



**Interdisciplinary Journal of Arts,
Politics and Law (IJAPL) – ISSN 3080-
3284**

**Beyond Borders: The Regional
Inconsistencies in Refugee Protection
Across Southern Africa**



Volume 1 – Issue 1 – August 2025

 **Title of Article**

Beyond Borders: The Regional Inconsistencies in Refugee Protection Across Southern Africa

 **Author**

Clarance Erenes Gandawa
Springfield Research University
Ezulwini, Eswatini

Abstract

While international refugee law provides a foundational framework for the protection of displaced persons, its regional application across Southern Africa remains fragmented and inconsistent. This paper critically examines the disparities in refugee protection frameworks and practices among Southern African Development Community (SADC) member states. It explores the influence of domestic politics, weak implementation mechanisms, divergent legal commitments, and socio-economic constraints that contribute to uneven asylum experiences. By comparing refugee policies in countries such as South Africa, Zimbabwe, and Eswatini, the paper highlights how inconsistencies undermine the principle of non-refoulement, limit access to social services, and perpetuate statelessness. The paper also reflects on the broader implications for regional integration, human rights obligations, and migration governance. It concludes by proposing a harmonized regional approach that strengthens accountability, expands protections, and centers the lived realities of displaced populations in Southern Africa.

Keywords

Refugee Law • Southern Africa • Human Rights • Migration • Non-Refoulement • Statelessness • SADC • Regional Harmonization • Forum Shopping • Legal Limbo

1. Introduction

The Southern African region has witnessed growing patterns of displacement over the past two decades, driven by political instability, economic crises, climate-related shocks, and armed conflict in both member and neighbouring states. As asylum seekers and refugees move across porous borders in search of safety and dignity, the expectation is that regional legal frameworks will offer consistent protection grounded in human rights and international law. However, the lived reality for many displaced persons in Southern Africa is far more precarious. While the 1951 Refugee Convention and the 1969 OAU counterpart serve as legal touchstones, refugee protection in Southern Africa is ultimately sculpted by each country's domestic law, bureaucratic culture, and political imperatives often resulting in

fragmented and precarious outcomes. This has resulted in stark disparities in access to asylum, legal status, documentation, and social services.

While countries such as South Africa have codified refugee protection in relatively comprehensive legislation, their practical implementation is marred by administrative inefficiencies, restrictive policies, and rising xenophobia. In contrast, other states such as Zimbabwe and Eswatini maintain skeletal or outdated legal provisions, often relying on discretionary executive powers with limited judicial oversight. These inconsistencies produce a patchwork of protection that is unpredictable, exclusionary, and incompatible with the shared values of regional integration and solidarity that underpin the Southern African Development Community (SADC).

This paper investigates these regional disparities, asking: How do legal and policy inconsistencies across SADC countries affect the protection of refugees and asylum seekers? And, what reforms are necessary to promote a more coherent, rights-based, and regionally harmonized approach to refugee protection?

Through a comparative analysis of selected Southern African countries, this paper identifies structural gaps in national refugee frameworks, explores the political and practical barriers to implementation, and highlights the human cost of legal fragmentation. It ultimately argues for a regional approach that foregrounds legal harmonization, state accountability, and the dignity of displaced individuals.

2. Literature Review and Legal Landscape

2.1 International and Regional Frameworks

Refugee protection in Africa is anchored in two foundational legal instruments: the 1951 United Nations Convention Relating to the Status of Refugees and the 1969 Organisation of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa. The 1951 Convention offers a narrow definition of a refugee, centered on a well-founded fear of persecution, whereas the 1969 OAU Convention expands this scope to include individuals fleeing “events seriously disturbing public order,” thereby acknowledging the continent’s complex socio-political realities. Both instruments enshrine essential principles, including non-refoulement (protection from forced return), the right to seek and enjoy asylum, access to documentation, employment, and education, and protection against discrimination and arbitrary detention. Although SADC member states have largely ratified both Conventions, implementation remains uneven. Some countries have domesticated these frameworks with varying levels of compliance, while others continue to operate under ambiguous or outdated legislative regimes.

2.2 Divergence in National Legal Frameworks

A growing body of scholarship points to the fragmented and inconsistent application of refugee law across Southern Africa (Handmaker, 2001; Amit, 2012; Mavura, 2020). South Africa possesses one of the more comprehensive refugee statutes (Refugees Act of 1998, amended in 2017), but

implementation has been fraught with bureaucratic delays, legal uncertainty, and rising xenophobic sentiment. Scholars have described the system as “rights on paper, exclusion in practice.” Zimbabwe lacks an independent refugee authority. The Refugees Act (1983) is outdated and relies heavily on a Refugee Committee with ministerial oversight. Asylum seekers often face long waiting periods and limited access to integration pathways. Eswatini has ratified both major Conventions but has no dedicated refugee law. Asylum procedures are underdeveloped, and refugee matters are often handled on a case-by-case basis with limited transparency or legal recourse. Botswana and Namibia operate encampment policies that restrict freedom of movement and access to employment, contravening international norms on refugee autonomy.

This patchwork legal landscape contributes to forum shopping, where refugees seek out countries perceived to have better protections. It also fosters legal limbo, statelessness, and limited access to essential services like healthcare, education, and employment.

2.3 Implementation Gaps and Political Realities

Scholars and human rights organizations have consistently highlighted the gap between legal commitments and political will in the refugee context. While ratification signals international alignment, actual protection often falls prey to national security rhetoric, immigration anxieties, and populist narratives.

Xenophobia in South Africa has been a major barrier to refugee protection, with attacks against foreign nationals undermining the state’s commitment to asylum rights. Resource constraints in countries like Malawi or Mozambique result in minimal institutional capacity to process and support asylum seekers. Executive discretion in countries with weak rule of law allows refugee policy to be used as a political tool rather than a rights-based obligation.

Moreover, regional mechanisms for accountability such as the African Commission on Human and Peoples’ Rights lack enforcement teeth, limiting their ability to influence national refugee governance.

2.3 Critiques from the Field

Scholars like Kibreab (2009), Zetter (2012), and Abebe (2016) emphasize the need to move beyond minimal compliance and toward transformational refugee policy in Africa. They advocate for legal harmonization across regional blocs, decentralized refugee management systems that allow for community integration, greater role of civil society and universities in refugee advocacy and research and stronger emphasis on human dignity, not just administrative classification.

Importantly, there is growing recognition that refugee protection is not just a legal or political issue it is a human development imperative, intersecting with healthcare, education, and economic inclusion.

3. The Cost of Fragmentation: Consequences of Legal Inconsistencies on Refugees in Southern Africa

Despite shared commitments to international refugee frameworks, the lack of harmonized national implementation across Southern Africa has resulted in unequal protection, administrative confusion, and serious human rights violations. Refugees and asylum seekers pay the price of this legal fragmentation often with their dignity, freedom, and future.

3.1 Unequal Access to Asylum Procedures

Inconsistent asylum procedures across SADC states result in differential treatment of individuals based solely on geography. A refugee from the Democratic Republic of Congo (DRC) may have access to a formal legal process in South Africa but face informal or discretionary screening in Eswatini or Angola.

In countries lacking robust systems, asylum seekers may be detained as undocumented migrants, without access to legal aid or interpreters. Delays in status determination sometimes lasting years leave refugees in legal limbo, unable to work, study, or travel. In some states, there are no appeals mechanisms, placing life-altering decisions in the hands of unaccountable officials. These disparities violate the principle of non-discrimination and undermine the universality of refugee rights.

3.2 Statelessness and Lack of Documentation

Legal inconsistencies often lead to documentation gaps, which are especially dangerous for refugees born in exile or those who lose identification documents during flight. Without proper documentation, refugees face barriers to banking, healthcare, education, employment, and freedom of movement. Children born to refugee parents are often not registered, increasing the risk of statelessness, particularly in states that do not grant nationality by birth (*jus soli*). Even recognized refugees can wait years for ID cards or travel documents, further entrenching social and economic exclusion. This lack of documentation not only violates international obligations but also fuels poverty and marginalization.

3.3 Limited Social and Economic Integration

Some SADC countries adopt encampment policies, which restrict refugees to designated camps, cutting them off from meaningful participation in society. Others allow integration in principle but offer no real support. Refugees in camps often lack access to higher education, sustainable livelihoods, or internet connectivity. In urban settings, refugees face xenophobic discrimination, especially in the informal economy. Women and girls experience heightened vulnerability due to gender-based violence, lack of access to menstrual health care, and exclusion from decision-making. In contrast to the African Union's call for refugee self-reliance and inclusion, these practices trap refugees in cycles of dependence and insecurity.

3.4 Cross-Border Inconsistencies Undermine Regional Solidarity

Fragmented refugee policies also erode trust between states and weaken regional cooperation. Refugees may "shop for asylum", fleeing from one SADC country to another in search of better

treatment or faster processing. This creates tension and perceptions of burden-shifting. The absence of a binding regional refugee policy or framework means that states operate in silos, duplicating efforts or creating policy contradictions. This disjointedness also hampers data sharing, cross-border protection, and joint planning for mass displacement (e.g., from natural disasters or conflict spillover). As a result, SADC fails to present a unified, rights-based response to displacement, despite the region's increasing interconnectedness.

4. Recommendations: Toward a Harmonized and Human-Centered Refugee Framework for Southern Africa

Addressing the regional inconsistencies in refugee protection across Southern Africa requires more than technical legal reform it demands a deliberate shift toward harmonization, human dignity, and political accountability.

4.1 Develop a SADC Regional Refugee Framework

The Southern African Development Community (SADC) currently lacks a binding legal instrument specifically tailored to refugee protection. To address this gap, the development of a regional refugee protocol drawing on the principles of the 1969 OAU Convention and the African Charter on Human and Peoples' Rights would be a critical step forward. Such a framework could establish minimum protection standards across member states, create coordinated mechanisms for refugee status determination, and facilitate the sharing of best practices, data, and resources. It would also enable joint response strategies in the event of mass influx scenarios, enhancing regional preparedness and solidarity. Crucially, this protocol should prioritize rights-based, people-centered approaches that uphold human dignity, rather than defaulting to securitized migration controls.

4.2 Domesticating and Update National Refugee Laws

To strengthen refugee protection across Southern Africa, all SADC member states should be actively encouraged and where necessary, strategically pressured to domesticate international refugee instruments into clear, rights-compliant national legislation. Countries such as Eswatini, Angola, and Mozambique must move beyond discretionary or ad hoc frameworks and adopt comprehensive refugee laws that align with regional and international standards. Meanwhile, existing legal regimes in Zimbabwe, Botswana, and Namibia require substantive reform, particularly in areas concerning encampment policies, documentation procedures, and access to livelihoods. These reforms must embed robust appeal mechanisms, judicial oversight, and provisions for legal aid to ensure procedural fairness and accountability. Crucially, parliamentary committees and national human rights institutions should be mobilized to champion and monitor these legislative efforts, fostering a culture of rights-based governance and regional solidarity.

4.3 Strengthen Legal Aid and Civil Society Support

Across the SADC region, refugees frequently face significant barriers to accessing justice, stemming from limited legal literacy and inadequate resources to navigate complex asylum systems. To address these systemic gaps, governments, donors, and regional bodies must prioritize investments in legal aid infrastructure including refugee help desks, mobile legal support units, and networks of pro bono lawyers. Strategic partnerships with universities and civil society organizations can amplify know-your-rights campaigns within refugee communities, fostering legal empowerment and informed engagement with asylum procedures. These interventions are especially critical in remote areas and encampments, where access to legal support is often most constrained. A rights-based approach to refugee protection demands that displaced persons regardless of geography or income are equipped with the tools and support necessary to claim and defend their rights within host states.

4.4 Improve Refugee Documentation and Civil Registration

Uniform and timely refugee documentation is essential to safeguarding access, dignity, and legal identity across the SADC region. Member states must ensure the birth registration of all children born to refugees or asylum seekers, thereby preventing statelessness and affirming the right to identity from birth. Temporary identification should be issued to asylum seekers within 30 days of application, enabling access to basic services and legal protections during status determination. Furthermore, harmonized documentation systems capable of cross-border verification are vital for transit refugees and those navigating regional mobility. These measures not only uphold international obligations but also foster administrative efficiency, reduce vulnerability, and promote inclusive development across borders.

4.5 Facilitate Social and Economic Inclusion

Beyond the recognition of legal status, refugees must be empowered to lead full and dignified lives within host communities. SADC member states should actively promote access to education, healthcare, and employment for recognized refugees, ensuring their inclusion in national service delivery systems. Encampment policies that restrict movement, autonomy, and opportunity must be dismantled in favor of community-based protection models. Moreover, governments should partner with the private sector and development agencies to integrate refugees into national development planning, recognizing their potential as contributors to economic growth and social resilience. These measures align with the Global Compact on Refugees and the African Union's vision for inclusive, self-reliant refugee protection anchored in solidarity, sustainability, and shared responsibility.

4.6 Enhance Regional Monitoring and Accountability

To ensure compliance and sustained progress in refugee protection, both SADC and the African Union must adopt robust accountability mechanisms. A dedicated Refugee Rights Monitoring Body should be established to systematically track member state adherence to regional and international standards, including the OAU Convention and the Global Compact on Refugees. Annual refugee protection scorecards grounded in transparent, rights-based indicators can provide comparative insights and

spotlight areas for improvement. Additionally, peer review mechanisms modeled on the African Peer Review Mechanism (APRM) would foster constructive dialogue, regional solidarity, and mutual accountability. By embedding refugee protection within broader governance and human rights frameworks, these tools can mobilize reform through transparency, regional peer pressure, and shared responsibility.

5. Conclusion

As displacement within and across Southern African borders intensifies, the need for a unified, rights-based, and forward-looking refugee protection system has never been more urgent. This paper has highlighted the stark inconsistencies in legal frameworks, asylum procedures, and refugee treatment across SADC member states. These discrepancies not only violate international commitments but also leave displaced individuals vulnerable to exploitation, statelessness, and systemic exclusion.

At the heart of this fragmentation is a failure to view refugee protection as a shared regional responsibility. While each country faces its own political and economic constraints, the lack of coordination and harmonization undermines both human rights and the broader goals of regional solidarity and integration. A refugee's access to safety, dignity, and opportunity should not depend on which side of a border they land.

What is required is a reimagining of refugee governance in Southern Africa one that transcends outdated laws, securitized approaches, and reactive policy. The path forward lies in adopting a harmonized regional refugee framework, updating national legislation, investing in legal aid and documentation systems, and centering refugee voices in policy development.

Refugee protection must be more than compliance it must be a commitment to justice, inclusion, and shared humanity. If the SADC region is to live up to its ideals of unity and cooperation, it must ensure that no person fleeing persecution is left behind or left invisible. Only then can Southern Africa become not just a zone of passage, but a region of protection, dignity, and belonging.

References

- African Union. (1969). OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. Addis Ababa.
- Kibreab, G. (2009). Forced Migration in Africa: Challenges in Development and Conflict Resolution. In P. Adepoju (Ed.), *International Migration within, to and from Africa in a Globalised World* (pp. 99–119). Sub-Saharan Publishers.
- Maru, M. T. (2013). The Kampala Convention and the Right Not to Be Arbitrarily Displaced. In D. Cantor & E. Mooney (Eds.), *The Law of Refugee Status in Africa*. Oxford University Press.
- Republic of South Africa. (1998, amended 2017). Refugees Act 130 of 1998. Government Gazette.

UNHCR. (2021). Global Trends: Forced Displacement in 2020. United Nations High Commissioner for Refugees. <https://www.unhcr.org/flagship-reports/globaltrends/>

Zetter, R. (2012). Refugees and Other Forced Migrants in Africa: Towards a Legal and Normative Framework of Protection and Solutions. *Forced Migration Review*, 39, 16–18. <https://www.fmreview.org/fragilestates/zetter>

African Commission on Human and Peoples' Rights (ACHPR). (2022). Report on the Human Rights Situation of Refugees and Migrants in Africa. Banjul, The Gambia. <https://achpr.au.int>

Global Compact on Refugees. (2018). United Nations High Commissioner for Refugees. <https://www.unhcr.org/the-global-compact-on-refugees.html>