. 3(1).
2. Regional Legal Framework and Mechanisms applicable to Mozambique

As regards the regional level, Mozambique is a State party to the African Union (AU) which, unlike its predecessor OAU, places the protection and promotion of human rights as a crucial and mandatory issue of its Constitutive Act of 1 July 2000. Still under the replaced OAU, the country ratified the African Charter on Human and Peoples’ Rights of 27 June 1981 (Banjul Charter) on 22 February 1989. The Charter, which followed the examples of the European Convention on Human Rights of 1950 and the American Convention on Human Rights of 1969, “is intended to promote and protect human rights and basic freedoms in the African continent”. In its article 12, regarding the right to freedom of movement, it states in paragraph 3 that “every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the law of those countries and international conventions”.

Even before ratifying the Banjul Charter, the country became a State party to the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa of 10 September 1969 (1969 OAU Convention) on 25 August 1988. This is especially relevant considering that this document broadened the definition of a refugee used in the 1951 Refugee Convention, by encompassing also persons fleeing from conflict, generalised violence and/or events seriously disturbing public order. In fact, the 1969 OAU Convention states in its article VIII that it “shall be the effective regional complement in Africa of the 1951 United Nations Convention on the Status of Refugees” and that its Member

---

46 Constitutive Act of the African Union (adopted on 11 July 2000), art. 3 h).
49 Cf. supra note 12, art. I (2), which reads: “(...) the term “refugee” shall also apply to 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”.
50 Idem, art. VIII (2).
States “shall co-operate with the Office of the United Nations High Commissioner for Refugees”\textsuperscript{51}. Importantly, concerning impediments to and forfeitures of refugee status, the Convention is in line with the provisions of the 1951 Refugee Convention, adding solely two provisions concerning persons who have infringed the purposes, aims and principles of both the 1969 OAU Convention\textsuperscript{52} and of the replaced OAU\textsuperscript{53}.

As of 2004, the African Commission on Human and Peoples’ Rights (ACmHPR) established the Special Rapporteur on Refugees, Asylum-Seekers and Internally Displaced Persons, which mandate was extended in 2006 to cover migration issues as well. Thus, the duties of the Special Rapporteur encompass examining and acting upon the situation of refugees, asylum-seekers, migrants and internally displaced persons in Africa, undertaking fact-finding missions, assisting Member States of the AU in developing asylum legislation and policies, and, finally, raising awareness and promoting the implementation of both the 1951 Refugee Convention and 1969 OAU Convention\textsuperscript{54}.


The Constitution of the Republic of Mozambique of 16 November 2004 declares in its article 20 (2) that the country “shall grant asylum to foreigners persecuted on the grounds of their struggle for national liberation, for democracy, for peace and for the protection of human rights”\textsuperscript{55}. This provision relies not only on the protected grounds mentioned in the 1951 Refugee

\begin{flushleft}
\textsuperscript{51} Cf. supra note 12, art. VIII (1).
\textsuperscript{52} Idem, art. I (4 g).
\textsuperscript{53} Idem, art. I (5 c).
\textsuperscript{55} Constitution of the Republic of Mozambique (adopted on 16 November 2004), art. 20(2).
\end{flushleft}
Convention but also on the wider concept of refugee of the 1969 OAU Convention. The same provision was already granted in article 64(2) of the superseded Constitution of 2 November 1990 though the latter also included foreigners persecuted on the grounds of their struggle for social liberation.\footnote{Constitution of the Republic of Mozambique (adopted on 02 November 1990) (superseded) art. 64(2).}

Accordingly, Mozambique adapted its national legislation to the international and regional instruments concerning refugee matters it ratified throughout the years.

On 31 December 1991, the Act No. 21/91 (Refugee Act) was enacted, which starts by citing in its preamble that Mozambique acceded to the above-mentioned Conventions and to the 1967 Refugee Protocol. Thus, it states that in order to properly implement them it was urged the establishment of “appropriate procedural mechanisms to guide all formalities with which applications for refugee status for the persons concerned should comply”\footnote{Mozambique: Act no. 21/91 of 31 December (Refugee Act) (adopted on 31 December 1991), Preamble, para. 3.}, thereby justifying the enactment of the act. Hence, the preamble underlines that its ultimate goal is “to apply the constitutional principle of respect for and defence of human rights”\footnote{Idem.}. Similar to the Constitution, the Refugee Act also relies its concept of refugee on both Conventions: in its article 1, it defines a refugee as “any person who has 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 or, owing to such fear, is unwilling to return to that country or to seek its protection”\footnote{Idem, art. 1(1, a).} or, in the case of a stateless person, is “outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return it”\footnote{Idem, art. 1(1, b).}. Noticeably, article 1(1,c) is solely based on article I (2) of the 1969 OAU
Convention and therefore encompasses also persons fleeing from conflict, generalised violence and/or events seriously disturbing public order in its definition of a refugee. As regards the impediments to and forfeiture of refugee status, article 2 of the Refugee Act has the same provisions as the 1951 Refugee Convention, with the exception of its paragraph 2 b) which adds persons who have infringed the purposes and aims of the 1969 OAU Convention (resembling the latter itself). It ought to be noted that Mozambique reserves itself in the right to withheld both Conventions and the Protocol “on grounds of national security or public order”\textsuperscript{61}.

The Decree no. 33/2007 of 10 August 2007 establishes the proceedings for the application for asylum – meaning of the refugee status determination (RSD)\textsuperscript{62} –, which is under responsibility of the Mozambican Government. Whenever a foreigner arrives in Mozambique with the intention of applying for asylum, he shall head to Maratane refugee camp, which is about 35km away from Nampula (the third largest city in the country, located in the north), where the only reception and registration centre for new asylum-seekers in Mozambican territory is (as of April 2003). In theory, the individual shall apply for asylum in writing or orally\textsuperscript{63} to the competent authority, which normally should be the competent migration body of the Ministry of the Interior (MINT)\textsuperscript{64}\textsuperscript{65}. Hence, these receiving authorities shall conduct first a primary screening and then refer immediately to the National Institute for Refugee Support (INAR)\textsuperscript{66} – which does not operate under MINT but rather under the Ministry of Foreign Affairs and Cooperation (MNEC)\textsuperscript{67}\textsuperscript{68} –, so that the individual

\textsuperscript{61} Cf. supra note 57, art. 5(4).
\textsuperscript{62} Mozambique: Decree no. 33/2007 of 10 August (RSD Decree) (adopted on 10 August 2007), art. 1.
\textsuperscript{63} Cf. supra note 57, art. 7.
\textsuperscript{64} Idem, art. 8.
\textsuperscript{65} In Portuguese, Ministério do Interior (MINT).
\textsuperscript{66} In Portuguese, Instituto Nacional de Apoio aos Refugiados (INAR).
\textsuperscript{67} In Portuguese, Ministério dos Negócios Estrangeiros e Cooperação (MNEC).
\textsuperscript{68} Mozambique: Decree no. 51/2003 of 24 December (Creation of INAR) (adopted on 24 December 2003), art. 2.
receives material and juridical support. Afterwards, the individual is temporarily placed in the transit centre of the refugee camp where in principle he should be interviewed and registered during the first week.

After receiving the application for asylum, “a provisional residence permit shall be granted (…) to the petitioner and to persons indicated by him in accordance with the provisions of article 4, paragraph 2”. However, “if a provisional residence permit is not granted, every effort shall be made to limit the movements of the petitioner and his family members to the indispensable minimum”, which can result in impositions based “on serious grounds of national security or of public order cited by the Republic of Mozambique”. Outstandingly, INAR should open the eligibility proceedings and interview the asylum-seeker for RSD within the first three months (though it can be prolonged for thirty more days). If proven necessary, INAR can collect further information and search for additional clarification. Furthermore, if deemed essential, INAR can also consult other State institutions or UNHCR.

Once this phase is concluded, the personal file of the asylum-seeker is sent to the National Eligibility Commission (CCR) for an appraisal and then submitted to the Minister of the Interior. The CCR functions within MINT and it is composed of representatives of the above-mentioned Ministry, MNEC, Ministry of Justice and INAR; the representative of MINT chairs the Commission.

---

69 Cf. supra note 62, art. 2(1).
70 Term used in the Mozambican Refugee Act for “asylum-seeker”.
71 Cf. supra note 57, art. 9.
72 Idem, art. 4(2): “the spouse and minor children and the ascendants in the first degree of the petitioner or of his spouse shall be deemed to be members of the nuclear family (…)”.
73 Idem, art. 10(1).
74 Idem, art. 10(2).
75 Cf. supra note 62, art. 10(1).
76 Idem, art. 11.
77 Idem, art. 10(1).
78 Idem, art. 10(2).
79 In Portuguese, Comissão Consultiva para os Refugiados (CCR).
80 Cf. supra note 62, art. 12.
81 Cf. supra note 57, art. 6.
and the Representative of UNHCR Mozambique might be invited to attend CCR sessions\textsuperscript{82}. One of the functions of this Commission is to assess and deliver an opinion concerning the credibility of asylum applications\textsuperscript{83}. There should be a regular CCR session once a month and an extraordinary one whenever the President of the Commission convenes it\textsuperscript{84}. After reaching a decision during a session – in which neither the officer who conducted the eligibility proceedings nor the asylum-seeker himself are present –, the CCR shall issue its recommendation concerning an asylum request and the application shall then be submitted to the Minister of the Interior. The latter “shall be competent to rule upon a petition for asylum\textsuperscript{85} after consulting the Advisory Committee for Refugees\textsuperscript{86}8788.

It should be noted that the application for asylum shall contain the identification of the applicant, the description of the facts or circumstances underlying the request, the description of the route until reaching Mozambique and, finally, relevant supporting evidence\textsuperscript{89}. The applicant should, in principle, stay in the refugee camp during the processing of the asylum application\textsuperscript{90} and it shall be unlawful to send him to any other country before reaching a final decision concerning his application\textsuperscript{91}.

The asylum-seeker shall be notified of the decision of the Minister of the Interior by the CCR, through INAR\textsuperscript{92}. If on the one hand the decision is positive, the individual is granted asylum in Mozambique and he will receive from INAR an identification document confirming that he holds refugee status as well as a

\textsuperscript{82} Cf. supra note 62, art. 3.
\textsuperscript{83} Idem, art. 4 a).
\textsuperscript{84} Idem, art. 5(1).
\textsuperscript{85} Term used in the Mozambican Refugee Act for “asylum application”.
\textsuperscript{86} Term used in the Mozambican Refugee Act for “CCR”.
\textsuperscript{87} Cf. supra note 57, art. 3(1).
\textsuperscript{88} Cf. supra note 62, art. 6(1).
\textsuperscript{89} Idem, art. 7.
\textsuperscript{90} Idem, art. 6(3).
\textsuperscript{91} Cf. supra note 57, art. 15.
\textsuperscript{92} Cf. supra note 62, art. 13(1).
travel document. From that point on, “admission to the Republic of Mozambique shall be facilitated for any member or members of his nuclear family who may wish to join him” If on the other hand the decision is negative, the rejected asylum-seeker should be handed over to migration management bodies for appropriate action – though he can be granted a permit to stay for no longer than three months in order to organise his departure from the country. In case of a negative decision from the Minister, the applicant may appeal to the Administrative Court in Maputo for reconsideration of his request.

Finally, it is important to mention that “where any criminal or administrative offence directly connected with illegal entry into the Republic of Mozambique has been committed by the petitioner and his family members and has given rise to criminal or administrative proceedings, any such proceedings shall be suspended immediately upon the submission of the petition [for asylum]”. Hence, in case the decision on the asylum application is positive, these suspended criminal or administrative proceedings shall be filed, as long as “the offence or offences committed were determined by the same facts as those which warranted the grant of the petition for asylum.”

According to the Refugee Act, refugees “shall in principle enjoy the rights and have the duties proper to aliens resident in the Republic of Mozambique”.

93 Cf. supra note 57, art. 5(3).
94 Cf. supra note 62, art. 13(2).
95 Similarly to art. 28 of the 1951 Refugee Convention and art. VI of the 1969 OAU Convention.
96 Cf. supra note 57, art. 4(1).
97 Cf. supra note 62, art. 15(2).
98 Idem, art. 15(1).
99 Cf. supra note 57, art. 3(2).
100 Cf. supra note 62, art. 14.
101 Cf. supra note 57, art. 11(1).
102 Idem, art. 11(2).
Mozambique"\textsuperscript{103}. This means that they are obliged to respect and act according to Mozambican law, "including any instructions relating to the maintenance of public order, and to refrain from any subversive activities against any foreign State"\textsuperscript{104}. The Act highlights that refugees (unlike aliens in general) shall enjoy any rights that derive from the 1951 Refugee Convention, its 1967 Protocol and from the 1969 OAU Convention, though subject to the reservations made by the host country\textsuperscript{105}. However, the Act is nonetheless mostly silent regarding specific rights of refugees and asylum-seekers in the country. Concerning naturalisation, and given its reservation to article 34 of the 1951 Refugee Convention, Mozambique does not grant a special treatment to refugees in comparison to other aliens in general, and therefore a person who has been granted asylum and has refugee status may acquire Mozambican nationality once Nationality Law requirements have been met and upon authorisation of the Government\textsuperscript{106}. However, unlike aliens in general, concerning expulsions, a refugee shall not be expelled from Mozambique, except when it concerns national security or public order issues\textsuperscript{107} – but in any case, he can only be expelled in pursuance of a lawful decision of MINT\textsuperscript{108} and he has the right to defend himself against the prevailing accusations\textsuperscript{109}. Outstandingly, article 14 of the Refugee Act restricts the decision to expel due to the principle of non-refoulement, which hinders the State from expelling refugees to territories where their life, physical integrity and freedom would be threatened on account of protected grounds, or where they would face conflict, generalised violence and/or events seriously disturbing public order\textsuperscript{110}; if the expulsion has to proceed in any case, the refugee "shall

\textsuperscript{103} Cf. supra note 57, art. 5(1).
\textsuperscript{104} Idem.
\textsuperscript{105} Idem, art. 5(2).
\textsuperscript{106} Idem, art. 12.
\textsuperscript{107} Idem, art. 13(1).
\textsuperscript{108} Idem, art. 13(2).
\textsuperscript{109} Idem, art. 13(3).
\textsuperscript{110} Idem, art. 14(1).
be entitled to an option with regard to the choice of the country to which to be sent”\(^{111}\).

### 3.1. The Role of INAR

As mentioned before, INAR operates under MNEC, unlike migration management bodies which – as it will be explained in detail later on – operate under MINT. INAR was created through Decree no. 51/2003 of 24 December 2003\(^{112}\). According to the preamble of the document, as Mozambique is a host country for refugees, it was needed an institution that would coordinate all formal demands involving applications for asylum as well as assist in materialising the constitutional principle of respect for and defence of human rights\(^{113}\). The Internal Regulation of INAR was approved through the Ministerial Decree No. 81/2005 of 20 April 2005 and defined as its purpose the reception, accommodation and accompaniment of asylum-seekers and refugees\(^{114}\). Its main responsibilities are to support and assist asylum-seekers and refugees, organise asylum application cases as concerns the acquisition of identification and travel documents, update individual files of asylum-seekers and refugees, offer contracts and agreements to other Ministries and Governmental institutions apart from MNEC, manage on a daily basis the reception centres as concerns the distribution of goods and other services, promote access to education and health among refugees and asylum-seekers, and, finally, promote projects envisaging self-reliance of refugees\(^{115}\).

\(^{111}\) Cf. supra note 57, art. 14(2).

\(^{112}\) Cf. supra note 68, art. 1.

\(^{113}\) Idem, Preamble.

\(^{114}\) Mozambique: Ministerial Decree no. 81/2005 of 20 April (Internal Regulation of INAR) (adopted on 20 April 2005), art. 2.

\(^{115}\) Idem, art. 3.
3.2. Refugee Camps in Mozambique

Until 2001, two refugee camps were located in the south of the country – Bobole and Massaca –, close to the capital city Maputo and to the border with the neighbouring country, South Africa. Upon an agreement between UNHCR and the Mozambican Government, both camps were closed and then relocated to the north. The explanations behind this closure given by the Executive were that refugees should not live close to the capital city and that they were creating problems and confusion in the area\textsuperscript{116}. Nonetheless, another reason stated to prevail behind this decision was allegedly due to political pressure from South Africa\textsuperscript{117}. At the same time, a Ministerial Instruction enacted in 2001 – and which entered into force in 2003 – banned refugees from residing in Maputo, though not retroactively. This last document is a solid example of the reservation that Mozambique made to article 26 on freedom of movement and choice of residence of the 1951 Refugee Convention\textsuperscript{118}.

The Government studied the possibility of setting the refugee camp in Lichinga, which was in the north-western province of Niassa, close to Lake Malawi. In fact, it even came to be set there a reception and registration centre. Nevertheless, due to its remote location and resulting high expenditures, the idea of expanding it and thus setting a refugee camp there did not move forward. Hence, the camp was then built in 2001 in the northern province of Nampula – about 35km away from the city of Nampula and more than 2000km from the capital, Maputo –, and it is in one of the places in the country which is furthest away from any national border. The Maratane refugee camp, as previously mentioned, is the only reception and registration centre in the country since 2003 and it is under the responsibility of INAR since 2007 – after the handover by UNHCR. Before 2007, World Food Programme (WFP) and NGOs such as World Relief (which was actually an implementing partner together with

\textsuperscript{116} Mecagni, 2004, p. 1.
\textsuperscript{117} Idem.
\textsuperscript{118} Cf. supra note 31.
INAR and UNHCR), World Vision, Médecins Sans Frontières and Save the Children worked in the camp. Most of these organisations worked fundamentally on promoting self-reliance of refugees, for example through agriculture and microcredit projects. As of 2011, WFP has been assisting UNHCR in food provision in the camp and the Ministries of Health, Education, Labour, Social Action and Agriculture are the implementing partners together with INAR; hence, today the only NGO present in the field is the Scalabriniens, which is a religious organisation originally founded in Italy to assist refugees and migrants\textsuperscript{119}.

III. Mozambican Migration Law and Policies

1. The Mozambican Aliens Law

On 28 December 1993, the Law no. 5/93 (Aliens Law) was enacted. It is justified “due to long term experience gained in the management and execution of immigration”\textsuperscript{120} and as a “need to reflect current changes of International Conventions upon Mozambican Law”\textsuperscript{121}. Thus there was a “need to adopt a juridical board competent in this area”\textsuperscript{122}. This law “establishes juridical regime for foreign citizens [aliens], namely norms of entry, residence and departure from the country”, as well as rights, duties and privileges while in Mozambique\textsuperscript{123}. Importantly, it underlines that it does not interfere with other special legislation, accords or International Conventions “to which Mozambique is a signatory”\textsuperscript{124} – such as the 1951 Refugee Convention, 1969 OAU Convention and the Mozambican Refugee Act. In fact, article 37 highlights that concerning officially recognised refugees it shall be applied the “accords or International Conventions to which Mozambique is a member”\textsuperscript{125}.

According to article 3 of the Aliens Law, an illegal immigrant is “anyone who leaves or enters the national territory from any border post without a passport or with a false, incomplete or expired travel document, as well as those who do not pass through the official border posts even if they have necessary travel documents”\textsuperscript{126}. This definition will be especially important when dealing with mixed migration flows. The law establishes that a foreigner (resident or temporarily resident) in Mozambican territory has the same rights,

\textsuperscript{120} Mozambique: Law no. 5/93 of 28 December (Aliens Law) (adopted on 28 December 1993), Preamble.
\textsuperscript{121} Idem.
\textsuperscript{122} Idem.
\textsuperscript{123} Idem, art. 1(1).
\textsuperscript{124} Idem, art. 2.
\textsuperscript{125} Idem, art. 37.
\textsuperscript{126} Idem, art. 3 d).
privileges and duties as a national citizen\textsuperscript{127}, with the exception of “voting rights and other rights and duties reserved by law” for Mozambican citizens\textsuperscript{128}. The mentioned duties encompass respecting the Mozambican Constitution and legislation, declare residence and provide personal information to the competent authorities\textsuperscript{129}.

The entry into and departure from Mozambique shall be made through official border posts, where the individual is subject to the national immigration procedures\textsuperscript{130,131}. For instance, these procedures include the possession of a passport or a valid travel document\textsuperscript{132} and a visa (except for individuals with authorisation “to reside in the country” or individuals “from countries which have signed a visa abolition accord with Mozambique”\textsuperscript{133}). It is worth mentioning that articles 53 and 54 of the Aliens Law regulate the provision and types of travel documents for refugees\textsuperscript{134}. A foreigner might be forced to leave Mozambique due to lawful extradition or expulsion\textsuperscript{135} (which might be administrative or legal). On the one hand, an administrative expulsion might occur, for instance, due to “irregular entry into the country”, “disrespect of the Constitution” or “attempt to prejudice national security, public order or well-being”\textsuperscript{136}. After acknowledging these facts, the immigration authorities – which are the competent authorities “to carry out the expulsion process” against a foreigner\textsuperscript{137} – shall open the proceedings and “provide evidence against the accused within eight days”\textsuperscript{138}. On the other hand, a legal expulsion might occur in cases where the foreigner is

\textsuperscript{127} Cf. supra note 120, art. 4(1).
\textsuperscript{128} Idem, art. 4(3).
\textsuperscript{129} Idem, art. 4(2).
\textsuperscript{130} Idem, art. 5.
\textsuperscript{131} Idem, art. 26.
\textsuperscript{132} Idem, art. 6 a).
\textsuperscript{133} Idem, art. 18.
\textsuperscript{134} Idem, arts. 53 and 54.
\textsuperscript{135} Idem, art. 28.
\textsuperscript{136} Idem, art. 29(1).
\textsuperscript{137} Idem, art. 33(1).
\textsuperscript{138} Idem, art. 29(3).
sentenced to prison. Importantly, article 36 states that an expulsion shall not be executed if a foreigner “is to be sent to a country where he will be prosecuted” on protected grounds.\(^{140}\)

In article 38 of the Law, the power to “check commercial and recreational vessels in aircrafts at airports and ports on their arrival in or departure from the country” is given to immigration authorities.\(^{141}\) Thus, article 39 states that “captains and pilots of aircrafts and vessels coming into the country, companies, travel agencies and other facilitating organisations are obliged to co-operate in any searches deemed necessary by immigration officials in order to capture illegal immigrants or persons who have committed a crime.”\(^{142}\) It is also foreseen that immigration officials have free access to “private houses, places of entertainment, recreational associations, ports, airports and railway stations and to trains, ships, aircrafts or any other locations” to carry out searches or other investigations if deemed necessary.\(^{143}\) Overall, illegal immigration and falsification of documents are punishable according to Mozambican legislation.\(^{144}\) Hence, “public or private companies and commercial establishments who have employed” a foreigner who is illegal in the country shall cover the costs of deportation.\(^{145}\) Also, “companies, travel agencies and individuals who bring illegal or foreign citizens [aliens] without documents into the country are responsible for all their expenses including the costs of their return with an additional fine” of €140,712 in case of disembarkation.\(^{146}\)

\(^{139}\) Cf. supra note 120, art. 30.

\(^{140}\) Idem, art. 36.

\(^{141}\) Idem, art. 38(1).

\(^{142}\) Idem, art. 39.

\(^{143}\) Idem, art. 40.

\(^{144}\) Idem, art. 41.

\(^{145}\) Idem, art. 45.

\(^{146}\) Idem, art. 46.
2. The Mozambican Migration Management System

In Mozambique, migration management authorities operate under MINT. The core of migration management in the country is the Department of Migratory Movements147. It controls all entries and departures from the country both of national citizens and aliens in every legal border post – land (both road or railway), air or water. The stated policy of the department is if the foreigner requests for asylum at the border he is immediately brought to the Maratane refugee camp148. This department controls also the legality of stays of foreigners under the Aliens Law and it works closely with courts and defence and security forces operating in the country. Moreover, it also works with INAR, screening together large groups of new arrivals in the country. Noticeably, border guards are not under the Department of Migratory Movements but are also under MINT.

Foreigners who are caught in Mozambique without a visa are taken to detention facilities of immigration bodies or, in case of lack of space, to police stations. These people will be held in custody until their deportation to their countries of origin. Nevertheless, if migration management authorities catch them close to the border where they entered the country, they are transported directly until there. One of the responsibilities of the Department of Migratory Movements is not only to accompany repatriations of these foreigners but also of nationals who are repatriated to Mozambique149.

According to the Mozambican newspaper “Jornal Notícias” of 24 October 2013150, the Mozambican Republic Assembly approved on the previous day a

147 Interview (in Portuguese) with Nicolau Jorge, Inspector, Migratory Movements Department, Ministry of the Interior, Maputo, 07 March 2014.
148 Idem.
149 Idem.
The Impact of Mixed Migration Flows on the Mozambican Asylum System

new law that creates a National Service for Migration. This service envisages reinforcing the internal security of the country as concerns the control of entries, stays and departures of foreigners. Hence, its aims are to diminish illegal immigration and international crime (such as smuggling and trafficking), as well as to respond to the new challenges of migratory flows in a global context. The establishment of the National Service for Migration also comes as an answer to the significant number of aliens in the country due to its untapped natural resources and its peaceful and stable environment. The Minister of the Interior stated that this law is based on previous practices of other SADC Member States and thus its purpose is to adjust the organisation, functioning and response capacity of migration management system so that it is able to prevent and tackle migratory infractions, namely human trafficking. This new Migration Service is expected to replace the current one but at the time of writing no precise date has been established.

It is important to strengthen that one of the major restraining factors behind migration management in Mozambique is the lack of funds for deportations. This brings borderline situations in terms of human rights standards as these persons remain incarcerated without a specific date to depart and, most of the times, without access to legal assistance. According to the above-mentioned Migratory Movements Department, efforts are being made to contact family members and embassies to fund and thus facilitate deportation, which is the prevailing option for the migration management system in the country. Moreover, the funding of IOM for voluntary repatriations is significantly limited and thus even if these migrants agree to be sent home, it is most of the times unaffordable. One of the few exceptions to this recurrent situation is when migrants come illegally to the country by plane: as it is under the responsibility of the airline company to take them back to the place of departure, the deportation proceedings are consequently facilitated. As it will be demonstrated further on, these constraints lead migration management bodies
to rely incorrectly on the asylum system, especially since the increase of migration flows affecting the country in the past few years.

3. International Legal Framework applicable to Mozambique

As regards international migration documents, Mozambique has ratified two conventions which are found to be of importance to this investigation: the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW) of 18 December 1990 and the UN Convention Against Transnational Organised Crime (UNTOC) of 15 November 2000, as well as two of its three protocols.

The country ratified ICRMW on 19 August 2013. According to the Convention, a migrant worker is “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national”\(^{151}\). A refugee or a stateless person is not covered by this Convention “unless such application is provided for in the relevant national legislation of, or international instruments in force for, the State Party concerned”\(^{152}\). However, it was deliberated by the Committee on Migrant Workers that this exclusion is only applied for recognised refugees and not for asylum-seekers supposing they fulfil the definition of a migrant worker as stated in the Convention\(^{153}\). The aim of ICRMW is to mainstream the notion of migrant workers – whether in a regular or irregular situation – as human beings who shall not be discriminated upon their status\(^{154}\) and who are entitled to fundamental rights as any other national citizen\(^{155}\). Also, it envisages helping States developing migration laws

---

\(^{151}\) International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (adopted on 18 December 1990), art. 2(1).

\(^{152}\) Idem, art. 3 d).


\(^{154}\) Ct. supra note 151, art. 7.

\(^{155}\) Idem, part III.
and policies that at the same time guarantee rights of these persons. In order to avoid situations of exploitation, abuse and discrimination which are most likely consequences of their inherent vulnerability, this Convention emerges as an assurance of their rights, well-being and both living and working conditions not only in the host country but also in countries of origin and transit. Also, the Convention calls for State action in order to prevent and eradicate illegal or clandestine recruitment and trafficking of migrants workers, and to take measures to eliminate employment to migrant workers in an irregular or undocumented situation. In this sense, ICRMW establishes minimum standards of civil, political, economic, social and cultural rights of migrant workers and their families that should be respected, protected, recognised and enforceable in accordance with the law of the given country, as well as the duties and responsibilities of the State towards them. Nonetheless, its article 79 safeguards full sovereignty of States when it comes to the right to “establish the criteria governing admission of migrant workers and members of their families”.

It should be noted that before the ratification of the ICRMW, a Department for Migratory Work already functioned under the Mozambican Ministry of Labour. Notwithstanding, this department is mainly focused on the Mozambican mine workers in South Africa. Hence, this department does not deal with migrant workers in Mozambican territory.

On 20 September 2006, Mozambique ratified UNTOC and its supplementing protocols: the Protocol Against Smuggling of Migrants by Air, Sea or Land (Smuggling of Migrants Protocol) and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially in Women and Children.
(Trafficking in Persons Protocol). These issues are currently of significant importance to the country due to the ongoing rise of international crime trespassing on its territory. According to UNTOC, an organised criminal group is “a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences (…) in order to obtain, directly or indirectly, a financial or other material benefit”\(^\text{160}\). Thus, smuggling and trafficking networks are by definition encompassed in this description, as they are usually very organised, controlled by several people and conducted in more than one State. As it will be demonstrated later on, in the case of Mozambique and southward movements, smuggling networks have greater expression in the region than trafficking ones.

The Smuggling of Migrants Protocol establishes that smuggling of migrants is “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which that person is not a national or a permanent resident”\(^\text{161}\). Nonetheless, this Protocol safeguards that smuggled migrants shall not be criminally prosecuted under this document “for the fact of having been the object of conduct”\(^\text{162}\). The Protocol is overall focused on the prevention, suppression and criminalisation of smuggling of migrants and it works as a guidance tool for States to develop anti-smuggling legislation. Thus, it encourages the criminalisation “when committed intentionally and in order to obtain, directly or indirectly, a financial or a material benefit”\(^\text{163}\) of actions such as:

1. The smuggling of migrants itself;
2. The production of a fraudulent travel or identity document; and/or the procurement, providence or possession of such a document;

\(^{160}\) UN Convention Against Transnational Organised Crime (adopted on 15 November 2000), art. 2 a).
\(^{161}\) Protocol Against Smuggling of Migrants by Air, Sea or Land (adopted on 15 November 2000), art. 3 a).
\(^{162}\) Idem, art. 5.
\(^{163}\) Idem, art. 6(1).
3. To enable a person who is not a national or a permanent resident to remain in the State concerned without complying with the necessary legal requirements\textsuperscript{164}.

Moreover, the Protocol establishes that actions which put in danger (or are likely to) the lives and safety of migrants or that involve inhuman and degrading treatment of migrants shall be considered as aggravating circumstances and therefore have the appropriate criminal prosecution\textsuperscript{165}. In order to prevent and detect smuggling of migrants, the Protocol calls upon States to strengthen border control\textsuperscript{166} and information programmes in order to raise awareness concerning the criminal nature of such activity\textsuperscript{167}. Furthermore, it maintains that States should take all appropriate measures to preserve and protect the rights of smuggled migrants, in particular their right to life and the right not to be subject to torture or other cruel, inhuman or degrading treatment or punishment\textsuperscript{168}, as well as to assist the ones in need\textsuperscript{169}. Overall, smuggling is an important issue for discussion as it “clearly exacerbates the problems of bribery, corruption and extortion in the border crossing process”\textsuperscript{170}. It usually encompass a variety of actors, such as “recruitment agents, truck drivers and transporters, boat owners, providers of forged and stolen documents, border guards, immigration and refugee officials, members of the police and military”\textsuperscript{171}. It raises questions on transparency and liability from both private and public actors, hence of the own rule of law of the country.

\begin{flushright}
\textsuperscript{164} Cf. supra note 161, art. 6(1).
\textsuperscript{165} Idem, art. 6(3).
\textsuperscript{166} Idem, art. 11(1).
\textsuperscript{167} Idem, art. 15(1).
\textsuperscript{168} Idem, art. 16(1).
\textsuperscript{169} Idem, art. 16(3).
\textsuperscript{170} ISSN 1020-7473, January 2011, p. 20.
\textsuperscript{171} Idem.
\end{flushright}
The Trafficking in Persons Protocol establishes that trafficking in persons shall mean “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”\(^\text{172}\). Thus, the document calls upon States to criminalise such actions\(^\text{173}\) and to properly protect and assist victims of trafficking in persons\(^\text{174}\), as well as to make its legal proceedings confidential\(^\text{175}\). In this sense, States are required to attend to the special needs of the persons concerned\(^\text{176}\) and to ensure the physical safety of the victims while in its territory\(^\text{177}\). As it regards an especially sensitive problem, the Protocol establishes that measures should be taken in order to permit victims of trafficking to remain in the territory of the country, either temporarily or permanently\(^\text{178}\). With the purpose of preventing and detecting trafficking in persons, the Protocol calls upon States to strengthen border control\(^\text{179}\) and to exchange information within the different governmental bodies so as to disseminate the methodology traffickers use to enter the territory\(^\text{180}\).

4. Migration Dialogue for Southern Africa

The Migration Dialogue for Southern Africa (MIDSA) was founded in November 2000 to work as a consultative process within SADC Member States in order for them to have a dialogue platform to “exchange views on

\(^{172}\) Cf. supra note 19, art. 3 a).
\(^{173}\) Idem, art. 5.
\(^{174}\) Idem, art. 6(3).
\(^{175}\) Idem, art. 6(1).
\(^{176}\) Idem, art. 6(4).
\(^{177}\) Idem, art. 6(5).
\(^{178}\) Idem, art. 7(1).
\(^{179}\) Idem, art. 11(1).
\(^{180}\) Idem, art. 10(1).
common challenges and solutions to migration related issues. This tool is facilitated by IOM and the Southern African Migration Programme, while Ministries of the Interior of the different countries and other organisations such as UNHCR are its partners. Mozambique as a Member State of SADC is part of this consultative process, having chaired in 2013 the Ministerial-level dialogue on labour migration and migration management in Maputo. The purpose of this platform is to reach a common understanding and cooperation among States as concerns the impact of migration in the region (both positive and negative) and to improve the capacity of countries in answering and managing these challenges, by means of sharing information as well as harmonising their legislation and policies. Furthermore, the presence of organisations specialised in migration issues enables greater insight regarding characteristics and management of migration challenges. Its main focuses throughout the several workshops and Ministerial-level dialogues which were held at least once a year regarded migration and border management, development, health, labour migration, irregular migration, forced migration, trafficking and smuggling, rights of migrants, and return and admission. Outstandingly, its regional conference in 2014 will be on the challenges of mixed and irregular migration in the region and consequently, in preparation for it, in May 2014 IOM and UNHCR Mozambique hosted a meeting with the different key actors in Mozambique to discuss the situation and challenges faced in the country.


IV. The Mixed Migration Phenomenon

If one comes across the term “mixed migration”, it is possible to readily deduce that it concerns a diverse population movement. Indeed this phenomenon encompasses a multifaceted flow of people, as the ones who endeavour these (most of the times, hazardous) journeys are doing it for entirely different motives and purposes – “multiplicity of factors driving the movement”\(^\text{184}\). Thus, these persons leave their countries of origin and end up sharing the same routes – sometimes even the same destinations – and means of transportation, but their initial willingness to move is not analogous and may not be protection-related for the majority of them. One can find different profiles of people – refugees, asylum-seekers, economic and labour migrants, unaccompanied and separated children, victims of trafficking or stateless persons --, who perceptibly have to be taken into consideration by their different needs upon arrival in a foreign State, though in some cases a person may be driven by more than just one motive and/or fall into more than one of these profiles. Hence, it is required that all needs of the persons involved in these movements are assessed and addressed. “While the majority of people in this category move in order to establish new livelihoods, join family members or for educational purposes, others do so due to protection concerns which force them to flee their home countries for their own security or to protect their integrity and dignity and that of their families”\(^\text{185}\). Moreover, it is necessary that a clear distinction between a real need for international protection and a mere reason of personal convenience (for instance, to improve social and material conditions as regards economic migrants) is considered, as well as to which extent the person at his own will decided to take the journey. All persons

\(^{184}\) Cf. supra note 9, p. 3.

\(^{185}\) UNHCR, Concept Note, UNHCR – Regional Conference on Refugee Protection and International Migration: Mixed Movements and Irregular Migration from the East and Horn of Africa and Great Lakes Region to Southern Africa, Dar es Salaam, 6-7 September 2010, 06 September 2010, p. 1, para. 1.1.
involved in these flows are exposed to significant risks and thus it is required to guarantee full respect of their human rights and basic needs throughout the journey, both in transit and destination countries.

Mixed migration flows usually take place irregularly as most of the times these people lack the requisite documentation and resort to smuggling networks to make the journey. Thus, “the people who move in this manner often place their lives at risk, are obliged to travel in inhuman conditions and may be exposed to exploitation and abuse”. The considerable increase of mixed migration flows during the last years and its correlated challenges become an essential problematic matter not only for the individuals concerned but also for States, international organisations and civil society organisations. As regards States, they approach mixed flows as a threat to their sovereignty and consequently end up prioritising the reinforcement of their national security, by means of increased border and entries control, for example. Nonetheless, the State cannot overlook its obligations under international instruments as regards refugee law and international human rights law.

1. Refugee Protection and Mixed Migration

Presently, the world witnesses a wide and complex population movement. This drive has inevitably consequences for the relationship between migration and refugee protection. UNHCR took into account these challenges and thus published the 10-Point Plan of Action on Refugee Protection and Mixed Migration (10-Point Plan) which will be discussed in detail in the next subchapter. As it has been stated in the introduction of this plan, “it has become imperative for the international community to address this phenomenon in a more coherent and comprehensive manner”. Thus, many lives of refugees

---

187 Idem.
and asylum-seekers are at risk due to these widespread mixed movements, which create difficulties in terms of distinguishing the different profiles of the persons involved. Once they endeavour this journey, all these people face the same risks in spite of their different purposes, motives and needs. The potential hazards include serious human rights violations and exposure to exploitation, abuse, physical violence, arbitrary detentions and/or deportations.

These movements oblige States to have adequate asylum and migration management systems in place. Accordingly, such adequate systems might prevent States from failing to comply with their international obligations towards refugees and asylum-seekers. Also, the proper functioning of both systems may ultimately avoid the overload of the asylum system. Importantly, many persons travelling in these flows who are not in need of international protection end up applying for asylum to regularise their stay in the country, even if temporarily. Therefore, it is necessary for States to have efficient and effective reception, screening and referral procedures. These procedures should allow for a proper and prompt evaluation of the new arrivals and they might help avoiding any unlawful deportation of persons genuinely in need of international protection. Hence, the identification of refugees and asylum-seekers would be facilitated and it should be possible to promptly provide them with appropriate treatment and solutions. Overall, such procedures might prevent the State from failing to comply with the principle of non-refoulement, right to seek asylum, right to access to territory (unlike migrants in general) and other obligations under international human rights law.

This phenomenon is severely complex and it involves a major influx of foreigners who might irregularly enter, stay or cross the country. Moreover, these flows usually involve resorting to smuggling and trafficking networks, which hamper the combat to international crime. Thus, States perceive mixed flows as a risk to their national security and sovereignty. Nonetheless, States like Mozambique who have ratified the 1951 Refugee Convention and the 1967 Refugee Protocol cannot ignore their duties under international and national
refugee law. As this is an extremely complex issue, States should rely on the expertise of organisations such as UNHCR who can assist them ensuring necessary protection arrangements.

1.1. The 10-Point Plan of Action on Refugee Protection and Mixed Migration

Given the complexity of the worldwide phenomenon of mixed migration flows and the difficulties it causes in ensuring refugee protection, UNHCR published in 2006 the 10-Point Plan. The phenomenon has particular impact in regions such as the Gulf of Aden, Mediterranean Sea, Balkans, Central America and Southeast Asia188. Nevertheless, it has been increasingly spreading throughout the world, including in the Southern African region. Thus, UNHCR aim is to mainstream the entailed challenges of these flows and to help States addressing such movements in a protection-sensitive manner.

“The 10-Point Plan is a tool developed by UNHCR to assist governments and other stakeholders to incorporate refugee protection considerations into migration policies”189. Its purpose is to develop strategies that balance the sovereignty and security concerns of the State at the same time with the rights and needs of persons involved in mixed migration flows. It consists of ten key points, “(…) each proposing practical, protection-sensitive tools and strategies that could be adopted as part of effective and coherent responses to mixed movements”190. The plan does not deal specifically with the rooting causes for these mixed migration movements but to the policies and actions which can be implemented in the countries of transit and destination. Thus, the bottom line of it is the undeniable nexus between refugee protection and international migration in our days, connecting it to the phenomenon of mixed migration movements. Its two core matters are protection-sensitive entry systems –

---

190 Idem.
namely to profiling and referral mechanisms – and differentiated processes and procedures – as an alleviation and safeguard of asylum systems. Thus, the ten key points are as follows:

1. **Cooperation among key partners**\(^{191}\) – such a complex movement, inevitably requires intervention of more than one key actor, namely concerned States, governmental bodies, international and regional organisations (as it is the case of UNHCR, IOM or OHCHR) and other international and local NGOs. According to the plan, the first step would be to identify and assemble such actors “in an appropriate forum so that they can exchange information and establish terms and conditions for cooperation and coordination”\(^{192}\).

2. **Data collection and analysis**\(^{193}\) – the plan defends that in order to foster cohesive and comprehensive strategies it is necessary to collect, analyse and exchange data regarding movements and groups characteristics. This data should contain evidence regarding country of origin information, motivations for movement, means of transportation, routes and entry points.

3. **Protection-sensitive entry systems**\(^{194}\) – as mentioned above, this is one of the key points of the plan, as it is considered an “important element in any strategy relating to mixed movements”\(^{195}\). The plan defends border control as a crucial point for national security and combat to international crime, though without neglecting international human rights obligations, namely concerning refugees and asylum-seekers. Thus, “practical protection safeguards are required to ensure that such measures are not applied in an indiscriminate or disproportionate manner and that they do not lead to *refoulement*”\(^{196}\). One of the proposals is to train border guards

---

\(^{191}\) Cf. supra note 186, p. 2, chapter 1.

\(^{192}\) Idem.

\(^{193}\) Idem, chapter 2.

\(^{194}\) Idem, p. 3, chapter 3.

\(^{195}\) Idem.

\(^{196}\) Idem.
and immigration officials so that they can distinguish the different needs of the different people and gain knowledge on how to respond to asylum applications. The plan makes a note concerning irregular maritime migration and the need for compliance with maritime law obligations.

4. *Reception arrangements*¹⁹⁷ – “appropriate reception arrangements are needed to ensure that the basic human needs of people involved in mixed movements can be met”, as well as to ensure registration and provision of temporary documentation.

5. *Mechanisms for profiling and referral*¹⁹⁹ – following the above-mentioned procedure, gathering information through simple and standardised questions can help to make an initial determination “with regard to who they are, why they have left their own country and where their intended destination is”. Hence, a counselling session can help to understand if they are seeking asylum in the country and to help them “identify other options available to them, including return, regularisation or regular onward migration”. The plan underlines that this would not constitute RSD but a mere indication of the motives for movement of the persons interviewed as well as assurance of delivering the suitable treatment for their situation.

6. *Differentiated processes and procedures*²⁰² – considering that many people travelling in these mixed flows without need of international protection end up claiming for asylum in order to temporarily regularise their situation in the concerned country, it becomes vital to ensure alleviation of national asylum systems. Thus, the plan establishes that asylum claims “which appear to be relatively simple (because they are well founded or manifestly unfounded) could be assessed in an

---

¹⁹⁷ Cf. supra note 186, p. 3, chapter 4.
¹⁹⁸ Idem.
¹⁹⁹ Idem, chapter 5.
²⁰⁰ Idem.
²⁰¹ Idem.
²⁰² Idem, pp. 3-4, chapter 6.
expedited procedure\textsuperscript{203}, while other and more complex ones could need a more detailed assessment. The document underlines that different processes should address the situation of, for example, victims of trafficking not in need of international protection or of migrants as their specific needs should be addressed outside asylum arrangements.

7. \textit{Solutions for refugees}\textsuperscript{204} – the plan defends that recognised refugees or recognised people in need of international protection should be given a protection-based response: a durable solution. Though it would depend of the situation itself, it is stated that several solutions – not only the classic durable solutions but also legal migration, for instance – would constitute better chances for success.

8. \textit{Addressing secondary movements}\textsuperscript{205} – this key point proposes to address situations where refugees and asylum-seekers have moved on from countries where they have previously found adequate protection. Thus, it does not only take into consideration the purposes of the people on the move but also “the legitimate concerns of States about irregular onward movement”\textsuperscript{206}. The plan highlights that this point is still lacking consensus among the various actors.

9. \textit{Return of non-refugees and alternative migration options}\textsuperscript{207} – an expeditious return in safety and dignity is the widely chosen response of States in cases of people who are found to be in no need of international protection. Nonetheless, other regular migration options might be agreed, either temporary or for a longer term.

10. \textit{Information strategy}\textsuperscript{208} – the plan states that all nine key points referred up to now should be complemented with information campaigns in countries of origin, transit and destination, so as to alert people on the

\textsuperscript{203} Cf. supra note 186, p. 3, chapter 6.
\textsuperscript{204} Idem, p. 4, chapter 7.
\textsuperscript{205} Idem, chapter 8.
\textsuperscript{206} Idem.
\textsuperscript{207} Idem, pp. 4-5, chapter 9.
\textsuperscript{208} Idem, p. 5, chapter 10.
danger behind these irregular movements. Though this point is not efficient *per se*, it can make a difference when combined with remaining key points, as well as with “longer term measures to tackle the root causes of such movements”\(^\text{209}\).

Since its publication, the 10-Point Plan has been continuously developed and applied in several countries, as it is exemplified by the publication of UNHCR “The 10-Point Plan in Action” on February 2011\(^\text{210}\), which contains nearly 200 practical examples from several different countries. Also, the plan – together with other dialogues and reviews on the nexus between refugee protection and mixed migration – inspired a number of regional conferences on Refugee Protection and International Migration throughout the world. These regional conferences followed the lines of its above-described key point number one on assembling key actors so that they share information and settle cooperation and coordination. Thus, as it will be analysed later, one of the conferences was in September 2010 and it concerned Mixed Movements and Irregular Migration from the East and Horn of Africa and Great Lakes Region to Southern Africa, which included the participation of the State of Mozambique.

2. The Case of Southern Africa

During the past decade, and particularly during the last five to six years, a major route has been established coming from the Horn of Africa towards Southern Africa. Coming from Somalia, Ethiopia and, less recurrently, Eritrea, these people travel for about 4.500km, along a route that classically encompasses Kenya, Tanzania, Malawi, Mozambique, (perchance) Zimbabwe and South Africa. Thus, out of these six countries, their envisaged destination is South Africa, whereas the others are mainly (but not exclusively) transit

\(^{209}\) Cf. supra note 186, p. 5, chapter 10.

\(^{210}\) Cf. supra note 189.
countries. However, even South Africa might in fact not be their final destination, as it might be used as a gateway to reach the United States, Australia or the United Kingdom later on\textsuperscript{211}. Whereas Somalis endeavour this journey to escape the prevailing conflict in their country, human rights violations, personal persecutions or some are even in search of better life conditions, Ethiopians are almost exclusively looking for better work opportunities as, unlike Somalia, their country of origin is not affected by generalised conflict and violence\textsuperscript{212}. Other frequent movements but presently less significant (or, at least, less documented) towards Southern Africa are the ones coming from the Great Lakes region – Burundi, Democratic Republic of the Congo and Rwanda – and, even more recently, from South Asia – namely, Pakistan and Bangladesh. Thus, in the first case, though the numbers of Burundians and Rwandese people on the move have decreased in the recent past, the same cannot be said regarding Congolese people as prevailing conflicts in certain regions of the country still force people to flee and to seek asylum in neighbouring countries. Nevertheless, there are cases of Congolese who decide to leave their country in search of better life conditions\textsuperscript{213}. Regarding the second case, there is still not much information as to their background but for what it is observable upon their arrival, their previous halt was usually in the Arabian Peninsula and they change quite often means of transportation along the way.

Regarding transit and/or destination countries bordering Mozambique, there are a few points that are worth mentioning. Malawi, on the basis of its Refugee Act of 08 May 1989, allows a person to enter and cross the country “for the purpose of proceeding to another country where he intends to seek asylum as a refugee”\textsuperscript{214}. Thus, these persons on the move find in this law the

\textsuperscript{211} Cf. supra note 170, p. 7.
\textsuperscript{212} Idem.
\textsuperscript{213} Idem, pp. 8-9.
\textsuperscript{214} Malawi: Refugee Act of 1989 (adopted on 08 May 1989), art. 10(3).
perfect ally to continue forward. Tanzania has a strict policy on illegal immigration and reputes it as a crime, which results in arrests, detentions and deportations, occasionally for long periods of times. Finally, in South Africa, the Government controls all the asylum system. Due to the grant of a work permit while the asylum proceedings are taking place, the South African asylum system and RSD procedures are completely overloaded and inefficient, given the amount of people with manifestly unfounded claims. Currently, the principle of first safe country is being applied, which means people who have crossed other safe countries while en route to South Africa can be rejected asylum in the latter215. Although this principle does not exist in International Law but only in bilateral or multilateral agreements, it is not in theory unlawful but its “design and implementation must adhere to the basic tenets of international and domestic law (particularly the Refugees Act), namely the obligation to protect and to prevent refoulement216. Also, there is currently the intention to move the refugee reception centres to the borders in order to strategically control the entries into national territory217.

The above-mentioned routes are typical cases of mixed migration flows, as they are highly diverse and complex population movements. They might be composed by “people with a valid claim to refugee status as they are fleeing from persecution, armed conflict and political violence in their countries of origin; refugees who have previously been accommodated in camps or urban centres in neighbouring and nearby countries; vulnerable migrants who are moving in response to poor governance and harsh economic circumstances; people who are seeking better livelihoods, income-generating and educational opportunities; as well as those whose ultimate aim is to make their way to Europe or North America”218 or even by people who are driven by more than

216 Idem, p. 21.
217 Idem, p. 42.
218 PDES/2010/10, August 2010, p. 6, para. 17.
one reason and/or fall into more than one of these categories. Thus, it is important to highlight that these movements also encompass refugees who have their status already recognised by other States and who are perhaps looking for greater protection and better chances for the future\textsuperscript{219}. Additionally, many of these people on the move might not have a legitimate claim for protection or humanitarian assistance at the beginning but they might develop it during the journey (for example, due to aggressions, mistreatments or other abuses). These persons usually travel irregularly, in big groups and most of them are young men, only rarely encompassing women, children and/or elderly people\textsuperscript{220}. The majority of these groups travelling south are coordinated by major and well-organised smuggling networks which operate the journey all the way from their countries of origin until their final destination. Hence, such networks manage to seduce these young men with a promise of a potential job in South Africa and they charge per person a significant amount of money to arrange the journey, but then again gather them in huge groups in order to maximise their profits.

These routes can be extremely dangerous ones, as they might involve travelling not only by land (in trucks, containers, tankers, buses or merely by foot) but also by air (though nowadays the security control at airports has been reinforced, at least in big cities) and sea (in small and overcrowded boats, though in decrease after its peak in 2011). The choice of route highly depends on the conditions to cross irregularly the borders. Thus, if some countries have hampered the entry, these smuggling networks promptly adapt it in some other way, either by changing promptly the transit countries or the means of transportation (for instance, in 2011, instead of crossing Tanzania by land, these flows were taking a one week boat trip directly from Kenya to Mozambique). In most cases, when these groups are intercepted along the way by law enforcement officials or are in need of humanitarian assistance due to

\textsuperscript{219} Cf. supra note 170, p. 13.
\textsuperscript{220} Cf. supra note 218, p. 6, para. 16.
extreme exhaustion and/or malnourishment, they might apply for asylum in order to legalise their stay in the given country, even if it is only for the purposes of repose and recovery (for example, to receive basic food and other assistance at the refugee camps) before heading back en route\textsuperscript{221}. Therefore, even if these groups are detained, deported or accommodated in refugee camps, as soon as they find a chance to be released or feel in possession of their full capacities, they try again to continue their journey, even if that involves trying to cross the same border for the third time, for example. In fact, even refugees among these groups (particularly the ones coming from the Horn of Africa) have a different concept of protection, which is based upon self-reliance and not upon becoming dependent in a refugee camp: thus, their primary goal is to reach their envisaged destination in order to find a job or start their own business\textsuperscript{222}. Also, this might possibly be due to fear of reprisals from smugglers, who might threat to harm their families that have stayed in the countries of origin if they do not conclude the journey.

The problem in most of the mentioned transit countries – in this particular case, Mozambique – is the lack of means and mechanisms for their asylum and migration management systems to deal with this avalanche of irregular migration. Thus, these constraints are further exacerbated by a limited operation of UNHCR, which “finds itself under significant pressure in responding to a challenge that beyond the strict confines of its mandate for refugee protection and solutions”\textsuperscript{223}, and a limited presence of IOM (which actually does not operate in Malawi for instance). The countries do not have means to deport irregular migrants among these groups (especially to return them to their countries of origin) or to return already recognised refugees to their countries of first asylum. “States in the region lack the capacity to identify and return

\textsuperscript{221} Cf. supra note 218, p. 6, para. 16.
\textsuperscript{222} Idem, para. 20.
\textsuperscript{223} Idem, para. 22.
refugees who are engaged in onward movement, while countries of first asylum are unwilling to readmit refugees who have left their country”\(^{224}\). In an act of despair, the Southern African Governments started increasing security and patrol at the borders and in refugee camps. Hence, the States were regularly carrying out interceptions, long detentions and deportations without proper screening and guarantees of international protection and assistance for the ones in real need. This environment of fear and alarm gave rise to the 2011 emergency, which will be analysed in detail in the following chapter. Notwithstanding, these arrangements have proved to be ineffective, as these flows kept (and keep) finding a way to continue their journey, even if through much more hazardous routes – which ultimately raises even more concerns when it comes to persons in need of international protection\(^{225}\).

### 2.1. Regional Conference on Refugee Protection and International Migration: Mixed Movements and Irregular Migration from the East and Horn of Africa and Great Lakes Region to Southern Africa

On September 2010, the Government of Tanzania, UNHCR and IOM gathered the countries of Burundi, Democratic Republic of the Congo, Ethiopia, Kenya, Malawi, Mozambique, Rwanda, Somalia, South Africa, Tanzania, Uganda, Zambia and Zimbabwe in Dar es Salaam for a two days regional conference on Refugee Protection and International Migration, particularly to discuss Mixed Movements and Irregular Migration from the East and Horn of Africa and Great Lakes Region to Southern Africa. This conference benefited from the examples of the other three regional conferences on the same topic which had been organised by then by UNHCR in Yemen (May 2008), Senegal (November 2008) and Costa Rica (November 2009), and greatly from the regional conference organised by IOM together with the Government of Malawi.

\(^{224}\) Cf. supra note 170, p. 13.

\(^{225}\) Idem.
in February 2009 regarding Mixed Migratory Flows from the East and Horn of Africa to Southern Africa\textsuperscript{226}. Moreover, the 10-Point Plan of UNHCR had also proven to be an extremely useful and important guidance tool. International organisations such as UNHCR, IOM, OHCHR and Interpol were present, along with representatives of regional organisations (for instance of the AU and SADC), of development partners and of civil society organisations.

Before the conference took place, national consultations were carried out in most of the different participant States. The purpose of these consultations was to assess particular key issues and challenges faced as well as levels of implementation of mechanisms in place and expectations concerning the outcomes of the conference\textsuperscript{227}. In Mozambique, these consultations were held one month before the regional conference and gathered members of the different departments of MNEC, MINT and of the Ministry of Labour as well as IOM and UNHCR officers.

In the regional conference, all key actors got together to discuss the current challenges arising from the increase of the phenomenon of mixed migration flows and correlated international protection concerns in East and Southern African regions. Outstandingly, it was possible to reunite in this conference not only transit and destination countries in the region, but also the main countries of origin of these people on the move (Burundi, Democratic Republic of the Congo, Ethiopia, Rwanda and Somalia). Hence, the aim of the conference was to deepen “the understanding of the scope and extent of the southward migration” and to reach “comprehensive, collaborative and well-


\textsuperscript{227} Idem, p. 2, Introduction.
coordinated protection-sensitive strategies to address this phenomenon. In more detail, the main goals of the conference were to:

1. “Increase understanding on the nature, scale and reasons for south-bound mixed migratory movements from the East, Horn, and Great Lakes sub regions of Africa;
2. Examine the challenges to responding to the phenomenon of mixed movements from a human rights-based approach including the adequacy and effectiveness of the respective legal, policy, institutional, operational and management frameworks and exploring ways of enhancing such frameworks;
3. To achieve consensus on recommendations to address the challenges related to mixed migration movements with the final aim to agree on an Action Plan, as well as on a Road-Map, spelling out how to implement the Action Plan and achieve these recommendations, with special focus on regional co-operation.

As one can see by its goals, the conference dealt with previously mentioned core challenges of mixed migration, namely motives, purposes, needs and consequences behind these flows; needs assessment and screening mechanisms; quality of asylum and migration management systems; institutional and policies background; States approach and stand towards it; among others. Accordingly, throughout the conference, it was possible to consider main aspects such as countries of origin and respective information on them, profiles of the persons involved, motives and factors behind their movement, recurrent chosen routes, recourse to smuggling networks and their active role on the movement, and, finally, access to refugee and human rights protection mechanisms.

228 Cf. supra note 185, p. 3, para. 1.1.
229 Idem, pp. 4-5.
As a result of this meeting, four main topics were raised during its discussions\textsuperscript{230}. First, focus was made on the need for greater national and regional cooperation on issues regarding mixed migration, irregular migration and refugee protection. This goal can be pursued by the establishment of interministerial and mixed migration task forces at a national level (to safeguard exchange of information amid the several Ministries, and international, regional and civil society organisations) and by taking advantage of organisations such as AU or SADC as permanent platforms for continued dialogue, cooperation and coordination at a regional level. Second, an agreement could be reached on the importance of improved national legal and policy frameworks in order to cope with the challenges of mixed migration movements. The aim of the review shall be to safeguard national asylum systems, re-evaluate indiscriminate detentions of irregular migrants and asylum-seekers, and provide possible local integration options for refugees and migrants. Third, the significance of greater national capacity regarding border management was affirmed, in order to address the demands of mixed migration flows in a human rights and protection-sensitive manner while safeguarding national sovereignty and security. Fourth and last, the need for “more accurate refugee and migration data and improved data analysis (...) to ensure the development of evidence-based policies”\textsuperscript{231} was recognised, for instance through joint studies or data gaps analysis, both at a national and regional level.

The evident outcome of the conference was the noteworthy number of recommendations made on how it could be feasible to deal with and address in a protective-sensitive manner the issues arising from this phenomenon. Thus, these recommendations were divided into the following eight main issues:

\textsuperscript{230} Cf. supra note 226, p. 3.
\textsuperscript{231} Idem.
1. **Respecting human rights of people on the move, irrespective of status**\(^{232}\) – as regards this topic, some of the recommendations are for States to review and improve national legal and policy frameworks, to mainstream human rights protection into its entire legal framework, as well as to ratify and properly implement international human rights instruments. Also, the countries are requested to avoid as much as possible detention of refugees and migrants, but if so to fully respect the right to fair trial and due process, and international standards for detention conditions. Another recommendation is based upon improving capacity of judicial systems by means of training officials in order to adequately address human rights violations of these people on the move. Importantly, it is highlighted the need to aggravate penalties for smugglers and traffickers but nevertheless to decriminalise irregular migration.

2. **Enhancing legal migration: alternatives to irregular migration**\(^{233}\) – States are called upon to ratify and implement international instruments concerning rights of migrant workers (for example, ICRMW). Notably, it is recommended to “strengthen the role and capacities of regional organisations to enhance legal migration between states”\(^{234}\) and for States to potentiate legal migration by means of signing regional protocols establishing free movement of people as well as agreements allowing labour migration. Finally, it is advised to key actors to mainstream the risks and dangers of irregular migration, along with their legal migration options.

3. **Ensuring protection for refugees arriving in mixed migratory movements**\(^{235}\) – States are again recommended to review and improve their national asylum policies (in order to ensure their effectiveness and adequacy to address challenges rising from mixed migration flows) and to lift reservations to the 1951 Refugee Convention, especially

\(^{232}\) Cf. supra note 226, pp. 5-6.
\(^{233}\) Idem, p. 8.
\(^{234}\) Idem, para. ii.
\(^{235}\) Idem, p. 11.
concerning the right to freedom of movement. In order to ensure protection for refugees and proper identification of their needs, “capacity-building efforts should be increased”\(^{236}\) for all Government officials and civil society partners that might have contact with refugees and asylum-seekers (for instance border guards). Moreover, UNHCR and other key actors are called upon to support the Government in identifying and protecting these persons in need. To alleviate backlogs of RSD procedures, it is recommended for States to recognise persons fleeing from conflict and generalised violence as refugees on a *prima facie* basis. Once again, it is requested that States avoid as much as possible detention of refugees and asylum-seekers, but if so to facilitate them access to UNHCR and legal representatives. Finally, in order to address a characteristic of this southward migration, it is recommended to find “regional strategies on secondary movements (...) based on principles of cooperation and burden-sharing and informed by research and consultation on the nature and underlying reasons for the onward movement of refugees”\(^{237}\).

4. **Managing borders and addressing security concerns while ensuring protection**\(^{238}\) – regarding border management, the recommendation that stands out is the creation of “multi-stakeholder border management teams”\(^{239}\), not only among different Ministries but also encompassing international and civil society organisations, to “ensure a coordinated response to border management and protection activities”\(^{240}\). Also, more focus needs to be made on capacity-building for all actors dealing with these people moving irregularly, so that appropriate measures can be taken regarding each person profile. Thus, when it comes to border management issues, it is needed that all key actors in the States work

\(^{236}\) Cf. supra note 226, p. 11, para. ii.

\(^{237}\) Idem, para. vii.

\(^{238}\) Idem, pp. 13-14.

\(^{239}\) Idem, para. i.

\(^{240}\) Idem.
coordinate and cooperatively, and exchange information among each other. Due to the constant threat of international crime, here enhanced by these mixed flows due to their standard resort to smuggling and existence of trafficking networks, States are advised to ratify the Protocol Against Smuggling of Migrants by Air, Sea or Land, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially in Women and Children, as well as to review and strengthen national legislation and penalties in these matters in order to aggravate prosecutions for smugglers and traffickers.

5. **Different people different needs: determining profiles and responsibilities**\(^{241}\) – as mentioned throughout the chapter, an essential point of mixed migration flows is the clear identification of the profile of the person and his needs. In order to sustain coordination and consistency among all key actors, it is advised to create standard operating procedures (SOPs) as concerns profiling and referral mechanisms. Thus, these shall be placed at entry points so as to be possible to promptly assess the specific needs of the persons arriving and provide protection and assistance to the ones in need. Moreover, the establishment of reception arrangements would also facilitate interviews and the processing of individual cases, and later counselling sessions can be arranged in order to better understand motivations and prospects behind the movement. As these persons might fall into more than one category, it is recommend that States use mechanisms already in place for nationals with specific needs (for instance, for abused children or victims of sexual violence) for migrants and refugees as well. As regards the particular needs of children, detention should be highly avoided and it is advised to conduct specific training for actors (in particular law enforcement officials) to ensure access to proper treatment of, for instance, unaccompanied and separated children. Concerning trafficked persons, States are called upon to revise their national legislation, so as

\(^{241}\) Cf. supra note 226, pp. 16-17.
to create mechanisms that provide effective assistance and protection to these persons. Hence, States are urged to avoid prosecuting victims of trafficking and to arrange permits that allow them to legally stay in the country.

6. **Return of persons not in need of international protection**\(^{242}\) — in this regard, the recommendation that excels concerns the establishment of a consultation mechanism on return arrangements between countries of origin, transit and destination. Furthermore, States are recommended to establish agreements with other affected countries “on return and readmission of persons found not to be in need of international protection, with appropriate safeguards included”\(^{243}\). International organisations (for example, IOM) can help States to carry out voluntary repatriations, though it is recognised that the State is the main responsible for the return and deportation of rejected asylum-seekers and migrants.

7. **Data collection and information gaps**\(^{244}\) — States are encouraged to undertake mapping exercises in order to identify existing data and research sources on mixed migration movements in the region. All key actors are advised to cooperate and share information among each other, and “to develop common standards and criteria for the collection and analysis of data on mixed movements”\(^{245}\). Due to the limited information on mixed migration flows in the region, States are encouraged “to prioritise funding for universities and academic institutions to undertake research on mixed movements”\(^{246}\). Furthermore, regional organisations are here encouraged to collect and analyse data on the topic, to possibly thereafter create a regional data bases.

\(^{242}\) Cf. supra note 226, p. 19.
\(^{243}\) Idem, para. i.
\(^{244}\) Idem, pp. 21-22.
\(^{245}\) Idem, para. iii.
\(^{246}\) Idem, para. v.
8. Enhancing cooperation and coordination among States, and with other actors, in responding to mixed migratory flows\textsuperscript{247} – as previously mentioned, in order to strengthen dialogue, cooperation, coordination and information sharing at a national level, it is recommended to establish task forces on mixed migration between the different key actors in the country. Also, it is advised to establish an interministerial task force in order to ensure consistency, cooperation and communication among different Ministries dealing with refugee and migration issues. At a regional level, it is recommended to enhance cooperation and to take advantage of regional organisations such as AU or SADC, and to transform them into permanent platforms for sustained dialogue, cooperation and collaboration.

Following the third general goal of the conference, a Plan of Action was agreed between the participants and it indicates a possible framework for pursuing implementation of the recommendations that have emerged from the conference. The plan is divided into six chapters – Legislative reform and policy review, Capacity-building, Operations, Communication and outreach, Data collection and analysis, and Cooperation and coordination – and it suggests a number of actions, though they do not translate into mandatory guidelines: States can only implement the ones they find adequate and suitable considering their national requirements and background\textsuperscript{248}. Moreover, these actions can be subject to review and modifications deemed necessary by key actors. Some of the proposed ones largely depend on financial resources (for instance, external funding) but nevertheless “the proposed targets are meant to set realistic benchmarks encouraging and inspiring concrete actions by all stakeholders”\textsuperscript{249}.

\textsuperscript{247} Cf. supra note 226, pp. 23-24.
\textsuperscript{249} Idem.
In order to ensure an efficient and effective implementation of the recommendations, it is strengthened throughout the plan that cooperation and coordination as well as partnership among key actors are indeed needed. The State is here regarded as the implementer of most of these proposed actions. Nevertheless, it is highlighted that other actors have important roles, for instance by cooperating with the Government, supervising their implementation or even by actively applying them.

Only a few months after the conference took place, a major flow of individuals from the Horn of Africa affected the whole region of Southern Africa, in particular Mozambique. As it will be explained further on, this situation created a state of chaos in the whole region and most of the countries closed their borders. Hence, this closure ultimately drove the flows to particularly affect Mozambique.

Although almost four years have passed since the regional conference, no significant actions have been taken to pursue the implementation of the action plan and recommendations in Mozambique. There have been no reviews or amendments to national legislation, in particular to the Refugee Act and the Aliens Law. Also, the penalties for smugglers and traffickers have not been yet aggravated and thus these persons still regularly escape with impunity. The country still lacks SOPs as concerns profiling and referral mechanisms (if not the mechanisms themselves), and there is a significant backlog of RSD procedures. As it will be exemplified in the following chapter, migrants are still recurrently detained for long periods of time and detention conditions are far from complying with international standards (for example, there is still no separation of adults and juveniles). Moreover, there are no alternatives to detention and deportation of rejected asylum-seekers and migrants. As regards international human rights instruments, the most significant achievement was the ratification of ICRMW on August 2013. In spite of UNHCR efforts, the
country has still not lifted the reservations to the 1951 Refugee Convention. As recommended in the conference, cooperation and coordination within regional platforms have been enhanced, namely within SADC. This organisation has strengthened its position as a permanent platform for dialogue, in particular regarding migration and asylum matters in the region\textsuperscript{250}.

UNHCR and IOM regularly conduct trainings for officials throughout Mozambique. Under the UN Delivering as One initiative, both organisations together with UNICRI have launched a project on capacity-building to respond to mixed migration, though it has not yet started. Thus, “the aims of the project are:

1. To establish an interministerial task force to coordinate the Government’s response to mixed migration;
2. To undertake a review of existing legislation relating to mixed migration in Mozambique, and make recommendations for reform;
3. To develop Standard Operating Procedures for border officials to manage mixed migration flows, including referral mechanisms to enhance protection of vulnerable migrants\textsuperscript{251}.

2.2. “In Pursuit of the Southern Dream: Victims of Necessity”

In 2009, IOM conducted a research on the irregular movements from the East and Horn of Africa to South Africa in order to experience smuggling of migrants in this corridor\textsuperscript{252}. Though the initial purpose of the research was to investigate trafficking in persons along this corridor, the object of the study

\textsuperscript{250} Cf. pp. 40-41.


\textsuperscript{252} IOM, In the Pursuit of the Southern Dream: Victims of Necessity, April 2009.
changed as there was no evidence that it was taking place\textsuperscript{253}. By this time, the research came to the conclusion that the number of Ethiopians and Somalis being recruited to these smuggling networks was increasing\textsuperscript{254}. Hence, this research proved to be right when early as 2010/2011 large groups coming from the Horn of Africa started arriving in Mozambique. Most of these people on the move were indeed resorting to smuggling networks to facilitate the journey.

The majority of these individuals were leaving their countries mainly to search for better life and work opportunities, as well as to escape from poverty, insecurity and political situation\textsuperscript{255}. The study found that although these smuggled migrants face many problems at border controls in some countries, there is also substantial involvement and abuse by corrupt State officials\textsuperscript{256}. Hence, these smuggling networks may pay more to these officials than the State itself. The research also highlights that more restrictive border controls will not deter these flows but rather increase the demand for smuggling networks as well as the price for the journey\textsuperscript{257}. Regrettably, it also found evidence that many smuggled migrants are continuously arrested and sentenced against what it is stated in the Smuggling of Migrants Protocol, while smugglers continue to escape with impunity\textsuperscript{258}. Overall, the report concludes that “the major challenge for policy makers, and national Governments, is how to address a problem that from the points of view of the irregular migrant, the smuggling network and the profiteering State officials (and criminals) could be seen as a win-win-win situation”\textsuperscript{259}.

\textsuperscript{253} Cf. supra note 252, p. 5.
\textsuperscript{254} Idem, p. 133.
\textsuperscript{255} Idem.
\textsuperscript{256} Idem.
\textsuperscript{257} Idem.
\textsuperscript{258} Idem.
\textsuperscript{259} Idem, p. 135.
V. Modus Operandi in Mozambique

1. Asylum Procedures in Practice

Many provisions of the Mozambican law are not properly applied in practice. Whenever an asylum-seeker arrives at the Mozambican border, he should declare to the border guards\(^{260}\) that he is seeking asylum in the country and the latters will provide him an authorisation\(^{261}\) to continue the journey to Nampula. Once the individual is in the city, he should present himself at the police station, where he will wait for INAR officials to perform a first verification. This police station (the 1\(^{\text{st}}\) Squad in Nampula\(^{262}\)) is not any different from others as it handles all sorts of criminal offences, thus it is not in any way specialised in asylum proceedings. The police does not inform INAR officials about new arrivals, unless when it concerns intercepted groups; therefore, INAR officials supposedly go to the police station every day to verify if there are new arrivals\(^{263}\). According to INAR, in general migration officials only participate in proceedings when the persons involved do not request asylum. These practices overturn article 2(1) of the RSD Decree, where in principle the competent migration authorities should be the ones receiving these asylum-seekers and refer them immediately to INAR\(^{264}\). Consequently, once INAR officials encounter these persons, they shall transport them to the Maratane refugee camp, the only reception and registration centre. This transportation should immediately follow this first verification at the police station but due to financial constraints, it might even take two weeks to be carried out\(^{265}\).

\(^{260}\) Mozambican border guards operate under MINT but not under Migration Movements Department – cf. p. 34.

\(^{261}\) In Portuguese, Guia de Marcha.

\(^{262}\) In Portuguese, Primeira Esquadra de Nampula.

\(^{263}\) Interview (in Portuguese) with Marisa Varela, Protection Officer, INAR, Nampula, 25 February 2014.

\(^{264}\) Cf. supra note 69.

\(^{265}\) Cf. supra note 263.
Once they are at the camp, asylum-seekers are registered and screened by INAR officials. Hence, though in principle the asylum-seeker shall apply orally or in writing to the competent migration authority, the whole arrangement is enabled by INAR while performing registration and screening proceedings. By this time, asylum-seekers are placed temporarily in the transit centre, where they have access and are entitled to accommodation, food and other provisions while waiting for eligibility proceedings and interviews for RSD\textsuperscript{266}. Noticeably, these persons do not have easy access to legal representation during these initial phases, which might make them vulnerable to further demands. Also, it is recurrent to find Government officials who do not speak any other language but Portuguese, which might hamper communication with persons of concern; therefore, they end up relying many times on other asylum-seekers or refugees to facilitate any communication.

From this point on, RSD proceedings take place as described in the RSD Decree, which means that once this phase of RSD led by INAR is concluded, the process is sent to CCR for further appreciation and then to the Minister of the Interior for a final decision\textsuperscript{267}. The verdict of both bodies is solely based on paper application files, not encountering the applicant in any phase. Also, the asylum-seeker is not informed at any time on the current status of procedure other than upon final decision. As regards CCR, unlike what is set out in article 5 of the RSD Decree\textsuperscript{268}, only a significantly small number of sessions actually takes place – for instance one per year. In case of a negative decision, the asylum-seeker faces substantial problems in appealing to the Administrative Court\textsuperscript{269} as it is located solely in Maputo and many of these asylum-seekers is accommodated in the refugee camp (which is located more than 2000km away from the capital). Contrary to paragraph 2 of article 15 of the RSD Decree\textsuperscript{270},

---

\textsuperscript{266} Cf. supra note 263.
\textsuperscript{267} Cf. supra note 80.
\textsuperscript{268} Cf. supra note 84.
\textsuperscript{269} Cf. supra notes 99 and 100.
\textsuperscript{270} Cf. supra note 97.
rejected asylum seekers are usually not deported from Mozambique by the migration authorities. This situation leads to a Maratane refugee camp full of rejected asylum seekers who cannot leave due to lack of documentation. Overall, it should be noted that there is presently a significant backlog of RSD proceedings in Mozambique, where one can find asylum seekers waiting for refugee status for more than ten years. This comes as a result of not only absence of CCR sessions but also due to a considerable number of processes expecting the decision of the Minister of the Interior. This brings a worrying and unstable situation for these people, as it severely hinders their full protection and legal certainty in the host country as well as their own local integration (for example in order to access naturalisation). Considering that many of these processes might be pending for ten years or more, many of the grounds for asylum might not be verified any longer.

Mozambique currently hosts 4,445 refugees and 10,674 asylum seekers, most of them originating from the Democratic Republic of the Congo, Rwanda, Burundi and Somalia. Half of these persons live in the Maratane refugee camp where INAR provides them assistance, while already self-reliant ones have settled in urban centres, namely in the cities of Nampula and Maputo. Though Mozambique made a reservation to article 26 of the 1951 Refugee Convention on the right to freedom of movement and choice of residence, refugees and asylum seekers benefit nonetheless from a substantial autonomy to do so, as they are allowed to leave the camp in order to work or study. The only visible restriction to this right is indeed the already mentioned Ministerial Instruction enacted in 2001 banning refugees from residing in the capital Maputo, though not retroactively; thus, it is indeed very hard for a refugee to manage to settle in this city. Concerning the other

---

272 Cf. supra note 31.
273 Cf. supra note 271.
reservations to the 1951 Refugee Convention – namely the rights to property, education, work and association, as well as access to naturalisation –, refugees and asylum-seekers in the country do not face significant challenges in order to access them. As to naturalisation, it is required in practice that the person is a recognised refugee in the country for at least 10 years.

As one can see, there are a number of inconsistencies between the Mozambican legal and policy framework for refugee protection and current practices, which in the end might undermine full protection of persons in need in the State. Though on the one hand some aspects of Mozambican policies in practice might be very generous, on the other hand legal documents fail to create and grant a rights-based legal framework for refugees and asylum-seekers in Mozambique. Thus, the lack of legal codification of rights creates a precarious situation for these persons. For instance, though the State often grants nonetheless the majority of rights of the 1951 Refugee Convention to which it made reservations, such practice is not found in any legal document. Hence, the absence of a rights-based legal framework for refugees and asylum-seekers jeopardises their legal certainty in Mozambique as it opens gates for arbitrariness of State officials, who can decide to whom to grant rights or not. Moreover, though the Refugee Act together with the RSD Decree describe thoroughly the proceedings for the reception of refugees and asylum-seekers in Mozambique, these provisions are not entirely compatible to its application. This inconsistency threatens the full protection and assistance of these persons as, again, it is subject to the willingness of State officials who encounter them. Also, many of these State officials might not be trained to deal with asylum proceedings as in the case of the police at the 1st Squad in Nampula. This scenario together with the significant backlog of RSD procedures and other discrepancies between legal provisions and practice endangers the effectiveness and efficiency of the national asylum system.
2. The Impact of Mixed Migration Flows on the Asylum System

As explained in the previous chapter, Mozambique finds itself in the middle of a corridor towards Southern Africa, where in most cases it is a transit country and not a destination one. As the main envisaged destination is South Africa, Mozambique is the last or one of the last countries before reaching it. The country is not ready to handle with such significant number of persons on the move, especially as most of them enter or try to enter irregularly the country and many without evident claims for asylum. Furthermore, migration management bodies do not have the means to deal with the number of economic migrants illegally arriving in the country. Considering that persons involved in these flows have a variety of motives, purposes and needs behind their willingness to endeavour the journey, the State should have in place prompt protection-sensitive arrangements in order to avoid denial of international protection to persons who have grounds for asylum. Nevertheless, this is still not the case in Mozambique.

Most of these individuals are currently arriving illegally in the country by land, resorting to trucks, containers, tankers, buses or merely by foot, while others try their luck by plane, boarding in Ethiopia, Kenya or Tanzania. The ones coming by plane are more commonly from Pakistan or Bangladesh. Their journey is not well defined, but it seems they catch a flight in the Arabian Peninsula to East Africa and then they either catch another plane to enter the country or try to endeavour the trip by land. In one case, they allegedly caught the plane in Dubai to Tanzania, crossed the border to Mozambique by bus and then caught a national flight in the northern city of Pemba to Maputo, where they were detained by migration services. Presently, as the security control in the airport of Maputo has been reinforced, chances of being caught either with absence of documentation or possession of forged one are much higher. Hence, there are cases of flights landing in Mozambique that afterwards have to take again most of its passengers on the way back as these latters lack proper

---

274 Cf. subchapter 2 of chapter IV.
documentation and therefore the airline company is hold accountable for this illegality\textsuperscript{275}. This raises serious questions on to which extent migration services and border guards at airports actually perform verifications in order to detect persons in need of international protection, and/or refer these situations to INAR. In Maputo, whenever aliens are caught without proper documentation at migration services in the airport and for irrespective reason they are not able to be deported immediately (either due to absence of available seats or because it concerned a national airline flight/company), they are taken to a police station in the city (the 18\textsuperscript{th} Squad in Maputo\textsuperscript{276})\textsuperscript{277}, where they have to remain until deportation takes place. This occurs as a direct result of lack of space for all of them at the detention facilities of immigration bodies and therefore the Ministry of Defence (which is the one responsible for police stations) allows migration services to use it. Though they are at a police station in the city and consequently have crossed the border, they are dealt with as if they are not on Mozambican territory. Again, here it is not clear if there is any referral to INAR. These individuals are kept in this station under poor conditions, in overcrowded cells\textsuperscript{278} and for an unspecified period of time, which might be significant due to constraints in funding for deportations. This might result in serious human rights violations of these persons on the move and in a trivialisation of their dignity. The migration bodies are responsible for the conditions in which these persons are held in police stations. Thus, in case one of the individuals has any health problem, migration officials should provide him assistance and bring him to a hospital. It should be noted that within the Mozambican legal framework there are almost no alternatives to detention, which results in completely overcrowded prisons and police stations facilities.

Concerning the ones coming by land, they usually travel in large groups – which might vary between 15 to 60 persons – and manage to enter irregularly

\textsuperscript{275} Cf. supra note 146.
\textsuperscript{276} In Portuguese, Décima Oitava Esquadra de Maputo.
\textsuperscript{277} Cf. supra note 147.
\textsuperscript{278} Cf. supra note 183.
Mozambique, through Tanzania, in the northern province of Cabo Delgado\textsuperscript{279} or through Malawi, in the provinces of Tete or Zambézia. There are also reports of entries through Zimbabwe, in the central province of Manica. In recent times, the majority of these large groups is comprised of young Ethiopian men. The recurrent route covers for example Ethiopia to Nairobi and then Mombasa (Kenya), Dar es Salaam (Tanzania) and finally Nampula. Once they are intercepted, two situations might arise: either they are immediately deported to the country where they crossed the border or they are transported to a police station\textsuperscript{280}. Thus, officials manage to deport these persons immediately in case they are intercepted close to the border. This might raise concerns on to which extent a profile of these persons is performed in order to verify the different purposes, motives and needs of each person in these big groups. Moreover, there are high chances of, for instance, Tanzania to send them back to Mozambique, after they have been returned from Mozambique to Tanzania\textsuperscript{281}. In other cases where they are further away from a border, they are taken to police stations where they wait for deportation. Again, the same situation occurs as the one described concerning individuals caught at Maputo airport: poor conditions, overcrowded cells and all this for an unspecified period of time.

When these big groups are intercepted in the northern provinces, individuals are usually brought to the 1\textsuperscript{st} Squad in Nampula. Upon interception, the police informs INAR and migration management bodies, and they might perform a first verification together at the squad in order to determine if these persons have grounds for asylum, are economic migrants or have other needs\textsuperscript{282,283}. This procedure might be severely compromised as they are performed with the whole group together, which might be comprised of individuals moving for different motives and with diverse needs. Nevertheless, due to limited human resources of both INAR and migration management bodies, they do not have

\textsuperscript{279} Cf. supra note 147.
\textsuperscript{280} Idem.
\textsuperscript{281} Cf. supra note 263.
\textsuperscript{282} Idem.
\textsuperscript{283} Cf. supra note 147.
means to do it otherwise when dealing with a significant number of persons. Moreover, in groups of Ethiopians where it is a common feature that usually only one person speaks English who then is the designated speaker\(^{284}\), it is even more complicated to perform an individual assessment of needs, also because State officials usually have only limited knowledge of English. At the end of this first verification at the squad, both Governmental bodies have to make a statement on the profile of the persons encountered. In general, State officials believe that when Ethiopians request asylum it is only to temporarily legalise their stay in the country, as their main goal is to proceed to South Africa\(^{285,286}\); nevertheless, it is recognised that some Ethiopians have valid grounds for seeking asylum\(^{287}\). For example during an interview with an Ethiopian asylum-seeker, he claimed he was persecuted on the grounds of his religion and thus he wanted to be granted asylum in Mozambique\(^{288}\). Notwithstanding, if these groups of Ethiopians claim to be looking for better life opportunities, INAR officials automatically declare them as economic migrants and from that point on they are under the responsibility of migration management bodies\(^{289}\). Due to the already mentioned funding constraints for deportation, these migrants end up confined in police stations for a considerable period of time; given the poor conditions of facilities, together with the malnourishment during the journey which is aggravated at the police station, their health conditions start to deteriorate. As a consequence, many of these economic migrants end up being transported to the refugee camp on humanitarian basis.

With regard to Somalis, until 2009 the Government of Mozambique would not grant them refugee status under any circumstances\(^{290}\). Today, it is already

\(^{284}\) As it is acknowledge as well in p. 7, para. 27 of PDES/2010/10, August 2010.
\(^{285}\) Cf. supra note 263.
\(^{286}\) Cf. supra note 147.
\(^{287}\) Idem.
\(^{288}\) Interview with Mohammed Nur, Asylum-Seeker, Nampula, 25 February 2014.
\(^{289}\) Cf. supra note 263.
\(^{290}\) Cf. supra note 147.
possible to encounter Somali asylum-seekers in the country though most of them do not stay for significant periods of time. As concerns Pakistanis and Bangladeshis, they are not granted refugee status in Mozambique and they are often straight away detained and sent back to their countries of origin. Furthermore, it is very common to find onward movements of refugees in Southern Africa. Accordingly, many refugees move amid the different refugee camps in the region. For instance, there has been verified a movement of Burundians refugees from camps in Tanzania to Mozambique. These persons have been leaving their previous host country as they are afraid their refugee status ceases.

It is worth mentioning that the existence of well-organised smuggling networks operating in the country is quite visible. These are the main responsible for the arrival of, for instance, Ethiopians in the country. Hence, these networks have local agents who facilitate their stay and help them to continue their journey towards South Africa, where they reportedly will work in farms. These local agents are responsible for defining the remaining path and for all the arrangements in the country regarding falsification of documents and accommodation. Thus, these large groups of Ethiopians are recurrently found in private houses, containers or buses. Even when these groups are transported to the refugee camp, they are recurrently picked up again by smugglers to proceed with the planned journey. The problem of irregular entries and smuggling networks brings to table the question of corruption in Mozambique, due to possible but unconfirmed involvement of law enforcement officials in these movements (though they may not be directly involved but they may tolerate it). Notwithstanding, these smugglers and local agents are hardly ever

291 Cf. supra note 147.
292 Idem.
293 Cf. supra note 263.
detained and hold accountable for their criminal action. As previously exemplified, the same cannot be said regarding smuggled individuals.

2.1. The 2011 Emergency

In 2010, large numbers of Somalis and Ethiopians started arriving incessantly in Mozambique. This situation intensified and prolonged until 2011 and it created a complete chaos in the country, as the groups arriving were composed of more than 100 persons, mostly young men from the Horn of Africa. By this time, the numbers of asylum-seekers in Maratane refugee camp more than doubled, as for example in the first six months of 2011, more than 7,450 Somalis and Ethiopians arrived\(^{294}\) — though these persons would not stay more than two to three months\(^{295,296}\). Most of them alleged having fled from their countries due to poverty, insecurity and political instability, as well as to find better life and work opportunities. The emergency situation was particular intense in northern cities of the country and in the refugee camp. This came as a result of changes of routes used and of means of transportation. For example, neighbouring countries such as Tanzania and Zimbabwe completely closed their borders. Consequently, these Somalis and Ethiopians started coming to Mozambique by boat directly from Kenya. Hence, their journey would start in Ethiopia and continue to Kenya, first in Nairobi and then in Mombasa, where they would get on a boat\(^{297,298}\). These overcrowded and precarious boats would take more or less seven nights to complete the journey from Mombasa to Mozambican northern cities such as Palma\(^{299}\), Pemba or Mocimboa da Praia\(^{300}\).


\(^{295}\) Cf. supra note 263.

\(^{296}\) Interview (in Portuguese) with Rute Monjane, Field Officer, UNHCR Mozambique, Nampula, 26 February 2014.

\(^{297}\) Interview with Girma Maru, Asylum-Seeker, Nampula, 25 February 2014.

\(^{298}\) Interview with Takatle Abose, Asylum-Seeker, Nampula, 26 February 2014.

\(^{299}\) Idem.

\(^{300}\) Cf. supra note 297.
It was quite common as well to find persons trying to cross the border through the Rovuma River, which separates Mozambique from Tanzania. Though there are no official numbers, many of these individuals trying to reach the country died, either due to poor conditions faced in the overcrowded boats or because of drowning in the Rovuma River. The ones who made it to the country congested coastal cities. A scenario of chaos was set in these cities and many individuals where eventually able to be transported to the Maratane refugee camp. Nonetheless, as flows of people trying to reach Mozambique would not stop coming, the Government started to unlawfully deport them to Tanzania. Such deportations were taking place without proper screening, though the groups were composed not only of young men but also of women, children and elderly people.

At the time, UNHCR made a public statement requesting the Government of Mozambique to stop deporting asylum-seekers.\textsuperscript{301} The Refugee agency was assisting the Government to deal with these large groups of arrivals at coastal cities and it stated that it was not aware of the number of deportations being carried out. On one occasion the agency thought it was helping the police to organise the transportation of 93 individuals to a place close to the city of Palma where they were receiving newly arrived asylum-seekers. Nevertheless, “instead of bringing them to the reception site police instead took them away and later deported them”.\textsuperscript{302} Also, Amnesty International in its Annual Reports of 2011 and 2012 mentioned this major influx of new arrivals in the country. The 2011 Report referred to the circumstances in place, stating that many of these individuals were arrested upon arrival in the country.\textsuperscript{303} This report also mentions an incident where “nine people drowned and more than 40 went missing after a boat carrying scores of undocumented migrants sank off the coast of Cabo Delgado province”\textsuperscript{304} (in the north of Mozambique). The 2012

\textsuperscript{301} Cf. supra note 294.

\textsuperscript{302} Idem.


\textsuperscript{304} Idem.
Report alleges that many undocumented migrants and asylum-seekers were beaten up by the Mozambican police, who would abandon them on islands along the Rovuma River in order for them not to cross again to the country. Additionally, this river was also being used for the disposal of dead bodies. Another situation mentioned in the 2012 Annual Report concerns law enforcement officials trying to prevent an overcrowded boat with around 300 people from disembarking in the country, which resulted in its overturn and at least 15 people killed.

In the refugee camp, the situation was chaotic too. The transit centre was only ready to receive around 30 to 40 persons per month and, all of a sudden, the groups arriving were composed of more than 100 per day. Somalis and Ethiopians were only properly registered and given documentation after three months as a way of guaranteeing that they could stay, given that in the same way they were entering in big numbers, they were also leaving. Also, in the beginning it was hard for INAR officials to register Ethiopians as they did not have translators of Amharic; nevertheless, individuals of other nationalities were being regularly registered and not affected by this crisis. Once they were in the camp, they would immediately receive food (such as corn flower, beans, oil and salt) and the most debilitated cases would receive nutrition bars. Due to this emergency, the camp received assistance and help from WFP (which at the time was not working in the camp), universities as well as other organisations such as OXFAM and the International Committee of the Red Cross (ICRC). These institutions provided food and tents for the camp. Due to the unexpected large number of arrivals, and thus a really full and overcrowded camp – which was in any other situation a very peaceful one –, outbreaks of diseases such as

306 Cf. supra note 296.
307 Cf. supra note 263.
308 Cf. supra note 296.
309 Idem.
diarrhoea and malaria took place\textsuperscript{310}. Moreover, the camp was now completely filled with human excreta, which further promoted the spreading of diseases\textsuperscript{311}.

Overall, the number of Ethiopians and Somalis that stayed in the camp was significantly low. Many of them proceeded with their planned journey to South Africa as soon as they recovered energies and managed to leave the camp. In one occasion, one container carrying more than 30 persons was found near Maputo – already en route to South Africa – with some people dead and others in a debilitated state, who were then carried to the hospital\textsuperscript{312}. Since this outbreak of migration by sea, this mean of transportation drastically dropped and it is not recurrently used any longer. Nevertheless, the police has now two embarkations in the Rovuma river\textsuperscript{313}.

2.2. The Integrity of the Asylum System

Though there is no universal consensus regarding the right of an individual to be granted asylum, an individual is still entitled to seek it. The State of Mozambique is indeed the one who decides on who to grant asylum or not but such premise cannot bar individuals from pursuing it. In any case, the national asylum system shall be capable of granting asylum only to persons who are indeed in need of international protection. The principle of non-refoulement also corroborates with the right to asylum as it forbids the State from returning an asylum-seeker to a country where he will face persecution\textsuperscript{314}. In this sense, what happened in Mozambique in 2011 was not only a violation of the right to seek asylum but also of this principle. People were constantly being deported to Tanzania, where they were facing persecutions, poor conditions and long periods of imprisonment.

\textsuperscript{310} Cf. supra note 296.
\textsuperscript{311} Idem.
\textsuperscript{312} Idem.
\textsuperscript{313} Cf. supra note 263.
\textsuperscript{314} Cf. pp. 17-18.
Due to these major mixed migration flows, distinguishing an asylum-seeker of an economic migrant became significantly harder. Not only both endeavour the journey together but are now recurrently involved in illegal entries in countries. As their entry in Mozambique is usually facilitated by smugglers, asylum-seekers and refugees among these mixed movements might not declare at the border that they are approaching the country with the purpose of seeking asylum. In this sense, the argument that many Mozambican Government officials use on how a genuine asylum-seeker would declare it right at the border does not stand, as the conditions in which these people endeavour the journey are not comparable to traditional refugee movements. Thus, by automatically deporting these people and not assessing if they have grounds for asylum, Mozambique might be undermining the right to asylum under not only international instruments but also under its own national legislation. In this sense, it is necessary that the different profiles are taken into account, especially if it involves large groups where at a first glance the different needs involved might not be evident.

If on the one hand, individuals are entitled to seek asylum, on the other hand the Mozambican national asylum system shall not be abused. What has nevertheless been verified in Mozambique is that economic migrants amid these large groups of mixed movements also take advantage of the asylum system for the purpose of temporarily legalising their stay in the country as well as resting before resuming their journey. Thus, though they do not have grounds for asylum, they are still able to remain in the transit centre of the refugee camp, where they are given food and non-food-items. Hence, this might jeopardise the rights of genuine asylum-seekers as negative actions of these persons might affect the perception State authorities have of persons who apply for asylum in general.

In addition, due to the visible lack of effective migratory alternatives to process migrants, the Governmental migration bodies attempt to rely on the
asylum system. It is recurrent that migration management bodies try to channel large groups of economic migrants into the asylum system as they do not have solutions for them other than detention and deportation. Hence, in the hands of migration bodies, these migrants remain incarcerated for long periods of time and fall sick due to the poor human conditions they are subject to. Many end up being transported to the refugee camp on humanitarian basis. Yet, the absence of a functioning migration system ultimately forces people into the asylum system.

The Mozambican asylum system is completely overloaded. The national system does not have the necessary human and financial resources to deal with a significant number of arrivals and to promptly address the needs of refugees and asylum-seekers among these mixed migration flows. Also, the country itself does not have proper mechanisms that enable an assessment of the profiles and needs of the persons arriving. The significant backlog that the country experiences with RSD procedures together with the number of manifestly unfounded asylum applications jeopardises the sustainability of the asylum system and renders it impracticable. Thus, the system does not have the conditions to promptly decide upon asylum applications, which might come as an advantage for non-genuine asylum-seekers. In addition, the prevailing constraints of the migration management system end up undermining the integrity of the asylum system.
VI. Optimal Implementation

As it has been demonstrated throughout this thesis, the phenomenon of mixed migration is a severely complex one as it involves a vast number of sensitive issues – ranging from refugee protection, trafficking, unaccompanied and separated children to irregular migration. Thus, given that all these problems are brought up together in these movements, it is required from Mozambique and other key actors prompt measures to act accordingly to the different needs of the persons on the move. These measures are highly important when it comes to refugees and genuine asylum-seekers who justifiably need to be treated differently due to the reasons compelling them to move. Although the 10-Point Plan dates of 2006 and the Regional Conference in Dar es Salaam of 2010, no significant actions have been taken to adequately address mixed migration movements and refugee protection. Accordingly, the Mozambican legislation and policies for refugee protection have not been reviewed since. Additionally, the situation in the Southern African region even aggravated in 2011, as it was described in the previous chapter.

Taking this into consideration and with due regard to the need to protect genuine asylum-seekers and refugees among these flows, several national arrangements can be implemented by the State of Mozambique. Such arrangements shall promote the review of the legal and policy framework for refugee protection and its enforceability. Importantly, the legal and policy framework for migration management shall also be equipped in order to address such phenomenon. Furthermore, the Southern African countries can implement a number of regional arrangements that enhance coordination and cooperation among the different States. Overall, the following recommended measures enable to address mixed migration movements in a protection-sensitive manner. Consequently, such arrangements can ensure and enhance the rights of refugees and asylum-seekers among these mixed flows.
1. National Arrangements

1. Review of Legal and Policy Framework for Refugee Protection

At the national level, it is verified that, since the outbreak of mixed migration movements, the Mozambican legal and policy framework for refugee protection has not been reviewed. Yet, it is now inadequate to address such flows. The Refugee Act (which dates of 1991) and the RSD Decree (though dated of 2007) are now outdated regarding new settings of refugee movements. Moreover, both have several shortcomings and their implementation is currently inconsistent with the wording of the law\(^{315}\). Consequently, it is urged a review of both the Refugee Act and of the RSD Decree. The Act in particular should not only adapt RSD procedures to the new configuration of migratory movements but also create a rights-based legal framework for asylum-seekers and refugees in Mozambique. Given their inherent vulnerability, it is important that the State fully assumes a protective role and plausibly guarantees them a *positive discrimination*.

Mozambique should withdraw the reservations to the 1951 Refugee Convention. Many of these rights to which it made reservations are nevertheless often granted in practice\(^{316}\). Therefore, the State should remove such limitations and should encompass in its legal framework the rights to which refugees are entitled to in the country (for example the rights to education and work), so as to ensure legal certainty of these individuals. Moreover, the particular lift of reservations to the right to freedom of movement and right to work would increase the probabilities of self-reliance and further local integration of these persons. Facilities provided at the Maratane refugee camp (for instance, free health services, nourishment and housing) should be prescribed by law as well. Notwithstanding, the Act should also include rights that are for now nearly barred from refugees and asylum-seekers but that are nonetheless extremely relevant to uphold their legal status in the host country.

\(^{315}\) Cf. subchapter 1 of chapter V.

\(^{316}\) Cf. pp. 69-70.
For example, the right to access legal representation is indeed of extreme relevance, particularly during the initial phases of RSD procedures. Ultimately, the establishment of a rights-based legal framework will hinder arbitrariness of State officials and enable legal action against possible abuses. Furthermore, it will enable clear differentiation of refugees and asylum-seekers from aliens in general.\footnote{Cf. supra note 103.}

The spirit of the law shall promote and protect human rights of refugees and asylum-seekers in Mozambique. Given that mixed migration flows purport a complex population movement, it is important that the needs of refugees and asylum-seekers among them are acknowledged, attended to and distinguished from other categories of people sharing the same routes. Thus, it is vital that the legal documents for refugee protection are effectively and impartially implemented in practice and not subject to the willingness of State officials. In this sense, the proper implementation of other human rights documents already ratified by the State such as the ICCPR, CRC and Torture Convention can also contribute for the enhancement of the legal status of these persons in Mozambique. Yet, it is encouraged that the country ratifies the optional protocols or specific articles on individual complaints procedures of these international human rights documents. Furthermore, it is also deemed necessary that Mozambique ratifies the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 16 December 1966.

As to RSD procedures, policies prescribed by law do not find a match in current practices. Hence, this raises concerns on which steps should be taken in order to apply for asylum and refugee status in the State of Mozambique, which ultimately might jeopardise the access to such legal status (status which already experiences a significant backlog of grant). Also, it is unclear in both the Refugee Act, RSD Decree and in practice who is indeed responsible for first encounters with asylum-seekers and refugees in the country. In any way, both
RSD procedures prescribed by law and applied in practice are inadequate to address mixed migration movements, as they encompass significantly extensive proceedings and fail to reach in due time a final decision concerning an asylum application. Taking this into consideration, it is urged a review of RSD policies in the country. The roles of INAR (MNEC) and MINT should be thoroughly described and clearly distinguished in law, with particular attention to the phases of RSD where they intervene and are in charge of. The functioning of CCR shall be rectified and it should take place consistently, so as to ensure the ordinary course of RSD procedures. The number of CCR sessions prescribed by law should encompass a realistic scenario given both human and financial resources of the country. Also, the number of sessions shall be appropriate to answer to the demanding for applications. As the final decision regarding asylum application is under the responsibility of the Minister of the Interior, this particular provision shall be urgently revised. The significant number of applications does not permit that the decision on all applications comes under the responsibility of a Minister who realistically does not have means to process them in due time. Hence, it shall be sought an alternative solution within MINT (perchance together with officials of INAR). Such solution might include designated officials under direct supervision of the Minister of the Interior who shall be attributed competence to rule upon final decisions regarding asylum applications.

“The efficiency of the asylum system is key. If the asylum system is both fast and fair, then people who know they are not refugees have little incentive to make a claim in the first place, thereby benefitting both the host country and the refugees for whom the system is intended.”318

318 Cf. supra note 13.
The lengthy and extensive RSD proceedings are not only hampering the rights of asylum seekers in Mozambique but also the practicability of the asylum system itself. Due to the already significant delay on asylum application decisions, and the fact that many economic migrants within these mixed movements keep applying for asylum only to temporarily regularise their stay in the country, the tendency is to a deterioration of the whole system. Hence, if the situation does not switch, it will eventually render the national asylum system impracticable. Accordingly, the Refugee Act and the RSD Decree must be urgently revised so as to establish a proper and prompt asylum system. The previous proposed changes to RSD proceedings are indeed deemed necessary to achieve such goal. In addition, the State shall implement RSD procedures that are able to assess expeditiously both manifestly well-founded and unfounded applications in order to both alleviate the asylum system and readily meet the needs of genuine asylum seekers.

An efficient and effective RSD procedure to be introduced in Mozambique shall be the grant of refugee status on a *prima facie* basis to persons fleeing from conflict and/or generalised violence. This means that asylum seekers who have manifest protection needs as they are fleeing from the above-mentioned situations shall promptly be granted the status, which ultimately will contribute for the alleviation of RSD procedures and of the asylum system itself. Such procedure will allow for a clear distinguishing treatment of these persons when addressing mixed migration movements and consequently enabling greater chances for protection. Furthermore, this procedure is also especially important in times of major refugee movements as the country is not and will not be able to process each individual case of new arrivals – fact which is undisputedly always beyond its control. Hence, the refugee status would be timely granted and the asylum system would be adequate to meet the protection needs of these persons on the move. Notwithstanding, for such mechanism to be implemented, it is required the assistance of other key actors in the country, such as UNHCR. These key actors shall assist the State on
collecting and constantly updating information on the countries of origin of these persons on the move. Such evidences would corroborate and therefore facilitate the prompt attribution of refugee status on a *prima facie* basis.

To properly address the multifaceted phenomenon of mixed migration, it is necessary that the different Ministries of Mozambique work together. As mixed movements involve different categories of people with different needs, they ultimately affect and entail obligations that touch upon the various Ministries mandates. Moreover, State officials that encounter refugees and asylum-seekers within these movements are also from different Ministries. In this sense, it is needed a coherent and coordinated action between these institutions. A working group shall be set between MNEC, MINT, Ministries of Justice, Health, Defence and Labour. This group shall discuss prevailing challenges of mixed migration movements and reach cooperation among its different participants in the elaboration and execution of policies. Also, the group shall allow for proper coordination and establishment of responsibilities among the different Ministries, fact which is especially necessary when it comes to clearly differentiating the roles of MNEC and MINT. Hence, this group will enable raising awareness concerning the needs of refugees and asylum-seekers among these flows.

2. Capacity-Building

A significant number of State officials encounter refugees and asylum-seekers once they enter Mozambique. As verified, not all these officials are under responsibility of INAR and thus do not have the same preparation on how to provide assistance to these persons. Hence, it is necessary that organisations such as UNHCR and IOM make use of their expertise to conduct training sessions for State officials and other actors involved in mixed migration movements. For this purpose, these organisations shall create training manuals
and guidelines on mixed migration and refugee protection concerns to be distributed among the different actors. These trainings would be significantly important for actors such as border guards who are the first to encounter new arrivals. Similarly, such sessions would be imperative for law enforcement officials in general as regrettably refugees and asylum-seekers are recurrently received in or taken to police stations. Moreover, it shall be regularly delivered training to INAR officials so as to raise awareness on current challenges in mixed migration and refugee protection faced in the region, as well as new recommendations on how to address the phenomenon. Judges, criminal prosecutors, lawyers, media and other relevant civil society actors should also be target groups of these training sessions in order to foster an informed society on the need to protect refugees and asylum-seekers among these mixed flows.

The main goal of these trainings is to demonstrate how to address mixed migration movements in a protection-sensitive manner. Thus, it is necessary to ensure that Mozambican officials are familiar with the concept of mixed migration and consequently increase their awareness on the different needs of people on the move, particularly of refugees and asylum-seekers. Also, it is essential to evidence the importance of their work and the difference it can make for the vulnerable lives of these persons. Hence, State officials become hereby aware of the need to provide international protection to refugees and asylum-seekers due to the motives that have forced them to move. The acknowledgement of their needs together with a sense of responsibility can avoid unlawful detentions and deportations of these persons. Also, this awareness might avoid lengthy periods of incarceration of asylum-seekers as hopefully it might foment the practice of informing INAR about new arrivals on a regular basis. These training sessions might work as well as a tool to disseminate the difference between a smuggled person and a smuggler, so as to prevent the punishment of the first and impunity of the latter. Importantly, it shall be clear for all actors that smuggling is a crime and that any engagement in such networks shall be effectively penalised by law.
On a separate note, these sessions should nonetheless address the needs of other categories of persons other than refugees and asylum-seekers (such as victims of trafficking in persons, and unaccompanied and separated children) in order to ease deliverance of response to their needs, raise awareness on their situation, as well as to uphold and protect their human rights.

In the Southern African region, good examples of investment in capacity-building are the working tools created in Zambia on “Protection Assistance for Vulnerable Migrants”. IOM and UN agencies (including UNHCR) worked together on a joint-programme to support the Government of Zambia on providing protection assistance in a context of mixed migration. Such programme was supported by the European Union and IOM Development Fund. As a result of this programme, tools such as a training manual for persons delivering training sessions\textsuperscript{319}, a handbook for participants of trainings\textsuperscript{320} and guidelines on protection assistance\textsuperscript{321} were published to guide Zambian State officials. These documents explain the various concepts connected to mixed migration, the rights and needs of people among these movements, and recommended actions to be taken when encountering these persons (including on the subject of detention). Also, it was created a chart indicating the Zambian national referral mechanism for the different persons among these mixed migration movements. This chart guides “on the different stages of assistance to vulnerable migrants requiring protection assistance”\textsuperscript{322}.

Hence, the Mozambican Government and other key actors in the country might take these instruments published in the neighbour State as a guiding tool on the following steps to be taken in terms of capacity-building. Though not

sufficient for itself, a chart containing the different national referral mechanisms can be nonetheless a useful tool and shall be distributed among the different national borders and police stations throughout the country.

3. Entry System, Reception Arrangements and Profiling and Referral Mechanisms

Due to significant numbers of arrivals of aliens in the country, Mozambique has increased its border and entry control. The State faces mixed migration flows as a threat to its own national security and as an obstruction to its combat to international crime. An effective and well-functioning entry system is indeed necessary to tackle international crimes such as trafficking and smuggling. However, that does not mean that it has to be a stricter and discriminatory system. Practice has shown that harsher border control is not in itself sufficient to deter illegal migration. For instance, smuggling networks keep finding alternative entry points to Mozambique, even by means of illegal entry points. Severer border control might in the end penalise instead asylum-seekers and refugees who might be subject to refoulement due to disproportionate bans of entry in the country. Hence, it is important that Mozambique establishes a protection-sensitive entry system. As border guards are the first to encounter new arrivals, there should be regular training sessions for them on how to address protection needs. Hence, these officials need to be clearly instructed on how to act when confronted with an asylum-seeker and a refugee. Moreover, they should also be trained on how to address the needs of other categories of people within these mixed flows, in particular victims of trafficking, and unaccompanied and separated children. In this sense, information on how to deal with each situation and to whom to address it should be distributed among the different legal entry points. Key actors in Mozambique could join forces to create a mechanism where it is specified and thus coordinated the roles of the different national and international actors given the specific situation
encountered. Finally, though arrivals by boat are not common any longer since the 2011 Emergency, Mozambique shall in any case guarantee that it has conditions to respect its maritime law obligations and to safeguard lives of people at sea.

In a context of mixed migration, settle of reception arrangements are crucial to address such movements. Notwithstanding, the reception arrangements in Mozambique are poor. New arrivals have to present themselves in police stations and are kept detained. Hence, refugees and asylum-seekers might remain arrested indeterminately with criminals, given that such police stations deal with all sorts of criminal offences. The ones found to be asylum-seekers only have access to the reception centre after INAR officials decide to transport them to the refugee camp. Hence, the country must urgently revise its reception policy. Asylum-seekers and refugees cannot be treated as if they have committed an offence by seeking asylum. Also, this time gap until they are transported to the refugee camp does not allow for their individual cases to be promptly processed and thus they are barred from accessing services they are entitled to at the camp. Reception arrangements should ensure human dignity of all persons on the move. Therefore, it is advised for Mozambique to convene other arrangements that do not encompass incarceration of people involved in these mixed migratory movements. For example, the reception centre could be set in the centre of the city of Nampula so as to enable interviews and processing of individual cases without the resort to police stations. Also, proper arrangements for persons other than asylum-seekers shall be urgently put into place as there are no current solutions for these persons but incarceration. In any case, reception arrangements should not however be placed at borders as it would greatly hamper the access to protection and increase of the risk of refoulement – as well as it would not (again) be sufficient to deter illegal migration.
As the nature of mixed migration flows encompass different profiles of people who naturally have different needs and motives, it is deemed necessary to implement profiling and referral mechanisms in Mozambique. Such mechanisms will enable State officials to identify in due time the different profiles of persons encountered, to determine their motives to move and to be able to provide proper assistance to their needs. Hence, by taking this information into account, officials will then be able to refer each person to responsible national institutions. For example, these mechanisms can be extremely effective already at entry points, as border guards would be aware to where to refer encountered persons. Also, these instruments can in the end alleviate the asylum system as persons are channelled into the most appropriate arrangement for them. Concerning applications for asylum, these mechanisms will help the asylum system to act promptly and effectively as claims are soon proven to be manifestly well-founded. However, profiling and referring do not replace RSD procedures. For the development of these profiling and referral mechanisms, it is important that State officials and other key actors in Mozambique work on the establishment of SOPs. These SOPs will help coordinating national response to mixed migration movements and enable creating a uniform national referral mechanism to all actors in the country. Thus, the establishment of these procedures will also greatly contribute to security and legal certainty of these persons in Mozambique.

4. Migration Policies

Concerning the Mozambican migration system, it is imperative that is finds viable alternatives to process irregular migrants. Currently, economic migrants among these mixed migratory movements are kept detained in poor conditions while waiting for deportation. Regrettably – and as deportation is the only option foreseen by State authorities –, these persons might remain incarcerated for long periods of time as there are significant constraints for
deportation funds. Thus, it is recommended for Mozambique to enhance the migration management system and to equip it with sufficient funds. If this system is able to function, the human dignity of these migrants is preserved and ways for them to be safely returned home can be fixed – for instance, through agreements with other key actors in the country. It is important that in any case Mozambique respects human rights of migrants and that it has a rights-based approach to migration management. Moreover, the migration management system needs to be self-sufficient so that it does not resort to the asylum system in order to process these irregular migrants. The responsibilities and mandates of both systems should be clearly distinguished and not overlapped. The integrity and practicability of both systems needs to be guaranteed at all times. Also, migration institutions need to process urgently rejected asylum-seekers who remain in the country and find adequate and legal solutions for these persons.

Hence, Mozambique should seriously consider the establishment of other legal migration options for irregular migrants (and rejected asylum-seekers). These options might be temporary or permanent, but shall appear as a substitution of detention and deportation. The country could give migrants opportunities to either stay in the country or to legally resume their journey. For instance, they might be allowed to temporarily stay in the country in order to gather funds to return home in security.

As of international documents, Mozambique should review its criminal legislation to ensure accurate implementation of UNTOC and both Smuggling of Migrants Protocol and Trafficking in Persons Protocol. Hence, Mozambique should avoid prosecuting trafficked and smuggled persons as it is stated in both documents. Due to the prevailing resort to smuggling networks by people travelling within mixed migration flows, it is imperative that the country is actively involved in prosecuting smugglers. These smuggling networks have
indeed local agents in Mozambique who facilitate the entry and stay in the
country. Until today, most of these persons escapes with impunity, while
smuggled persons are recurrently detained. In this sense, it is necessary that
smugglers are effectively condemned and given severe penalties. The effective
detention of smugglers might deter the increase of these networks.
Furthermore, Mozambique shall attribute especially austere penalties for corrupt
law enforcement officials who engage with these smuggling networks.

Concerning ICRMW, Mozambique needs to adapt its national legislation
to allow for the full implementation of this document. This Convention is not only
important because it upholds basic rights of migrant workers (either in a regular
or irregular situation), but also since it can be applied to asylum-seekers as well
(given that they fulfil the definition of a migrant worker). Hence, this Convention
allows for the enhancement of the legal status of these persons in the country.
Mozambique could take advantage of the Department of Migratory Work of the
Ministry of Labour as a platform to supervise the implementation of this
Convention. As at the moment this department only deals with Mozambican
mine workers in South Africa, it would be a positive reform if it would extend its
mandate to encompass migrant workers in Mozambique, so as to safeguard
their rights and conditions in the country.

5. Non-Refugees travelling in Mixed Migration Movements

Concerning other categories of people among these mixed flows, it is
important that the State reinforces its constitutional principle of respect for and
defence of human rights. Though these persons might not fall under the
definition of refugee and therefore should not have access to the national
asylum system, they are still human beings whose dignity shall be respected.
Some might even have special needs that consequently shall be attended by
the State. In any circumstance, Mozambique shall avoid prosecution of these
persons in case they have entered the country by resorting to smuggling
networks. It is deemed necessary that Mozambique ratifies the Convention Relating to the Status of Stateless Persons of 28 September 1954 and the Convention on the Reduction of Statelessness of 30 August 1961. Though some stateless persons might fall under the definition of refugee, many others do not and by definition are not under protection of any State. Hence, it is important that Mozambique safeguards the dignity and security of these persons by finding legal solutions for them either to stay in the country or to go back safely to the one of habitual residence. Regarding unaccompanied and separated children, Mozambique should implement arrangements that timely determine the best interest of the child, as well as facilitate family reunification when proved to be a viable option for the child in question. In order to protect victims of trafficking that enter Mozambique, the country should review its criminal legislation in order to effectively implement the Trafficking in Persons Protocol and promptly prosecute traffickers. Though conducted studies revealed that there is no evidence that trafficking is taking place in the Southern African region323, networks that start as smuggling might end up as trafficking since smugglers might take advantage of the vulnerability of individuals and coerce them to resume their planned journey. It should be noted that although persons might be victims of trafficking at first, they might have developed protection needs throughout the journey, which in this case would create grounds for refugee protection. Furthermore, due to the extreme vulnerability of trafficked persons, the State should implement legal options for these persons to stay and reside in the country, even if for a specified period of time.

In order to implement cost-effectively and prompt solutions for persons among these mixed migration movements, Mozambique should take advantage of mechanisms already set in the country for its own nationals – for instance, for abused children or victims of sexual violence – and also apply them for these persons.

6. The 10-Point Plan of Action and the Regional Conference on Refugee Protection and International Migration

In addition to the above proposed national arrangements, it is imperative that Mozambique actively studies and examines the adoption of recommendations that were discussed during the 2010 Regional Conference on Refugee Protection and International Migration in Dar es Salaam. Thus, the State might take advantage of the proposed set of a working group between the different Ministries to use it as a platform that thoroughly analyses and finds national solutions that meet the recommended actions and goals of this conference. Moreover, the country should also admittedly regard the 10-Point Plan of Action published by UNHCR as a guiding tool on the development of policies that enhance refugee protection within mixed migration movements.

2. Regional Arrangements

At the regional level, it is important that States – ideally, the ones who have participated in the 2010 Regional Conference – enhance cooperation and coordination between each other. Mixed migration movements affect all these countries and thus they shall be addressed together. In this sense, it is extremely important that all countries – being countries of origin, transit or destination – share information among each other. This information shall encompass for example routes taken, means of transportation used, reasons behind the move of these persons and range of smuggling networks. Also, States should share positive policies and actions implemented.

Ideally, transit and destination countries should achieve a minimum of agreement concerning legislative and policy frameworks between each other. The fact that a country has policies more generous leads this country to be the most searched one in the region, being severely affected by mixed migration flows when compared to its neighbouring countries. To avoid situations similar to the 2011 emergency, Southern African countries should harmonise their
legislation and policies. Accordingly, there should be a real sense of burden sharing in the region.

Also, these States together with countries of origin could discuss possible interventions and actions to be taken in the latters. Though mechanisms can be put in place and actions can be taken to address and minimise mixed migration impact, no arrangements will be capable of discontinuing these movements. The intervention has to necessarily be done in the country of origin where the triggering problems persist and keep causing these persons to move.

States can make use of platforms already in place – such as the AU or SADC – to strengthen dialogue between each other and to promote coordinated actions. In the case of the Southern African region, the status of MIDSA as a permanent platform for migration dialogue shall be enhanced. Also, it is important to establish a permanent platform for dialogue between Southern African and Eastern African countries. It is crucial to ensure effective cooperation among these countries as transit and destination countries need to have coordinated responses with the main countries of origin of these persons. Thus, a follow-up meeting of the 2010 Regional Conference could be scheduled. This would allow for both an individual and a regional evaluation on the level of implementation of recommendations of the 2010 Conference. Hence, the meeting would enable States to be confronted with how much it has been done to adequately address the phenomenon of mixed migration in the region.
VII. Conclusion

Mozambique is facing severe problems to cope with mixed migration flows. This is an extremely complex issue as it involves security questions for both the individuals engaged in these movements and for the country concerned. The Mozambican State needs to recognise that the nexus between refugee protection and mixed migration is exceptionally relevant. It is necessary to provide those people in such movements, who are in genuine need, with a sufficient level of international protection. Thus, though mixed migration flows might be perceived as a threat to national security due to their irregular nature, they cannot be an excuse for denial of asylum. As a State party to the 1951 Refugee Convention and to the 1969 OAU Convention, Mozambique needs to fulfil its obligations under these instruments.

The country is currently not able to guarantee protection and assistance to refugees and asylum-seekers among mixed flows. The national legal and policy framework for refugee protection is not adapted to the current outline of population movements and thus it is not able to adequately address this phenomenon. Moreover, its implementation is inconsistent with the wording of the law. The asylum system lacks resources and means to promptly identify and assist asylum-seekers and refugees among these movements. There are no proper reception arrangements or prompt profiling and referral mechanisms. In addition, RSD procedures face a significant backlog as its proceedings are extremely lengthy and extensive. Hence, current framework is an impediment to the operationalisation of a well-functioning asylum system. The Refugee Act itself fails to create a rights-based status for refugees and asylum-seekers in Mozambique.

Legal certainty of asylum-seekers and refugees is jeopardised. Due to shortcomings and inconsistent implementation of the framework for refugee protection, these persons are subject to arbitrariness of State officials. Hence,
they might not be able to promptly receive protection and assistance. There are no guarantees of sifting apart refugees and asylum-seekers from other migrants. This is worrying as the country recurrently detains intercepted groups of people on the move for undetermined periods of time. Although Mozambique repeatedly arrests smuggled persons, it nonetheless fails to condemn smugglers, who are still able to easily escape with impunity. The recurrent options to deal with mixed migration movements in the country are detention and deportation. Given the arbitrariness with which both these practices are performed, it raises serious concerns regarding rights of asylum-seekers and refugees against *refoulement* and in accessing asylum.

The migration management system faces constraints in gathering funding for deportations. Consequently, as there are no other alternative migration solutions foreseen, economic migrants among these flows end up incarcerated in poor conditions while waiting to be deported. As an attempt to decrease their responsibilities, migration authorities try to channel large groups of economic migrants into the asylum system.

The Mozambican asylum system is overloaded. The practicability of the system is endangered by the significant backlog of RSD procedures, the number of unfounded asylum applications and prevalent constraints of the migration management system. Thus, in order to be able to effectively manage these flows, it is necessary that the State has in place efficient and functioning asylum and migration mechanisms. Both systems need to have clear separate mandates and both their integrity and practicability must be ensured.

It is urged that Mozambique implements arrangements and mechanisms to deal with mixed-migration flows in a protection-sensitive manner. The country needs to diminish inconsistencies between the legal framework for refugee protection and practice in order to ensure legal certainty of refugees and asylum-seekers in its territory. The RSD procedures need to be revised and
adapted to current challenges faced with population movements. Thus, the country should introduce procedures that allow for a expedite assessment of both manifestly well-founded and unfounded applications. In addition, it should considered introducing grant of refugee status on a *prima facie* basis. These changes in RSD procedures would greatly contribute for the alleviation of the asylum system and would promptly meet the needs of genuine asylum-seekers. Hence, a well-functioning asylum system discourages its resort by persons without a valid claim for asylum. To guarantee delivery of protection and assistant to persons in need, it is important that Mozambique implements proper reception arrangements and prompt profiling and referral mechanisms. The functioning of these solutions will allow the country to identify in due time refugees and asylum-seekers among these movements. Also, it is important to invest in capacity-building, so as to develop knowledge among State officials concerning needs of refugees and asylum-seekers. It is required a coordinated and coherent action between the different Ministries affected by mixed migration flows.

Indeed mixed migration flows complexity goes beyond the control of the host State. Adequate and efficient national arrangements and mechanisms can address and minimise their impact but are not able to solve its root causes. Hence, ideally intervention would be done where the triggering problems are: in the country of origin of persons driven to move. Nevertheless, such evidence does not clear responsibilities of host countries and it does not justify inaction. Mozambique must ensure protection and assistance to persons genuinely in need of international protection, as well as respect the dignity and security of all persons among these mixed migration flows.
Cláudia Mega Pedrosa
References

1. Books


2. Articles in Journals/Reports/Revues


3. Conventions and Treaties


• UN, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, available at [http://www.refworld.org/docid/3ae6b3930.html](http://www.refworld.org/docid/3ae6b3930.html) [consulted on 02 June 2014].

• UN General Assembly, *Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, 1465 UNTS 85, available at [http://www.refworld.org/docid/3ae6b3a94.html](http://www.refworld.org/docid/3ae6b3a94.html) [consulted on 05 July 2014].


• UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, 189 UNTS 137, available at [http://www.refworld.org/docid/3be01b964.html](http://www.refworld.org/docid/3be01b964.html) [consulted on 25 May 2014].


• UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3, available at [http://www.refworld.org/docid/3ae6b38f0.html](http://www.refworld.org/docid/3ae6b38f0.html) [consulted on 15 July 2014].

• UN General Assembly, *Declaration on Territorial Asylum*, 14 December 1967, A/RES/2312(XXII), available at
http://www.refworld.org/docid/3b00f05a2c.html [consulted on 28 June 2014].


4. National Legislations


• Mozambique: Ministerial Decree No. 81/2005 (Internal Regulation of INAR) of 20 April 2005.

5. Documents of International Organisations


6. Documents of Non-Governmental Organisations


7. Internet Sites


• UNDG, Delivering as One: Making the UN system more coherent, effective and efficient, available at http://www.undg.org/content/un_reform_and_coherence/delivering_as_one [consulted on 09 July 2014].

• UNDP, Statistical Tables from the 2013 Human Development Report – Table 1: Human Development Index and its components, 07 December 2013, available at https://data.undp.org/dataset/Table-1-Human-Development-Index-and-its-components/wxub-qc5k [consulted on 16 May 2014].

8. Interviews

• Interview (in Portuguese) with Ana Scattone Ferreira, Associate Protection Officer, UNHCR Mozambique, Nampula, 21 February 2014.
• Interview with Girma Maru, Asylum-Seeker, Nampula, 25 February 2014.
• Interview (in Portuguese) with Marisa Varela, Protection Officer, INAR, Nampula, 25 February 2014.
• Interview with Mohammed Nur, Asylum-Seeker, Nampula, 25 February 2014.
- Interview (in Portuguese) with Nicolau Jorge, Inspector, Migratory Movements Department, Ministry of the Interior, Maputo, 07 March 2014.
- Interview (in Portuguese) with Rute Monjane, Field Officer, UNHCR Mozambique, Nampula, 26 February 2014.
- Interview with Takatle Abose, Asylum-Seeker, Nampula, 26 February 2014.
Abstract

1. English Version

Mixed migration flows have become a problem for Mozambique and the national asylum system is currently unable to cope with them. The nature of such flows is that a variety of people undertake the move from their countries to another one for entirely different motives and purposes, while only a portion of those individuals are genuine asylum-seekers and refugees. For these however it is imperative to guarantee international protection. Hence, the Mozambican legal framework for refugee protection must be revised and enhanced in order to adequately protect refugees and asylum-seekers travelling in these mixed movements. Also, it is imperative that it creates a rights-based status for these persons, as current national legislation fails to do so. Furthermore, the inconsistencies with practice – particularly regarding reception policies for new arrivals – must be diminished in order to ensure legal certainty of these individuals in Mozambique.

For the majority of persons on the move in the Southern African region, Mozambique is mainly a transit country on the way to South Africa. These groups usually resort to smuggling networks to enter the country illegally and irregularly. Many of the persons without need of international protection apply for asylum in Mozambique to temporarily legalise their stay. This scenario inevitably has an impact on the national asylum system, which is aggravated by the existing backlog of refugee status determination procedures, as well as prevalent constraints of the migration management system. Hence, the asylum system needs to ensure protection to genuine asylum-seekers by preventing its abuse through other forms of migration. Proper reception, screening and profiling mechanisms should be put in place as well as more efficient refugee status determination proceedings, such as grant of refugee status on a prima facie basis. Furthermore, the country should provide viable alternatives for
persons who are not in need of international protection, to prevent them from rendering the asylum system impracticable.

Current policies proved to be ineffective to cope with the present crisis and to sift apart genuine refugees from other migrants. Nevertheless Mozambique needs to stop its current practice of arbitrary detentions and deportations since this approach bears the danger of denying some genuine asylum-seekers access to international protection. Also, the country should aggravate penalties for smugglers and hold them accountable for their criminal action.

2. German Version
